

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21TH DAY OF JUNE 2018 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; Matt Shively, Planner; Mae Kratzer, Planner; Duane Burrow; Planner, Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. A motion was made and seconded (*Lyon/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of May 2018 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Lyon*) 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 **Howard M. & Ida A. Yoder** for an amendment to an existing Special Use for a home workshop/business for a bakery to allow for an addition on property located on the East side of CR 43, 1,800 ft. North of CR 24, common address of 59162 CR 43 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0223-2018*.

There were eight neighboring property owners notified of this request.

Mervin Stoltzfus, 60112 CR 41, Middlebury, the contractor was present representing the bakery on behalf of the owners. Mr. Stoltzfus stated the bakery has grown and needs more room. Mr. Miller asked about a semi turn-around, and Mr. Campanello pointed out the site plan shows one that was previously approved. Mr. Hesser asked the current number of outside employees, and Mr. Stoltzfus responded four full-time. Mr. Miller mentioned the application states only one or two trucks deliver to the property a week. Mr. Stoltzfus responded it is primarily a retail business, where customers pick-up their items, and only two delivery trucks come to the property a week.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the business has four outside employees, and he stressed they will surpass the home workshop qualifications at some point. He added no one is present in remonstrance, and he is not opposed to this request. Mr. Miller mentioned CR 43 is in decent shape and not heavily traveled. Mr. Hesser asked staff, if the number of outside employees can be modified from two to four, and Mr. Godlewski responded yes.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon 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 a bakery to allow for an addition 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 (dated 4/16/18) 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, Denny Lyon, Randy Hesser.

5. The application of *Railside Parochial School* for an amendment to an existing Special Use for a school to add living quarters on property located on the East side of CR 43, 1,050 ft. South of CR 44, common address of 68198 CR 43 in Benton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0302-2018*.

There were five neighboring property owners notified of this request.

David Bontrager Jr., 59811 CR 37, Middlebury, was present representing the school. Mr. Bontrager explained the school would like to construct living quarters to provide their teachers a place to stay a few nights a week. He continued saying they will go through the proper process to obtain septic and state permits. Mr. Hesser mentioned the proposed shaded play area, and he responded it will be under an eight foot overhang beyond the residential addition. Mr. Hesser clarified the covered area will span from the school house to the barn. He then questioned why the Staff Report lists no proposed improvements, when a residence is being constructed. Mr. Godlewski responded that was an error. Mr. Hesser reiterated the dwelling is an addition to the school house, and Mr. Bontrager pointed out its location. He explained the last eight feet of the addition will be an open overhang for shade. Mr. Godlewski noted staff was aware of the proposed residence, but it was not reflected on the Staff Report.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the Board has approved similar petitions, and Mr. Godlewski added it is not uncommon to have living quarters attached to small schools.

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 school to add living quarters 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 (dated 5/11/18) 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, Denny Lyon, Randy Hesser.

6. The application of **Lamar M. & Rosanna J. Hochstetler** for renewal of a Special Use for a home workshop/business for wheel polishing on property located on the Northeast corner of CR 48 & CR 127, common address of 16953 CR 48 in Jackson Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0293-2018*.

There were seven neighboring property owners notified of this request.

Attorney Kolbus asked if the Special Use application referenced is from this year or last. He stressed that needs to be determined for the Commitment. Mr. Godlewski responded the most recent, and Attorney Kolbus clarified it is dated 5/29/18. Mrs. Britton pointed out the site plan is actually dated 5/9/18. Mr. Miller recognized the date in the commitment should be changed to 5/9/18, and no additional commitments need to be added. Mr. Campanello mentioned the request is for a Special Use renewal.

Lamar Hochstetler, 16953 CR 48, Syracuse, was present for this request. Mr. Hesser asked if the business has been operational, and he responded yes. He then asked why the hours of operation are listed as unknown in the questionnaire. Mr. Hochstetler explained he does not have set hours, because he works as it comes in. Mr. Miller clarified the hours of operation are whenever people come in needing work. Mr. Campanello asked if the new questionnaire is a copy of the old one.

Roseanna Hochstetler, 16953 CR 48, came on in favor of this petition and clarified she was told she could use the previous questionnaire. Mr. Miller asked if any employees will be added, and Mr. Hochstetler responded he is currently the only employee. Mr. Hesser commented he is surprised the Board approved this request without any hours of operation. Mr. Campanello mentioned it would be a good idea to add hours of operation for the record. Mr. Miller asked between what times people can drop off work. Mr. Hochstetler responded anytime, but typically between 8 a.m. and 5 p.m. Mr. Miller asked about Saturday hours, and he responded from typically 8 a.m. to 12 p.m. on Saturdays but sometimes until 2 p.m. Mr. Miller suggested adding a commitment for hours of operation 8 a.m. to 5 p.m. on weekdays, 8 a.m. to 2 p.m. Saturdays, and no Sunday hours.

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 renewal of a Special Use for a home workshop/business for wheel polishing 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 (dated 5/9/18) and as represented in the Special Use Renewal application.
2. Hours of operation 8:00 a.m. to 5:00 p.m. Monday through Friday, 8:00 a.m. to 2:00 p.m. Saturday, no Sunday hours.

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

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

7. Mr. Godlewski presented the staff item for *Jerry Hochstetler* (20031880). He explained the request for a site plan amendment to allow for a 20~~0~~50~~0~~ fuel tank canopy and a 1,440 sq. ft. building addition. He continued saying it is a 12% change from the originally approved site plan, and staff recommends approval as a minor change. Mr. Campanello asked the zoning of the subject property, and Mr. Godlewski responded A-1. Mr. Miller stated he does not see a driveway back to the proposed building on the site plan, and Mr. Godlewski mentioned an expansive parking area is shown. Mr. Hesser stressed he is concerned about adding two structures to what was originally approved, and Mr. Godlewski pointed out the additions are only 12% of the total square footage. Mr. Campanello mentioned the 1,440 sq. ft. building was not part of the original site plan. Mr. Hesser stated he does not see any problems with this request but adding two buildings to original approval is a major change. Mr. Miller stated he sees a minor change as moving an approved building or a small addition. Mr. Hesser explained he would approve a small canopy addition as a minor change. Mr. Campanello stressed the request is to add a canopy over existing fuel tanks, and Attorney Kolbus pointed out it is also for an addition to the existing building. Mr. Campanello stressed since the proposed building is a canopy to protect the existing fuel tanks, and a small addition, he does not consider this a major change. Mr. Miller mentioned it is a large piece of property. Mr. Atha clarified the Board is mostly concerned about the new proposed building. Mr. Campanello stated he believes it is a canopy, and Mr. Miller stressed the description states it is a 1,000 sq. ft. cold storage building. Mr. Hesser reiterated the 18~~0~~80~~0~~ structure is an addition, and the 20~~0~~50~~0~~ one is a canopy. Mr. Miller stated this does not appear to be a huge change on this piece of property, but he believes it is a lot to approve as a minor change. Mr. Campanello stressed he disagrees, but he understands their concerns. Mr. Atha mentioned he believes a Special Use Amendment will be approved.

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

Motion: Action: Approved, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board determined this request to be a major change due to the two additions and total square footage.

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

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

8. Mr. Godlewski presented the staff item for *AMMF Trustee Corporation as Trustee for Amish Mutual Mortgage Fund (Land Contract Holder) & Gerald & Ida Borkholder (Land Contract Purchaser)* (SUP-0197-2018). He explained the request for a minor change site plan change to move the proposed 80x50 building location. He added staff recommends approval of this request as a minor change. He then mentioned a complaint was received against the business on June 20, 2018, for noise and burnt sawdust causing an odor. Mr. Hesser clarified the request is to move a building already approved by the Board. He then request an aerial showing the subject property, and Mr. Godlewski responded one is not readily available. Mr. Campanello stated he believes moving an already approved building is a minor change. Attorney Kolbus clarified the Board would like to see, if the building will move closer to the neighbors. Mr. Hesser explained he believes this is a minor change since the building was already approved unless it moves closer to the neighbors. Attorney Kolbus suggested the Board precede with the 9 a.m. hearings and continue this hearing later.

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

9. The application of *Pine Crest Farms, Inc.* for a Special Use for indoor and outdoor recreation (wedding venue and event center) on property located on the North side of CR 34, 3,900 ft. West of CR 33, common address of 15829 CR 34 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0313-2018.

There were 11 neighboring property owners notified of this request.

Tonja Miller, Progressive Engineering, was present representing Pine Crest Farms, 15829 CR 34. Mrs. Miller explained the petitioners are proposing an indoor recreational facility similar to their existing one about .5 miles east of this property. She continued saying they received several requests from the community for another facility. She added they received favorable recommendations and signatures from the surrounding property owners that were submitted with the petition. Mr. Campanello questioned the need for a 16x40 addition to the existing barn, and Mrs. Miller responded it is for restrooms.

Elvira Miller, 15229 CR 34, came on in favor of this petition as the manager of their existing barn, the Jay Weaver Barn. Mrs. Miller stated she enjoys managing the barn and has had great success with it. Mr. Campanello commented it appears the community appreciates the facility, and he asked what events are typically held there. Mrs. Miller responded they mostly host weddings and an occasional anniversary, birthday, or graduation party on Sundays. Mr. Miller questioned hours of operation, and she responded everything is shut down by midnight. She continued saying she monitors the current venue, and she has never needed to call security. She stressed this facility has been very successful, and they would like to start another one.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller mentioned he has attended events at the existing venue, and it is always well kept and clean.

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 indoor and outdoor recreation (wedding venue and event center) 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 (dated 5/14/18) and as represented in the Special Use application.

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

Yes: Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

Abstain: Joe Atha.

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

10. The application of ***Tristan & Lynette Ramer*** for a Special Use for a home workshop/business for diesel truck repair, for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right, and for a 44 sq. ft. Developmental Variance to allow for the placement of a 48 sq. ft. sign (Ordinance allows 4 sq. ft.) on property located on the North side of CR 50, 1,750 ft. East of CR 3, common address of 28665 CR 50 in Locke Township, zoned A-1, R-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0311-2018.

There were 13 neighboring property owners notified of this request.

Tristan Ramer, 28665 CR 50, came on for this request. Mr. Ramer stated he spoke to Matt from the Planning and Development Department before he filed for this petition, and he was encouraged to pursue a Developmental Variance, rather than a Rezoning like he had originally planned. He explained the business currently operates in a large building on the back of the neighboring property that is zoned B-3. He continued saying he has rented the building from Rod Kemp for four years. He mentioned the plan is to construct a similar building on his property, and he stressed they have operated in the current location for four years and it will not change other than location. He added the new building will be set off of the road an additional 75 ft., because the front of the new building will line up with the back of the existing one. Mr. Ramer then submitted a petition signed by the neighboring property owners in favor of this request [Attached to file as Petitioner Exhibit #1]. Mr. Hesser clarified the proposed business is a permissible use in a B-3 zone. Attorney Kolbus asked what type of vehicles will be serviced, and Mr. Ramer responded pick-up trucks. He went on to say he does not work on semis, only light, duty pick-up trucks. Mr. Campanello asked how many years he has operated off of the neighboring property, and he responded four. He continued saying they would like to construct a larger building on his property, because they are outgrowing the current one. He added it will be 75 ft. farther off the road than the existing building, and he plans to plant a row of buffer trees in front to decrease sound even more. Mr. Campanello questioned the B-3 zone next to the subject property, and it was found to be the location of Mr. Ramer's current operation. Mr. Ramer then pointed out their

building. Mr. Lyon asked if a proposed road runs between the current and proposed building, and he responded there is not a road in that area. Mr. Ramer stated his property is zoned A-1, and he originally planned to rezone it to B-3. However, he continued saying he was advised to petition for a Special Use instead. He stressed the business is not changing, it is simply moving to the neighboring property. Mr. Hesser asked his current sign size. Mr. Ramer responded they currently do not have a sign, but the request is for the same size sign as Kemp Construction's next door. He explained it will be a non-illuminated, PVC post style with a board attached. Mr. Hesser asked, if he will also pursue a rezoning. He responded that was his initial request, but he was advised to apply for a Special Use. He continued saying whether the request is approved as a Rezoning or Special Use/Developmental Variance does not matter to him. Mr. Miller commented this is a residential area, and he is surprised to see a B-3 zone there. Mr. Ramer mentioned that property was originally Hochstetler Construction, and Mr. Campanello mentioned the Board of Zoning Appeals did not make the decision to allow B-3 zoning. He continued saying he believes the comprehensive plan addresses mixing B-3 with residential use. Mr. Godlewski mentioned the area could also predate zoning. Mr. Ramer stated he knew Eli Hochstetler who constructed his current building, the owner of Hochstetler Construction years ago. He explained he purchased his property from him, and the construction business operated there when he was a child. He went on to say the B-3 property was then sold to Rod Kemp the owner of Kemp Construction. Mr. Hesser asked if a sign the proposed sign is allowed by right in a B-3 zone. Mr. Godlewski responded the best option would be a DPUD, because the property has both a residence and a business. He explained the sign size could then be tailored to meet their needs. Mr. Hesser asked the petitioner, if he sees the business growing past four employees. Mr. Ramer responded the new building is being constructed in anticipation of growth so he does not plan on any further expansions. Mr. Lyon asked if the proposed building is larger than their existing one, and he responded yes. Mr. Ramer explained the current building is around 75x130 and the new one will be slightly larger.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he is opposed to the sign size, and he believes a Rezoning to B-3 will be approved, since the neighboring property is zoned B-3. He stressed the request is for an existing use operating next door, and the Board has more control over a Special Use than a Rezoning. He continued saying he is okay approving this as a home workshop/business, but he believes four employees and a 48 sq. ft. sign is a lot. Mr. Campanello mentioned, if the Special Use is approved with a time limit, a different Board may deny a renewal and require a Rezoning. Mr. Godlewski stated that is an option, or the building may have to be converted into an agricultural use. Mr. Campanello stressed he believes this could be approved as a Special Use with a time limit requiring a Rezoning. Attorney Kolbus suggested approving a smaller sign, if sign size is the only concern. He explained the Board can approve anything under 48 sq. ft. Mr. Hesser stated he would not impose a time limit on this request, expand the size of the sign, or go beyond four employees. He continued saying the business has operated on the neighboring property for four years, and no remonstrators are present. Mr. Campanello suggested allowing one more employee in case the business grows. Mr. Hesser stressed, if he grows past four employees the property needs to be rezoned to B-3. Attorney Kolbus suggested adding a commitment limiting the business to light-duty, diesel pick-up trucks only. Mr. Hesser

suggested approving the Developmental Variance for the square footage of the building but not the sign. Attorney Kolbus stressed Mr. Ramer will make a significant investment constructing the building and should be given a reasonable amount of time. Mr. Campanello asked Mr. Ramer, if he would be okay with a sign half the size being requested requesting. Mr. Ramer responded the sign is their logo, and he is concerned it will be too small to read. Mr. Hesser clarified his business currently does not have a sign, and Mr. Ramer stated the Kemp Construction sign is in front of their current shop. He continued saying since they rented the building they did not invest in a sign, but their request is consistent with the neighboring sign. He added they have a 4x8 sign on the building that is not visible from the road. Mr. Campanello asked if the Kemp Construction sign is legal, and Mr. Hesser pointed out it is on a B-3 zone. He continued saying a larger sign will be allowed, if the property is Rezoned. Mr. Ramer added once the new building is constructed, they plan to tear down the shop house, which is too close to their residence. Mr. Hesser clarified the petitioner resides in the residence on the property. Mr. Miller stated he believes approval of this request will give the petitioner a B-3 business in a residential area, and Mr. Hesser stressed it will be subject to home workshop restrictions. Mr. Miller mentioned the Board just heard a request for a home workshop business with four outside employees, and they were told the business is growing too big for that classification. Mr. Hesser pointed out the mentioned request was approved, but the Board suggested they proceed with a Rezoning. He continued saying, if the petitioner needs more employees or a larger sign in the future, he can apply for a Rezoning. Mr. Lyon asked if the back part of the property could be subdivided and Rezoned to B-3, and Mr. Ramer responded that was his original request. Mr. Hesser explained if the petitioner expands the sign size or number of employees from the approved amount than a Rezoning is required. Attorney Kolbus suggested limiting the request to light duty pick-up trucks, and Mr. Campanello disagreed. He explained he would like to allow the petitioner the ability to grow his business and work on semi cabs. Mr. Hesser stressed the business is only limited under the home workshop title, and it would have less restrictions under a B-3 zone. Mr. Miller added he believes it is hard to call this a home workshop with semi repair being done. Mr. Campanello explained he believes most diesel trucks are very similar to semis, and Mr. Ramer responded one of the only differences between them is the sticker on the door. Mr. Campanello stressed he does not want to limit his business.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that this request for a Special Use for a home workshop/business for diesel truck repair be approved based on the findings and conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. The scope and scale of this development is compatible with Home workshop/businesses.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This business already operates on the neighboring property.
3. The Special Use will substantially serve the public convenience and welfare.

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 site plan submitted (dated 5/14/18) and as represented in the Special Use application.
2. Limited to four (4) non-occupant employees.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

No: Roger Miller.

Mr. Hesser asked what findings are needed for a Developmental Variance, and Mr. Godlewski suggested acknowledging the general findings. Attorney Kolbus pointed out the next petition lists the three findings for Developmental Variances.

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Joe Atha that this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right 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 property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following conditions were imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 5/14/18) 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, Denny Lyon, Randy Hesser.

Mr. Campanello asked if he can change the square footage of the sign to allow for a smaller one than what is being requested, and Attorney Kolbus responded yes. Mr. Atha asked the normal sign square footage allowed for a home workshop/business, and Mr. Hesser responded four.

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that a Developmental Variance to allow for a 32 sq. ft. sign 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 property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following conditions were imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 5/14/18) and as represented in the Developmental Variance application.

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

Yes: Tony Campanello, Denny Lyon.

No: Joe Atha, Roger Miller, Randy Hesser.

Attorney Kolbus explained the motion for a 32 sq. ft. sign failed, but the Board still needs to act on the requested 48 sq. ft. sign. Mr. Hesser stated the Board denied the request to exceed the 4 sq. ft. allowed for a home workshop/business. Attorney Kolbus stressed the Board has not addressed the 48 sq. ft. request. Mr. Godlewski added action must be taken for that request.

Motion: Action: Approve, **Moved by** Tony Campanello, that the request for a 44 sq. ft. Developmental Variance to allow for the placement of a 48 sq. ft. sign (Ordinance allows 4 sq. ft.) be approved **None seconded**. Motion dies for lack of a second.

Attorney Kolbus explained the state statute mandates the Board make a decision for approval or denial of the request.

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the request for a 44 sq. ft. Developmental Variance to allow for the placement of a 48 sq. ft. sign (Ordinance allows 4 sq. ft.) be denied based on the findings and conclusions of the Board:

1. Approval of the request will be injurious to public health, safety, morals or general welfare.
2. Approval of the request will cause substantial adverse effect on the 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.

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

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

11. The application of *Christian M. & Malinda M. Weaver* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and for a 25 ft. Developmental Variance to allow for the construction of an accessory structure 50 ft.

from the centerline of the right-of-way (Ordinance requires 75 ft.) located on the North side of CR 142, 2,500 ft. West of CR 13, common address of 24471 CR 142 in Union Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0300-2018*.

There were eight neighboring property owners notified of this request.

Mr. Miller asked if the agricultural use is restricted to only three horses, or if the petitioner could also have chickens later on. Mr. Godlewski responded it is restricted to horses only. Mr. Atha mentioned the property is zoned A-1, and Mr. Godlewski pointed out the property is less than three acres. Mr. Hesser added the questionnaire references dogs, but the Board does not consider them agricultural animals. Mr. Godlewski clarified dogs are only a problem, if they own over five.

Christian Weaver, 24471 CR 142, Goshen, was present for this request. He explained he would like to tear down an existing decrepit building and replace it with a new one. He continued saying the new building will not meet the required setbacks, because the best place to construct it is in the same location as the existing building. Mr. Hesser clarified he will not be closer to the road than the existing building. Mr. Weaver responded the new building will actually be a few feet farther from the road than the existing one. He stated he would also like permission to keep horses on his property that have been there for several years. Mr. Atha asked the size of the pasture, and he responded around one acre. Mr. Weaver then pointed out the pasture on the aerial, on the east side of the barn to the point of his property. Mr. Atha asked the need for three horses, and he responded for transportation.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he does not have any concerns and approval of this request should improve the property.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Denny Lyon 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 three 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. Approved in accordance with the site plan submitted (dated 5/10/18) and as represented in the Special Use application.
2. A maximum of three (3) horses residing on-site at any one time.

Further, the motion included that a 25 ft. Developmental Variance to allow for the construction of an accessory structure 50 ft. from the centerline of the right-of-way (Ordinance requires 75 ft.) 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 taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 5/10/18) 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, Denny Lyon, Randy Hesser.

12. The application of *Laverne C. & Elnora Mast* for renewal of an existing Special Use for a home workshop/business for a farrier service and buggy wheel repair business, for a 35 ft. Developmental Variance to allow for an existing sign 20 ft. from the center line of the right-of-way (Ordinance requires 55 ft.), and for a 20 sq. ft. Developmental Variance to allow for the existing sign to be 24 sq. ft. (Ordinance allows 4 sq. ft.) on property located on the West side of CR 37, North of CR 28, common address of 59915 CR 37 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0291-2018.

There were eight neighboring property owners notified of this request.

Mr. Hesser pointed out the Staff Analysis does not reference any history for this property, but the request is for renewal of a request. He continued saying the application states approval was originally given in 2013, and Mr. Godlewski noted the history should reflect the previous request. Attorney Kolbus stated Developmental Variances cannot be waived in regards to a Special Use. He explained the Board needs to make findings for the Variances. Mr. Hesser asked, if the Developmental Variances were included in original approval. Mr. Miller mentioned the Staff Report lists the date submitted as May of 2008, and it was found to be a typo that should read May of 2018. Mr. Godlewski suggested the Developmental Variances be included with approval of the Special Use. Mr. Hesser asked if the 20 sq. ft. sign and setback were approved in 2013. Mr. Atha clarified the petitioner has approval for a home workshop on this property, but Mr. Miller added the Board is unsure, if the Developmental Variances were approved. Mr. Godlewski clarified the requests is for a new sign, and he would assume the Developmental Variances are new requests. Attorney Kolbus stated staff recommends approval of this request.

Lavern Mast, 59915 CR 37, Middlebury, was present for this request and stated he was not aware of the sign limitations when he ordered his sign. He explained he decided it should display his logo and the two business names, which increased the sign size. He continued saying he has a 20x10 sign on the building for the furrier business, but he decided to advertise from the road when he added the tire re-set business. Mr. Atha asked if the sign is currently on the property, and he responded yes. Mr. Miller stated the site plan shows a 30x40 double-sided sign. Mr. Mast mentioned he measured from the center line of the road to the sign, and it was about 30 ft. He explained if he moves closer to the road it would be hidden by trees. Mr. Miller asked if the sign on the site plan is existing or proposed, and Mr. Mast responded existing. Mr. Miller also mentioned the site plan shows it 20 ft. from the center of the road, and Mr. Mast clarified

when he measured it he found it to be farther from the road than he originally believed about 30 ft. Mr. Atha noted that should be changed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser mentioned the Board has to determine findings for the Developmental Variances, and Mr. Godlewski agreed they need positive findings to be approved.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Denny Lyon 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 renewal of an existing Special Use for a home workshop/business for a farrier service and buggy wheel repair 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. Approved in accordance with the site plan submitted (dated 5/8/18) and as represented in the Special Use Renewal application.

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

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that a 27 ft. Developmental Variance to allow for an existing sign 28 ft. from the center line of the right-of-way (Ordinance requires 55 ft.), and for a 20 sq. ft. Developmental Variance to allow for the existing sign to be 24 sq. ft. (Ordinance allows 4 sq. ft.) 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 property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following conditions were imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 5/8/18) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon.

No: Randy Hesser.

13. The application of **Kyle & Dianna Schlabach** for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of CR 32, 1,200 ft. East of CR 43, common address of 10494 CR 32 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0318-2018*.

There were 10 neighboring property owners notified of this request.

Mr. Hesser stated second dwelling Use Variances are frequently approved, but the Staff Report does not list a condition mandating when the existing residence must be demolished. Mr. Godlewski responded that should be added as a condition.

The petitioners were not present for this request.

Mr. Hesser mentioned this request could be tabled, but since it is a routine request he suggested it be approved without the petitioner present. Mr. Miller mentioned a condition should be added requiring the existing residence be torn down within a certain amount of time, and Mr. Godlewski added six months is the standard. Mr. Atha clarified the existing residence must be torn down within six months of the certificate of occupancy issuance. Mr. Hesser asked if the Board typically requires the building permit be pulled by a certain time after approval. Mr. Godlewski mentioned the residence is to be constructed within a year and the existing residence demolished within six months of its completion. Mr. Hesser suggested the time restrictions be added as conditions. Mrs. Kratzer mentioned a permit typically needs to be pulled within 180 days of approval. Mr. Godlewski explained a permit for the new residence should be pulled within 180 days, completed within one year, and the existing residence demolished six months after the certificate of occupancy is issued.

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 Use Variance to allow for the construction of a second dwelling on a parcel 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 variance from the standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
3. The existing residence must be removed within six (6) months of the issuance of the certificate of occupancy.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 5/14/18) and as represented in the Use Variance application.

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

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

14. The application of ***Georgi & Mila Simeonov (Buyer) & Jerry L. & Elizabeth A. Bloxson (Sellers)*** for a Use Variance to allow for warehousing and storage of a semi tractor and trailer on property located on the North side of CR 12, 721 ft. West of CR 3, common address of 29135 CR 12 in Cleveland Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0269-2018*.

There were 12 neighboring property owners notified of this request.

Mr. Miller mentioned the Staff Report lists the use of the property as agricultural, but it is zoned R-1.

Mila Simeonov, 3455 Bay Pointe Dr. Apt. 1B, Elkhart, was present for this request. Mrs. Simeonov stated she would like to read her presentation to touch on the importance of this variance for her family. She explained approval of the Use Variance is the last step in the process of purchasing their first residence. She stressed her husband is their main source of income and permission to park a semi on this property is crucial. She added her husband works often, and that is the reason he is not present at the hearing. She continued saying the semi will not be parked on the property more than thirty hours a week, and it will not be warehoused there since it will only be kept there for short periods of time. She added semis will not be loaded or unloaded on the property, and there will be no employees, smoke, dust, or noise produced. Mrs. Simeonov stated they will strive to refrain from disturbing the area. She stressed they chose this property since it is over three acres, and farm animals are allowed on the property. She continued saying the semi truck is not any more disruptive than farm animals. She added the property is located on a county road with multiple small businesses, and she went on to say the residents should be familiar with larger vehicles using the road. She explained with a few minor adjustments the driveway will allow a semi to enter and exit the property without backing onto/off of the road. She stressed traffic will not be hindered in any way, and no one will be put in danger. She continued saying the driveway adjustments have already been discussed with County Highway. She added any adjustments made to the property will improve its aesthetic appeal. She explained they plan to install a fence, plant trees, widen/reinforce the driveway, and reinforce an existing outbuilding. She stressed the neighbors will not be able to see the semi. Mrs. Simeonov then clarified the Variance is very important to them, because the city currently does not have a lot for truck drivers to pay for parking spots. She stressed parking services are typically only found in large cities like Chicago. She continued saying in the past her husband has driven to and from Chicago for his weekly trips. She mentioned she believes it is impractical, but the only alternative is to illegally park at home. She stressed they have not found any other options. She stressed due to new driving regulations from December 2017 drivers are required to keep electronic log books and could be heavily fined, if they go over on hours. She continued saying truck drivers then have the decision to either violate their time logs or park illegally, which could cost them their jobs. She added he could leave his semi at various truck stops, but they typically require a truck be attended. She explained leaving a truck unattended increases the risk of vandalism. She mentioned leaving the truck somewhere also requires the driver be picked up and dropped off. Mrs. Simeonov stressed denial of this variance would result in unnecessary hardship, because they do not have any alternate locations to store it.

She then stated approval of this request should not interfere with the Elkhart County Comprehensive Plan. She stressed its purpose is to protect general rights, property rights, general welfare, development, growth, character, density, and public waste. She mentioned parking the semi on their property will not harm the environment or cause additional noise, and the property will look pleasing from the road. She added community health, safety, convenience, and general welfare will not be affected by this Variance, because the semi will be kept inside. She continued saying the semi truck will be kept inside of an outbuilding for about fifty hours a week. She also stated this should benefit the community because of the improved property value from adding a fence, new drive, and outbuilding. Mrs. Simeonov stressed she believes a semi parked in their outbuilding is the same as a car parked in a garage. She went on to say density is not an issue, because additional people will not be coming to the property. She also mentioned the drive will be extended, and that has already been discussed with the Highway Department. She then went on to demonstrate how the truck will pull in and turn around on the property. Mr. Hesser clarified no backing onto/off of the road will take place. Mrs. Simeonov stressed the semi will completely turn around on their property, and she plans to plant trees across the front as a buffer from the road. She stressed the property will not appear commercial, but she pointed out multiple businesses are located down the road. Mr. Miller asked if both the tractor and trailer will be kept on the property, and Mrs. Simeonov responded yes. She then went on to stress they looked at several properties over two years to store the semi. She explained one would allow her child to live in a safe neighborhood, her to live close to work, and her husband to have peace of mind. She stressed they understand the importance of the rules and regulations, but they hope the Board approves this request. Mr. Hesser clarified the questionnaire states legal truck parking locations are available close to the subject property, and she responded that is incorrect. He clarified it should read no legal truck parking locations are available in Elkhart County. Mrs. Simeonov stressed she is a moral citizen, and she hopes this request is approved so she can purchase her first house. She added they prefer to reside within the Elkhart Community School Corporation.

Angie Schultz, 29107 CR 12, was present in remonstrance, and pointed out her property directly behind the subject property. Mrs. Schultz stated she has a problem with this request because of its close proximity to her residence. Mr. Hesser asked if the trees are located between her property and the petitioner. Mrs. Schultz responded a mound of dirt with some bushes is located between the two properties. Mr. Lyon questioned her access to the property, and she pointed out a strip back to her residence. He also asked if her property runs along the ditch, and it was found she owns property on both sides of it.

Tim Eby, 29099 CR 12, the neighbor directly east of the petitioner was present against this request. He stressed he has lived on his property for twenty-four years, and he did not purchase it to have a commercial use next door. He added multiple neighbors are opposed to this request but were unable to make it due to work. Mrs. Schultz added Yoder Motor Oil is located down the road, and diesels always park there. Mr. Eby stressed CR 12 is heavily traveled from Forest River and the High School, and he believes approving a semi will cause safety concerns.

Mrs. Simeonov came back on and pointed out where the semi will be kept. She then pointed out woods with a wide open area behind it located between where the semi will be parked and Mrs. Schultz's property. She continued saying they have not measured to the neighbors' property, but she believes it is approximately half the length of their property. Mr.

Campanello asked about running the engine in the winter, and Mrs. Simeonov stressed it is no louder than her school bus. She explained Elkhart buses are located about half a mile away, and she does not believe the neighbors have any issues with the noise cause by 140 busses. Mr. Campanello stressed a diesel truck has to warm up before driving, and he mentioned several neighbors are in close proximity to the property. Mrs. Simeonov explained the semi only lets off smoke when it first starts, because the new system keeps most of the dust inside. She also added the location where semis park mentioned by the remonstrators only allows those being serviced to park there. Mr. Atha asked if the truck and trailer will be indoors. Mrs. Simeonov responded the existing building is not tall enough, but they plan to raise the roof to accommodate the semi truck. Mr. Atha asked where the trailer will be kept. She stressed it is typically not kept in a building, but they can try to fit it inside to satisfy the neighbors. Mr. Hesser stated he believes storing a semi indoors is a different request that does not require Board approval. Mr. Atha compared it to an RV being parked inside. Mrs. Simeonov stressed when she applied she was told parking the semi indoors or outdoors is the same request. Mr. Godlewski clarified it in general is hard to prove a semi is on the property, if it is kept inside.

The public hearing was closed at this time.

Mr. Hesser stated the Board has a history of denying semi Use Variances. He continued saying while the semi stored off of the road, no backing onto/off of the road, and a tree buffer lean him towards approval, the Board has consistently denied these requests. Mr. Hesser asked about the availability of semi storage areas. Mr. Miller responded storage is always an issue, and his drivers either knew someone whose property they could park it on or worked out a deal with a service plaza. He continued saying leaving vehicles unattended can cause issues with vandalism. He added Bristol has a few locations trucks can park. Mr. Atha asked if Board action is required when a semi is kept inside. Mr. Hesser stated he believes a Developmental Variance would be needed due to the building's height, and Mr. Godlewski added it may also exceed the personal storage square footage allowed. Mr. Campanello stressed CR 12 does not need the extra semi traffic, and he believes too many neighbors live close to this property. Attorney Kolbus pointed out this request is a Use Variance, which is the most restrictive request. Mr. Hesser explained it is a tough decision, because they are typically denied. He continued saying he understands the need for parking, but this cannot meet the findings required for a Use Variance.

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

Motion: Action: Denied, **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 Use Variance to allow for warehousing and storage of a semi tractor and trailer be denied.

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

Yes: Tony Campanello, Roger Miller, Randy Hesser.

No: Joe Atha, Denny Lyon.

15. The application of *Andrew G. & Susie Martin* for a Use Variance to allow for two existing dwellings on a parcel located on the South side of CR 30, 1,430 ft. West of CR 1, common address of 30312 CR 30 in Olive Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #UV-0261-2018.

There were five neighboring property owners notified of this request.

Loren Sloat, Attorney from Nappanee, 102 Heritage Pkwy., was present representing the petitioners and apologized for Mr. Martin's absence due to an emergency. Mr. Sloat submitted a packet to the Board *[Attached to file as Petitioner Exhibit #1]*. He explained the subject property was split off of a larger piece of property in 2015 with both residences on it. Mr. Hesser asked who split the property, and Mr. Sloat responded it was taken from a larger parcel. He added the Weavers broke the subject parcel off in 2015 in addition to two parcels off of CR 1 in 2010, and another parcel in 2005. He continued saying the Martins purchased the property in 2015, and a neighbor who has lived in the area for several years is also present. He explained the owner of the remaining 101 acres is still living, but he believes the family decided to sell off the improvements to minimize management responsibilities. He went on to say the buildings on the subject property were original to farm, and a third house on the property was destroyed by fire. Mr. Hesser mentioned he believes family members probably lived in the additional residences. Mr. Sloat pointed out one was constructed in 1920, another in 1949, and the third one probably when the farm was originally created. He stressed all of the dwellings on the property predate the Zoning Ordinance. He again pointed out both residences were once part of a much larger parcel. He pointed out page three in the submitted packet shows the primary residence, page four the second residence, page five the barn, and page six the remaining acreage. He again referenced the multiple parcels split off of the main one at different times. He stressed the remaining property has been owned by the same people for seventy to eighty years. Mr. Hesser clarified the Martins purchased the subject property when it was split off in 2015. Mr. Sloat reiterated the property originally had three residences, but only two remain, which all predate the Zoning Ordinance. He continued saying Staff acknowledges this is a legal nonconforming use, and he questioned why it needs to be brought into compliance. Mr. Hesser stressed legal nonconforming status is lost when the property is changed. Mr. Sloat mentioned both houses still remain on one parcel, but the parcel size has changed. He explained one of the residences has an insignificant value, and Mr. Martin plans to tear that one down. He added when the remaining acreage is sold he believes Mr. Martin will purchase it. He stressed requiring a Minor Subdivision causes an unnecessary hardship on the property owners, because it is expensive with no benefit. He explained the Martins plan to tear down the second residence within a year or two, but it will be torn down sooner, if this request is denied. Mr. Campanello clarified this request is because the petitioners do not want to tear down the second residence yet. Mr. Sloat responded a renter currently occupies the residence, but it is in disrepair and does not have central heat or air. He went on to say it needs a lot of work and will be torn down, if this request is denied. He recommended the Board add a condition to approval prohibiting any improvement location permits be issued on the second residence. He stressed that will stop Mr. Martin from changing his mind and fixing up the residence. Mr. Miller suggested adding a commitment to allow the second residence for only one to two years, and Mr. Sloat agreed to that. Mr. Lyon asked how long it would take to evict the current tenant. Mr. Sloat responded he is unsure, because it depends on the lease length. Mr. Campanello asked how much a Minor Subdivision would cost, and Mr. Sloat stated it is a simple process but not cheap. Mr. Campanello stressed he believes a Minor Subdivision is a hardship on the landowner. Mr. Hesser pointed out the property owners

created this hardship when they purchased the property, and he stressed the Board did not impose the hardship. Mr. Campanello mentioned denial of this request would require the property owner spend \$5,000 to subdivide the property only to tear down the second residence in a few years. He stressed the second residence will not be livable in a few years, and he suggested adding a commitment requiring it be torn down. Mr. Sloat stressed they are willing to add a condition that it be torn down in two years and no improvement location permits may be issued for that residence. He went on to say, if the request is denied the residence will be torn down.

Rudy Hartman, 30546 CR 32, Wakarusa, was present in favor of this request. Mr. Hartman stated he farms the remaining 101 acres and lived in the second residence. He added he is sure Mr. Martin will not file for a minor subdivision. He explained the current owner of the remaining property is in her nineties and lives in Arizona. He added the property will be sold when she passes away. He stressed Mr. Martin is a good neighbor, and he believes he will end up purchasing the additional property. He added Mr. Martin follows through with what he says, and he is in support of giving him time to tear the second residence down.

Mr. Sloat came back on and stated due to the property's history and current situation he believes the best decision is to allow it to remain as it currently stands. He stressed both residences have been here for seventy years, and the property will not change. He added when driving down the road no one can tell both residences are on the same property. He continued saying in this case it is not logical to spend \$3,000 on a minor subdivision.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he believes allowing two years to tear the structure down is reasonable. Mr. Hesser mentioned he does not see how the findings can be changed to allow for a Use Variance in this case. However, he added the Board has given owners time to comply in the past, and he does not have a problem giving him a few years. He stressed he cannot grant a Use Variance, because the situation was self-created. He asked Attorney Kolbus, if allowing the petitioner two years to tear down the nonconforming structure is an option. Attorney Kolbus responded in a way the Board is granting the request by directing staff to delay enforcement for two years. He continued saying the only way to make the petitioners comply is for staff to pursue a code violation.

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

Motion: Action: Denied, **Moved by** Randy Hesser, **Seconded by** Denny Lyon 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 two existing dwellings on a parcel be denied.

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

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

Included as part of the motion, Staff to delay enforcement for two (2) years, and no Improvement Location Permit is to be issued on House #1 as shown on the site plan dated 5/3/18.

16. The application of *John J. & Gail F. Bergan (Previous Owners) & Penitani Sosefo (Current Owner)* for a 10 ft. Developmental Variance to allow for an existing residence 0 ft.

from the North property line (Ordinance requires 10 ft.) located on the West side of CR 3, 2,630 ft. South of CR 26, common address of 60473 CR 3 in Baugo Township, zoned A-1, came on to be heard.

Mr. Godlewski stated the Staff Report has not changed since the last hearing. He suggested the request be either approved as presented or dismissed, since the encroachment is a civil matter. He clarified the request presented is for a zero lot line Developmental Variance, and the Board cannot rule on the encroachment. Mr. Hesser then asked Mr. Sloat come up and give an update on the situation.

Loren Sloat, Attorney in Nappanee, 102 Heritage Pkwy., came on representing the petitioners. He stated this request came before the Board six months ago, and it was tabled to give him time to work with the surrounding property owners to acquire a ten foot strip to the north that would then be traded with Mr. Harter for his strip of land with the encroachment. He continued saying he has not been able to contact either of the neighbors to the north even with reasonable offers for their land. He explained the encroachment has existed for forty-four years. He then reviewed with the Board the surrounding property was vacant when the residence was constructed, and the subdivision left an L shaped gap area between the properties when it was created. He continued saying he has been told that the surveyors left a gap area to eliminate the need to find the exact property lines. He added the developer sold the gap area to a neighbor, even though this residence was encroaching onto that property. Mr. Sloat stated a zero lot line Developmental Variance can be granted, but it will not solve the encroachment. Mr. Hesser clarified the petitioners have been unable to purchase the property where the building encroaches. Mr. Sloat explained the owner of the gap area does not want to sell it, because it is his access to CR 26. Mr. Campanello asked if the neighbors' outbuilding is conforming. Mr. Godlewski responded it is probably encroaching onto the neighboring property, but the GIS property lines are not accurate. Mr. Campanello questioned how the Board determined the residence to be encroaching. Mr. Sloat responded the property survey shows the residence encroaching onto the neighboring property. He then submitted the survey *[Attached to file as Petitioner Exhibit #1]*. Mr. Miller mentioned the neighbors' shed is also on the property line, and Attorney Kolbus stressed this request is for the encroaching residence. Mr. Sloat stated he is not opposed to dismissing the request, and he tried to get cooperation from the neighbors.

David. Harter, 29050 Hillary Ln., was present and stated he was on board with what Mr. Sloat was trying to accomplish. He explained he also assumed the property line was ten feet to the north, and his outbuilding is now a few inches over the property line. He continued saying he is willing to move it to meet the proper setbacks. He stressed he houses a 1965 mustang in the garage, and he needs the ten foot strip to have access to CR 26. He went on to explain the petitioner's residence is only two feet onto his property, but the shrubs take up an additional three feet. He stressed he has a problem, because he can only use five feet of his ten foot strip. He added he is willing to move his garage to be in compliance, but he is requesting the petition be denied so he can regain access his ten feet. He continued saying it is a civil matter, because he does not want to keep using his neighbors' property for access. Mr. Campanello asked, if a survey was completed when he purchased the property, and he responded no. Mr. Harter mentioned the Staff Report states the use and value of the adjacent property will not be affected, but he stressed his property will be affected, if this request is approved. He went on to say approval will decrease his property value, and he will be unable to use it for what he needs. Mr.

Campanello suggested he sell the ten foot strip to the petitioner and draw up an easement allowing him to drive across the property. Mr. Harter responded he is afraid that could get messy, if the property changes hands again.

The public hearing was closed at this time.

Mr. Hesser suggested this request be either dismissed or tabled indefinitely, because granting the petition does not solve the encroachment. Attorney Kolbus pointed out an indefinite tabling is not possible, because the petition would expire. Mr. Hesser stated he does not want to make the petitioners reapply, if a solution is found, but the application fee will not be very expensive compared to other fees involved in resolving the encroachment. Mr. Miller asked if dismissing the request is the Board's only option. Mr. Hesser responded the petition could be granted, but he does not believe the board has a basis to grant it. Mr. Campanello stated the two parties should agree to a resolution amongst themselves. Mr. Atha asked if this request is preventing the residence from being sold, and Attorney Kolbus pointed out it was started in November of 2017. Mr. Godlewski pointed out the petitioners can reapply three months after dismissal.

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

Motion: Action: Dismiss, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the request for a 10 ft. Developmental Variance to allow for an existing residence 0 ft. from the North property line (Ordinance requires 10 ft.) be dismissed without prejudice.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

No: Tony Campanello.

17. The Board now returned to the Staff Item for *AMMF Trustee Corporation as Trustee for Amish Mutual Mortgage Fund (Land Contract Holder) & Gerald & Ida Burkholder (Land Contract Purchasers)* (SUP-0197-2018). Mr. Godlewski presented two aerial photos from the original approval. Mr. Hesser asked the reason behind the recent complaint filed against the property, and Mr. Godlewski responded noise and saw dust odor. Mr. Hesser asked when the Special Use was approved, and Mrs. Britton responded 5/18/18. Mr. Atha pointed out the new location places the building farther from the neighbors. Mr. Hesser asked if a time limit was imposed, and Mrs. Britton responded no. Mr. Hesser stressed this request is to move the building location, and Mr. Miller added it is a better location than the original one.

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 approve this request as a minor change.

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

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

18. Mr. Godlewski presented the staff item for *Rebecca Bender* (20053440). He explained the request is for two additional groomers, and to increase the number of dogs groomed each day from five to twelve. He added the letter was received June 15th, and staff recommends approval as a minor change. He continued saying no complaints have been filed against this property.

Mr. Miller asked if any remonstrators were present. Mr. Hesser asked the number of current employees, and Mr. Godlewski stated she is requesting two in addition to what was approved. He also asked if the petition was for a home workshop/business, and Attorney Kolbus responded yes. Mr. Hesser stressed doubling the number of employees and more than doubling the number of dogs groomed per day is a major change.

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 determined this request to be a major change.

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

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

19. The Staff Item for Jerry Hochstetler (20031880) was previously heard as item #7 on page 4.
20. The Staff Item for AMMF Trustee Corporation as Trustee for Amish Mutual Mortgage Fund (Land Contract Holder) & Gerald & Ida Burkholder (Land Contract Purchasers) (SUP-0197-2018) was previously hears as item #8 and #17 on pages 5 and 21 respectively.
21. The Staff Item for Rebecca Bender (20053440) was previously heard as item #18 on page 22.
22. The meeting was adjourned at 10:58 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary