

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20th DAY OF JULY 2023 AT 9:00 A.M.
MEETING ROOMS 104, 106, & 108 – ADMINISTRATION BUILDING
117 N. 2nd STREET, 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: Mae Kratzer, Plan Director; Jason Auvil, Zoning Administrator; Adam Coleson, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

Absent: David Miller.

2. Mr. Hesser noted the Board voted on a 1-year renewal for the Roy M. Kinsinger petition. He stated he didn't see that as part of the commitments on pages 4 and 5 of the minutes. A motion was made and seconded (*Norman/Warner*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of June 2023 be approved as read with the mentioned correction. The motion was carried with a unanimous roll call vote. After reviewing previous minutes, it was found that on page 6, the commitments did include that the petition was granted for 1 year with renewal coming before the Board of Zoning Appeals.

3. A motion was made and seconded (*Warner/Cramer*) 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 *Culver Duck Farms, Inc.* for a Special Use for commercial parking on property located on the North side of CR 10, 2,100 ft. West of SR 13, common address of 11925 CR 10 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0337-2023*.

There were seven neighboring property owners notified of this request.

Shawn Smith, General Manager of Culver Duck Farms, 12215 CR 10, Middlebury, was present for this request. He stated they are asking to add onto the current parking area for commercial vehicles for the expansion of the business. He went on to say as they expand the facility they will be migrating to the parking area that is currently in use at this time.

Dawn Pease, 11954 CR 10, Middlebury, was present in remonstrance. She explained her first concern is for the traffic and noise that this will add in front of her home. She stressed she understands Culver Duck needs to improve, though she feels they have enough property that they could find a different location for this parking area. She went on to say she is concerned about her home value going down due to having commercial vehicles parking across the street from her home.

Shawn Smith came back on to respond. He explained their plan is not to store semi-trucks in this location. He continued to say this parking area will be for maintaining their service trucks and forklifts. Mr. Hesser asked if they are planning on screening the area. Mr. Smith responded that isn't the plan, but they aren't opposed to adding screening, if they have to. There was a

discussion on where the new parking area is going to be located and it was shown on the aerial. Mr. Miller asked if they will be adding any additional vehicles. Mr. Smith responded no, the new parking area is taking the place of the current parking area that is being lost due to building expansions. Mr. Norman asked if there is a tree buffer along the roadway. Mr. Smith responded there isn't a buffer in that location. He continued to say he is not against adding some trees to help his neighbor. Mr. Hesser stated according to the site plan the new parking is 47 feet from the centerline of the road.

The public hearing was closed at this time.

Mr. Warner stated he would support adding screening as a commitment.

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

Motion: Action: Approve, **Moved by** Ron Norman, **Seconded by** Deb Cramer 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 commercial parking be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A revised site plan must be submitted for staff approval showing the entire 10-acre parcel and the buffering along CR 10.

The following commitments were imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Special Use application.
2. A visual buffer of live trees must be installed and maintained along the southern part of the new parking area along CR 10.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

5. The application of *Marcus D. Yoder & Ruby E. Yoder, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the Northwest corner of CR 54 & CR 11, common address of 25123 CR 54 in Union Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0384-2023*.

There were 21 neighboring property owners notified of this request.

Marcus Yoder, 25115 CR 54, Nappanee, was present for this petition. He stated the solar system is to power the Miller Poultry barns he is in the process of building. He went on to say that solar power will be in place of having a generator running full time. Mr. Miller asked if they will have a backup generator. Mr. Yoder responded yes, though the solar panels will take the use of the generator down to an 8% run-time use.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated there is plenty of land for these panels. Mr. Hesser asked where the solar panels will be located. There was a discussion about where they would be located on the property.

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

Motion: Action: Approve, **Moved by** Ron Norman, **Seconded by** Deb Cramer that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a ground-mounted solar array be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/7/2023) and as represented in the Special Use application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

6. The application of *Earl Yoder & Marla Yoder, Husband & Wife* for a Special Use for a home workshop/business for a bait and tackle shop on property located on the North side of CR 24, 1,080 ft. West of CR 41, common address of 11687 CR 24 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0388-2023*.

There were 13 neighboring property owners notified of this request.

Earl Yoder, 11687 CR 24, Middlebury, was present for this petition. He explained he went to the Zoning office to turn in a revised site plan, and he was told he had to bring the new site plan to the meeting. He submitted a new site plan to the Board [Attached to file as *Petitioner Exhibit #1-2*]. Mr. Hesser asked what the difference was on the submitted plans. Mr. Yoder responded he was told he had to keep the sign out of the right-of-way. Mr. Hesser asked how big the sign is. Mr. Yoder responded the sign on the application was 5 ft. by 10 ft., though he was told that was too big. He continued to say the sign will be 6 ft. tall from the ground up, and 5 ft. wide by 3 inches tall. Further, he explained he has talked to one of his neighbors, and they have come to an agreement on the size of the sign. He noted he is willing to go smaller, if he needs to. Mrs. Cramer asked if the proposed parking will be on the grass. Mr. Yoder responded yes, the left side of the driveway would have some grass parking. Mr. Miller asked if they will be adding onto the house. Mr. Yoder responded no, he will not be building anything new. Mrs. Cramer stated on the site plan the proposed parking looks smaller than when looking at the aerial. Mr. Norman asked how many cars will be allowed to park on his property. Mr. Yoder responded he will mostly have Amish customers, therefore, he may have up to 3 cars parked there at one time. He stressed he doesn't expect to have cars parked there every day. Mr. Miller asked if he has talked with his neighbors about running this tackle shop. Mr. Yoder responded he talked to a few of the Amish people, and they were for this request. He noted he only talked to one other neighbor who lives closest to his house.

Curtis Elliot, 11707 CR 24, Middlebury, was present in remonstrance. He explained he has lived here for 32 years, and the attraction of this area is having quiet and peaceful surroundings. He went on to say that Mr. Yoder has a small 2-lane area for pulling off of the property, and Mr. and Mrs. Yoder already have 5 cars on this property at all times. He submitted a photo showing

the cars parked on the property *[Attached to file as Remonstrator Exhibit #1]*. He stressed they have people living with them now and when they back out of the driveway, they back onto his front yard. Further, he stated he is concerned about the safety of people backing out onto the county road and into his yard. He reiterated he doesn't have anything against his neighbors, though he wants this to be done right. He went on to say he is opposed to any sign over 2 ft. by 2 ft. as this is a half-acre parcel that doesn't have a lot of room to be running a business. Mr. Miller asked if there were any other home businesses in this area. Mr. Elliot responded not in the immediate area, though a few miles to the south there is one. He continued to say they have 55 acres to run a business. Mr. Hesser asked if there are covenants in this subdivision. Mr. Elliot responded none that would stop this from happening. He continued to say that he asked other neighbors and none of them were too happy about this business. He went on to say the RV that is on his property is not there all year, as he moves it to storage in the winter. He stressed it is only there in the summer while they are using it for recreation. Mr. Miller asked if he would be in favor of a fence being put up between the properties. Mr. Elliot responded he doesn't have an issue with a fence going in, though he is concerned about having a big sign and the number of cars that are already at the home. Mr. Norman stated in the photo he submitted, he is saying the cars on the lawn are just sitting there and not being used. Mr. Elliot clarified that this is correct.

Earl Yoder came back on to speak. He stated he has one jeep parked in his yard, and he is working on getting rid of it. He added he is trying to minimize the vehicles on his property. He stressed he didn't know that someone backed into his neighbor's property, and he will make sure that doesn't happen again. He went on to say the guy living with him is in between apartments and won't be living there long. Mr. Norman clarified the extra cars will be moved off the property before opening the business. Mr. Miller asked if he would be willing to put up a privacy fence along the property line. Mr. Yoder responded he has no objections to putting in a fence. Mrs. Cramer asked how big of a truck comes for deliveries, and how they will maneuver for making deliveries. Mr. Yoder responded that he gets a delivery once a week from a cargo van, and it backs into his driveway to unload and then pull back out.

The public hearing was closed at this time.

Mr. Miller stated it is a bit unusual for the Board to approve a business on such a small parcel, and it is already causing issues in the neighborhood. Mr. Hesser stated he is not satisfied with the revised site plan; the sign is well over what is normally allowed for a home workshop. He added he feels this will be out of place in the area. Mrs. Cramer stressed there are already cars parked on the grass, and she doesn't see how customers will be able to get in and out safely. Mr. Norman stated the road frontage isn't big enough to even add in a turnaround driveway. Mr. Miller explained this is a heavily traveled road. Mr. Warner stated a minimum to approve this request would be to have a turnaround driveway, and there is no room for that here. Mr. Hesser stressed there are so many issues with this that the Board can't ask for this to be approved.

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

Motion: Action: Deny, Moved by Randy Hesser, Seconded by Roger Miller that this request for a Special Use for a home workshop/business for a bait and tackle shop be denied based on the following findings and conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

**** Mr. Hesser stepped down from the Board at this time****

7. The application of *Wa-Nee Community Schools* for an Amendment to an existing Special Use for a school to allow for two electronic message boards and for a Developmental Variance to allow electronic message boards within 300 ft. of a residence on property located on the Southwest corner of N Elkhart St. (CR 3) & Wildcat Dr., 1,200 ft. North of Waterford St. (CR 40), common address of 301 N. Elkhart St. in Olive Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0367-2023*.

There were 35 neighboring property owners notified of this request.

Scott Croner, Superintendent, Wa-Nee Community Schools, 1300 N Main St., Nappanee, was present for this request. He stated they want to upgrade their signs for the schools. He explained they upgraded the signs at other schools, and they have never received a complaint about those signs. He stressed he visited all the neighbors and explained what they were petitioning for, and he didn't receive any negative feedback. Mr. Miller asked if these signs are the ones that automatically dim at night. Mr. Croner responded that is correct.

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** Ron Norman, **Seconded by** Deb Cramer that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a school to allow for two electronic message boards be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/28/2023) and as represented in the Special Use Amendment application.

Further, the motion also included that a Developmental Variance to allow electronic message boards within 300 ft. of a residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 6/28/2023) and as represented in the Developmental Variance application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller.

Excused: Randy Hesser.

*****Mr. Hesser returned to the Board at this time*****

8. The application of *Virginia G. Sheffer* for a Special Use for a home workshop/business for a gutter installation business, for a Developmental Variance to allow for 4 outside employees (Ordinance allows 2), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the Southeast corner of CR 4 & Decker Dr., common address of 22794 CR 4 in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0385-2023*.

There were 21 neighboring property owners notified of this request.

David Lefler and Virginia Sheffer, 22794 CR 4, Elkhart, were present for this petition. Mr. Lefler stated he is using the existing barn to store supplies and for employees to park their vehicles. He stressed no work will be done on-site, and no customers will come to the property. Mr. Miller asked if he had people working for him. Mr. Lefler responded he has 2 employees right now, but he is requesting for 4 employees for future growth. He stressed that if they get bigger than 4 employees, they will buy property for the business elsewhere. Mr. Hesser stated on the application there's a number he can't read. He then asked how many employees he has. Mr. Lefler responded he has 2 employees, not including himself. Mr. Norman asked if they only have 1 company truck. Mr. Lefler responded he has 2 company trucks parked there, but they only currently use one truck. Mr. Miller asked if they do any bending or work on the material in the shop on-site. Mr. Lefler responded he hasn't run into using his machine in the shop. He stressed he has used it twice over 2 years where a customer met him at the end of his driveway to pick up a small piece of replacement gutter. Mr. Norman asked if he is doing a gutter job and some parts need to be replaced, do they go to the shop to make repairs and then come back to the site. Mr. Lefler responded typically they buy the fascia. Mr. Hesser clarified that as long as the occupants of the residence are the owners of the business then it is a home workshop. There was a discussion about the sign being too big. Mr. Hesser explained the Zoning Ordinance only allows for a 4 sq. ft. sign. Mr. Lefler responded he didn't know what was allowed, and that he is more than willing to just have a yard sign. Mrs. Sheffer asked how far from the road the sign needs to be placed. Mrs. Kratzer responded she would explain that after the meeting. Mr. Miller asked how deliveries are made on the property. Mr. Lefler responded delivery trucks pull onto the property and then pull off the property onto the road as there is a turnaround area. Mrs. Sheffer explained there is another part of the driveway that isn't shown in the photo that has access to the barn. It was clarified that they have a circle driveway for access and for delivery trucks to turn around on the property. Mr. Lefler explained part of the driveway is just grass as the gravel has worn away, though he is looking to get that re-graveled. Mr. Norman asked where the employees are parking. Mr. Lefler responded they park on the right side of the barn facing away from the road.

Leslie Cunningham, 29588 CR 18, Elkhart, was present in support of this request. She stated she owns property in this area, and she is in support of this business. She went on to say there is very little traffic on Decker Dr.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he would like to see a revised site plan.

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

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

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A revised site plan must be submitted for staff approval showing setbacks for the existing accessory structure and the proposed sign location and size.

The following commitment was imposed:

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

Further, the motion also included that a Developmental Variance to allow for 4 outside employees (Ordinance allows 2) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right be approved with the following conditions imposed:

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

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

9. The application of *Danny Miller, Jr. & Jolisa K. Miller, Husband & Wife* for a Special Use for a home workshop/business for a boat restoration business and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the East side of CR 35, 1,220 ft. South of CR 30, common address of 62220 CR 35 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0390-2023*.

There were nine neighboring property owners notified of this request.

James Letstone, Eden Creek Builders, 0280 W 1100 S, Wolcotville, was present representing the petitioner. He stated the petitioner needs more room for the business, though they do not see the need for more employees. He went on to say the workshop will be heated by a generator, and they are looking to widen the driveway as well. Mr. Miller asked if there will be boats parked in the front yard all the time. Mr. Letstone responded yes, they keep boats parked in the yard, and normally have 13 outside. He continued to say that it was noticed in the Staff Report

that it was recommended to be limited to 4 boats. He asked if they were to put in a driveway to the back of the barn, would they be allowed to store more boats outside. He stressed they are willing to only store the 4 boats that were recommended. Mr. Hesser explained that if this grows any bigger than what is approved, then the petitioner would have to come back in to request more storage and parking. Mr. Miller stated he's not seen 13 boats parked outside, and they have never blocked the view of the road. Mrs. Cramer explained if there is no limit to the number of boats being stored outside, then this could become a boat storage area. She suggested setting a limit to the amount of boats being stored outside.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Auvil explained it would be the Staff's preference to the Board that the boat storage is in the back of the property, behind the building, and not having a limitation of boats being stored outside. Mr. Hesser stated the petitioner said they could live with limiting to only having 4 boats. Mrs. Cramer stated that 6 boats would fit behind the barn nicely. Mr. Auvil reiterated Staff wouldn't necessarily need a limit set on the number of boats stored outside if they were limited to storing behind the barn only. Mr. Hesser explained a Board member had a concern about the number of boats being stored outside.

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

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

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A revised site plan must be submitted for staff approval showing and limiting the outside storage area for watercraft.

The following commitments were imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Special Use application.
2. The outside storage is limited to a maximum of six (6) total finished or unfinished watercraft behind the building.

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

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

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

*****Mr. Hesser and Mr. Norman both stepped down from the Board at this time*****

10. The application of *Cameron Snyder & Suzanne Snyder, Husband & Wife, Jon K. Hart & Connie S. Hart, Husband & Wife, Patrick Rosenogle & Kristie Rosenogle, Husband & Wife, & Daniel Gregory & Leann Gregory, Husband & Wife* for a Use Variance to allow for an existing accessory structure without a residence on lot 3, for a Use Variance to allow for the construction of an accessory structure without a residence on lots 2, 4, and 5, and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on lot 4 located on the West side of Forest Rd., 425 ft. South of Baker St., East of CR 109, common address of 51413 Forest Rd. in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0392-2023*.

There were 38 neighboring property owners notified of this request.

Mr. Miller asked for clarification from Staff as to why they are recommending approval when typically storage units aren't allowed without a residence. Mr. Auvil responded the subject properties are paired with a residence across the street, and it was supposed to be recorded on the plat, that these lots were designated for accessory structures. He continued to say when the first building permit was issued; it was missed that this wasn't platted correctly to have accessory structures without a residence.

Jon Hart stated, from the audience, that he didn't want to come up to speak.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Cramer asked if the properties were paired and if the person building the barn is the person who lives on the lake. Mr. Auvil explained the lots on the west side of the street are deeded with the properties across the street. He went on to say that the residential lots on the east side of the street are so small that the subdivision intended to allow for the vacant lots on the west side to be for accessory structures. Mr. Miller asked if this will rectify the problem for other people in the subdivision. Mr. Auvil responded this will allow them all to build their accessory structures, but if their storage space is more than the 110% that is allowed by right then they may need to come back for a Developmental Variance.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Steve Warner 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 an existing accessory structure without a residence on lot 3 and for a Use Variance to allow for the construction of an accessory structure without a residence on lots 2, 4, and 5 be approved with the following conditions imposed:

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

2. A revised site plan must be submitted for staff approval showing all 4 subject lots, the existing accessory structure, and the currently proposed accessory structure.

The following commitments were imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Use Variance application.
2. All site plans for future accessory structures may be approved by staff.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on lot 4 be approved with the following conditions imposed:

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

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Deb Cramer, Steve Warner, Roger Miller.

Excused: Randy Hesser, Ron Norman.

****Mr. Hesser and Mr. Norman returned to the Board at this time****

11. The application of *Adam Delagrang & RoseMary Delagrang* for a 14 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of an addition to the residence 106 ft. from the centerline of the right-of-way and for a 54 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of an accessory structure 66 ft. from the centerline of the right-of-way on property located on the South side of SR 120, 2,265 ft. East of CR 29, common address of 16064 SR 120 in Washington Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0386-2023*.

There were four neighboring property owners notified of this request.

Glen Bontrager, Sunrise Construction, 51583 CR 29, Bristol, was present representing the petitioner. He explained the petitioner wants to build an accessory structure, and he realizes it might not be a good idea to build that close to the road. He continued to say that they just bought the property at the beginning of the year, and they need more room in the house. Mr. Hesser asked why the new garage can't be moved back. Mr. Bontrager responded it would take away the pasture area for the horses, but it could be moved. He went on to say that Mr. Dean from the Building Department noticed the site plan might not be accurate. He continued to say that he went off of an old map and when the surveyor marked the property lines they found they needed a Developmental Variance. Mr. Hesser asked if Staff would have an issue with the building being in line with the residence. Mr. Auvil responded that would be acceptable. Mr. Bontrager stated that if they were to move the barn to be even with the house then they would end up behind the barn or just do an addition to the barn. Mr. Hesser clarified the new building would be even with the proposed new addition of the house, and not behind the barn or house.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Cramer stated there is no reason for the variance as the new building could be set back the 120 ft. that is required.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 14 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of an addition to the residence 106 ft. from the centerline of the right-of-way be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 6/6/2023) and as represented in the Developmental Variance application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Deb Cramer that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that for a 54 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of an accessory structure 66 ft. from the centerline of the right-of-way be denied.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

12. The application of *Jeremiah Schwartz* for a 45 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for the construction of an agricultural building 30 ft. from the centerline of the right-of-way on property located on the East side of CR 31, 1,350 ft. North of CR 18, common address of 57590 CR 31 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0366-2023*.

There were six neighboring property owners notified of this request.

Jeremiah Schwartz, 57590 CR 31, Goshen, was present for this petition. He stated the reason he needs the barn in this location is due to the leach field and septic location to the north of the house, and he can't go any closer to them. He went on to say that he doesn't want to clear out his woods, to keep the barn further away. There was discussion and clarification that the petitioner would like to place the new barn 37 ft. from the centerline of the right-of-way as opposed to the 30 ft. shown on the site plan. Mr. Hesser asked where the entrance to the barn is located. Mr. Schwartz responded the entrance is on the south side. Mr. Hesser asked if there will be a driveway to the barn. Mr. Schwartz responded yes, coming off of the existing driveway that goes to the house. Mr. Hesser stated his concern is due to CR 31 being a busy road, though visibility in that area isn't an issue. Mr. Schwartz reiterated his drawing shows the barn 37 ft. away from the

centerline of the right-of-way. He continued to say that CR 31 comes to a T intersection with CR 18 which will slow traffic down a little bit in that area. He reiterated that 30 ft. is still very close to the road. Mr. Hesser asked if it was feasible to move the barn further back. Mr. Schwartz responded he has his drawing marked at 37 ft. Mrs. Cramer stated he has to remove 2 or 3 trees to put the barn in the proposed location. Mr. Norman asked what the distance is from the back of the proposed barn to the field system. Mr. Schwartz responded it is 35 ft. Mr. Norman asked if there are trees between the proposed barn and the field system. Mr. Schwartz responded he would have to remove 5 or 6 trees versus 2 if he moved the barn back any further. Mr. Norman stated there are four fingers to the field system. Mr. Miller explained when the house was built there was a requirement for a reserved leach field. Mr. Hesser asked if he were to cut down more trees, how much further from the road could he go. There was a clarification as to where the barn could go concerning the leach field, as Mr. Schwartz was thinking the Board was asking about moving the barn into the wooded area. Mr. Schwartz stressed he is pretty much maxed out where he is proposing for the barn to go now. He stressed 37 ft. is as far back as he can go to stay 10 ft. away from the leach field. Mr. Norman asked Staff if there is a limit to how close someone can build to a leach system. Mrs. Kratzer responded she believes it is 10 ft.

David Schwartz, 4705 S 600 W, Topeka, was present in support of this request. He stated he is in support of not cutting down trees and taking out natural habitat areas for a barn.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he is not in favor of a building that close to the road. Mr. Hesser reiterated he is not concerned about visibility, as it is a straight road. He went on to say that he would still like to see the barn further back, even if a few more trees had to be cut down. Mr. Norman stated even if he added a new leach field finger further in the back, he would only gain a few more feet. Mrs. Cramer stated he could possibly get another 12 feet back by moving the leach field. There was discussion that the Board is to act upon what has been presented, and they could give the petitioners time to come up with new plans, if the Board were to table this request until next month.

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

Motion: exception number 1 at the end delete words, **Action:** Deny, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a 45 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for the construction of an agricultural building 30 ft. from the centerline of the right-of-way be denied based on the following 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 effects on neighboring property. The placement of the building is out of character with the placement of buildings on nearby properties.
3. Strict application of the terms of the Zoning Ordinance would not result in an unnecessary hardship in the use of the property. There are more suitable places for the building.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

13. The application of *Loveway Projects, Inc.* for an Amendment to an existing Special Use for an indoor riding arena to allow for the placement of a residence, for a Special Use for a mobile home, and for a 515 sq. ft. Developmental Variance (Ordinance requires 900 sq. ft.) to allow for the placement of a 385 sq. ft. residence on property located on the West side of CR 33, 1,090 ft. South of CR 108, common address of 54151 CR 33 in York Township, zoned A-1, came on to be heard.

There were 11 neighboring property owners notified of this request.

Mr. Hesser asked if there was anyone in the audience that would like to have the Staff Report re-read. He noted there was no one in the audience except the petitioner, and the Staff Report did not need to be read again. He continued to say the whole point of this request to be tabled last month was for a revised site plan to be submitted at the request of the petitioner, and he would like to have a presentation on the revised site plan.

Andrew Cunningham, Jones, Petrie, Rafinski, 325 S. Lafayette Blvd., South Bend, was present for this petition. Mr. Cunningham explained a revised site plan was submitted before the meeting through the Planning and Development Department. He continued to say they adjusted the location of the mobile home based on the septic system study that was done. Further, he noted the request to table last month allowed them time to reach out to the neighbors who had concerns, and they were able to make sure the neighbors understood where the mobile home was going, what it was going to look like, and answer any questions they still had. Mr. Hesser asked how far from the park model will be from the road. Mr. Cunningham responded over 540 ft. from the centerline of the right-of-way. Mr. Hesser asked how far from the neighboring property to the north will the park model be placed. Mr. Cunningham responded 30 feet. Mr. Hesser clarified that the setback wouldn't need a Developmental Variance. Mr. Miller asked if they will be impeding the well system of the neighbors. Mr. Cunningham responded no there wouldn't be a well within 1,500 ft. of that location. There was discussed that well and septic location isn't a Board issue. Mr. Hesser clarified that the revised site plan date will be 6/15/2023.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for an indoor riding arena to allow for the placement of a residence be approved with the following conditions imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/15/2023) and as represented in the Special Use Amendment application.

Further, the motion also included that for a Special Use for a mobile home be approved with the following conditions imposed:

1. The request is approved subject to Staff renewal every three (3) years and with a one (1) year review to verify compliance with the following:
 - a. The mobile home shall be adequately stabilized and skirted and have tie-downs installed.
 - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
 - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools, and vehicles, except licensed motor vehicles.
 - d. At all times, the premises shall be kept free of abandoned junk vehicles and parts thereof as described by Indiana State Law.
2. The request is approved in accordance with the site plan submitted (dated 6/15/2023) and as represented in the Special Use Amendment application.

Further, the motion also included that a 515 sq. ft. Developmental Variance (Ordinance requires 900 sq. ft.) to allow for the placement of a 385 sq. ft. residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 6/15/2023) and as represented in the Developmental Variance application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

Attorney Kolbus brought it to the attention of the Board that there is a commitment that needed to be a part of the motion and the Board only motioned on conditions. There was a discussion with the Board members and Staff about the commitment that was on the Staff Report and it was clarified the commitment needs to be added to the motion.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Ron Norman that the previous motion be amended to include the commitments as stated in the Staff Analysis.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

14. Mae Kratzer brought to the Board an opportunity for condensed 2-hour training with the American Planning Association with the State of Indiana. She continued to explain the training is in person in the City of Elkhart and will be in August from 3 p.m. to 5 p.m. She went on to say the available dates are August 22nd, 23rd, and 24th. Mrs. Cramer clarified it will just be one day not all 3 of those days. She noted she would prefer the latest date. There was a discussion from the Board, and it was agreed that August 24, 2023, from 3 p.m. to 5 p.m. for the training would be best.

15. The meeting was adjourned at 11:05 a.m.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary