

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21st DAY OF JANUARY 2021 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: Chris Godlewski, Plan Director; Jason Auvil, Zoning Administrator; Mae Kratzer, Planner; Danny Dean, Planner; Deb Britton, 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 17th day of December 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. A motion was made and seconded (*Miller/Atha*) to elect the following Board members: Mr. Hesser as Chairman, Mr. Miller as Vice Chairman, and Mr. Campanello as Secretary.

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

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

5. The application of *Craig Smith* for a Special Use for a ground-mounted solar array on property located on the north side of CR 42, 1,600 ft. west of CR 37, common address of 13291 CR 42 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-0909-2020*.

There were 11 neighboring property owners notified of this request.

The petitioner was not present; hearing continued to the end of the 8:30 A.M. time slot.

See item #9 on page 5.

6. The application of *Elmer D. Maust & Eunice E. Maust, 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 located on the south side of CR 118, 1,190 ft. east of CR 115, common address of 22738 CR 118 in Concord Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0963-2020*.

There were 13 neighboring property owners notified of this request.

Eunice Maust, 22738 CR 118, Goshen, was present for this request with her grandson Eric, who resides at the same address. She explained they applied for the Special Use after receiving a complaint regarding the chickens. Mr. Atha asked how many chickens they have on the property,

and Mrs. Maust responded twenty-one. She then request they be allowed to keep all twenty-one chickens. Mr. Atha explained the Board typically approves twelve chickens no roosters on less than three acres. He noted the questionnaire request approval for twelve chickens. He went on to say the Board can grant them time to remove the extra chickens from the property, if the request is approved. Mrs. Maust questioned how long the Board would give them, and Mr. Atha asked how long she would need. Mr. Campanello then suggested they be given three months to remove any extra chickens from the property. Mr. Atha questioned waste disposal, and Mr. Maust responded they use it as fertilizer on their flower beds. Mr. Miller asked if the mentioned complaints have been rectified, and Mrs. Maust stated they continue to work on cleaning up the property. Mr. Miller asked how the cleanup is progressing, and she responded the property has come a long way. Mr. Miller clarified no one lives in the RV. Mrs. Maust noted no one has lived in the RV since last summer. He then clarified all inoperable vehicles have been removed from the property.

Mr. Auvil submitted a letter received in remonstrance from Mary A. Mansfield, 22712 CR 118 [Attached to file as Staff Exhibit #1]. He noted Mrs. Mansfield does not believe approval of this request is appropriate due to the petitioners' disregard for the Elkhart County Zoning Ordinance for many years. She mentioned multiple complaints have been filed against the property, and it is very unkept. She noted piles of junk are brought to the property, cleaned up, and then replaced with more junk, which she stressed has become a pattern. He noted the letter includes multiple concerns regarding this request.

Mrs. Maust came back on and stated they continue to work on the property, but their neighbor continues to complain.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha stated he does not see a problem allowing twelve chickens based on land use. Mr. Miller mentioned the history of complaints/violations is a concern. Mr. Atha asked if a time limit should be imposed, and Mr. Campanello stated he does not believe one is necessary. Mr. Atha added the county will likely receive a complaint if the petitioners go above the twelve chicken limit. Mr. Hesser suggested adding a one year staff review. He went on to say a renewal is not necessary, but staff can bring the matter back before the Board if issues arise. He stressed he believes a review is appropriate in light of the property's history.

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 an agricultural use for the keeping of animals on a tract of land containing less than 3 acres 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. Approved with a one (1) year review by staff for compliance.
3. The petitioner has three (3) months from 1/21/21 to reduce the number of chickens on the property from twenty-one (21) to twelve (12).

The following commitments were imposed:

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

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

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

7. The application of *Matthew Beachy & Monica Beachy, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the south side of CR 28, 725 ft. west of CR 127, common address of 17156 CR 28 in Elkhart Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0947-2020*.

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 stated their proposal is to install two arrays for the residence and two for the outbuilding, because they have separate meters. She stressed the petitioner will keep as many existing trees as possible between the two properties. She added the proposed arrays will be placed behind the outbuilding and will not be visible from the residence. Mr. Hesser asked if the petitioners own the parcel to the west, and Mrs. Mitschelen responded yes.

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 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 12/8/2020 and as represented in the Special Use application.

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

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

8. The application of *Floyd Miller & Elsie Miller, 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 located on the south side of CR 26, 1,695 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-0967-2020*.

There were six neighboring property owners notified of this request.

Stephanie Floyd, Progressive Engineering, 58640 SR 15, Goshen, was present representing the petitioner. She stated a one-lot Minor Subdivision was brought before the Plat/Plan Commission for this property in order to expand their business. She noted the property owners are Amish and have horses onsite. She added the request is for two horses, but they would like approval for three. She explained they work between two horses, and another one is onsite but not typically used. She also request the Board allow thirty chickens. She then pointed out the petitioners' residence, their neighbor who is family, and the petitioners' son's farmland on the aerial. She went on to say the chickens will be utilized by all three families. Mrs. Floyd stated waste from the animals will be used on their flower beds and farm field. She noted twelve chickens is very minimal for the families utilizing them. She again request approval for three horses, and she added the horse barn will be constructed on their son's property. Mr. Atha stated he does not believe the Board can approve more than the number of animals requested in the application. Attorney Kolbus pointed out the petition request approval for thirty chickens and two horses. Mr. Miller noted the parcel is a good size, and the chickens will also be used by the neighboring property. Mr. Hesser mentioned the current owners will share the chickens, but he mentioned that could change. Mrs. Floyd stated the mentioned properties have been in the family for years, and she does not anticipate that changing. Mr. Hesser responded ownership could change, and the Special Use would then transfer to the next owner. He then clarified the Special Use application request approval for two horses. Mrs. Floyd noted the petitioners spoke to her yesterday about asking for three horses. Mr. Atha explained a visiting horse does not count towards the number of animals allowed. Mrs. Floyd noted the area is predominately Amish with similar situations. Mr. Miller mentioned the Board has had issues with property changing hands prompting complaints about previous Board action. He then pointed out the animals would be allowed by right on the son's farmland. Mrs. Floyd responded putting the animals on the son's property would cause them to loose farm ground. Mr. Miller noted the petitioner can have an unlimited number of animals on the farm field property, if the Board restricts the number allowed on the subject property. Mrs. Floyd responded the son's property is strictly used as farm land. She then pointed out the proposed location for the chicken coop. Mr. Hesser clarified the third horse would be from visitors, and Mrs. Floyd responded they may have a visitor for a month at a time. Mr. Hesser reiterated the third horse will be on the property more long term than a day.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha noted the property is 2.75 acres. Mr. Miller pointed out a Special Use would not be required, if they owned another .25 acres. Mr. Hesser mentioned the Board limited a previous request on 2 acres to twelve chickens. Mr. Campanello explained this property has no history of complaints like the mentioned property. He then asked if this request can be approved for only the current owner, but Mr. Hesser responded no. Attorney Kolbus clarified approval cannot be limited to a named individual. Mr. Hesser questioned why the parcel was created at 2.75 acres rather than 3. Mrs. Floyd responded the property was split based on an existing building and farmland. She went on to say the petitioner's brother and sister reside on the neighboring property, and the drive along with required setbacks affected the property size. Mr. Miller asked why the south property line could not be moved back .25 acres. Mrs. Floyd responded she believes they had a reason while platting out the property that it could not be moved. Mrs. Britton pointed out

the reserve septic system is located in that area. Mrs. Floyd stressed they needed to leave enough room on the neighboring property for their current septic system and a reserve. Mr. Atha questioned the use of a building on the neighboring property. Mrs. Floyd responded she is unsure of its use, but it appears to be a shed. Mr. Miller stated he is willing to make an exception for this property and allow thirty chickens. Mr. Atha agreed and added he believes the number of chickens is appropriate due to the size and layout of the property. He added no body of water borders the subject property. Mr. Hesser questioned if three horses can be approved when the application requests two. Mrs. Britton responded the legal advertisement does not note the number of horses requested. Mr. Hesser pointed out a neighbor could view the file, which reflects the request for two horses. He then asked if the petition could be amended and re-advertised without charging an additional fee. Attorney Kolbus responded the decision is up to the Board, and it has been done in the past. Mr. Campanello noted the property is surrounded by farmland. Mr. Hesser suggested the petition be postponed and re-advertised, because he does not believe the Board should deviate from what was requested. Mrs. Floyd asked that the Board approve the request for two horses, and the petitioners can file another application, if the third horse is necessary. Mr. Hesser stated he would like to avoid the petitioner re-filing for three horses. Mrs. Floyd responded the petitioners were more concerned about the chickens than the horses, and she will work with them. She went on to say they have worked on this project for four months, and they do not want it to take any longer.

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 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 12/14/2020 and as represented in the Special Use application.
2. The agricultural use is limited to a maximum of two (2) adult horses and thirty (30) chickens at any one time, no roosters.

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

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

9. The application of *Craig Smith* for a Special Use for a ground-mounted solar array on property located on the north side of CR 42, 1,600 ft. west of CR 37, common address of 13291 CR 42 in Clinton Township, zoned A-1, came on to be heard.

Again, no petitioner was present.

Attorney Kolbus stated requests without a petitioner present have been tabled in the past when the Board has had questions or concerns. He continued saying the Board has also acted on a request without the petitioner present, when staff has had a favorable recommendation, and the

Board had no questions or concerns. Mr. Atha stated he is comfortable making a motion without a petitioner present.

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 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 11/25/2020 and as represented in the Special Use application.

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

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

10. The application of *Davidson Chezem & Valerie M. Chezem, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the southeast corner of Arlene Ave. & CR 13, 1,070 ft. North of CR 24, common address of 23872 Arlene Ave. in Concord Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0961-2020*.

There were 27 neighboring property owners notified of this request.

Glen Miller, 310 S. Main St., Leesburg, was present for this request representing the petitioners. He explained they would like to install a ground-mounted solar array south of the residence. Mr. Atha clarified the submitted site plan will not change.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a 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 12/10/2020 and as represented in the Special Use application.

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

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

11. The application of *Kenneth E. Yoder & Luetta F. Yoder, Husband & Wife* for a Special Use for a home workshop/business for a wood finishing business and for a Developmental Variance to allow for 4 outside employees (Ordinance allows 2) on property located on the east side of CR 37, 1,395 ft. south of CR 36, common address of 64200 CR 37 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-0962-2020*.

There were seven neighboring property owners notified of this request.

Kenny Yoder, 64200 CR 37, Goshen, was present for this request and stated he would like to extend his shop 40 ft. to the north. Mr. Hesser clarified the shaded area on the site plan is the proposed addition, and he pointed out the site plan shows 30 ft. rather than 40 ft. Mr. Yoder explained he originally planned to extend it only 30 ft., but he would like the addition to be 40 ft. wide. Mrs. Kratzer stated extending the addition by 10 ft. will not interfere with the setbacks, but the site plan must be revised to show the correct dimensions.

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 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. The petitioner must provide a revised site plan showing the updated building dimensions 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 application.

Further, the motion also included that a Developmental Variance to allow for 4 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 petitioner must provide a revised site plan showing the updated building dimensions 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.

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

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

12. The application of *Freeman Bontrager* for a Special Use for a home workshop/business for a construction business, for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right, and for a Developmental Variance to allow for 15 outside employees (Ordinance allows 2) on property located on the east side of CR 101, 1,470 ft. south of CR 56, common address of 72758 CR 101 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-0965-2020*.

There were nine neighboring property owners notified of this request.

Freeman Bontrager, 72758 CR 101, Nappanee, was present for this request and stated he would like to utilize an existing building for a construction company. Mr. Hesser asked how many employees are onsite at a time. Mr. Bontrager responded a salesman stays onsite for office work, but the other employees only come to the subject property to load up materials and equipment for the jobsite. He stressed the employees do not all work on the property. Mr. Hesser clarified the employees come to the property, load the tools, and then head to the jobsite. Mr. Bontrager stated he houses lumber and materials on the property, but most work is completed off site. Mr. Atha noted the site plan shows three parking spaces, and he asked if the parking spaces are for employees or customers. Mr. Bontrager responded his sales employee and an occasional customer utilize the parking. He continued saying only two to three customers come to the property a week. Mr. Hesser asked the type of construction work they complete. Mr. Bontrager responded new houses, pole barns, and some commercial.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he was concerned about the number of employees, but most will not be onsite. Mr. Hesser noted fifteen employees is a large number for a home workshop/business, but he remembers allowing that many for construction businesses. He stressed this operation is close to needing more than a home workshop/business Special Use.

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 a Special Use for a home workshop/business for a construction business be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 12/14/2020 and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right, and for a Developmental Variance to allow for 15 outside employees (Ordinance allows 2) 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 12/14/2020 and as represented in the Developmental Variance application.

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

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

13. The application of *Andrew C. Carpenter & Cynthia Dawn Carpenter, Husband & Wife (Buyers) & Northern Investments, LLC (Seller)* for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the north side of Greenleaf Blvd., 875 ft. east of Marguerite Ave., in Osolo 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-0969-2020*.

There were 15 neighboring property owners notified of this request.

Tim Miller, Fireside Homes, 70659 Hilltop Rd., Union, was present representing the petitioners who he stated are two of his close friends. He went on to say he has been involved with building and development for years. He explained the petitioners were unable to make the hearing due to having Covid. He stated he has talked at length with the petitioners about their plans for the subject property. He mentioned as a builder he has constructed three residences along Greenleaf Blvd. in addition to a large renovation project on the petitioners' residence. He continued saying most property owners along water have boats, wave runners, outdoor furniture, etc. that need to be stored inside. He stressed the petitioner would like to construct this building for storage of the before mentioned items in addition to having a play area for their grandchildren. He then submitted a few pictures of some options they have discussed for the proposed building [Attached to file as *Petitioner Exhibit #1*]. He explained the building will be residential in design and will not appear commercial. He went on to say the building will be designed to match the residences nearby. He noted he lives on Baldwin Lake, and twenty percent of the residences on that lake have accessory structures across the street. He reiterated their goals is to construct a residential structure that will blend in with the neighborhood. He added the subject property has existing natural screening, that the petitioner is willing to leave. He stressed the structure will look nice and will not have a negative impact on the surrounding property values. He continued saying the petitioner plans to spend well into the six figures on this structure, and the building affects their property value as well, since their residence is across the street. Mr. Tim Miller stated he drove down Greenleaf Blvd., and there is a significant difference in value between the residences on the water and those on the other side of the street. He stressed the proposed structure will not be injurious to the neighboring properties. He request approval of this request. He added Mr. Carpenter is a very caring individual who does not want to upset his neighbors.

Dennis Gobble, 23879 Greenleaf Blvd., was present against this request and pointed out his residence on the aerial. He stressed this area is residential, and no buildings similar to this proposal exists along Greenleaf Blvd. He pointed out the north side of the road has several vacant lots, and he believes approval of this request will open them up to similar uses. Mr. Hesser asked if he is aware of any accessory structures without a residence located in the area, and Mr. Gobble responded no. He added he agrees with staff's recommendation.

Mr. Auvil presented a packet containing multiple letters and emails opposed to this request *[Attached to file as Staff Exhibit #1]*. He then proceeded to read the names and addresses, if provided, from the letters and emails submitted in the packet: Eli Glazer, 3312 Greenleaf Blvd.; Thomas & Nancy Parrish, 3337 Greenleaf Blvd.; Barbara Weidner, P.O. Box 1575 Nashville/23938 Greenleaf Blvd.; Charles & Vallie Havens, 3320 Greenleaf Blvd.; Fred & Lynn Lands, 3351 Greenleaf Blvd.; James Kelly, 3345 Greenleaf Blvd.; and Sarah Dille, 3333 Greenleaf Blvd. He noted the letters and emails contain concerns including standalone accessory structures in a residential area, negative effects on property value, and setting a precedence with approval.

Fred Lands, 3351 Greenleaf Blvd., was present in remonstrance. Mr. Hesser stated his letter was read, and he asked for any additional information. Mr. Land stated he is a real estate broker, and he stressed storage buildings belong in a B zone. He noted no other properties in the area have standalone accessory structures, and approval of this request would set a precedence. He explained approval will open up the neighboring vacant parcels to the same use. He request the petition be denied.

Christine Gobble, 23879 Greenleaf Blvd. was present against the request. She stated she recently retired from the title department of a law firm, so she has a history with title work. She went on to say she completed a title search at the Elkhart County Recorder's Office on the subject property. She explained she found restrictions requiring the use be residential. She then read off of the deed for Unrecorded Broadmore II lot 158 which states, "No building other than for residential purposes shall be place on the property described herein and no building shall be placed there closer than 25 ft. to the front line thereof and 5 ft. to the sideline thereof." Mrs. Gobble mentioned she has found that restrictions stated on the deed do carry with the property. She reiterated the deed for the subject property states the property should not be used for anything other than residential use. She went on to say approval of the Use Variance would go against the deed restriction. She stated from a legal stand point she does not believe this request should be granted.

Sarah Dille, 3333 Greenleaf Blvd., was present in opposition representing her father and herself. She stated her father owns three vacant parcels across the street, and he is strongly against this request. She stressed she has nothing against the Carpenters, but she wants the area to remain residential. She noted she lives on the river side of the road, and she does not want to negatively impact the property values on the northern side of the road.

Mr. Tim Miller came back on and stated the general public often has concerns that a storage building will be a commercial structure. However, he went on to say the proposed structure will be residential and used for personal storage. He mentioned he has come before the Board several times as a developer, and neighbors opposed almost every development he proposed. He stressed he understands the property value concern, but all of the developments done by Fireside Homes have benefited the adjoining communities. He continued saying the petitioner wants the neighbors to understand that the proposed building will not be a detriment to the neighborhood. Mr. Hesser asked if Mr. Tim Miller will construct the proposed building. Mr. Tim Miller responded he has

not discussed with the petitioner, if he will contract with Fireside Homes. He went on to say he is in the process of retiring, so he is not very involved with the company anymore. Mr. Hesser clarified the subject property is not currently owned by the Carpenters, but they do plan to purchase it. Mr. Tim Miller responded the petitioners have a purchase agreement for the property pending approval of this request. He then pointed out the petitioners' residence on the aerial. Mr. Hesser asked if the petitioner is willing to combine the titles to both properties and sell them together. Mr. Tim Miller responded yes. He added the petitioner is also willing to leave the natural screening, if the neighbors do not like the appearance of the building. He stressed the proposed building will be beautiful. Mr. Hesser agreed and stated he does not have an issue with the appearance of the proposed building. He went on to say his concern is the separation between the residence and the subject property. Mr. Tim Miller explained the subject property recently came up for sale, but the petitioner would have preferred to purchase property across the street from his residence, if it was available. He noted the petitioner currently stores items at his manufacturing facility every year, and he would like to store his items closer.

The public hearing was closed at this time.

Mr. Miller asked if a Use Variance would be required had both properties been on the same deed. Mr. Hesser responded yes, because the accessory structure would still be on a parcel without a residence. He noted the Board typically adds a deed restriction requirement, if an accessory structure is approved on property across the street from a residence to prevent the properties from being sold separately. He added similar requests that are typically approved are on water, small/older lots, and consistent with the surrounding area. He went on to say he sees no precedence for accessory structures on parcels without a residence in this area. He added this neighborhood has larger lots and homes than the smaller lake lots. Mr. Campanello pointed out the proposed building will likely be worth more than most of the residences on the north side of the street. He stressed it will not take away from the neighborhood. Mr. Miller stated it is still a storage building, and Mr. Campanello stressed the building will be used for residential storage. He continued saying the proposed style of the building will increase property values in the area. Mr. Miller voiced his concern that approval of this request will set a precedence, and he does not believe this is the neighborhood for accessory structures on lots without a residence. He noted the subject property has deed restrictions. Mr. Campanello stressed this property is in the county and on water. He pointed out the subject property is not large enough to build the storage building the petitioner needs. He stated the petitioner will construct a beautiful building, and it will likely look nicer than most of the houses on the north side of the street. Mr. Hesser stated he cannot move past the fact that the location is not directly across the street from the residence, and he does not believe the lots are as restricted as some of the similar requests that have been approved. Mr. Miller added the Board typically approves these requests when the lots are small, and a storage building is all that would fit on it.

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

Motion: Action: Approve, **Moved by** Tony Campanello, that the request for a Use Variance to allow for the construction of an accessory structure without a residence be approved. **None seconded.** Motion dies for lack of a second.

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 Use Variance to allow for the construction of an accessory structure without a residence be denied.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Joe Atha, Roger Miller, Randy Hesser.

No: Tony Campanello.

14. The application of **Randy A. Coyle & Cynthia D. Coyle, Husband & Wife** for a 4 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing attached garage 1 ft. from the west side property line located on the south side of CR 16, 690 ft. south of US 20, common address of 24788 CR 16 in Concord Township, zoned R-2, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0956-2020*.

There were six neighboring property owners notified of this request.

Cynthia Coyle, 24788 CR 16, was present for this request. She stated the site plan her builder gave her does not match the site plan on file with the county. She went on to say she is unsure why the two site plans do not match. She stressed they believed they were well within five feet when they constructed the building, but they did not have a current survey at the time. She noted the surveyor was out Tuesday for the final survey, which shows the need for a 4 ft. Developmental Variance. She explained the garage has already been constructed, and only the back corner is within the required setback. She stressed only about a 3'x1' section needs the Developmental Variance, because the garage sits on an angle. She added the new garage has increased the property value for them and their neighbors. She noted they plan to add a large amount of landscaping this spring in addition to a new driveway, siding, doors, and window wraps. Mrs. Coyle explained her husband is getting older, and it was difficult for him to shovel their old, gravel driveway. She continued saying the new driveway is much easier for him, and they no longer have to clean off their cars in the morning. She mentioned the garage also gives them room to store their lawn tractor. She reiterated the garage is beneficial to both them and the neighbors. She asked if the Board has a copy of the site plan her contractor drew. She then submitted her contractor's site plan *[Attached to file as Petitioner Exhibit #1]* and the site plan that was attached to the permit *[Attached to file as Petitioner Exhibit #2]*. Mr. Hesser request clarification of the submitted site plans. Mrs. Coyle explained the hand drawn site plan was put together by her builder, and the computer generated one was on file with the county. Mr. Hesser clarified the drawing from the contractor shows the garage 6 ft. from the property line. Mr. Campanello noted the drawing the county received shows it 20 ft. from the property line. Mrs. Coyle responded the garage on the county drawing is shown in front of the breezeway, but the contractor drew it attached to the breezeway. She went on to say the garage was constructed beside the breezeway. Mr. Miller stated the site plan on file was approved, but it appears the contractor built a structure to match a different plan. Mrs. Coyle clarified the hand written drawing from the contractor was not submitted for the building permit. Mrs. Kratzer reiterated the computer generated drawing on file was submitted for both the building permit and the original Developmental Variance. Mrs. Coyle asked who submitted the site plan on record. Mrs. Coyle stated her contractor gave her the hand drawn site plan and informed her he had submitted it for the building permit. Mrs. Kratzer responded the

records do not reflect that. Mrs. Britton noted Progressive Engineering submitted the computer generated site plan, which was included in the Developmental Variance for the front setback. She pointed out the submitted site plan shows 20 ft. from the property line, but the building is only 1 ft. from it. Mrs. Coyle reiterated the 20 ft. shown was off of the corner of the breezeway. Mrs. Coyle asked if the hand written drawing from the contractor was submitted with the building permit. Mrs. Kratzer clarified the computer generated drawing on record is the one that was submitted for both the building permit and previous Developmental Variance. Mr. Miller stated the building is already constructed. Mr. Hesser asked if they spoke to the neighbor, and Mrs. Coyle responded their neighbor is present.

Ruth Hill, 1241 Goshen Ave., the next door neighbor was present opposed to this request. She explained she attended the first Developmental Variance hearing with two goals; to ensure her neighbor was adhering to the county's rules/regulations and to ensure the property line measurements were correct. She stressed she also wanted to make sure she can sell her residence when the time comes without issue or extra costs. She went on to say she is at this meeting, because it was discovered that none of her goals were met. She expressed her frustration that her neighbor was allowed to start construction of the garage prior to the hearing, resulting with it being constructed 4 ft. into the required 5 ft. setback. She continued saying her neighbor is now requesting the Developmental Variance to fix the problem that was created. She questioned why policies and procedures exists, if they are not followed. Mrs. Hill stated she feels encroached upon, because the structure is so close to her property. She noted the petitioner hired a surveyor, and she does not believe the property lines they marked are correct. She stressed she now has to pay a surveyor to mark the lines, and she may have to hire an attorney. She went on to say the petitioner has a history of doing things on her property, including harassing, mocking, and bullying her. She explained her son asked their son why she was causing problems. She questioned how finding out the correct property lines is a problem. Mr. Hesser asked if Mrs. Hill was present at the January 14th hearing, and she responded she was present at the very first one. Mr. Hesser clarified she attended the hearing for the front setback Developmental Variance. Mrs. Hill stated she submitted pictures at the first hearing of the already started project. She reiterated the footers were poured before the first hearing, and her pictures were included in the previous file. She clarified she attended the Hearing Officer Meeting in October but not the Plat/Plan Commission Hearing in January. Mrs. Hill stated she informed staff and the Hearing Officer that the submitted drawing was not correct at the previous hearing.

Randy Coyle, 24788 CR 16, Elkhart, was present as the petitioner. He stated he does not understand how the garage addition will harm the neighbor's property value. Mr. Miller asked if the building was started before a permit was issued, and Mr. Coyle responded no. He responded the surveyor who represented them said everything was okay. Mr. Miller questioned why the site plan submitted and the structure's location do not match. Mr. Coyle responded he is unsure, because their surveyor represented them at the previous hearings. He reiterated their surveyor informed them everything was fine, and he is unsure how the discrepancy happened. Mr. Campanello asked if the footings and foundation were inspected, and Mr. Coyle responded yes. Mrs. Britton stated Stephanie Floyd from Progressive Engineering represented the petitioners at the October 14th meeting. She went on to say Mrs. Floyd stated the site plan submitted with the petition was based off of GIS aerial measurements, but a Minor Subdivision would later be filed with survey measurements. She stressed the GIS aerial property lines are not accurate. Mr. Coyle

added Progressive completed the survey on Tuesday, and he had them stake the property lines. Mr. Campanello stated the building was not constructed at the proper setback, and Mr. Coyle responded he is unsure how the discrepancy happened. He stressed the contractor's drawing is what they agreed on along with Progressive Engineering. He went on to say he is unsure who submitted the drawing on file, but he has never seen it. Mr. Miller responded the drawing on file was submitted by Progressive Engineering.

Mrs. Coyle came back on and stressed the entire garage is not within the required setback only a small corner extends into it. She stated the garage addition will increase the neighbor's property value. She continued saying the neighboring residence is not close to the property line. She explained when they constructed the garage, they believed the building met the required setback. She went on to say she could understand the neighbor's frustration, if her residence was closer to the property line. She again stressed they believed they met the required setback based off of a post that they assumed was their property line. She went on to say the addition does not encroach onto the neighbor's property. Mr. Campanello asked if the corner of the building encroaching into the setback could be removed and fixed to meet the proper setback. Mrs. Coyle responded they spent a tremendous amount of money for the addition, and she hopes that is not the solution. Mr. Campanello suggested the surveyor who made the mistake should help pay to rectify it. Mrs. Coyle reiterated she believes the addition increases the value of their residence and the neighbors.

Mr. Campanello asked staff their opinion on the proper way to rectify this situation and if the back corner should be removed and constructed at the proper setback. Mr. Auvil responded he believes a few remedies exist for this situation. He went on to say he does not believe it is staff's or the Board's place to work out the details between neighbors, but the best outcome would be for the neighbors to come to an agreement. He explained the petitioners could purchase a few feet of the neighbor's property so the garage meets the required setback. He went on to say the petitioners could pay to have the neighbor's property surveyed. He stressed he believes this can be worked out, if all parties are civil and in agreement. He continued saying the petitioners made a mistake, but he believes they can reach an agreement to rectify the situation. Mr. Auvil stated the contractor provided staff with a site plan, but the building was not constructed to the site plan that was approved. He added the companies involved should have liability insurance because mistakes do happen. He mentioned it cannot be determined if the discrepancy was on purpose, and he also noted the GIS system is not survey level data. Mr. Godlewski suggested tabling the request for 30 days to see if the involved parties can reach an agreement. Mr. Miller asked the ramifications of denial, and Attorney Kolbus responded a partial tear-down. Mr. Campanello clarified the garage portion located within the setback would need to be torn off and rebuilt to meet the required setback. Mr. Hesser asked if the neighbor could pursue damages with approval of this request. Attorney Kolbus responded he is unsure. Mr. Campanello then asked if the setback is determined by the overhang or foundation, and Mr. Auvil responded the foundation. Mr. Miller stated he is in favor of tabling the request to see if the neighbors can come to an agreement, but he understands the repercussions of denial. Mr. Campanello noted as a contractor, it would be his responsibility to correct his mistake. Mr. Hesser pointed out the city/county line divides the two properties. He went on to say the Board has no jurisdiction in the city, and he is unsure of Elkhart City's rules/regulations. Mr. Miller stated he purchased a residence, where the neighbor's garage was partially on his property, and they made an arrangement with each other. He stressed this

situation can be worked out. He went on to say someone messed up, and he does not believe it was the property owner’s fault.

The public hearing was closed at this time.

Mr. Hesser suggested the request be tabled for 60 days. He stated he does not like either situation. He explained he has no reason to believe that the owners intentionally built the garage too close to the property line, and he does not want to punish them for a mistake. However, he does not believe the neighbor should have repercussions from the petitioners’ mistake. Mr. Hesser noted no re-notification is needed, since both parties involved are present.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Joe Atha that this request for a 4 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing attached garage 1 ft. from the west side property line be tabled until the March 18, 2021, Advisory Board of Zoning Appeals meeting to allow the petitioner and neighbor time to reach a resolution.

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

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

15. The meeting was adjourned at 10:27 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary