

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>TH</sup> DAY OF AUGUST 2017 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; Mae Kratzer, Planner; Duane Burrows, 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 (*Miller/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20<sup>th</sup> day of July 2017 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Lyon/Miller*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

4. Mr. Hesser stated the Legal Services Agreement to allow Glen Duncan to fill in as the Board's Attorney for the Esteban Sr. & Maria R. Martinez petition needs to be approved by the Board. He explained Attorney Kolbus has a conflict of interest with the petition, and Attorney Duncan will take over as the Board's Attorney.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the contract for Special Counsel from Glenn Duncan be approved for the Esteban Sr. & Maria R. Martinez petition.

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

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

***\*\*It should be noted that Attorney Duncan came on as the Board's Attorney for this petition\*\****

5. The application of *Esteban Sr. & Maria R. Martinez (Buyers) & Traco LLC C/O Karla Ruelas (Seller)* for a Special Use for warehousing and storing of RVs and transport on property located on the North side of CR 26, 1,720 ft. East of CR 9, in Concord 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-0340-2017*.

There were 10 neighboring property owners notified of this request.

The petitioner was not present. Due to the number of remonstrators present, the Board heard their comments without the petitioner present.

Mr. Miller asked if Staff approves of the revised site plan. Mr. Godlewski responded it could improve as the property has a lot taking place. He added it has substantially improved

from the original site plan. Mr. Hesser request remonstrators keep their presentation to five minutes, and not repeat other comments.

Randy Wilson, 59725 CR 9, was present in remonstrance to this request. Mr. Wilson stated the neighbors are concerned about this operation. He continued saying their first concern is the property's proximity to federal wetlands, and he pointed out an area on the corner of CR 26 and CR 9, which he believes is wetland. Mr. Wilson stated he understands the RVs will not be motorized; however, leakage remains a concern. He mentioned the neighboring property owners have not seen the updated site plan, and he added traffic on CR 26 needs to be addressed. He went on to say he has lived in the area for over 30 years, and CR 26 handles a lot of heavy traffic. He stressed in addition to the amount of traffic, nails and screws often fall off of vehicles creating road hazards. He added his business vehicles traveled down CR 26, and he fixed tires several times. Mr. Wilson stressed he believes areas north of this property could better sustain an operation of this extent. He added he understands storage lots are needed, but he does not believe this is the right location for one. He stated he believes the Board's action for this request will set a precedent for future operations. He mentioned discussion has involved a range of 24 to 99 units, and he mentioned he has an aerial of the property with 19 trailers parked on site. Mr. Wilson asked if 24 RVs is the maximum number the Board will approve, and Mr. Godlewski clarified the proposal is 25 per acre. Mr. Hesser suggests he submit the aerial referenced as evidence. Mr. Wilson then requests the Board deny this request. Mr. Campanello asked if any remonstrators were present at last month's hearing, and Mr. Hesser responded it was tabled due to lack of notice with no testimony heard. Mr. Campanello also asked how long Mr. Wilson has resided on his property, and he responded since 1987. Mr. Campanello continued asking if the subject property was previously considered wetland, and Mr. Wilson responded the neighboring property owned by Earthmovers was classified as wetlands. However, he continued the Federal Government moved it to allow for a burrow pit. Mr. Campanello clarified the subject property is across the street from the WFRN radio station, and he believes the front area of the property was under water at one time. He then pointed out a white trailer and an area on the aerial, which was covered with trees and water. Mr. Wilson clarified that area was cleared and substantial work done.

Doug Martin, 25538 CR 24, came on in opposition to this request and pointed out his property on the aerial. Mr. Martin stated he is not within the 300 ft. notice range, but he has a clear view of the property especially without leaves on the trees. He stated he would like to address a few points from last month's minutes, which he does not agree with. He explained two small businesses were approved in this area; a message parlor and one for the Arendts. He mentioned each business was restricted to three parking spaces, and he question why the Board would consider 99 for this petition. Mr. Hesser stated it cannot be considered an inconsistency without knowing the facts of each case. Mr. Martin stressed he believes it is an inconsistency. He then asked if the property is considered federal wetlands, and Mr. Hesser stated that does not fall within the Board's jurisdiction. Mr. Martin stated Federal Law prohibits disturbing wetlands, and he asked how it can be enforced without knowing, if is classified as wetlands. Mr. Hesser stressed the Board does not enforce Federal Laws, and he explained the Board is only responsible for zoning. Mr. Martin pointed out the Board request proof that the RVs would be parked outside of the wetlands, and he does not see that proof was provided. Mr. Lyon stated the new site plan shows the RVs parked 150 ft. from the wetlands on the West side, and he added in

his opinion that would not classify as obstruction of wetlands. Mr. Campanello mentioned the wetlands have a required setback; however, Mr. Godlewski stressed this department would not enforce it. He continued saying the Army Corp of Engineers would enforce the setback. Mr. Martin stressed he hunted on this property before the current owners purchased it, and he is certain it is wetlands. He added the neighbors will contact the Army Corp of Engineers, if this petition is approved. Mr. Martin stated the Board requested details about lighting, and he does not believe that was addressed. He stated lighting is a concern, because they could use low watt light bulbs or bright industrial lights. He added fencing and road entrance were also concerns, which no additional information was provided on. He stressed a 36 ft. long RV cannot pull out of the drive without crossing both lanes of a busy road. He continued saying he believes an acceleration and deceleration lane is needed to safely carry out this operation. Mr. Martin stated the Board previously mentioned enforcement of the Conditions and Commitments is complaint driven, but he believes a lot of illegal activity takes place on the property. He then invited the Board over for breakfast to hear several roosters crowing half an hour before sunrise. He mentioned he has a rooster along with his neighbor; however, he believes the petitioners have hundreds of roosters. He continued saying he has video footage of rooster fights taking place on the subject property. He stressed his point that the petitioners are possibly partaking in illegal activities. He added he believes this information pertains to the request, because it shows a history of breaking the rules. He continued saying to his knowledge permits were not pulled for any buildings on the property, and wetlands were bulldozed without permission. He stressed he does not believe the petitioner follows the rules, and he mentioned this operation was started without approval. He requests the Board deny the petition.

Mr. Wilson came back on and submitted an aerial picture of the property *[Attached to file as Remonstrator Exhibit #1]*.

Lisa Arendt 25650 CR 24, came on in opposition to this request and stated she came before the Board for her business. She continued saying she understands change is necessary, and she researched two similar requests, which were approved. She mentioned a newspaper article that addressed those petitions; one is in Middlebury on CR 43, North of CR 16. She stressed that property is 98.6 acres with over 17,000 ft. of road frontage. She went on to say the other petition mentioned is in Clinton Township; it has 160 acres with 26,000 ft. frontage. She added both of the mentioned properties are also on corners, and she pointed out this property is 12.4 acres with only 296 ft. road frontage. Mrs. Arendt stated she is concerned a residential drive from this property would be a danger. She clarified the petition is for 25 RVs per acre, and she stressed the revised site plan is not to scale. She pointed out a few measurements that do not add up, and Mr. Hesser found she has the most recent site plan. Mrs. Arendt mentioned 58 units are shown parked in a 134 ft. area. She stressed she is worried, because RVs are valuable, and this lot does not have a fence or any security. She continued saying port-au-johns were placed on the property possibly for the eight full-time and two part-time employees mentioned in the application. She stated she is also concerned people will trespass on her property to gain access to the subject property, because there is not a fence or security lighting. She explained valuable equipment stored in her backyard is a huge concern. She continued stressing she was hoping the petitioners could address her concerns, but they are absent. She mentioned the Board has made it clear the neighbors are responsible for monitoring this property, and she asked who she should go to with any problems.

Mr. Hesser counted ten people present in opposition to this request. Mr. Godlewski pointed out the petitioner is now present. Mr. Hesser reiterated a few of the concerns voiced by the neighbors about wetlands, traffic, lighting, and security; he request the petitioner address those issues.

Antonia Alba, 58611 SR 15, was present on behalf of the petitioners. Mrs. Alba stated the entrance is their current focus, and she explained the drive was widened to allow RVs to pull in without stopping traffic. Mr. Lyon asked if she has contacted the Highway Department about the entrance improvements, and she responded no. Mr. Hesser asked how they plan to address the lighting and fencing concerns. Mrs. Alba stated she still needs to research lighting options. She continued saying the owner received a quote, but it was more than they could afford. She added she is not sure who to contact about the lighting. Mr. Hesser asked her to address the fence concerns, and she responded the entire property is already fenced in. She mentioned one of the neighbors trees knocked down part of the fence in the back. Mr. Campanello questioned how long the petitioners have owned the property, and she responded since 2012. Mrs. Alba stated the fence continues to the drive, but the gates still need to be installed. Mr. Lyon confirmed the entrance will be gated. Mrs. Alba explained the gate will be off of the road enough for trucks to pull in and unlock the gate instead of blocking the road. She added the number of units decreased since the last hearing, and she stressed it varies from month to month. Mr. Lyon stated the maximum number of trailers allowed is 100, and Mr. Hesser clarified it equals 25 per acre. Mr. Miller mentioned the site plan shows parking areas, and he asked if that reflects the amount recommended by Staff. Mrs. Alba responded it reflects the area trailers will be parked, and she believes around 60 are currently parked in the first area. Mr. Miller reiterated the entire parking area will be covered in gravel. Mrs. Alba added the drive will be widened to allow two trailers to pass each other. Mr. Campanello asked the total acreage of the property, and Mr. Hesser answered the Staff Report show 12.48 acres. Mr. Lyon clarified this petition will only utilize four acres. Mrs. Alba added the petitioner also owns the neighboring two-acre property. Mr. Campanello asked if Staff has any record of permits pulled for the property since 2012, and Mr. Godlewski responded permits were not researched. He also asked if excavation permits or a SWPP was completed when the excavation/tree removal took place. Mr. Godlewski answered that was not researched for this property. Mr. Campanello mentioned he frequently drives past the subject property and has never seen any permits posted. He continued saying he does not believe the county knows the front area was filled in. Mr. Hesser asked Mr. Campanello to confirm the road shown on the aerial, and it was found to be CR 26.

Mr. Godlewski stated, because the hearing proceeded out of order due to the petitioners' absence, he believes the remonstrators should be given a chance to speak again. It was found that the Board had no objection to hearing the remonstrators again. Mr. Hesser stated the remonstrators may address anything the petitioner spoke on.

Mrs. Arendt came back on and displayed pictures showing the existing fence, which is farm fence not a security fence. The pictures also showed the drive that the Board agreed should be built to commercial standards but it is not. It should be noted the pictures were not submitted for the record. Mr. Lyon stated the petitioners did not receive Highway approval to widen the drive. Mrs. Arendt mentioned the drive was widened but still does not have a culvert. She added her residential drive was required to have a culvert. Mr. Lyon stated he believes the Highway Department will require one.

Mrs. Alba came back on and stated the drive can be built up, if needed. Mr. Miller stated the drive needs to meet Highways standards, and he added the Board does not have jurisdiction over driveway improvements. Mr. Godlewski explained due to the amount of traffic, he believes Highway will require substantial improvements. He continued saying right-of-way dedication may be required, because the road has a 45 mph speed limit. Mr. Miller agreed that tends to be the procedure for similar operations on heavily traveled roads. Mrs. Alba stated she will talk to the Highway Department about the driveway.

The public hearing was closed at this time.

Mr. Hesser stated the Board recognizes the need for RV storage, and they have recently approved more storage lots than in the past. He continued saying several of the concerns raised are typical for RV petitions. He added he lives in the country and understands their concerns. He also stated the Board has made some exceptions for petitions, and the property does appear to have some trees for screening. However, he believes this petition is incomplete. He mentioned lighting was a concern at the first meeting and was not addressed. He added the existing fence would not meet the standard for this operation. Mr. Campanello mentioned a recent petition for Stone Lake, and it was found to be a rezoning. He stressed similar Special Use requests have been more detailed, and he stated this petition has too many unanswered questions. Mr. Miller suggested moving for denial due to the lack of information and the fact that a driveway permit was not obtained. He went on to say this operation needs to be more put together before it can be approved. Mr. Lyon mentioned it should not continue to be tabled every month. Mr. Hesser stressed the petitioners can reapply in six months, or re-petition with a substantially changed request at any time. He stressed the petition would need to be substantially different than what has been presented to be considered for approval. Mr. Campanello stated the drive does not meet highways' standard. Mr. Hesser also suggested a time period be imposed to remove the RVs, and the Board agreed on 60 days.

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

**Motion: Action: Denied, Moved by Randy Hesser, Seconded by Tony Campanello** that this request for a Special Use for warehousing and storing of RVs and transport be denied based on the Findings and Conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. The Special Use will cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will not substantially serve the public convenience and welfare by providing needed RV storage.

**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 60 days.

Mr. Hesser stressed all RVs must be removed from the property in 60 days, and the petitioner can reapply when a detailed plan for the operation has been established.

***\*\*It should be noted Attorney Duncan stepped down at this time, and Attorney Kolbus came on as the Board's Attorney\*\****

6. The application of ***Lamar D. & Reva J. Schrock*** for a 33 ft. Developmental Variance to allow for the construction of a detached garage 43 ft. from the center line of the right-of-way of CR 33 (Ordinance requires 75 ft.) on property located on the Northwest corner of CR 33 and CR 18, common address of 57805 CR 33 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 #DV-0518-2017*.

There were four neighboring property owners notified of this request.

Lamar Schrock, 57805 CR 33, was present representing this petition. Mr. Schrock stated he would like to replace the existing shed with a 24'x32' building. He continued saying the new building will be moved 10 ft. to the West, but he cannot move it any farther due to the well location. He mentioned he is retired and would like to keep his things inside. He explained his trailer and lumber are currently being stored at his former employers, and he would like to bring it all home. Mr. Hesser request the aerial be displayed, and he asked why the garage cannot be constructed next to the house. Mr. Schrock responded that is his front yard and also the field drain's location. He added moving the building back to meet the requirement would place it in the middle of his yard. He addressed the line-of-sight concern and pointed out a row of pine trees planted around the corner, which do not interfere with sight distance. He also stated a stop sign is located on CR 33, but he will keep the building as far back as possible. He mentioned another location for the building but stated that would require another driveway. He added he uses his trailer to transport his lawn tractor and tiller. Mr. Lyon asked if the driveway will be concrete or stone, and he responded concrete. He continued saying the building will be vinyl sided with shingles and shutters. Mr. Lyon asked why the garage cannot line up with the residence on the East side, and Mr. Schrock responded it would be in the middle of the backyard. Mr. Atha asked, if traffic on CR 18 stops, and it was found only CR 33 stops.

Reva Schrock, wife of Lamar Schrock, 57805 CR 33, came on in favor of this request. Mrs. Schrock stated they moved to this property to retire, and she knew her husband would need something to do. She continued saying he needs a hobby barn to keep him occupied. She stressed they do not want to injure anyone, but she does not believe the proposed location poses any danger.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha stated he would consider this request, if traffic on CR 18 stopped. Mr. Campanello added traffic on CR 33 stops, and trees were already planted around the corner. Mr. Miller mentioned he believes the property has plenty of room to meet the setback. Mr. Campanello stated building locations are limited due to the size of the lot and field system placement. He continued saying the existing building did not cause any problems in that location. He also added the proposed building has a small footprint. Mr. Hesser asked if the building on the site plan is the current shed or proposed garage, and it was found to be the proposed garage. Mr. Lyon asked if the 34 ft. measurement shown is from the center line of the road or property line, and Mr. Schrock responded the property line. Mr. Godlewski clarified

Staff referred to the measurement as from the center line. Mr. Campanello clarified if the request is to build the garage 43 ft. from the center line of the road.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Joe Atha that this request for a 33 ft. Developmental Variance to allow for the construction of a detached garage 43 ft. from the center line of the right-of-way of CR 33 (Ordinance requires 75 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. The building is set far enough back from the corner of CR 18 and CR 33 that it will not be a hazard or danger to drivers.
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. This is a small piece of property with only a certain areas where this building could be constructed due to the location of the septic and future septic.

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 7/3/17) and as represented in the Developmental Variance application.

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

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

**No:** Roger Miller.

7. The application of *Scott & Karrie Clark* for a Special Use for the extraction of gravel, sand, and other raw materials on property located on the South side of CR 36, 1,540 ft. East of CR 11, common address of 24600 CR 36 in Harrison 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-0552-2017*.

There were 20 neighboring property owners notified of this request.

Mr. Godlewski pointed out this request has 15 Commitments instead of the 18 Commitments imposed with original approval. Mr. Miller asked if any complaints have been filed against this property, and Mr. Godlewski responded no. Mr. Hesser brought up Commitments #10, #17 & #18 have been removed from the original request. He continued saying he understands #17 & #18 represent events that already occurred, but he questioned why #10 was removed.

Scott Clark, 24600 CR 36, Goshen, was present representing this request. Mr. Clark stated he would like to renew his Special Use to continue operating as he has for 20 years. He explained he would now like to crush the concrete they take in once a year. Mr. Miller clarified

he plans to stockpile and then crush it similar to other operations. Mr. Clark added depending on the size of the pile it may not be crushed every year. Mr. Godlewski stated he believes the exclusion of Commitment #10 was an oversight, and Mr. Hesser suggested it be added.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus suggested Commitment #10 from previous approval be added as Commitment # 16 for this request.

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 the extraction of gravel, sand, and other raw materials 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 7/14/17) and as represented in the Special Use application.
2. Hours of operation to be 6:00 a.m. to 6:00 p.m., six (6) days per week (Monday thru Saturday.) All times to be prevailing local time and provided, further, that nothing shall require said use to remain open during those hours. All gravel loading or equipment producing noise shall be eliminated after 6:00 p.m.
3. Exterior lighting for said premises, if any, shall be restricted to security rural dusk to dawn night guard-type lighting.
4. No external loud speakers shall be allowed on the premises.
5. Permanent buildings constructed on the site shall be constructed in accordance with plans and specification approved by appropriate governmental authority with building permits issued by the Elkhart County Building Department.
6. The mining operation shall be conducted in compliance with all federal laws, rules and regulations imposed from time to time and administered by the United States Bureau of Mines.
7. All interior access roads to and from the site shall be dust controlled and maintained with crushed stone to prevent mud from being carried onto the highway.
8. Excavation areas shall be graded in such a manner as to prevent the collection of stagnant water.
9. The following setback lines shall be applicable to the gravel mining operation for materials storage and stockpiling, storage of equipment, excavations and the construction of permanent buildings:
  - Fifty (50) feet from all adjoining properties to the north, east and south, except for access point.
10. Sign per specification, mounded at existing drive.



11. The operator of the mining business shall be responsible for security of the property and maintaining the existing farm fence, along with the mounds on the east and south property line.
12. No asphalt or concrete shall be manufactured on the site without prior consent of the Elkhart County Board of Zoning Appeals after public hearing upon notice to interested parties as required by ordinance.
13. Only one (1) stockpile of concrete and one (1) stockpile of asphalt permitted for recycling in the gravel pit.
14. Upon closure of the mining operation, all ponds and/or lakes created by the operation shall be banked and sloped leading to the water's edge, with the slope not greater than three (3) to one (1) and seeded with perennial grasses at the time of grading.
15. Operator permitted to crush concrete on-site once a year.
16. The Special Use Permit area shall be confined to the site plan submitted.

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

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

8. The application of *Indiana Michigan Power Company (Lessor) & Kenneth Jerome (Lessee)* for a Special Use for warehousing and storing of a semi on property located on the Northwest side of Mellody Ln., 660 ft. Southwest of CR 5, common address of 28833 Mellody Ln. in Cleveland 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-0563-2017*.

There were 28 neighboring property owners notified of this request.

Kenneth Jerome, 28855 Melody Lane, was present for this request and pointed out his property on the aerial. He continued saying the garage shown on the aerial has been removed. He explained he owns four parcels and pointed them out on the aerial. He stressed the concrete from the garage was left for his semi to park on, and it has parked there for twelve years. He added he has maintained the property for six years, and he stressed the concrete pad was left to prevent his semi from leaking onto the ground. Mr. Jerome mentioned he drives his semi during the week and is only home for the weekends and vacations. He stated only two of his neighbors are opposed to this request. He continued saying he believes one is opposed, because he wanted to purchase the property. He added the other neighbor drives across his property and tears it up. He stressed he parks and performs daily maintenance on the semi-tractor only. He went on to say trees are planted across the front of his property. He added he started to install a fence on the far end of the property, and he plans to continue it across the front. He continued stressing he only parks the semi-tractor not the trailer. He added his truck is well muffled, and only a few neighbors have a problem with this request. Mr. Lyon clarified the petitioner lives in the residence west of the subject property. Mr. Jerome stressed parking his semi on a concrete slab will not harm the environment.

Richard Tripp, 28765 Melody Lane, came on in remonstrance and stated he lives in the residence east of the property. Mr. Tripp pointed out the fence is not complete. He added he is aware the petitioner is leasing the property, but he has parked at that location for several years. He stressed it is a residential area, and semis are commercial vehicles. He stated he is concerned

about the traffic on CR 5. Mr. Lyon asked if he owns all of the property to CR 5, and he responded owns his residence and is in the process of purchasing the other property.

Sandra Owen, 28765 Melody Lane, came on in opposition to this request. Mrs. Owen stated she believes parking a semi at this location is harmful for the environment. She continued saying she has lived here since 2015 and developed kidney failure and thyroid cancer. She added she worked in a dump site in 2013, where a few coworkers were diagnosed with the same cancer and passed away. She stressed she is concerned about chemical releases, and Mr. Jerome's semi could have leaks. Mrs. Owen stated she is very weak. She explained she just finished radiation, and she has dialysis three times a week. She continued saying she would like the semi to park somewhere else, because she believes more suitable places are available for him to park. Mr. Hesser asked the location of her property, and she responded the same as the previous remonstrator.

Mr. Jerome came back on and stressed Mrs. Owen was already sick when she moved into his neighborhood. He added his semi does not run while at this location, and he does not believe it impacts her health. He continued saying hundreds of semis drive past Mrs. Owen's residence on CR 5 everyday, and the Toll Road is also close to her residence. He explained his truck does not have any leaks and is Department of Transportation certified. Mr. Jerome stressed he has parked his semi on this property for 13 years, and he was not aware he needed approval. He explained his truck needs to be parked by his residence in the winter, because it must be plugged in to keep his fuel from gelling. He stated he does not believe his semi caused his neighbor's cancer, and he does not see a reason to prohibit him from parking there. He again stressed only the tractor parks at this location, and it does not run until he leaves. He added he simply drives to his property and turns it off. He also mentioned his vehicle is clean idle certified. Mr. Campanello clarified Mr. Jerome is the owner/operator. Mr. Jerome stated he could park at a different location, but he would not be able to plug in his semi. He stressed the fuel could then become gelled, and he would have to pay \$400-\$500 to have it repaired. He went on to say other locations are also not secure.

The public hearing was closed at this time.

Mr. Campanello mentioned the petitioner has parked the semi at this location for 12 years. Mr. Hesser mentioned the Board recently denied several similar requests, but he believes they also included trailers. Mr. Miller added those requests were also close to houses. Mr. Hesser pointed out this property is close to a few houses, and he suggests finding a way to tie the house to the property with the semi. He continued saying he does not want the petitioner to sell his house and continue parking on the neighboring lot. Mr. Godlewski stated he may not be able to tie the lots together. Mr. Hesser then suggested this request be approved provided the petitioner lives in the adjacent residence. Attorney Kolbus mentioned the Commitment could read approved for the owner/occupant of the property and he suggested a time limit be added. Mr. Hesser asked what Commitments should be added to this request. Attorney Kolbus suggested approved in accordance with the site plan/application submitted, semi-tractor only, a time period, and owner/operator of the truck must be the owner/occupant of the property.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that this request for a Special Use for warehousing and storing of a semi 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.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare. Approval of this request will provide a location for storage of the petitioner's truck.

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 7/17/17) and as represented in the Special Use application.
2. Approved for the semi-tractor only, parking of a trailer is prohibited.
3. Approved for the owner/occupant of the adjoining property to the Southwest.
4. Approved for a period of five (5) years with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

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

9. The application of *Delmar & Jo Ellen Hochstetler* for a Special Use for an agricultural use for the keeping of chickens and turkeys on property located on the East side of Adams St., 1,050 ft. North of CR 10, East of CR 9, common address of 54302 Adams St. in Osolo Township, zoned R-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0565-2017*.

There were 18 neighboring property owners notified of this request.

Mr. Hesser asked if the inactive Mobile Home Special Use should be addressed. Mr. Godlewski responded it was inactive before the Board rescinded requests, but he added it can be rescinded, if the petitioner wishes. Attorney Kolbus asked what buildings are currently on the property.

Larry Shaw, 54302 Adams St., Elkhart, came on for this request and stated he would like permission to keep their chickens and turkeys. He continued saying they were purchased around Easter for their grandchildren and have become pets. He mentioned his neighbors love the chickens, and children like to play with them. He added he feeds his birds melon to help keep them cool in the heat. He stressed he takes good care of his birds, and they have been dewormed, dust bathed, etc. He went on to say he keeps their pens clean. He added their pen is secured to keep predators out and the birds in. Mr. Shaw stated he allows the chickens to free-range every night for about an hour, and they do not wander far. He added they sometimes try to wander into the woods, but he does not allow them to. He continued saying one of his

neighbors loves to have the chickens in his yard, and he believes he sent a letter in support of this request. He explained his birds were hand-raised. Mr. Hesser asked what residence is currently on the property, and Mr. Shaw responded a doublewide. Mr. Miller asked if any of the turkeys are gobblers, and Mr. Shaw responded he has all hens.

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** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of chickens and turkeys 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 7/17/17) and as represented in the Special Use application.
2. Limited to ten (10) chickens and two (2) turkeys, no roosters.

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

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

***\*\*It should be noted Mr. Miller recused himself and stepped down\*\****

10. The application of **Kelly Jo Growcock** for a Use Variance to allow for a temporary residential use in a RV/camper on property located on the East side of CR 127, 1,110 ft. North of CR 50, common address of 70544 CR 127 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 #UV-0513-2017*.

There were four neighboring property owners notified of this request.

Kevin Growcock, 70544 CR 127, came on representing this request and stated he would like permission to temporarily live in an RV. He explained he plans to place it behind his destroyed home and outside the construction area. He continued saying he has two dogs he would like to bring back home. He added he would also like to keep an eye on his property, because he lives in the country and does not have many neighbors. Mr. Atha mentioned finding a place to rent is difficult, and Mr. Growcock added it can also be expensive. Attorney Kolbus asked when construction of the new residence will begin, and he responded it has already started. He continued saying the demo of his old residence is complete, and the new foundation is currently being worked on. He added he will pick up his septic permit today. Attorney Kolbus clarified the one year time limit is sufficient.

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** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for a temporary residential use in a RV/camper 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 conditions were imposed:

1. Approved in accordance with the site plan submitted (dated 7/3/17) and as represented in the Use Variance application.
2. Approved for a period of one year from August 17, 2017.
3. The petitioner must obtain all Elkhart County Environmental Health Department approvals.

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

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

**Abstain:** Roger Miller.

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

11. The application of **2015 Swihart Joint Revocable Trust** for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the East side of Maplewood Dr., 1,525 ft. North of Lake Dr., West of CR 109,. in Osolo Township, zoned R-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0558-2017*.

There were 15 neighboring property owners notified of this request.

Dale Swihart, 51235 Maplewood Dr., came on representing this request. Mr. Swihart mentioned he came before the Board two years ago and received approval to remodel their home on Simonton Lake. He went on to say they would now like approval to build a garage on the empty lot across the street. He explained the old garage was demolished and will be replaced by a two stall garage. He added the property does not have a residence prompting the need for this request. Mr. Lyon asked if his residence is west of the subject property, and Mr. Swihart responded he lives directly across the street. He continued saying some of his neighbors live several houses down from their garage, but he is lucky to have the lot right across the street. Mr. Hesser asked if Mr. Swihart agrees with the Condition and Commitments in the Staff Report. Mr. Swihart questioned Commitment #2 and stated he believes both properties are already tied together on his deed. Mr. Hesser stressed both parcels must be sold together.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon

these, further moved that this request for a Use Variance to allow for the construction of an accessory structure without a residence be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 7/17/17) and as represented in the Use Variance application
2. The Real Estate and grantor's parcel commonly known as 51235 Maplewood Drive, must be tied together with a deed restriction that prohibits said parcels from being sold separately.

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

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

12. Mr. Godlewski presented the request to rescind a Special Use for Michael Kelley (12500CR 12-100416-1). He stated Staff received a written letter requesting the Special Use for a daycare be removed. He continued saying the letter was sent from the Martha Slabaugh Trust, 12500 CR 12, Middlebury. He explained ownership of the property has changed, and he believes the new owners have no need for the Special Use.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for the rescission of a Special Use as requested by the petitioner be approved.

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

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

13. Mr. Godlewski mentioned Jason Auvil emailed the Board an updated copy of the BZA Rules of Procedure from last month's approved changes.

14. The meeting was adjourned at 10:04 A.M.

Respectfully submitted,

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Laura Gilbert, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary