

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF JANUARY 2014 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; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

2. A motion was made and seconded (*Wolgamood/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of December 2013 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Campanello*) that the legal advertisements, having been published on the 4th day of January 2014 in the Goshen News and on the 4th day of January 2014 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Campanello/Wolgamood*) 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.

5. Election of Officers: After a brief discussion:

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that the 2014 Board of Zoning Appeals officers be elected as follows: Doug Miller, Chairman; Meg Wolgamood, Vice Chairman; and Tony Campanello, Secretary.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

6. The application of *Old Order Mennonite Church Attn: David Zimmerman* for a Special Use for an existing church (Specifications F - #48) on property located on the North side of CR 38, 500 ft. West of CR 11 in Harrison Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #000CR 38-131219-1*.

There were seven neighboring property owners notified of this request.

Ivan Martin, 25634 CR 38, Goshen, was present on behalf of this request. He noted Secretary David Zimmerman, 63811 CR 3, Elkhart, was also present. As the church has been in existence since 1959 at the present location, they are requesting a Special Use permit to bring the property into compliance. When Mrs. Wolgamood asked if all of the buildings on site are affiliated with the church, Mr. Zimmerman indicated yes. She inquired further about how they happened to be seeking the Special Use permit now. Mr. Martin reported three or four years ago,

they purchased more land and wanted to move the horse tying sheds. When attempting to obtain a permit to move them, although he received the permit, he was told a Special Use permit should be requested prior to any future building. He said they are considering a possible future addition.

Merlyn Martin, 25720 CR 38, Goshen, was present in support of this request. Indicating his property on the aerial photo, he said he is a neighbor to the west and does not have any problem with the request.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Robert Homan 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 existing church (Specifications F - #48) 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. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

7. The application of *D.R.S. Co., LLC* for a Special Use for parking area, private (off-site) in an R-1 District (Specifications F - #24) on property located on the West side of Wysong Street, 253 ft. South of Tarman Road, being Lot 17 of Tarman's North Side Add. No. 1, common address of 19186 Tarman Road in Jackson Township came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #19186Wysong Street-131127-1*. When Mrs. Wolgamood questioned Mr. Mabry about the History and General Notes listing a Developmental Variance approved by the Hearing Officer on Tarman Road and how it is affiliated with this parcel, Mr. Mabry indicated it is an error as it was for the petitioner's property rather than the subject property.

There were 14 neighboring property owners notified of this request.

Attorney Michael DeBoni, 130 North Main, Goshen, was present representing D.R.S. Company, on behalf of this request. He noted Robert Steury, President of Veada Industries and co-owner of D.R.S., is also present. Pointing out their location on the aerial photo, he indicated Veada Industries and noted they have been located at this site since approximately 1968 and manufacture products for recreational boat industry. Mr. Steury and his brother, Doug, own Veada Industries and D.R.S. Company. Mr. DeBoni further explained that D.R.S. actually owns all of the real estate upon which Veada operates. D.R.S. also owns the subject property and the north adjacent residential lot on Wysong Street. Mr. DeBoni explained D.R.S. would like to remove the existing mobile home and shed to turn the property into a gravel or limestone parking lot for additional parking for Veada Industries so there is no need for employee on-street parking

in the residential area. As Veada is in a hiring mode, they hope to employ more than their present 470 employees and wish to expand their on-site parking. He noted the entrance to the proposed parking lot would be off of the existing parking lot and not from Wysong Street. They will put a six foot privacy fence between the parking lot and the residence to the north which is also owned by D.R.S. He noted the parking lot will also have bushes at least four ft. tall and will add 18 parking spaces. Mr. DeBoni further indicated they could combine it into one deed. Mr. Campanello asked about drainage for the current parking.

Bob Steury, 219 Egbert Road, Goshen, responded to Mr. Campanello by saying that it drains to the back of the property and noted a retention area south of this parcel. He also indicated on the aerial retention areas on the north end of the south adjacent property and at the south end of the south parcels. He noted they have tried to be a good neighbor, but they need more parking and are running out of options. They feel the subject property would work better as a parking lot than it does as a rental.

At the suggestion of staff, Mr. DeBoni said the proposal would be to keep any water on-site of this new parking lot by construction of a French drain. Regarding the fence and landscaping, Mrs. Wolgamood inquired when this would occur. Mr. Steury noted there is currently a fence on the south end of subject parcel which can be moved to the north side of subject property as soon as the ground thaws. Concerning the bushes, he said they could go with bushes or they could put fencing there as well. In lieu of paving, he noted stone would allow better drainage in the parking area.

Ed Walter, 19186-1 Wysong Street, was present in remonstrance to this petition. Using the pointer, he indicated his residence is catty-corner from the subject property on the east side of Wysong Street. He said he does not want this to become a parking lot because it will decrease the value of his property and complained about trash that blows onto his property from Veada currently. If this request is approved, he strongly suggested a fence on the east side of the subject property. He also suggested the parking lot be relocated to a different area on D.R.S. property out of the residential area.

Also present in opposition to this request was Mitchell Grevenstuk, 67921 Myer Street. He noted previous issues with a large quantity of trash in his yard weekly but conversation with Virgil Steury led to Veada putting up fencing which has greatly decreased the trash issue. He also complained about issues with the drainage ditch as he has a shallow well, and cigarette butts discarded in his yard by employees of Veada who stand at the corner of his property to smoke. He expressed agreement with Mr. Walter that the parking lot should be placed elsewhere, out of the residential area.

James Carmack, 19176 Tarman Road, was also present in opposition to this request. He said he and his wife are against it and noted previous issues with speeding traffic. If this request is approved, instead of landscaping, he also suggested fencing it off to make sure that no traffic from Veada comes in and out in the residential area.

In response to concerns, Mr. DeBoni noted the bushes were chosen because it was felt that neighbors would rather see live landscaping than a privacy fence. If the Board feels that a fence is better than the bushes, the petitioner has no problem with putting up a privacy fence. While bushes are in compliance with the Zoning Ordinance, they felt bushes would be more attractive. He did acknowledge that D.R.S. owns real estate south of what is shown on the aerial,

but it would be most convenient for employees to park on the subject property rather than farther south. He noted Veada voluntarily closed off the entrance on Wysong Street so there should be no employee traffic there currently. He said there should be no additional traffic on Wysong with the proposed parking lot because the only entrance will be via the existing Veada parking lot. He reported Veada has always tried to be a good neighbor and will take whatever steps the Board feels are reasonable or necessary to be the least intrusive to the neighbors.

Regarding the available commercial property north of Veada, Mr. Steury noted they did put in a bid to purchase it. He also reported they voluntarily closed off Myer Street in addition to Wysong Street to keep employees and truck traffic out of the residential area. He said they try to address calls that they receive from the neighbors. Regarding the smoking, he said when they put the smoking ban in place, they placed buckets for discarded cigarette butts but noted employees cannot be stopped from going off-premises on their own time to smoke and being in a residential neighborhood does make it a bit awkward. Lastly, he stated they need the parking, and they would try to do it the right way.

The public hearing was closed at this time.

Mrs. Wolgamood asked Mr. Mabry about the possibility of placing fencing along the east side running north and south instead of landscaping as requested by remonstrators versus landscaping which is a requirement of the Zoning Ordinance. Mr. Mabry said the requirement is a 4 ft. hedge/landscaping, wall, or fence so it is still within the Zoning Ordinance to have a fence. Although she has never been a real big fan of off-site parking in an R-1 zone, Mrs. Wolgamood noted there is a provision in the ordinance that allows for application of it. She feels the petitioners have done most everything that the neighboring property owners have asked them to do. If the Board is going to approve the request, she said she would be more in favor of fencing than landscaping based on comments from the remonstrators. She also noted the fence would need to be maintained. Mr. Campanello suggested the fence be 6 ft. in height. Mrs. Wolgamood expressed agreement and noted the height of sport utility vehicles. While understanding Mrs. Wolgamood's comment about off-site parking in an R-1 zone, Mr. Homan pointed out that the petitioner owns the adjoining property on three sides of the subject property, and the fourth side is a residential street so it is kind of an isolated situation. He noted the adjoining property owners' specific request for fencing and does not think that is unreasonable.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood 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 parking area, private (off-site) in an R-1 District (Specifications F - #24) 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. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

2. In lieu of the proposed landscaping on the east side of the property as shown on the site plan, a six foot privacy fence is to be installed and maintained on the north and east sides of the proposed property at the time the parking improvements are made.

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

Yes: Doug Miller, Robert Homan, Tony Campanello, Meg Wolgamood, Randy Hesser.

8. The application of *Karl D. & Beth E. Chupp* for a Use Variance to allow for the construction of a second dwelling on a parcel on property located on the East side of CR 31, 150 ft. South of CR 50, common address of 70486 CR 31 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #70486County Road 31-131220-1*. He noted a correction in Staff Analysis item #2, the word "removal" should be change to "conversion".

There were 12 neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465, New Paris, was present representing the petitioners on behalf of this request. He said they are the best neighbors he has ever had. He said currently the Chupps and their three children reside in the shop house and are anxious to get the new house started. Further, he stated they are hoping to be in their new house by December of 2014, and Mr. Chupp is going to be doing a lot of the construction himself. He noted they would like more than 30 days after they get the Certificate of Occupancy for the new house to convert the shop house to storage because they will be finishing up on their new house and suggested 60 to 90 days. Concerning neighboring property owners, he reported Mrs. Chupp's uncles to the east and north, as well as the Showalters across the street and the Culp's are all in favor of this request. When Mrs. Wolgamood asked how long the existing building has been a shop house, Mr. Doriot stated the Chupps purchased the property from Keith and Naomi Miller who owned the property since the 1960's. He further stated that the building was a shop house when the Chupps moved in. In response to Mrs. Wolgamood further questioning the shop, Mr. Doriot explained they just call it a shop house, and Mr. Chupp has personal woodworking tools. He went on the say Mr. Chupp does not run a business and is employed full-time at Jayco. He also explained Mr. Chupp wants to get his horses inside and out of the weather as presently they are in a lean-to. When Mr. Hesser questioned if the existing structure as accessory storage would exceed the living space of the house, Mr. Doriot indicated that should not be a problem. Regarding the staff recommendation for approval and commitment #3 with a date for completion and conversion of May 31, 2014, Mrs. Wolgamood agreed that date is not going to work. Mr. Doriot suggested February 28, 2015 as the deadline for the entire project. He added that the shop will not be livable at least by that date.

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** Meg Wolgamood, **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 Use Variance to allow for the construction of a second dwelling on a parcel 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. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The petitioner is required to return to the Board of Zoning Appeals if occupancy of the new residence and conversion of the existing residence has not been accomplished by February 28, 2015.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

9. The application of *AMMF Trustee Corp Trustee (land contract holder) and David A. & Marlene K. Farmwald (land contract purchasers)* for a Use Variance to allow for six full-time and two part-time employees who are not occupants of the residence on site for the Special Use home workshop/business on property located on the East side of CR 100, 388 ft. North of CR 52, common address of 71428 CR 100 in Locke Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #71428CR 100-131223-1*.

There were nine neighboring property owners notified of this request.

David Farmwald, 71428 CR 100, Nappanee, was present on behalf of this request. He submitted a letter he wrote which he summarized *[attached to file as Petitioner Exhibit #1]*. He added that some people don't even realize there is a business on the property. Referring to #2 of the questionnaire describing the proposed activity, Mrs. Wolgamood questioned if the business still does decorative molding which Mr. Farmwald said yes. She noted that was the second approval. She also confirmed that the business no longer has a government contract for crates and is not part of this petition. When she inquired about the number of employees, Mr. Farmwald reported he presently has six employees and was previously approved for two full-time and four part-time. He reported they were actually below that number of employees when he previously applied but have added employees since that time. She then inquired if the building was constructed specifically for doing the crates or if it was done in an existing building. He said the building was built specifically for making the crates. She noted in both the first and second approvals, the hours of operation were from 2 p.m. to 6 p.m; and now he is requesting to change that to 5 a.m. to 2 p.m. Regarding #6 of the questionnaire, Mrs. Wolgamood questioned his future plan to become a retail store. Apologizing, Mr. Farmwald said that is not correct as he despises retail, and they are only manufacturing the small RV parts.

Concerning #13 on the questionnaire, Mr. Hesser asked about the number of daily customers, Mr. Farmwald reported those people are dropping off supplies. He noted he does not advertise at all. He further stated that anyone who comes by is because of word-of-mouth. When Mr. Homan inquired further about products he makes for the RV industry, Mr. Farmwald said they make any kind of interior small wood parts such as possibly a fascia board that goes

over a slide-out, a corner block that goes under a slide-out, or a small louver that goes in a door. When Mr. Homan inquired about finishing, Mr. Farmwald said they are hardwood products, but they do not do any finishing. He further stated the work they do is sent to the finishing shop, and they have nothing to do with that process. Mr. Hesser noted in the site plan materials that were submitted, there is a reference to a new building. He asked if that building is the new building that was constructed for the crates. Mr. Farmwald said that is the site plan from the 2010 approval. Regarding his statement about not advertising, Mrs. Wolgamood questioned the sign on the building in the photographs that were submitted. Mr. Farmwald said he put that sign up when they were doing the crating but said he is very willing to take the sign down if the Board has a problem with it. Mrs. Wolgamood pointed out that was a condition of both the original and second approvals that he received that the Special Use is allowed one sign four square feet per side. When Mr. Farmwald asked if it makes a difference if the sign is by the road or on a building, Mr. Mabry informed him that just the size makes a difference.

When Mr. Hesser inquired about what prompted the petitioner to seek this request, Mr. Farmwald said that he wanted to be in compliance so there would not be any complaints about his business. He further stated that he wanted to be open with the Board and didn't want to sneak by because he was aware that he could only have six employees.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted she recalled the original request which the Board approved with a lot of conditions. She also indicated the petitioner is not in compliance with a number of those conditions even after a second approval after an additional request. She did express admiration for his forthcoming request for additional employees. When Mrs. Wolgamood questioned if the employees are full-time, Mr. Hesser noted according to the questionnaire and what was allowed previously, if you were to consider two part-time employees as one full-time employee, basically four were previously allowed and now he is asking to be allowed seven which is a full-time equivalent. Mr. Campanello said the only thing he saw that Mr. Farmwald is not in compliance with on the April 15, 2010, was in #4 for a sign. Mrs. Wolgamood said he is also not in compliance with the hours of operation. When Mr. Hesser questioned if the hours changed when the business changed from the shipping crates, Mr. Farmwald indicated that was correct.

Mr. Hesser said he felt finding #3 is a stretch to being peculiar to the property when it is something that has been self-created. While he understands Mr. Farmwald's concern with changing and adapting based on the circumstances he is presented with, Mr. Hesser noted he shares Mr. Homan's concern about the size and questioned the point it stops being a home workshop. Mrs. Wolgamood said she thinks it has stopped being a home workshop because this is a Use Variance request. When Mr. Homan asked if this would supersede the previous Special Use for a home workshop/business, Attorney Kolbus said it is on the one issue. He indicated it would be changing condition #6, but they are also asking for condition #9 to be changed as well.

In his mind's eye, Mr. Miller said it is important to note that there have been no remonstrators. Mr. Campanello noted there is no increase in traffic as this is bicycle traffic. Referring to question #6 regarding a retail establishment, Mr. Homan noted Mr. Farmwald previously indicated he has no intention of this ever becoming a retail establishment but pointed out the written response to #6 says there are future plans to become a retail establishment. He

believes a correction should be noted that it should read “no” future plans to become a retail store. Mrs. Wolgamood voiced that her issue is where they stop as this is the third time this Special Use permit has been before the Board. When Mr. Hesser questioned the possible imposition of time limits on Use Variance requests for review, Attorney Kolbus indicated that could be done. Mr. Hesser noted he is concerned because of the issue with the sign that is not in compliance and suggested maybe this needs to be looked at again after a period of time to see if there is compliance.

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

Motion: Action: Denied, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that this request for a Use Variance to allow for six full-time and two part-time employees who are not occupants of the residence on site for the Special Use home workshop/business be denied based on the following Findings and Conclusions of the Board:

1. The request will be injurious to the public health, safety, morals and general welfare of the community. The increase of employees, larger sign, and the change of use clearly is out of the realm of a home workshop/business.
2. The use and value of the area adjacent to the property will be affected in a substantially adverse manner.
3. A need for the Use Variance does not arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the property. Limiting the number of employees to what is allowed in the Zoning Ordinance still enables the property to function as a home workshop / business.
5. The Use Variance does interfere substantially with the Elkhart County Comprehensive Plan.

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

Yes: Robert Homan, Meg Wolgamood, Randy Hesser.

No: Tony Campanello, Doug Miller.

Mr. Hesser noted for clarification that the denial does not preclude Mr. Farmwald from seeking modification of the Special Use for additional purposes if needed and is not subject to the six month rule which was confirmed by Attorney Kolbus.

10. The application of *Vernon D. & Pollyanna Bontrager* for a Use Variance to allow for the placement of an accessory structure without a residence and for a 3 to 1 depth to width ratio Developmental Variance to allow for the placement of an accessory structure on property located on the South side of SR 120, West of SR 13, in York Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #00SR 120-13121-1*. Mrs. Wolgamood pointed out the photos are of remaining golf course property and not the property involved in this request.

As the lot width on the site plan and questionnaire is shown as 50 ft., Mrs. Wolgamood questioned the necessity of a lot width variance. Mr. Mabry noted that a 3 to 1 applies to a

residential use but was unsure about the need for a lot width variance. Mr. Kanney indicated that is not needed in this case. Mr. Mabry went on to say that this is an accessory use that is not a permanent residence. When Mrs. Wolgamood went on to point out that this is an accessory, Mr. Homan suggested that if there is no driveway, this is possibly different. Mrs. Wolgamood further noted that a building permit was issued for this temporary structure.

There were nine neighboring property owners notified of this request.

Vernon Bontrager, 9108 W 100 S, Shipshewana, was present on behalf of this request. Pointing out the location of the structure on the aerial photo, he said it is a 12'x20' portable log cabin structure. He noted that it is empty and has not been used yet as suggested. He said they bought the property primarily as an investment, and while they may harvest some timber after a few years, they want to mostly use it for mushroom hunting, bird watching, and sledding. Mr. Bontrager indicated they will be spending a very limited amount of time on the property. When Mr. Hesser asked about the possibility of a driveway, Mr. Bontrager said he intends to have just enough of a driveway to get a horse and buggy back there. He said he has talked to INDOT, and they are sending him driveway paperwork. Referring to question #2 on the questionnaire, Mr. Campanello questioned the mention of grazing beef cows on the pasture land. Mr. Bontrager said he has to put fencing up first so it may not happen yet this year and added that there is not a lot of grazing area. He noted he wants to preserve the property as it is a beautiful piece of land, and he does not want to change much. Mr. Campanello questioned the need for Mr. Bontrager to be before the Board for this petition if he were grazing cows and using the property as agricultural. Regarding the animals, Mrs. Wolgamood said the petitioner would not have to come before the Board because it more than three acres and an agricultural zone. As far as constructing buildings, he could have barns but the need for a lot width variance question still remains.

Regarding the issue of the lot width, Mr. Mabry said the regulations for lot width are within the Zoning Ordinance section where it talks about the single family and residential dwelling standards which goes along with Mr. Kanney's answer, from experience, that the lot width standards would not apply to this stand-alone accessory structure because it is not a residential structure. Mrs. Wolgamood stated that it is an accessory to a residential structure which is why he is here. Attorney Kolbus said it talks about a residential dwelling. Mr. Hesser questioned what residential structure it is an accessory to. When Mrs. Wolgamood suggested that is why it is a Use Variance, Attorney Kolbus said it is a Use Variance because it is a placement of an accessory structure without a residence. He added if there was a residential dwelling, then they would have to meet the lot width. When Mr. Campanello questioned if it was a barn, Mr. Kolbus said a barn could be placed with no frontage. Mrs. Wolgamood explained she is not against what the petitioner is looking to do, she just felt there were a lot of unanswered questions, and the building permit has already been issued so she is unclear why the petition is before the Board. Mr. Mabry noted the building permit was understood to be temporary in trying with weather conditions to facilitate placement of the structure and was his call to allow that with the understanding that it was temporary and if approved, could become permanent. Mrs. Wolgamood questioned if she were to purchase the property from Mr. Bontrager and wanted to build a house on the property if she would have to go through the whole procedure of the 3 to 1 and lot width, which Mr. Mabry indicated was correct.

Mr. Bontrager said he did not want to sneak it back there, and if denied, they can put tents back there. When Mrs. Wolgamood asked if they have water or a septic system, Mr. Bontrager said according to the proposal from the Health Department, they have to put a portable restroom on the property.

Ken Murr, 11530 Oak Hills Drive, was present for the hearing to express concern that he and some of the neighbors have heard rumors of this property being turned into a commercial cattle ranch. Noting Mr. Bontrager's comments during the hearing about using the property for recreation and grazing a few cattle and realizing this is agricultural property, he noted the wind comes out of the southwest and blows across the subdivision where he lives. He expressed concern about the smell and questioned the number of cattle that will be grazing on the property.

Larry Finch, 11715 SR 120, was also present for the hearing. He stated his residence is in front of the subdivision. He said he did not want something to be approved that would have a lot of waste that might not be handled in the correct manner. He also mentioned the possibility of ground water contamination, and a large number of flies being produced on the property.

In response, Mr. Bontrager said they do not support confined animal feeding operations. He stated he has eight cows at home that will probably have calves in the spring. To control the grass a bit, he would like to graze cattle to keep the grasses down but has no intention of even putting a barn back there for them. He said if anyone feels that they should not put cows back there, they do not have to do it, and it is not a problem either way.

There were no remonstrators present.

The public hearing was closed at this time.

Addressing the two concerned neighbors, Mrs. Wolgamood informed them that in accordance with the Zoning Ordinance, there is nothing that would prohibit any number of cattle on that property, and the Board has no say about him doing that. She added that Mr. Bontrager could get a building permit for a barn tomorrow if he chose to do so although he has graciously said he will not do that. She pointed out that he will not always own the property, and there were a lot of other parcels sold that were part of the golf course that are also zoned agricultural. The Zoning Ordinance is not going to protect them from anyone putting pigs, cows, or chickens on the former golf course property.

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

Motion: Action: Approve, **Moved by** Doug 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 Use Variance to allow for the placement 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 commitment was imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

Prior to voting on the motion, Mr. Hesser commented that he felt items #3 and #4 are a stretch but felt part of that is because of the difficulty with categorizing this request.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

11. The application of *Lamar Miller* for a Developmental Variance to allow for an existing deck 0 ft. from the Southwest property line (Ordinance requires 5 ft.) on property located on the Southeast side of North Shore Drive, 170 ft. South of Bell Avenue, West of SR 19, being Part of Lot 9A of Bell's North Shore Place, common address of 50892 North Shore Dr. in Osolo Township, zoned R-2, came on to be heard.

Mr. Mabry stated this request was tabled so the petitioner could provide a survey demonstrating that the existing improvements do not encroach onto adjacent property. On January 6, 2014, he received an as-built survey of the property, which he noted appears to show that the dwelling is entirely on the petitioner's property which was the concern and reason for the tabling.

Mr. Mabry presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #50892 North ShoreDr-131125-1*.

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Randy Hesser to reopen the public hearing for the purpose of accepting the site plan.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

Mr. Mabry submitted the as-built survey at this time *[attached to file as Staff Exhibit #1]*. He indicated David Raber is present representing Mr. Miller at today's hearing, and a letter was received from Mr. Miller giving Mr. Raber permission to represent him.

Mr. Kolbus said the petition was tabled for the purpose of getting the survey, and the survey has been placed into the record now so it is up to the Board whether they want additional testimony. Mrs. Wolgamood said the as-built survey has answered her concern. She recalled stating at the previous hearing that it is an entryway to the house and as long as it remains open, she does not have an issue. She went on to say that if it were an enclosed area, she would look at it differently. While he understands staff's points, Mr. Homan said lake lots are difficult to work with, and he does not know that the petitioner intentionally set the house a little bit too far to the west. While the petitioner did intentionally build the stairway and covered entrance to the house, he does not think this impedes access to the back yard any worse than any other house along the lake. Mrs. Wolgamood noted one previous condition imposed was to install gutters to ensure rainwater remains on-site.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that this request for a Developmental Variance to allow for an existing deck 0 ft. from the Southwest property line (Ordinance requires 5 ft.) be approved 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 provided all rain water is diverted away from the adjacent property to the west. This is a lake property and they have some unique building guidelines.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. The petitioner has provided evidence in the form of an as-built survey which shows that the single-family dwelling in question is entirely on the petitioner's property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property because of the configuration of the lot.

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. Approved in accordance with the survey dated 01/07/14 (Staff Exhibit #1) that was submitted into evidence today.
2. All rain water must be diverted away from the adjacent property to the west.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Doug Miller.

No: Randy Hesser.

12. The application of **Robert C. Dixon & Cynthia Ewing** for a 25 ft. Developmental Variance to allow for the construction of a detached garage 50 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) on property located on the East side of Ash Road, 2,700 ft. North of US 33, common address of 56680 Ash Road in Baugo Township, zoned R-1, came on to be heard.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Doug Miller to reopen the public hearing for the purpose of hearing a revised staff report and further testimony.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

Mr. Mabry presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #56680AshRd-131125-1*.

Robert and Cynthia Dixon, 56680 Ash Road, Osceola, were present on behalf of this request. When Mr. Hesser inquired about a revised site plan, Mrs. Dixon reported they were told their contractor, Shawn Masters of Eagle Point Construction, was going to drop it off. She indicated she talked to him on the 9th of January, and he told her that he was working on it then. For the record, Mr. Hesser noted there was no one else present in audience at this time. As the Dixons thought the drawing was going to be submitted, he said he does not have an objection to allowing an additional month for that to happen and suggested they follow up to make sure that occurs. Mr. Hesser also informed the petitioners to contact staff if there is a delay for any reason.

The public hearing was left open.

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

Motion: **Action:** Table, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that this request for a 25 ft. Developmental Variance to allow for the construction of a detached garage 50 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) be tabled until the February 20, 2014, Board of Zoning Appeals meeting to allow for submission of a more accurate site plan.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

13. There were no items transferred from the Hearing Officer.

14. The staff item for Rules of Procedure was presented by Brian Mabry. He apologized for having not been able to produce the revised Rules of Procedure. He noted the target is for distribution at the February meeting for approval in March.

15. The meeting was adjourned at 10:18 am.

Respectfully submitted,

Deborah Britton, Recording Secretary

Doug Miller, Chairman

Tony Campanello, Secretary