

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF MAY 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; Liz Gunden, Planner; Mae Kratzer, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Joe Atha.

2. A motion was made and seconded (*Miller/Lyon*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of April 2017 be approved as read. The motion was carried with a unanimous roll call vote.

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

4. The application of **Boyd P. & Krista L. Smith (Buyers) & Steven B. & Cathy D. Bartow (Sellers)** for a Developmental Variance to allow for an accessory dwelling in an existing building to exceed the square footage allowed (Ordinance allows for 1,000 sq. ft.) and for a Developmental Variance to allow for a two story accessory dwelling (Ordinance allows a single story) on property located on the South side of CR 42, 700 ft. South of CR 27, common address of 18200 CR 42 in Elkhart Township, zoned A-1, R-4, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0255-2017*.

There were eight neighboring property owners notified of this request. Boyd Smith, 18200 CR 42, Goshen, was present representing this petition. Mr. Smith stated after receiving the Staff report with the recommendation for denial he compiled some additional information that he then submitted to the Board [*Attached to file as Petitioner's Exhibit #1*]. He went on to read his submitted rebuttal. Mr. Hesser asked the current use of the building. Mr. Smith clarified he recently purchased the property and closed on April 28th, 2017. He responded the building was originally used as a woodshop/trophy room for the previous owner who was an avid hunter. He continued saying the building was constructed with 9 ft. walls in the basement, hardwood/carpet, heating and A/C, however, it was never connected to a septic system. Mr. Smith stressed this request is to convert a very well constructed outbuilding into a two bedroom home. Mr. Hesser noted plumbing will need to be added to the existing building. He continued asking if any of the agencies who would be involved in subdividing this property see any issues with it. Mr. Smith responded he believes they have concerns and referred to a copy of the Avigation Easement in the submitted packet. He continued saying the property is specifically referenced in the Easement especially under Exhibit C. He pointed out this property was on the market for around two years, because it was difficult to sell due to the Goshen City Airport

Runway easement. Mr. Smith mentioned he is a private pilot involved in the Goshen and Elkhart communities, which he stressed was a relief to the Goshen aviation committee. He continued stating he understands the property's limitations due to his background, and he believes the airport can be a good neighbor. He stated unfortunately the easement specifies the previous owners and the property. He added splitting the property would likely involve around a dozen agencies in order to re-write the easement, which could be avoided, if the Board approves the requested Variance. Mr. Hesser asked if he has reason to believe the mentioned agencies would not approve a subdivision of the property. Mr. Smith responded most of the agencies involved were surprised by Staff's recommendation of denial. Mr. Miller mentioned the Board has historically denied similar requests. Mr. Hesser asked if approved dawdy houses, which meet the requirements are typically Developmental Variances or Special Uses. Mr. Godlewski responded dawdy houses were classified as Use Variances, until accessory dwellings were added to the Ordinance. He went on to say the square footage of accessory dwellings was capped. Mr. Smith mentioned he spoke to staff, and they recommended he file for a Developmental Variance. Mr. Godlewski stated any accessory dwelling less than 1,000 sq. ft. is now allowed by right. Mr. Hesser mentioned in addition to the square footage, other requirements also have to be met, and he questioned if those requirements could be placed on a Developmental Variance. Attorney Kolbus stated that can be added as a condition or commitment.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he does not understand the difficulty of subdividing this property. Mr. Hesser asked Staff to comment on the problems caused by dividing this property, and Mr. Godlewski responded the easement would need to be imposed on the new parcel. He continued saying this easement works the same as a utility easement, and it follows the property when it is divided. Mr. Hesser stated he believes the accessory structure could be converted into a residence without requiring a Developmental Variance.

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

Motion: Action: Deny Moved by Randy Hesser, Seconded by Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow for an accessory dwelling in an existing building to exceed the square footage allowed (Ordinance allows for 1,000 sq. ft.) and for a Developmental Variance to allow for a two story accessory dwelling (Ordinance allows a single story) be denied.

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

Yes: Tony Campanello, Roger Miller, Randy Hesser.

No: Denny Lyon.

5. The application of *John Fisette & Tiffany Allison* for a Special Use for a home workshop/business for a detail shop on property located on the Northwest corner of Newcastle Dr. & Kerryhaven Dr., North of CR 108, East of CR 1, common address of 29561 Newcastle Dr. in Cleveland Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0243-2017*.

There were seven neighboring property owners notified of this request. Tiffany Allison Fisette, 29561 Newcastle Dr., Elkhart, was present representing this petition. Mrs. Fisette stated she would like permission to run a detail shop from her property. She continued saying at first they were cleaning cars later at night, because her brother was working a full time job. She went on to explain after a few weeks of business he realized the detail shop could be a full time job, and he left his other job. She stressed he was cleaning several cars when he started, but he is now only working on around two cars a day. Mrs. Fisette stated Enterprise realized most of their cars could be cleaned in house, however, they do not have a good vacuum to clean the inside of their cars. She continued saying he is now only given the cars with hard to clean insides. She explained they only have a few vehicles on the property at a time, because only her brother and his wife drive the vehicles. She mentioned customers do not come to the house, and they do not have any outside employees. Mrs. Fisette stated in the beginning cars were power washed outside, but as of April 24th, 2017 that has stopped. She stressed her brother now only cleans and details the inside of vehicles. Mr. Hesser asked who resides on the property. Mrs. Fisette responded she lived on the property for 11 years, but 9-10 months ago her brother and parents started renting the house from her. Mr. Miller clarified all work takes place inside the garage.

Spencer Allison, 117 Tamarack Dr., Wakarusa, came on for this petition. Mr. Allison stressed all work takes place in the garage, unless it is a transit van, which cannot fit in the garage.

Mr. Campanello questioned a lane on the East side of the property, and it was found to be a fence line shadow. Mrs. Fisette came back on and stated the road to East of the property is a dead end road. She continued saying sometimes an extra car is parked on the dead end street. Mr. Hesser asked if the subdivision has any restrictive covenants, and Mrs. Fisette responded yes. He also asked if their business is permitted under the covenants. Mrs. Fisette responded no, but the subdivision does not have a homeowners' association. She also added she received complaints about noise, but her brother now wears headphones instead of using speakers for his music.

Diana Rodecki, 29586 Newcastle Dr., Elkhart, came on in remonstrance and pointed out their residence across the street from the subject property. Mrs. Rodecki stressed Kerryhaven is a peaceful neighborhood. She explained it was established in 1998 with restrictive covenants, and she submitted a copy of the covenants *[Attached to file as Remonstrator's Exhibit #1]*. Mrs. Rodecki also submitted pictures of the subject property *[Attached to file as Remonstrator's Exhibit #2]*. She stressed they oppose this petition because it has become a nuisance, which has taken away from the peaceful atmosphere of the neighborhood. She mentioned Mrs. Fisette no longer lives on the property. She continued saying high-powered washers are used causing water to run off into the sewers across the street. She added high-powered washers, vacuums, and loud music can be heard all day. Mrs. Rodecki stressed this business is against their covenants, which restricts the subdivision to residential use only. She added sometimes several cars are parked around the corner of the dead end street blocking their line of site. Mrs. Rodecki stated she believes if this petition is approved, more businesses will try to come into the subdivision. Mr. Hesser asked if she is aware of any other businesses in the neighborhood, and she responded she is not aware of any.

Christopher Rodecki, 29586 Newcastle Dr., Elkhart, came on in remonstrance and stated he is aware of other businesses, which have been denied in this subdivision due to the covenants and restrictions.

Georgiana Bennet, 29586 Newcastle Dr., Elkhart, came on in remonstrance and stated she lives with her daughter and son-in-law, Christopher & Diana Rodecki. She continued saying she was the general manager of Irish Homes, the developer of Kerryhaven. She stressed their covenants are filed with the courthouse and pointed out the first one states only residential use is allowed in the subdivision. She went on to say she is proud to live in Kerryhaven. She added it has been featured in magazines as an example of how to develop and build a manufactured home development. She stressed all of the homes in Kerryhaven are high-quality with covenants requiring people to keep up their homes and prohibiting businesses. She mentioned she has good neighbors, and most of the neighbors are opposed to having a business in the subdivision. Mr. Rodecki came back on and pointed out their covenants are in effect until 2020 with 10 year automatic extension.

Bobby Dalrymple, 29869 Newcastle Dr., Elkhart, came on in remonstrance. Mr. Dalrymple stated he owns a business, and he will sometimes detail his own vehicles. He stressed he is upset with what is taking place on this property, because the previous owner was a nice couple. He added he originally believed the new owners were holding frequent parties. He continued saying the operation is a business, and the neighbors are very much opposed to it. He mentioned one concern he has is chemical use. Mr. Dalrymple pointed out Enterprise owns a detail shop on the corner of CR 19 and California St. He explained he is a professional business man who understands they want to start a business, but he does not want it in his neighborhood. He stated he is also concerned property values will decrease, and he stressed many people have invested money into their property. He also added a Neighborhood Association is currently being formed.

Nancy Dietz, 29635 Newcastle Dr., Elkhart, came on in remonstrance and pointed out her residence five doors down from the subject property. Mrs. Dietz stressed she is not opposed to the owners, however, she moved to this subdivision for the nice, quiet area. She continued saying this operation takes place mainly outdoors, and she has not seen any work take place indoors. She explained she is worried the business will grow and more cars will be brought into their neighborhood. She added she is also concerned their property values will decrease. She went on to say she would not have moved into this subdivision, if she knew a business was taking place there. She mentioned she wishes their business well, but in a different location. Mr. Hesser asked if she is aware of any other businesses in the subdivision, and she responded no.

Robert Toombs, 29640 Newcastle Dr., Elkhart, was present in remonstrance and mentioned many people in this subdivision are retirees who like the peace and quiet of the neighborhood. He added he is also concerned the chemicals used to clean may go into the water system. He stressed several neighbors are present in opposition to this request.

Mrs. Fisette came back on for this petition and stressed as of April 24th they no longer wash vehicles outside. She addressed the chemical concern and stated no commercial car wash was used. She continued saying when they first started they sometimes had several vehicles on the property, but it is now down to a maximum of two to three a day. She again stressed her brother and his wife are the only employees. She then explained Enterprise pays him to clean their cars, because he has a vacuum to clean the inside. She continued saying the vacuum is kept

in the garage, and the power washer is no longer used. Mrs. Fisette addressed the multiple car issue by saying her brother, sister-in-law, mom, and dad all have their own vehicles in addition to the cars being cleaned. However, she explained they typically clean the cars when her parents are working. She continued stressing she stopped by the house yesterday and only the car being cleaned was there. Mr. Hesser clarified Mrs. Fisette does not live in the residence, and she responded she moved out about nine months ago. She went on to mention she stops by frequently during her lunch, and she sees around two or three cars on the property at a time. She explained Enterprise now only gives her brother the cars that take them days to clean, which he can clean in two hours. Mr. Lyon asked if the garage has a floor drain, and she responded no. She added the cars were washed outside, but that no longer takes place. She explained they typically use Armor-All wipes, cotton swabs, and a shop-vac to clean the vehicles. She stressed the shop-vac is quieter than a mower or weed trimmer.

Mr. Allison came back on and apologized for the noise he made when he first started this business. He stressed he is attempting to operate and expand his own business. He continued saying he does not have the money to buy a shop, or he would already have one. He stated he is trying to save his money, and he hopes to have a different location soon.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if a home workshop can be operated by a renter, and Mr. Godlewski responded the occupant of the residence can run the business. Attorney Kolbus stated a business can be classified as a home workshop as long as it is operated by the owner or occupant of the residence. Mr. Hesser also pointed out that the Board cannot overrule subdivision covenants, and the neighbors have the right to enforce them, if this petition is approved. Mr. Campanello stated he does not see a covenant prohibiting businesses, and Mr. Miller agreed. Mr. Hesser responded a covenant mentions the property must be used primarily as a residence. Mr. Miller stated a home workshop is considered a residential use. Mr. Campanello stated a covenant prohibiting Special Uses or businesses is needed. Mr. Miller mentioned a covenant restricting the residence to three vehicles, and Mr. Campanello responded families with multiple teenagers would likely have more than three cars. Mr. Hesser pointed out this request could be for a worse business, but that does not mean this should be approved. He added Kerryhaven looks like a nice neighborhood. Mr. Campanello mentioned this property is at the end of the street rather than in the middle of the subdivision. He also suggested approving this petition with a time restriction requiring renewal before the Board. He continued saying that would give the petitioner time to build his business and move to a new location. Mr. Hesser stated he is inclined to deny this petition. He continued saying he would consider approving this request if the parcel was large enough to contain all of the vehicles on the property. He went on to say he understands the petitioner is trying to run a business, but this property is too small for what is being requested. Mr. Lyon stated he is concerned with run-off, and Mr. Hesser clarified the petitioner said they no longer wash cars. He continued saying he is inclined to deny this request, because vehicles are spilling out into the road. Mr. Miller mentioned a car every two hours generates a large amount of traffic in and out of the subdivision, and Mr. Campanello pointed out only two cars are being detailed a day. Mr. Hesser stated he is not concerned with extra traffic caused by two cars a day. Mr. Campanello suggested allowing the petitioner a time frame to establish the business at a different location. Mr. Hesser responded he does not believe that can

be done without approving the petition. Mr. Campanello suggested this be approved with a condition that the business be removed within six months. Mr. Miller mentioned he understands the petitioner is trying to build a business, but he does not believe this is the appropriate location.

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 detail shop 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 not cause substantial and permanent injury to the appropriate use of neighboring property. Although the activity occurs on-site, there will be no outside customers visiting the property.
3. The Special Use will not substantially serve the public convenience and welfare by providing local auto detailing services.

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

Yes: Roger Miller, Randy Hesser.

No: Tony Campanello, Denny Lyon.

Mr. Hesser suggested this petition be tabled for a month. He continued saying Mr. Atha will be given a chance to read the transcript and consider this petition for next month's Board of Zoning Appeals meeting. Mr. Godlewski suggested the public hearing be kept closed. Mr. Hesser agreed and stated Mr. Atha can rule on this case, and the Board will then make a decision. Attorney Kolbus stated Mr. Atha will be provided with a copy of the minutes and the recording to review.

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Special Use for a home workshop/business for a detail shop be tabled until the June 15, 2017, Advisory Board of Zoning Appeals Meeting due to a tied vote.

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

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

Mr. Hesser explained due to the motion ending in a tie vote, this request will be tabled for one month, and the public hearing will remain closed. He continued saying the absent Board member will be given a chance to read the minutes and listen to the recording from today's meeting. He added, if he makes a decision, a motion will be made at next month's meeting. He stressed the public hearing will not be opened at that point, unless the Board decides more information is needed at that time. He went on to say if the public hearing is reopened for additional evidence the neighboring property owners will be notified. He clarified, if a decision is not made at the June hearing, no new information will be heard until the July meeting. Mr. Godlewski mentioned June 15th, 2017, is the next hearing, and the neighbors will not receive notification. A remonstrator asked, if he will be notified of the final decision, and Mr. Godlewski responded no. Mr. Hesser stated surrounding property owners are not typically notified of a petition's outcome, and he suggested someone either attend the meeting or call

Planning and Development after the meeting to find out the ruling. Mr. Hesser also stressed the Board's ruling does not trump the subdivision covenants. Attorney Kolbus clarified the Board's decision does not affect the neighboring property owners' rights to enforce the subdivision's covenants.

6. The application of *Donald J. & Ruth E. Hostetler (Land Contract Holders) & Nelson M. & Irene J. Martin (Land Contract Purchasers)* for a Special Use for a ground mounted solar array on property located on the South side of CR 38, 1,730 ft. West of CR 37, common address of 13332 CR 38 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0245-2017*.

There were two neighboring property owners notified of this request. Nelson Martin, 13332 CR 38, Goshen, was present for this petition requesting permission to install solar panels. Mr. Miller stated he does not see anything unusual about this petition. Mr. Hesser asked if he has spoken with his neighbors, and Mr. Martin responded he talked with his neighbor to the West. Mr. Hesser went on to question the owner of the property to the South. Mr. Martin responded it is his property, and he pointed out the proposed location for the panels on the South parcel. Mr. Lyon asked how many panels will be installed, and he responded three. Mr. Hesser asked Staff if the parcel to the South was included in this petition, and Mr. Godlewski responded both parcels were described in the legal description. Mr. Hesser clarified notice was sent out based on both parcels, and Attorney Kolbus mentioned the maps in the Staff Report were not 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** Randy Hesser, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 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. Approved in accordance with the site plan submitted (dated 4/13/17) and as represented in the Special Use application.

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

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

7. The application of *Timothy Roy & Cheryl A. Martin* for a Special Use for a home workshop/business for the sale of dairy products on property located on the Southeast corner of Ash Rd. & CR 26, common address of 60020 Ash Rd. in Baugo 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-0247-2017*.

There were four neighboring property owners notified of this request. Tim Martin, 60020 Ash Rd., was present for this request. Mr. Martin stated he is requesting approval for a Special Use to sell dairy products off of his property. He continued saying they have milked cows for over twenty years and decided to start producing dairy products. He added they would now like to sell their products off of the property. Mr. Campanello questioned if the store will be in an existing building, and Mr. Martin responded it is an old milk house. Mr. Miller asked if he will make deliveries, and he responded yes. Mr. Campanello questioned truck activity and then stated as a farm several trucks will be coming and going from the property. Mr. Hesser asked if they will have a sign on the property, and he found a 2'x2' sign on the site plan, which falls within home workshop approval. He also asked if he has any conditions, which he needs to comply with in order to sell to the public. Mr. Martin responded saying his processing facility is certified. Mr. Godlewski mentioned Mr. Martin has been working with the Environmental Health Department.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for the sale of dairy products be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/13/17) and as represented in the Special Use application.

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

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

8. The application of *William D. & Sally A. Stephens* for a Special Use for an agricultural use for the keeping of goats and miniature horses on property located on the North side of Medford St., 1,100 ft. West of CR 11, common address of 25163 Medford St. in Osolo Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0254-2017*.

There were 15 neighboring property owners notified of this request. William Stephens, 12563 Medford St. was present representing this petition and stated he owns the property in question. Mr. Hesser asked the location of the residence, and he confirmed its location on the aerial. Mr. Campanello questioned the acreage of the property, and Mr. Hesser pointed out it is 13 almost 14 acres. Mr. Lyon noted a county regulated ditch runs through the property and asked if he will be using the property on the other side of the ditch. Mr. Stephens

responded he does not use that area. Mr. Lyon asked if the animals will be fenced in, and he responded yes. Mr. Miller asked if he has any problems with the restriction of two goats and two miniature horses, and he responded no.

Howard Turlin, 25057 Medford St., was present in favor of this petition and pointed out his property to the East. Mr. Turlin stressed he has no problem with the animals, and they do not make a lot of noise. Mr. Campanello confirmed the location of Mr. Turlin's property on the aerial.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he does not have a problem approving this request, and he pointed out the property is heavily wooded.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of goats and miniature horses 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 4/17/17) and as represented in the Special Use application.
2. Limited to two (2) adult dwarf goats and two (2) miniature horses at any one time.

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

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

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

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0251-2017*.

There were five neighboring property owners notified of this request.

Lamar Hochstetler, 16953 CR 48, was present representing this request and stated he is asking permission to run a home workshop/business. Mr. Lyon asked how he will polish the wheels. Mr. Hochstetler responded he mainly polishes semi wheels, but he can polish down to a 10 inch wheel. He continued saying he uses a machine inside his shop. He added wheels will typically be transported by a pick-up truck, but he will also service an occasional semi by appointment. Mr. Miller clarified semis will come onto the property to have their wheels polished, and Mr. Hochstetler stressed he will only service one semi at a time. Mr. Lyon asked if a semi can turn-around without backing out onto the road, and Mr. Hochstetler responded yes. Mr. Campanello asked if he lives in the residence, and he responded yes. It was found the subject property is located on the corner of CR 127 and CR 48. Mr. Campanello also asked the

number of trucks he will service a day, and he responded one. He mentioned he will not have one every day, and he stressed he cannot polish more than one a day. Mr. Hesser confirmed semis will not be stored outside. Mr. Miller questioned the chemicals used for this process. Mr. Hochstetler responded polishing does not produce exhaust or fumes.

Terry Norris, 17040 CR 48, came on in remonstrance and pointed out his property on the opposite corner as the petitioners. Mr. Norris stressed he moved to this property 20 years ago, and they built a nice home to enjoy a peaceful and quiet neighborhood. He mentioned he has researched wheel polishing and found it tends to be a very loud process. He went on to say he is not sure how Mr. Hochstetler will polish inside the building during the summer without air conditioning. Mr. Norris pointed out his bedroom window is only 400 ft. from the shop. He continued saying he is concerned this will impact the marketability of his home and property value. Mr. Campanello asked if he can see the petitioners' residence from his property, and he responded yes during winter. Mr. Lyon asked if the trees buffer the sound, and Mr. Norris responded it does when leaves are on the trees.

Mr. Hochstetler came back on and stated polishing is loud in the same room as the machine. However, he continued the machine is in a cabinet that goes around the wheel. He stressed the cabinet is inside the building, and he does not believe his neighbor will be able to hear the noise. Mr. Miller clarified the wheels are taken off of the vehicle and placed inside the cabinet, which is kept in the building. He went on to ask, if the machine could be moved outside, and Mr. Hochstetler responded no. Mr. Campanello questioned the possibility of muffling the noise, if it becomes too loud. Mr. Hochstetler responded he is sure it can be done, but he stressed he cannot hear the noise from his house.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser suggested a time restriction be added to this request in case noise becomes an issue. Attorney Kolbus suggested the standard commitment prohibiting backing of semis onto the road be added.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for wheel polishing be approved with the following conditions imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.
2. Backing in or backing out of vehicles from/onto CR 48 or CR 127 is prohibited.
3. Approved for a period of one year with renewal before the Elkhart County Advisory board of Zoning Appeals.

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

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

10. The application of **Warren D. & Linda L. Bontrager** for a Special Use to allow for ground mounted solar arrays on property located on the North side of CR 38, 1,100 ft. West of CR 21, common address of 20211 CR 38 in Elkhart 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-0248-2017*.

There were five neighboring property owners notified of this request.

Mr. Campanello asked, if staff approves of the submitted site plan, and Mr. Godlewski responded yes.

Betsy Salyer, 1952 W. Market St., Nappanee, was present representing the petitioners. Mrs. Salyer stated the proposed solar system will be 5 ft. from the property line. She continued saying a full rack and a half rack of panels will be installed.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** 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 to allow for ground mounted solar arrays be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/13/17) and as represented in the Special Use application.

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

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

Mr. Miller asked if roof-mounted solar panels are permitted by right, and Mr. Godlewski responded yes. He continued saying Staff is considering an Ordinance revision to allow ground-mounted panels larger than 850 sq. ft. by right. Mr. Hesser asked if the square footage restriction applies to roof-mounted panels. Mr. Godlewski clarified roof-mounted panels are allowed by right regardless of the size, but ground-mounted panels are restricted to 850 sq. ft.

11. The application of **Howard Turlin** for a Special Use for a home workshop/business for lawnmower repair on property located on the North side of Medford St., 300 ft. West of CR 11, common address of 25057 Medford St. in Osolo Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0250-2017*.

There were seven neighboring property owners notified of this request.

Howard Turlin, 25057 Medford St., came on for this petition and stated the lawn mowers will be stored inside a building. Mr. Hesser clarified all of the mowers will be stored inside, and Mr.

Turlin responded only his personal mower will be outside. Mr. Miller pointed out this request is for a repair shop, but the code complaint mentioned retail sales. Mr. Turlin stated he does not sell products off of his property. Mr. Campanello questioned deliveries, and Mr. Turlin responded customers typically drop their equipment off in pick-up trucks. Mr. Campanello clarified UPS or similar services will deliver parts.

William Stephens, 25163 Medford St., came on in favor of this request, and stated he owns the property next to the petitioner. He stressed he has no objection to this request.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** 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 lawnmower repair be approved with the following conditions imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.
2. No outside storage related to the Special Use is permitted.

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

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

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

12. As a staff item, Mr. Godlewski presented the request for approval of a site plan change to a Special Use for Michelle Steigmeyer (SUP-0246-2016). He stated Fred Ham from Schrock Commercial requested a minor change to the approved site plan to move the dog training facility addition from the North side of the existing structure to the East side. He continued saying the proposed addition will be the same size; it is simply changing location. He stated this request is for a major/minor change, and staff recommends approval of this request as a minor change.

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 approve the request as a minor change.

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

Yes: Tony Campanello, Roger Miller, Denny Lyon.

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

13. The application of *Grace Community Church of Goshen Indiana, Inc.* for an amendment to an existing Special Use for a church to add property and for future building expansions located on the Southwest corner of CR 36 & CR 21, common address of 20076 CR 36 in Elkhart 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-0260-2017*.

There were 20 neighboring property owners notified of this request.

Mr. Lyon asked if this property has been annexed into the city, and Mr. Godlewski responded Goshen City approval is needed because of the utilities.

Brad Mosness, Abonmarche Consultants, 1009 S. 9th St., Goshen, was present representing the petitioner, Grace Community Church. He stated this is a request to amend the Special Use for the addition of land and church expansion. He continued saying the church will be constructing three additions this summer for kids, junior high, high school, and fellowship areas. He explained this expansion will take place in phases. He went on to explain Phase One includes expanding parking and paving the existing drive. Mr. Mosness stated the submitted site plan shows the master plan for future expansion. He explained it includes more building and parking expansions along with outdoor recreational fields. He continued saying as the church continues to grow more amenities will be added. Mr. Hesser questioned the time frame for the expansion, and Mr. Mosness responded 3-5 years based on church growth. Mr. Hesser then asked Attorney Kolbus if approving future expansion creates any issues. Attorney Kolbus responded a Variance receives 180 days to pull an Improvement Location Permit, but ILPs for the entire project do not need to be pulled within that time frame. Mr. Hesser asked if the church needs to come back before the Board for approval of future expansions, and Mr. Godlewski responded the footprint can be approved. Mr. Hesser then clarified the building footprint can be approved now, and it can be built five years from now.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he is not opposed to this request, but he mentioned traffic in that area is horrendous on Sunday mornings. He continued saying a police officer directs traffic, and it is very congested. He added he is concerned expansion of the church will only add to the problem. He stressed a barricade by the church entrance only hurts the situation. He stated he is happy the church is growing, but he believes the road needs to be improved to alleviate the traffic situation. Mr. Miller asked if traffic congestion will be addressed. Mr. Mosness came back on and explained a new entrance has been planned onto CR 21. He continued saying the church hires an off duty officer to help with traffic at the CR 36 and CR 21 intersection, and they also implemented a traffic plan on their property. Mr. Miller questioned, if the new entrance on CR 21 will have egress and exit lanes. Mr. Mosness responded it will be a new access with dedicated left/right turn and new entrance lanes. Mr. Campanello pointed out the submitted site plan shows the accel and decel lanes. Attorney Kolbus asked how far the new entrance will be from the existing subdivision entrance, and Mr. Mosness responded it is 100 ft. to the North. Mr. Godlewski stated the new entrance will disperse traffic onto two roads rather than one. Mr. Lyon mentioned the parking lot will be expanded. Mr. Miller stated he does not believe the new drive will alleviate traffic. Mr. Godlewski mentioned Sundays are not typically peak traffic times. Mr. Miller suggested adding a commitment requiring improvements on CR 36. Mr. Campanello

stated that is up to Highway. Mr. Hesser mentioned he believes the problem is being addressed with the off-duty police officer directing traffic. He continued saying if the new entrance/exit does not alleviate the problem, they will need to come back for approval of more improvements.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a church to add property and for future building expansions 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 4/17/17) and as represented in the Special Use amendment application.
2. This development must meet City of Goshen development standards and review procedures.

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

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

Mr. Campanello asked if it would be easier for churches to have a DPUD or GPUD. Mr. Godlewski mentioned some do, but others were started as Special Uses and continue that way.

14. The application of *Devon & Neda Fern Lehman* for an amendment to an existing Special Use for warehousing and storing of concrete building forms and bundled plastic granules to allow for warehousing and storing of recreational vehicles and automobiles and for a Special Use for a home workshop/business to allow for an auto repair (body shop) business on property located on the East side of CR 27, 1,400 ft. North of CR 126, common address of 60226 CR 27 in Jefferson 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-0266-2017*.

There were seven neighboring property owners notified of this request.

Devon Lehman, 60270 CR 27, Goshen, was present representing this petition. Mr. Campanello clarified Mr. Lehman lives next door to the subject property. Mr. Miller asked if the business is changing. Mr. Campanello confirmed Mr. Lehman is still okay with the conditions and commitments imposed with the previous approval. Mr. Campanello also mentioned this request includes a Special Use for auto body repair. Mr. Hesser questioned if repairs are done indoors, and Mr. Lehman responded yes. Mr. Miller stated the Board is concerned that cars will be parked outside.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for warehousing and storing of concrete building forms and bundled plastic granules to allow for warehousing and storing of recreational vehicles and automobiles and for a Special Use for a home workshop/business to allow for an auto repair (body shop) business be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 4/18/17) and as represented in both the Special Use Amendment application and the Special use application.
2. Outside storage of RVs and vehicles must be in the area designated on the site plan.
3. Storage of wrecked or junked vehicles without titles is not permitted.
4. Limited to twenty-four (24) RV units at any one time.
5. Limited to twelve (12) vehicles at any one time.

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

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

15. The application of *MS Investments Corporation* for a Special Use for a wireless communications facility, for a 75 ft. Developmental Variance to allow for the construction of a wireless communications facility 25 ft. from the North property line (Ordinance requires 100 ft.), and for a 22 ft. Developmental Variance to allow for the construction of a wireless communications facility 78 ft. from the West property line (Ordinance requires 100 ft.) on property located on the West of CR 9, 175 ft. South of Miner Rd., common address of 53729 CR 9 in Osolo Township, zoned M-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0257-2017*.

There were four neighboring property owners notified of this request. Gene Cruise, MapleNet Wireless, 4561 Pine Creek Rd., Elkhart, was present representing MS Investments. Mr. Cruise informed the Board a fiber optic cable is in the process of being placed along CR 6 starting at CR 17 to the West. He continued saying the Redevelopment Commission approved the funding two weeks ago, and MapleNet was informed of the project last week. He added construction will start in a week, and the requested tower is an extension of that cable. Mr. Cruise stated this tower is primarily intended for Hawkins Water Tech due to the difficulty they have acquiring a connection at their locations in Elkhart and Middlebury. He added Forest River also has a plant nearby, which needs service. He continued saying foliage is deteriorating the performance of their current service. He also stressed a manufactured housing community to the West of the subject property is interest in receiving internet service. He added this tower will be 100 ft. Mr. Campanello questioned the house on the subject property, and it was found to be nonresidential. Mr. Cruise stated he understands it is either vacant or used for offices. Mr. Campanello asked if the property will be rezoned for commercial purposes. He also asked if this is a collapsible tower, and Mr. Cruise responded it is self supporting meaning it will fall on itself.

He continued saying the tower is positioned 100 ft. from the South property line as the owner of the subject property also owns the surrounding lots. He added, if the tower does fall, it can fall in any direction and still be on the owners' property.

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** Denny Lyon, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communications facility be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/19/17) and as represented in the Special Use application.

Further, the motion also included that a 75 ft. Developmental Variance to allow for the construction of a wireless communications facility 25 ft. from the North property line (Ordinance requires 100 ft.), and for a 22 ft. Developmental Variance to allow for the construction of a wireless communications facility 78 ft. from the West property line (Ordinance requires 100 ft.) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the Building Permit (where required).
2. Approved in accordance with the site plan submitted (dated 4/19/17) and as represented in the Developmental Variance application.

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

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

16. The application of *Daniel H. & Elsie M. Hochstetler* for a Special Use to allow for an agricultural use for the keeping of animals on a tract of land containing less than three acres, for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, and for a 2 ft. Developmental Variance to allow for the construction of a detached accessory structure 5 ft. from the East property line (Ordinance requires 7 ft. based on the height of the proposed building) on property located on the South side of SR 4, 1,100 ft. West of SR 13, common address of 12712 SR 4 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0258-2017*.

There were three neighboring property owners notified of this request.

Daniel Hochstetler, 12712 SR 4, Goshen, was present for this request. Mr. Hochstetler stated he would like approval to have three horses and a 30'x64' building close to the neighboring property. He continued saying he would like to build 5 ft. from the property line in order to stay out of an existing drive. He added the building can be shorter, however, he would like to have a loft in the top. Mr. Lyon asked if his son-in-law who owns the neighboring property has any problem with this petition. Mr. Hochstetler responded he does not, neither does his other neighbor. Mr. Lyon also asked if he has any problems with the conditions imposed, and he responded no.

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** Denny Lyon, **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 to allow for an agricultural use for the keeping of animals on a tract of land containing less than three acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 4/17/17) and as represented in the Special Use application.
2. Limited to three (3) adult horses at any one time.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, and for a 2 ft. Developmental Variance to allow for the construction of a detached accessory structure 5 ft. from the East property line (Ordinance requires 7 ft. based on the height of the proposed building) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the Building Permit (where required).
2. Approved in accordance with the site plan submitted (dated 4/17/17) and as represented in the Developmental Variance application.

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

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

17. The application of *Timothy & Patricia Bryant* for a Use Variance to allow for the construction of a second dwelling on a parcel, for a 19 ft. Developmental Variance to allow for the construction of a residence 56 ft. from the center line of the right-of-way of CR 2 (Ordinance requires 75 ft.), and for a 3 ft. Developmental Variance to allow for the construction of a residence 7 ft. from the property line (Ordinance requires 10 ft.) located on the North side of CR

2, 1,100 ft. East of CR 35, common address of 13433 CR 2 in York 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-0249-2017*.

There were eight neighboring property owners notified of this request. Timothy Bryant, 14423 CR 2, Middlebury, was present for this request. Mr. Bryant stated he is requesting permission to build a house in the location he previously received approval to build a 32'x40' garage. He continued saying he would like to build a one story house with two bedrooms and one and a half baths. Mr. Lyon asked if he will live in the mobile home until the new home is constructed. Mr. Lyon also questioned, if he understands the conditions and commitments imposed, and Mr. Bryant responded yes. He clarified the house must be built within a year, and the mobile home removed within six months of completion of the residence. Mr. Lyon asked if he has a mound system. Mr. Bryant responded saying it is a 10,000 gallon tank, which he has recently had pumped. Mr. Lyon also asked if he has contacted the Environmental Health Department, and he responded yes on March 1st.

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** Denny Lyon, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The mobile home must be removed within 6 months of completion of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/13/17) and as represented in the Use Variance application.

Further, the motion also included that a 19 ft. Developmental Variance to allow for the construction of a residence 56 ft. from the center line of the right-of-way of CR 2 (Ordinance requires 75 ft.), and for a 3 ft. Developmental Variance to allow for the construction of a residence 7 ft. from the property line (Ordinance requires 10 ft.) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the Building Permit (where required).
2. Approved in accordance with the site plan submitted (dated 4/13/17) and as represented in the Developmental Variance application.

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

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

18. The application of **Levon & Mary E. Brubacher ½ Kamron Brubacher ½ Jt. Ten** for a Use Variance for warehousing and storing of three commercial vehicles and for a 17 ft. Developmental Variance to allow for the construction of an attached garage 33 ft. from the centerline of the right-of-way of High St. (Ordinance requires 50 ft.) on property located on the Southeast corner of Elkhart St. and High St., 1,928 ft. South of CR 40, common address of 400 S. Elkhart St. in Olive Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0235-2017*.

There were eight neighboring property owners notified of this request. Kamron Brubacher, 400 S. Elkhart St., Wakarusa, was present for this request along with Josh Malott, his contractor. Mr. Campanello asked if the Town of Wakarusa made recommendations for this request, and Mr. Godlewski responded no. Mr. Malott stated the property has an existing garage off of High St., but it is not long enough for a full-sized truck to pull out without blocking the road. He continued saying to alleviate that problem they would like to tear down the existing garage and add a three stall garage that faces the driveway rather than the road. He pointed out the proposed location of the new garage where three existing parking spaces are located. Mr. Malott stated the need for a Use Variance did not come up until they applied for the Developmental Variance. He stressed the commercial vehicles have been kept on this property for several years without any complaints from the neighbors. Mr. Campanello confirmed the location of the garage being removed. Mr. Malott added an existing breezeway from the house to the garage will be torn down. He continued saying the new garage will be 15 ft. deeper and its doors will face the driveway rather than the road. He mentioned the 17 ft. Developmental Variance would allow the new garage to be as close to the road as the existing garage. Mr. Hesser asked the location of the residence, and Mr. Malott pointed out its location on the aerial along with the pole building. Mr. Miller asked the use of the pole building, and Mr. Brubacher responded it stores trucks and trailers. Mr. Malott mentioned Mr. Brubacher runs a lawn care business and stores his trailers in the building. Mr. Campanello confirmed the trailers are the commercial vehicles being requested. Mr. Malott responded he was informed any vehicle associated with a business is classified as a commercial vehicle, and he stressed under that definition Mr. Brubacher's personal vehicles are classified as commercial vehicles. He continued saying he was told even the vehicles used primarily as personal vehicles can be classified as commercial. Mr. Campanello asked if his neighbors have any issues with the vehicles. Mr. Brubacher responded saying he has not received any complaints, and he added he plows most of their drives in the winter. Mr. Hesser clarified the new garage will be used for personal vehicles, and he confirmed Mr. Brubacher is the owner/occupant of the residence. Mr. Hesser mentioned the site plan is not to scale. Mr. Campanello questioned the width of the right-of-way, and Mr. Lyon responded 66 ft. Mr. Campanello clarified the petitioner maintains the right-of-way. Mr. Miller asked if this garage will be in the right-of-way, and Mr. Lyon explained the right-of-way would be 33 ft. from the center-line of the road. Mr. Campanello pointed out the existing garage is 33 ft. from the center-line of the road, and Mr. Malott stated they would like to construct the new garage with the same setback. Mr. Brubacher stressed the new garage will face the East rather than the North. Mr. Campanello mentioned the petitioner is not asking to build any closer to the road than the existing garage. Mr. Hesser asked if the garage will be

off of High St., and Mr. Brubacher responded the entrance will be off of his driveway. Mr. Miller stressed the new garage will alleviate some of the traffic issues caused by the location of the current garage. He continued saying he does not have a problem approving this request. Mr. Campanello pointed out the Town of Wakarusa and neighboring property owners have not voiced any concerns with this request.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he does not see any problems with this request, and he mentioned the requested 33 ft. setback is the same as the current garage, which is grandfathered in. He asked Staff for any additional concerns if this is approved, and Mr. Godlewski responded eaves hanging into the right-of-way is a concern. Mr. Hesser mentioned the edge of the eaves is included in the Developmental Variance request. Mr. Campanello questioned how this petition substantially interferes with the Ordinance. Mr. Godlewski responded keeping commercial vehicles in an R-1 district is not favorably viewed by Staff. Mr. Campanello asked if commercial vehicles are allowed with a home workshop/business Special Use, and Mr. Godlewski responded it depends on the size and scope of the operation. He continued saying the goal in R-1 districts is to preserve the neighborhood. Mr. Campanello asked how home workshop/businesses preserve the neighborhood. Mr. Godlewski explained Special Uses are permitted in an R-1 zone, but Use Variances must overcome the problems with land use. He stressed Use Variances have a higher threshold of use. Mr. Hesser asked what conditions and commitments would be appropriate with approval of this request. Mr. Godlewski stated due to staff's recommendation of denial no conditions or commitments were proposed. He went on to suggest the petitioner work with Staff to compile a list of proposed conditions and commitments. Mr. Hesser stated he is inclined to approve this request as it has taken place on the subject property for years without any complaints. He continued saying the proposed garage is not a substantial deviation from the existing building, and it will likely be an improvement. He stressed he would be inclined to deny this request, if he was asking for something different, that what he has been doing for years. He added he would like the petitioner to provide a revised site plan, conditions, and commitments. He continued saying the Board has in the past approved a petition subject to approval of conditions and commitments at the next meeting. Mr. Hesser suggested the Board approve this request subject to submission of a revised site plan and approval of staff recommended conditions and commitments at the June 15, 2017 BZA meeting.

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 Use Variance for warehousing and storing of three commercial vehicles be approved (subject to submission of a revised site plan along with conditions and commitments to be finalized at the June 15, 2017, Board of Zoning Appeals Meeting) based on the findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.

3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The property has been used this way for several years without objection.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

Further, the motion also included that a 17 ft. Developmental Variance to allow for the construction of an attached garage 33 ft. from the centerline of the right-of-way of High St. (Ordinance requires 50 ft.) be approved (subject to submission of a revised site plan along with conditions and commitments to be finalized at the June 15, 2017 Board of Zoning Appeals Meeting) based on the findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.

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

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

19. The application of *D & M Rentals, LLC* for a Use Variance to allow for an accessory dwelling on property without the owner residing in the primary dwelling located on the East side of CR 27, 2,200 ft. North of CR 126, common address of 60066 CR 27 in Jefferson 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-0259-2017*.

There were four neighboring property owners notified of this request.

Mr. Campanello questioned the wording of the complaint received on March 2, 2017, and Mr. Godlewski stated that is a comment from the complainant.

Bill Davis, Davis and Roose Attorneys, 116 E. Clinton St., Goshen was present representing D & M Rentals, LLC for this request. Mr. Davis submitted a packet for the Board *[Attached to file as Petitioner's Exhibit #1]*. He stated the subject property is 2.47 acres, which was created in September of 1953. He then pointed out the staff report lists a single family residence and three buildings originally built as poultry houses on the property. He continued saying use of the buildings as poultry houses stopped shortly before David and Maynard Miller purchased the property in February of 2002. He mentioned in January of 2013 the property was transferred to D & M Rentals, LLC. Mr. Davis mentioned the Millers were denied permission to convert the poultry barns into storage units in both 2003 and 2004. He continued saying the first request asked for several units and the second was for only fourteen units in the North building to store RVs. He mentioned the residence has been a rental since the property was purchased by the Millers. He went on to say the front section of the middle building had a bathroom, which gave them the idea to remodel that section of the building into an efficiency apartment. He then referred to the submitted packet and pointed out efficiency apartment A. He also pointed out

efficiency apartment B, which was remodeled in 2010. He stressed the apartments have been rented since they were remodeled. Mr. Davis mentioned the two efficiency apartments were recently rented to the two daughters of the family living in the primary residence. He continued saying he believes this situation is similar to the Ordinance requirement stating the owner of the property must reside in one of the dwellings. He added the Miller brothers were not aware they needed a Use Variance until Mae Kratzer investigated the complaint referred to in the Staff Report. He then pointed out the second item in the submitted packet, a letter to Dave Miller from Mrs. Kratzer. He explained the letter states upon inspection of the property, she did not find the back portion of the middle building being used for a detail shop nor did she find the North/South building being used as self-serve rental units. He stated he believes the complainant's main concern was the business, which is not taking place. He continued saying she did identify the efficiency apartments as an issue requiring a Use Variance. Mr. Davis stressed the letter sent by Mrs. Kratzer gave them the option of filing for a Use Variance. Mr. Campanello asked if the proper permits were pulled to remodel the poultry barns into efficiency apartments. Mr. Davis responded saying he was told no permits were pulled, and he added the petitioners completed most of the work themselves. Mr. Davis then explained the third item in the submitted packet, which contained the petitioners' suggestions for findings of fact in support of this request. He went on to read their Finding #1 and commented he believes the building not being built to residential code is a building issue and does not pertain to the zoning aspect of the property. He suggested this petition be approved with a condition that the buildings be brought up to code. He then read their Finding #2 and pointed out Section IV of the packet, which includes section 5.5.1-5.5.7 of the Ordinance. He focused on 5.5.3 letter F., which states the owner of the property must reside in either the primary or accessory dwelling. He added he believes the two efficiency apartments meet the rest of the developmental criteria outlined in the Ordinance for accessory dwellings. He also pointed out the fifth item in the packet, a petition signed by the neighboring property owners, and the sixth item, a highlighted diagram of the neighbors in favor of this request. Mr. Hesser questioned Mr. Davis' argument for the owners of the property not residing in either the primary or accessory dwelling. Mr. Davis responded he believes the owner cannot reside on the property, because the owner is a Limited Liability Company. Mr. Hesser also asked, if this request would be allowed by right, if the owner lived in one of the dwellings. Attorney Kolbus responded saying an accessory dwelling is allowed by right as long as it meets the criteria listed in the Ordinance. Mr. Godlewski mentioned this property has two accessory dwellings and only one is allowed. Mr. Davis then proceeded to Finding #3 and suggested the property is peculiar, because the buildings have been there for 50 years. He argued the buildings were constructed before zoning regulations had been established, and the owners he stated are simply trying to find a use for them. He stressed Mr. Miller asked several poultry producers if they would be interested in using the buildings, and he was told no. He then read their Finding #4. He stressed the owner cannot reside on the property as it is owned by an entity rather than a person. He then mentioned a few hypothetical situations the first being a farmer builds an accessory dwelling, but then puts his farm into a corporation. He asked if the corporation would have to be abandoned or the property subdivided in order to be compliant. He stated strict enforcement of that requirement could cause hardships down the road. He then added, if the farmer moves to Florida, would he be able to rent out his property. Mr. Davis stated, if the Board does not wish to challenge the Zoning Ordinance, he believes they can omit

Finding #4. He mentioned a previous case involving Earth Movers, which came before the Board in 1994. He continued saying the Board approved a landfill with the condition that it would only run under a specific operator. He mentioned after several years the operator stepped down, during the appeal it was suggested zoning should relate to the use of land not the owner of the land. He added the condition was then changed to say a qualified operator rather than the specific operator. Mr. Hesser stated the Board has done that before. Mr. Davis then went on to read their Finding #5 as he does not believe this request interferes with the Elkhart County Comprehensive Plan. Mr. Campanello pointed out the buildings were constructed as chicken barns, however, the Miller brothers have remodeled them into apartments, which is not allowed. He stressed they are requesting approval to keep something that was not taken through the proper channels. Mr. Davis recognized ignorance of the law is not an excuse, but he believes that is what happened in this case. Mr. Campanello mentioned an LLC should not be ignorant of the law. Mr. Davis stressed the efficiency apartments were established before the property was placed in an LLC. He continued saying the petitioners realize they did not apply for the proper permits. He also stressed the property does not have a history of complaints. Mr. Miller stated a complaint was received March 2, 2017. Mr. Davis stated he believes the complaint was due to concerns that businesses were going to take place on the property. Mr. Miller added he does not agree with Mr. Davis, because the petitioners only filed for approval after a complaint was filed against the property. He also does not believe they were completely ignorant of the law in this case, and the people responsible for remodeling the building should have known it was a violation.

David Miller, 59466 CR 33, Middlebury, came on to speak for this petition. Mr. David Miller stated when he purchased the property the middle chicken house had a bathroom in the front, which was connected to its own field system. He continued saying at the time, an older couple was renting the primary residence and needed to downsize. He added he then had the idea to create an efficiency apartment. Mr. David Miller acknowledged they did not pull the proper permits for the remodel. He stressed Mrs. Kratzer suggested they file for a Use Variance, and he added he is willing to bring the apartments up to residential code. Mr. Roger Miller commented that the petitioner is asking for apartments in the country.

Jere Bigler, 60022 CR 27, was present in remonstrance and pointed out his property to the North of the subject parcel. Mr. Bigler stated he knew about the apartments, and he added the current residents are decent people. However, he is concerned they will continue developing the building into apartments. He stressed although he is okay with the current occupants, he does not want this situation to grow. He mentioned he is concerned as the property owners have a history of ignoring the rules. Mr. Bigler added it was rumored that one of the chicken houses was going to be remodeled into a detail shop. He went on to say they recently cleaned out the Southern chicken house, and some debris ended up in his hayfield. He stated a detail shop could cause fumes and chemicals to run into his field. He added he was not concerned with the apartments until the other issues came up. He requested this petition be denied as he is concerned this problem will continue to grow. Mr. Campanello asked if he would be opposed to warehousing and storage on the property. Mr. Bigler responded he would be against a public facility on the property, but he does not mind if Mr. David Miller stores his own equipment there. He added one of the buildings has been remodeled for storage, and he does not have a problem with a few of their friends renting space for boats or RVs. However, he does not want a

public facility with lights and 24/7 access. Mr. Campanello asked if the current occupants trespass on his property. Mr. Bigler responded they do not, but he is worried about future occupants trespassing. He stressed he does not have a problem with Mr. David Miller or the occupants of the apartments.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus request the Board not adopt the last sentence of Finding #4, if they choose to approve the findings submitted by the petitioner. Mr. Hesser stated he is inclined to deny this request. He continued saying he understands the petitioners trying to repurpose the buildings, but he stressed approval of this request would allow for a multi-family property. He added he does not believe the Board has ever approved a similar request. He asked if this property needs to go before the Plan Commission to become a multi-family property. Attorney Kolbus mentioned rezoning the property is an option, but a Use Variance is also an option. Mr. Hesser stated he does not believe the criteria has been met to approve a Use Variance. He then suggested giving the occupants of the efficiency apartments time to vacate the property. He added he would also give them time to take another route to make this legal, and he suggested a time restriction of six months to a year. He noted the remonstrator stated he is okay with the current occupants, and the other neighbors signed a petition in favor of this request. Attorney Kolbus suggested the petition and the recommendation to allow the occupants time to vacate the apartments be two separate motions. Mr. Godlewski mentioned the petitioners can reapply for this request in a year, and he stressed that could allow them to keep using the illegal structure. He suggested a nine month time period to prevent the owners from asking for the same request. Attorney Kolbus stated generally the petition needs to be a significantly changed in order to re-petition. Mr. Hesser added, if they significantly change the request, it can be brought before the Board at any time.

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

Motion: Action: Denied, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for an accessory dwelling on property without the owner residing in the primary dwelling be denied.

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

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board's recommendation to Staff that the occupants of the efficiency units not be evicted for up to one year be approved.

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

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

20. The staff item for Michelle R. Steigmeyer (SUP-0246-2016) was previously heard as item #12 on page 12.

21. The meeting was adjourned at 11:51 A.M.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary