

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF OCTOBER 2016 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 Vice Chairperson, Roger Miller. Staff members present were: Chris Godlewski, Plan Director; Liz Gunden, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon.

Absent: Randy Hesser.

2. A motion was made and seconded (*Lyon/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of September 2016 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/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 **Jedediah Long** for a 7 to 1 depth to width ratio Developmental Variance for an existing residence on property located on the South side of CR 22, 1,528 ft. West of CR 11, common address of 25276 CR 22 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 #DV-0498-2016*.

There were 10 neighboring property owners notified of this request.

Jed Long, 25276 CR 22, was present on behalf of this petition and pointed out he is keeping only a portion of the property on the aerial. Mr. Long stated he has put a 12 acre portion of his 22 acre parcel up for sale, and he has found a local buyer, who wishes to build a single family residence on the property. However, he stated the subdivision will cause his property to need a 7 to 1 Developmental Variance. Mr. Lyon questioned if Mr. Long had any problems with the staff conditions, and Mr. Long responded he believes his section of the property has already been through the Administrative Subdivision process. Miss Gunden stated the purchasers will also have to file for an Administrative or Minor Subdivision in order to build on their half of the 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** 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 7 to 1 depth to width ratio Developmental Variance for an existing residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 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 9/12/16) and as represented in the Developmental Variance application.
3. Either an Administrative Subdivision or Minor Subdivision must be completed before any permits are issued.
4. The petitioner must provide a site plan with dimensions.

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

Yes: Suzanne Weirick, Tony Campanello, Denny Lyon, Roger Miller.

5. The application of *Missionary Church North Central District Inc.* for an amendment to an existing Special Use for a church to allow for the construction of a pavilion on property located on the West side of SR 15, 1,600 ft. North of Hackett Rd., 3,400 ft. South of CR 126, common address of 61115 SR 15 in Elkhart 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-0477-2016*.

There were 14 neighboring property owners notified of this request.

Jerry Hay, 60329 CR 15 Elkhart, was present on behalf of this petition, and he stated the church is seeking approval to build a pavilion. He went on to say the church holds several picnics and gatherings throughout the year for which they typically rent a tent. He continued saying this amounts to a huge cost for the church, and they wish to alleviate that cost by building their own pavilion for shelter. Mr. Hay stated this will allow the church to have spontaneous events, and provide shelter for youth gatherings and daycare activities.

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** Suzanne Weirick 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 allow for the construction of a pavilion 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 8/31/16) and as represented in the Special Use application.

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

Yes: Suzanne Weirick, Tony Campanello, Denny Lyon, Roger Miller.

6. The application of *Vincent & Jennifer Cline* for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than three acres located on the West

side of Bannock Circle, 220 ft. South of Bainridge Dr., 1,130 ft. West of CR 15, North of CR 10, common address of 54075 Bannock Circle 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-0495-2016*.

There were 31 neighboring property owners notified of this request.

Jennifer Cline, 54075 Bannock Circle, Elkhart, was present on behalf of this petition along with her son, Nolan. Mrs. Cline stated she spoke with all of their neighbors except for those absent during the winter, and she received no complaints. She also spoke with their Home Owners Association president and received approval to have chickens. She continued saying they purchased the chickens when they were only a couple days old and did not realize they had received a rooster. She also stated they did not keep the rooster once he started crowing. Mrs. Cline went on to state they now have four hens and no roosters. Her son, Nolan, said he would like to keep the chickens because he loves them, would like to take them to the fair, and they are his pets. Mrs. Cline then stated she has a letter from their neighbor who shares the fence line with them, and she pointed out which neighbor submitted a letter on the aerial [Attached to file as Petitioner's Exhibit #1]. Mr. Lyon questioned if she had spoken with all of the neighbors. Mrs. Cline pointed out which neighbors she had spoken to on the aerial.

John Foy, 54070 Hampton Road, Elkhart, came on in remonstrance and stated his property is directly behind the property in question. Mr. Foy went on to say he is opposed to this petition because this is a subdivision which restricts the keeping of farm animals. He continued saying he believes allowing chickens into the neighborhood will lower his property values. Mr. Foy continued saying the noise and odor from the chickens is detrimental to the subdivision. He also believes the chickens will bring flies, rodents and predators. He went on to stress the petitioners did not request the Special Use until the Code Enforcement Inspector notified them of the violation. He continued saying the petitioners told them the chickens would be a one-time occurrence and not repeated.

*****It should be noted Randy Hesser arrives at this time*****

Cheryl Ginther, 23006 Nottingham Lane, Elkhart, came on in remonstrance and pointed out her home on the aerial. Mrs. Ginther stated they have lived in their home since 1976, and she believes by approving this petition they will see more chickens in their neighborhood. She continued saying they are struggling to keep up their property values, and chickens will bring their property values down. She stressed she has invested a lot of time and money into her subdivision, and she strives to keep up the value of her property.

Phillip Ginther, 23066 Nottingham Lane, Elkhart, was present in remonstrance and agreed with what his wife, Cheryl, and John had previously stated. Mr. Ginther continued saying he went before the Board for a second garage, and it was difficult to gain approval for his petition. He believes allowing chickens in the neighborhood will decrease their property values. Mr. Ginther also stated he grew up with chickens and knows the rodents and predators they attract.

Mrs. Cline stated she did not speak with the neighbors a street down, but she did speak to her surrounding neighbors. She also stated she talked to the Home Owners Association and her neighbors; she was not aware of the Zoning Ordinance. She continued saying when they received

the code violation letter they apologized to all of their neighbors, but no one voiced their complaints to them. Mrs. Cline went on to say they have a six foot privacy fence, and the chickens are cared for three times a day. Mrs. Weirick questioned when they got rid of the rooster, and Mrs. Cline responded the weekend before the complaint was filed. She also added the hens were very loud when they started laying. Mrs. Cline stressed they currently have four chickens and have no plans of keeping any more.

The public hearing was closed at this time.

Mrs. Weirick recognized this request should have come before the Board prior to purchasing the chickens, but she stressed everyone makes mistakes. She continued saying they have allowed chickens throughout the county, and she stressed it is actually improving property values due to the influence of 4-H projects. Mrs. Weirick questioned if the neighbors have heard a significant amount of noise since the chickens first started laying eggs.

Sue Foy, 54070 Hampton Rd., came on to answer Mrs. Weirick's question and stated the noise is significant when the chickens lay eggs. She stressed they are retired and like to enjoy their yard and pool. She believes they lay for half a day, and she wears earplugs in her backyard during that time. She went on to stress the homes in the subdivision are very close, and the noise is substantial.

Mrs. Weirick stated they have approved chickens in most cases, but the Board has no control over the Home Owners Association's rules and procedures. Mr. Miller stated they typically approve this request with the restriction of no roosters, and he commented this was the first time he had heard complaints of noise. Mr. Godlewski mentioned the City of Elkhart next to the subdivision allows 6 chickens and does not require a Special Use. Mr. Miller stressed people either like the chickens or they do not, however, he does not remember a time when a similar request has been denied. Attorney Kolbus mentioned each petition is different and a time limit can be imposed as an additional commitment. Mr. Miller stated he is hesitant to turn this request down due to the Board's history with similar cases. Mr. Campanello believes to make this fair they should add an additional commitment of a time limit. Mrs. Weirick stressed this boy will continue to be attached to his chickens, and a time limit may not allow him to see his 4-H project through. She continued saying the boy will not be out of 4-H in one year. Mrs. Weirick questioned how long 4-H lasts, and Mrs. Cline responded it can go through high school. Mr. Campanello stated he does not believe it matters whether the project is 4-H; he still thinks a time restriction should be imposed. Mr. Miller suggested allowing the chickens until the 4-H project is complete. Mrs. Weirick stated she believes that is too long of a time frame and stressed that would be around eight years. She went on to state she does not believe the time frame will change the situation as there is a possibility the subdivision could be incorporated into the City of Elkhart within the time frame. She believes a yes or no answer should be given. Mr. Campanello stated he thinks a time frame will help make the situation fair. Mr. Miller suggested a two year time frame.

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 an agricultural use for the keeping of

chickens 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 9/9/16) and as represented in the Special Use application.
2. Limited to 6 chickens at any one time, no roosters.
3. Approved for a period of one year with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Suzanne Weirick, Tony Campanello, Denny Lyon, Roger Miller.

Abstain: Randy Hesser

7. The application of *First United Methodist Church of Middlebury, Indiana Inc.* for an amendment to an existing Special Use for a church to modify the approved site plan on property located on the East side of SR 13, 2,650 ft. North of US 20, in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0499-2016*.

There were seven neighboring property owners notified of this request.

Matt Schuster, Jones, Petrie, Rafinski, 4703 Chester Dr., was present on behalf of this petition. Mr. Schuster stated as part of the previous Special Use approval the church was required to present a detailed site plan when they were ready to construct the new facility. He continued saying the church is incorporating an existing pavilion along with adding a trail around the church and a gravel parking lot. He also stated they recently added a passing lane and drive approach on SR 13. Mr. Hesser clarified they do not currently have a church building on the property. Mr. Schuster responded there is currently only a pavilion on the property, and he pointed out the proposed church location. Mr. Miller stated the church has already received approval, and they now need approval of the site plan to move forward. Mr. Schuster stated the church was required by previous approval to come before the Board again when they had received detailed plans and were ready to build. He also added the church will be 21,459 sq. ft. Mr. Godlewski questioned if this property had been annexed into Middlebury yet. Mr. Schuster responded he is not sure if it has been finalized, but the church is seeking approval in order to use the city water systems. Mr. Hesser questioned if the proposed structure is all one building, and Mr. Schuster clarified the site plan. Mrs. Weirick questioned if they are required to build farther back in case the state chooses to expand the road, and he responded they are set back farther than the required 120 ft. Mr. Miller stated his only concern is the property is low. Mr. Schuster stated the building will be built up.

Ron Rissel, 55598 Nadelhorn Place, Middlebury, Minister for this new church, came on in favor of this petition. Mr. Rissel stated their church has grown and is in need of a new building. Mr. Hesser clarified Mr. Rissel is speaking in favor of 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** Roger Miller, **Seconded by** Suzanne Weirick 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 allow for the construction of a church building, to modify the approved site plan 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 9/12/16) and as represented in the Special Use application.

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

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

8. The application of *Terrill Zimmerman* for a Special Use to allow for an agricultural use (keeping of horses) on a tract of land containing less than three acres located on the North side of CR 34, 1,000 ft. East of CR 37, common address of 12745 CR 34 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0502-2016.

There were five neighboring property owners notified of this request.

Merv Stoltzfus, MS Construction, 60112 CR 41, Middlebury, was present on behalf of this petition. Mr. Stoltzfus went on to say a young Amish couple is interested in buying this property, and they are seeking approval to build a barn and keep horses for transportation. Mr. Miller questioned if he has a problem with a limit of two horses. Mr. Stoltzfus responded he does not believe the owners will have a problem with the limit as this is a starter home, but three would be better. Mrs. Weirick questioned why the barn was not on the petition. Mr. Hesser clarified the barn does not require any Board of Zoning Appeals action.

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 a Special Use to allow for an agricultural use (keeping of horses) 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 9/12/16) and as represented in the Special Use application.
2. Limited to 2 adult horses at any one time.

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

Yes: Suzanne Weirick, Tony Campanello, Roger Miller, Deny Lyon, Randy Hesser.

Mr. Godlewski presented a staff item addressing the 90 day deadline to pull an Improvement Location Permit. He stated the staff is considering extending the condition from 90 days up to 180 days. Mr. Miller mentioned he has not heard a lot of complaints with the time limit. Mrs. Weirick clarified this will give the petitioners more time to work out the details needed to pull a permit. Mr. Kolbus stated in order to extend the deadline it will need to be put on the agenda as a staff item for next month.

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

9. The application of ***Missionary Church North Central District, Inc.*** for an amendment to a Special Use for a church to allow for the construction of a pavilion on property located on the West side of SR 15, 1,000 ft. South of CR 142, common address of 67621 SR 15 in Jackson 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-0494-2016.

There were 24 neighboring property owners notified of this request.

The petitioner was not present; hearing continued to the end of the 9:30 A.M. time slot. See item #12 on page 12.

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

10. The application of ***Tri County Land Trustee (Land Contract Holder) and Ray Weaver (Land Contract Purchaser)*** for an amendment to an existing Special Use for a home workshop business for a woodworking business to allow for the construction of an addition to an existing workshop and for a Developmental Variance to allow the total sq. ft. of accessory structures to exceed the total sq. ft. allowed based on total sq. ft. of living space in residence on property located on the East side of CR 43, 1,200 ft. South of CR 28, common address of 60988 CR 43 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0500-2016.

There were four neighboring property owners notified of this request.

Merv Stoltfus, MS Construction, 60112 CR 41, Middlebury, was present on behalf of this petition and stated Mr. Weaver is expanding his business. Mr. Stoltfus continued saying Mr. Weaver is in need of more space for personal storage. He stated the existing workshop will be used for lumber and personal storage, and the new building will be his workshop. Mr. Hesser clarified the new building will be used only for the business. Mr. Miller questioned if the hours of operation needed to be limited as an additional commitment in this approval. Mr. Hesser mentioned the hours of operation are listed in the questionnaire. Mr. Campanello questioned if

Mr. Weaver has any plans to add employees to his growing business. Mr. Stoltzfus responded saying Mr. Weaver does not have any outside employees, and his son will be helping him. Mr. Campanello asked the amount of semi deliveries, and Mr. Stoltzfus stated he does not know possibly one a week. Mr. Campanello stated the Board is concerned with semis backing in/off of the road. Mr. Stoltzfus stated he believes they have enough room to turn around on the property. Mr. Campanello stated he would like to add an additional commitment of no backing on or off of CR 43.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller questioned if Mr. Weaver can have as many employees as he would like without a restrictive commitment. Mr. Hesser clarified the petitioner is restricted to two outside employees with the home workshop approval.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Suzanne Weirick that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a home workshop business for a woodworking business to allow for the construction of an addition to an existing workshop 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 9/12/16) and as represented in the Special Use application.
2. Backing out or backing in of vehicles from/onto CR 43 is prohibited.

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

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

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 Developmental Variance to allow the total sq. ft. of accessory structures to exceed the total sq. ft. allowed based on total sq. ft. of living space in residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is 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 9/12/16) and as represented in the Developmental Variance application.

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

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

11. The application of ***Darrell & Tracy Cannan*** for a Use Variance for warehousing and storing of a tow truck on property located on the South side of Surrey Lane South, 1,800 ft. Southeast of CR 113, North of CR 28, common address of 23408 Surrey Ln. in Concord 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-0455-2016*.

There were 21 neighboring property owners notified of this request.

Darrell Cannan, 23408 Surrey Lane, Elkhart, was present on behalf of this petition. Mr. Cannan stated he is requesting approval for a recovery wrecker to be parked in his driveway. He continued stressing when he is on call he needs access to his vehicle at all times. Mrs. Weirick questioned if the tow truck is an emergency vehicle, and Mr. Cannan responded it is dispatched by 911 dispatchers but lacks the classification of an emergency vehicle. Mr. Campanello questioned the owner of the vehicle, and it was found that Thompson's towing is the owner. Mr. Cannan went on to say he was previously employed by Howards Tow Master and received no complaints. He also stated he feels the complaint could potentially be a personal issue. Mr. Miller questioned if the vehicle could be parked in a different location, and Mr. Cannan responded the vehicle would have to be placed at Thompson's Towing. Mrs. Weirick clarified the wrecker services the entire county. Mr. Cannan stated they cover a large area, are very limited on response time, and need immediate access to the vehicle. Mrs. Weirick also questioned how often he is on-call and if the vehicle will be placed off site when he is not on-call. Mr. Cannan stated he is on-call two nights a week and every other weekend; his vehicle will be parked at Thompson's Towing when he is not on-call. Mr. Campanello questioned if they are the only company who responds to 911 calls, and he responded they are not. Mr. Campanello also questioned how his driving is affected when he is going to a call. He responded they, by law, have to abide by the speed limits, and he also typically drives slower through the subdivision at night.

Don McQuarie, 26861 CR 26, Deputy with the Elkhart County Sheriff's Department, came on in favor of this petition and stated he works directly with the wreckers out of the Special Services department. Deputy McQuarie stressed the wreckers are in specific zones in order to allow for faster response times. He continued saying the wreckers have a certain amount of time to respond before another wrecker is called. He also mentioned a school bus in the vicinity, which is parked there more frequently than the wrecker. Deputy McQuarie stressed the wrecker is only 30 ft., their smallest wrecker, and the company is a stand-up company with well-maintained equipment. He continued saying they need the wrecker at the scene as soon as possible to clear the roadway. Deputy McQuarie mentioned he does not believe this petition falls under warehousing and storing, because the truck is not being stored on the property. He went on to stress Mr. Cannan is parking on this property to help complete the Sheriff Department's mission. Mr. Miller questioned why parking this vehicle at Thompson's Towing would change their response time, and Deputy McQuarie responded it will increase the response time. Mr. Hesser questioned where the school bus is located. Deputy McQuarie pointed out the general location of the school bus on the aerial. He continued saying Thompson's Towing is located 15 to 20 minutes from the Sheriff's Department. He then stated they have multiple companies placed strategically around the county to allow for the quickest response within a 20 minute time frame. He also mentioned the wrecker is outside if the Board wished to look at it.

Deputy McQuarie stressed they do have a plan B if the petition is denied. However, that plan will increase the risk of the wrecker being hit. Mr. Campanello questioned if any commercial vehicles other than the bus are parked in the neighborhood, and he responded a semi is parked in the adjoining subdivision.

James Steel, 11433 CR 14, Middlebury, the owner of Thompson's Towing, was present in favor of this petition. He submitted a picture of the semi parked in the neighborhood [Attached to file as Petitioner's Exhibit #1]. He then stated the company has speed monitors on their trucks, and Mr. Cannan will be removed from the night rotation if he speeds through the neighborhood. He also stressed if Mr. Cannan is not allowed to park in his driveway, his job may be in jeopardy due to the length of response time. Mr. Steel stressed due to being centrally located, they have the largest area to cover within the county. Mr. Miller asked about volunteer fire department procedures, and Mr. Steel stated he does not know their procedures. He went on to stress missing his 20 minute response time will cause him to lose his rotation. Mr. Miller asked what area Thompson's Towing covers, and he responded up to the state line, down to the south county line, and possibly over to the Noble County line. Mrs. Weirick questioned why this was not brought before the Board sooner as the complaint was filed a year ago. Mr. Steel responded Mr. Cannan was working for another company at that point.

Scott McDowell, 60416 Surrey Ln., Goshen City Fire Department, was present in remonstrance and submitted a petition signed by 18 landowners who could not make it to the hearing [Attached to file and Remonstrator's Exhibit #1]. He also submitted an exhibit packet which he explained throughout his presentation [Attached to file as Remonstrator's Exhibit #2]. He stated this is not the time to discuss Thompson's Towing's contract with the Sheriff's Department. He believes allowing this wrecker to be parked in their subdivision will be injurious to the community. Mr. McDowell showed the five potential entrances and exits Mr. Cannan could take through the subdivision, and he believes this raises many safety concerns. He does not believe the tight roads are adequate for this vehicle to navigate, and he stressed this will affect their property values. Mr. McDowell stated he believes a commercially zoned property is located less than five miles from Mr. Cannan's property which is already storing the company's vehicles. He stated the petitioner also sometimes parks his vehicle in the church parking lot behind his property. He went on to say the vehicle can be heard with his windows and doors closed, and he stressed this wrecker is not classified as an emergency vehicle but as a recovery vehicle.

Mr. Steel responded that the wrecker in question is not a heavy duty vehicle but is a medium class commercial vehicle. Mr. Campanello questioned if the petitioner uses the shortest route when he leaves the subdivision, and Mr. Steel stated he believes Mr. Cannan takes the shortest route to his destination. He also stated he has stipulations on idle time and will not allow him to leave his vehicle sit idle for long periods of time. Mr. Hesser questioned if the subdivision has any restrictive covenants, and Mr. McDowell stated he does not know of any. Mrs. Weirick questioned if a school bus is longer than this vehicle. Mr. Steel stated the wrecker is only 30 ft. long, and a school bus is 45 ft. He also stated it is approximately the same size as a motor home.

Mr. Cannan stated he talked to all of his neighbors within 300 ft. of his property, and no one stated they were opposed to his petition. He also stated he does not leave his truck running for long periods of time. He went on to say he takes the shortest distance out of the neighborhood to his destination, but he is willing to take a longer route to please his neighbors.

Mr. Cannan stressed he is just trying to do his job and make a living. Mrs. Weirick questioned if the petitioner is okay with adding a commitment that his vehicle be parked off site when he is not on call, and he responded yes. He also added the truck will be 19 ft. off of the road in order to keep the line of site clear. Mr. Campanello asked the petitioner about a picture of his vehicle parked on the road found in the remonstrator's packet. Mr. Cannan stated he only parked in the street, because he was informed he could not park in his driveway. He also mentioned the Highway Department had given him permission to park in the right-of-way as long as he does not interfere with snow removal. He continued saying the church allowed him to park in their parking lot until he gained approval from the county.

The public hearing was closed at this time.

Mrs. Weirick stated she believes this can be approved with an added commitment restricting the parking of his wrecker on his property to only when he is on call. She continued saying this is not the time or place to discuss the towing company's contract with the Sheriff's Department. She also mentioned this is a smaller vehicle than others in the community. She went on to stress Mr. Cannan is now under new supervision, which she believes will alleviate many of the issues brought up in the complaint. Mr. Miller stated he is trying to imagine being woken up in the early morning by a loud truck. Mrs. Weirick also mentioned those who he is trying to help. Mr. Miller stressed he does not see this as an emergency vehicle such as a fire truck or ambulance, which he also commented are not parked in subdivisions. Mr. Campanello brought up police officers take their vehicles home. Mr. Hesser mentioned he sees several utility vehicles and other commercial vehicles parked in driveways. He went on to say he does not believe this property is peculiar, but maybe this situation should be an exception. He then stressed the petitioner presented a strong case, however, he cannot find a way this petition falls within the legal requirements. Mr. Campanello mentioned he cannot find a way to change the Staff Analysis findings. Mrs. Weirick stressed this is a mid-sized vehicle not a heavy duty vehicle as the Staff Analysis states. Mr. Miller stated many subdivisions have ordinances prohibiting RVs. Mrs. Weirick stressed approval would be for limited parking, and the truck will not be parked on the property all of the time. Mr. Hesser stated he believes by approving this petition the Board would be going against the ordinance.

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

Motion: Action: Deny, **Moved by** Tony Campanello, **Seconded by** Randy Hesser 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 for warehousing and storing of a tow truck be denied.

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

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

No: Suzanne Weirick.

12. The application of *Missionary Church North Central District, Inc.* for an amendment to a Special Use for a church to allow for the construction of a pavilion, previously heard as Item #9 on Page 7 was recalled at this time.

Again, no petitioner was present. Attorney Kolbus stated the rules of the procedure require a petitioner to be present representing the case, however, the Board may choose to waive

that rule for this case. He continued stating the petition is typically only tabled if the Board has questions for the petitioner or remonstrators are present. Mr. Miller mentioned this is a minor request. Mr. Campanello stated he does not agree with waiving the rule as there are many houses around the church. Mrs. Weirick mentioned the neighbors also had an opportunity to attend this meeting in remonstrance, but no one is present. Mr. Miller agreed if remonstrators were present he would move to table this item, but he does not see a need to table this petition.

Motion: Action: Approve **Moved by** Suzanne Weirick, **Seconded by** Roger Miller that the Rule of Procedure requiring the petitioner to be present to hear the case be waived for this hearing.

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

Yes: Suzanne Weirick, Tony Campanello, Roger Miller, Denny Lyon.

Abstain: Randy Hesser.

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

The Staff report was previously read for item #9.

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** Suzanne Weirick 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 a Special Use for a church to allow for the construction of a pavilion 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 9/12/16) and as represented in the Special Use application.

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

Yes: Suzanne Weirick, Denny Lyon, Roger Miller.

No: Tony Campanello.

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

13. The application of **Carlin J. & Jayme R. Yoder** for a Use Variance to allow for an existing dance studio on property located on the East side of SR 13, 1,200 ft. North of CR 24, 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 #UV-0501-2016*.

There were three neighboring property owners notified of this request.

Blake Doriot, B. Doriot and Associates, P.O. Box 465, New Paris, was present for this petition with Jayme and Trinity Yoder. Mr. Doriot stated the Yoders wish to sell their home but

would like to keep their successful business. He continued saying they have another dance studio in Concord Township; this studio provides the Middlebury and Goshen clientele a closer location. He went on to say they have met all of the septic requirements. Mr. Doriot submitted a petition with neighbors' signatures in support of the dance studio [Attached to file as Petitioner's Exhibit #1]. He stated they would like to continue running this business without a residence on the property. He continued saying the Yoders' family has expanded, and they no longer have enough room in their current home. Mrs. Weirick questioned the purpose of the hearing. It was found they are changing the petition from a Special Use to a Use Variance.

Shannon Long, 6405 N 1200 W, Middlebury, came on in remonstrance. He stated he has driven by the home, and they have recently increased the size of the home.

The public hearing was closed at this time.

Mr. Miller mentioned the Board is not changing this petition other than allowing the owners to move off of the property. Mr. Hesser stated he does not have a problem with the dance studio, but he does not find this property peculiar enough to justify a Use Variance. Mrs. Weirick stressed the business is already in existence, and approval will just allow the owners to move to another location. Mr. Hesser stated approval will have a minimal impact on neighbors, however, he believes a Home Workshop Special Use restricts a business, while a Use Variance opens it up. Mr. Miller questioned if this petition is approved what else can this property become. Mr. Campanello responded this is only approval for the dance studio, and any other business would have to come back before the Board. Mrs. Weirick mentioned no relevant remonstrators were present for this issue.

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

Motion: Action: Approve, **Moved by** Suzanne Weirick, **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 existing dance studio 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 9/12/16) and as represented in the Use Variance application.
2. Approved for a performing arts studio only.
3. The studio shall be limited to a maximum of 15 students at any one time.
4. One (1) sign permitted, four (4) sq. ft. per side and unlighted.
5. There shall be no backing of vehicles onto SR 13.

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

Yes: Suzanne Weirick, Tony Campanello, Roger Miller, Denny Lyon.

No: Randy Hesser.

14. The application of **Mark Prough Living Trust** for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the West of CR 17, 593 ft. North of SR 120, in Concord Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0484-2016*.

There were 16 neighboring property owners notified of this request.

Mark Prough, 54435 Susquehanna Rd., Elkhart, was present on behalf of this petition. Mr. Prough stated he would like to build an accessory building on property without a primary residence. He continued saying the property backs up against businesses and the water way makes it a poor place to build a home. He also stressed two similar structures have recently gone up in his area. Mr. Hesser clarified Mr. Prough is willing to tie his lots together with a deed restriction.

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** Suzanne Weirick, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of 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 9/6/16) and as represented in the Use Variance application.
2. The Real Estate must be tied together with Petitioner's property, commonly known as 54435 Susquehanna Road, Elkhart, Indiana, with a deed restriction.

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

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

15. The application of **Vernon Sargent** for a Use Variance for a private off road track on property located on the North side of Yarian St., 211 ft. East of Mill St., 392 ft. South of CR 50, East of CR 3, in Locke 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-0493-2016*. Staff Analysis #3 has a typo should be R-2 not R-1.

There were 16 neighboring property owners notified of this request.

Vernon Sargent, 28566 CR 50, Nappanee, was present on behalf of this petition. Mr. Sargent stressed he did not build a track; he was just riding go-karts around his yard. Mr. Hesser mentioned before he was appointed to this Board, he did not know riding in his yard needed Board approval. Mr. Sargent went on to say he lost his wife a year ago, and he is riding to occupy his time. He stressed only one of his neighbors has a problem with his go-karts. He also mentioned the go-karts are no louder than a lawnmower, and he will not ride them every day. Mr. Miller questioned if the go-karts have standard mufflers, and he responded they do. Tina Stutzman, Vernon's sister, 8349 N 800 W, Etna Green, was present in favor of this petition. Mrs. Stutzman stated right now riding is therapeutic for her brother, and their grandkids love to

ride with him. She also mentioned her family is willing to help him plant trees and keep up the track.

Randy Spitaels, Kindig and Sloat, 102 Heritage Pkwy, Nappanee, was present representing the remonstrators, Judd and Wende Chaille. Mr. Spitaels pointed out the remonstrator's lots immediately to the North of the petitioner's property on the aerial. Mr. Campanello pointed out a right-of-way in between the two properties. Mr. Spitaels mentioned Mr. Sargent's and the Chailles' properties are part of Ebys 1st Subdivision. He went on to say the Chailles' property is probably the most affected in the subdivision as the winds come from the South and carry dust in their direction. Mr. Spitaels then reviewed the remonstrator's packet submitted [Attached to file as Remonstrator's Exhibit #1]. Mr. Hesser questioned if the subdivision has any restrictive covenants, and it was found this is an older subdivision that was not set up with any covenants. Mr. Miller questioned if all of the dust is generated by the go-kart track as the subdivision is surrounded by an agricultural area. Mrs. Weirick stressed the area in question is zoned residential. Mr. Spitaels responded the remonstrators believe the dust is generated by the track. He then submitted additional photographs in support of the Chailles' remonstrance [Attached to file as Remonstrator's Exhibit #2]. Attorney Kolbus stated Staff found the subdivision was created in 1874. Mr. Hesser clarified Mr. Sargent owns the property to the East of his track. Mr. Spitaels also submitted a picture of the chain link fence between the two properties [Attached to file as Remonstrator's Exhibit #3]. Mrs. Weirick clarified the white picket fence is only around the Chailles' pool. Mr. Spitaels then submitted an aerial with the 1,000 ft. distance required for a Special Use track in an A-1 zone represented in green [Attached to file as Remonstrator's Exhibit #4]. Mr. Campanello questioned who owns the right-of-way strip and why part of the property has been developed. Mr. Lyon stated it is public property. Attorney Kolbus stressed the aerial property lines are not 100% accurate and can be off by some distance. Mr. Hesser questioned how wide the right-of-way would be, and Mr. Godlewski responded 16 ft. Mr. Spitaels closed by stating he does not believe the application has provided enough evidence to support a Use Variance, and the evidence provided by the remonstrators proves the requirements in the application are not met. Mr. Spitaels stressed that finding #3 has no evidence proving this property is peculiar in any way. Mr. Hesser questioned Staff if this use would be allowed by right if it was in an A-1 zone and 1,000 ft. away from neighboring properties. Mr. Godlewski responded it would be allowed by Special Use. Mr. Spitaels commented the Staff Report does not address the 1,000 ft. requirement.

Darren Snodgrass, President of TNG Enterprises LLC, 1829 Fortner Dr., Indianapolis, was present in remonstrance representing the Chailles. Mr. Snodgrass submitted his written letter, which he then read before the Board [Attached to file as Remonstrator Exhibit #5].

Judd Chaille, 28602 CR 50, Nappanee, owner of the property to the North of the petitioner's property was present in remonstrance. Mr. Chaille stated his family is very upset. He continued saying they are simply asking for the right to be outside and enjoy their property while swimming, barbequing, relaxing, and similar activities. He believes a go-kart track is unreasonable in a residential setting and prohibits his family from enjoying their property. Mr. Chaille stressed the ordinance requires a 1,000 ft. setback, and Mr. Sargent's setback is only 1/200 of that setback. He continued saying they located in this area because they wanted neighbors while not having the busyness of city-life. Mr. Chaille responded to Mr. Campanello's previous comments about developing the right-of-way and stated the back strip is

a utility easement. He continued saying the previous property owners stated the easement has been yard for at least 40 years. He also added he has spoken to the utility company, and they allowed him to do what he wanted on the property. He developed the edge of the easement with the understanding that if the easement is needed, the company is not liable for any damage caused. He stressed he fertilizes and mows the easement as if it was part of his yard. Mr. Chaille closed by saying the decision made today will affect them every day.

Wendy Chaille, 28602 CR 50, was also present in remonstrance.

Mr. Sargent responded by saying he has not been given the opportunity to clean up his track. He stressed he is trying to wet it down, but he is unable to reach one corner of the track. Mrs. Stutzman requested a little time to clean up the track and have the opportunity to show respect to the neighbors. She continued saying, if the Chailles would like to be outside, Mr. Sargent will respect that and refrain from riding his go-karts. She stressed he will not disturb the neighbors when they would like to have parties. Mr. Sargent stated he does not ride when his neighbors have their laundry out. Mr. Miller questioned how much he will use this track, and a time mentioned when he had used it quite a bit throughout the day. Mr. Sargent responded he rode for a while after he had first purchased the go-karts. Mrs. Weirick mentioned the submitted remonstrance states water does not help the track, and oil cannot be put on the track due to well contamination. Mr. Sargent stated he has plans to make a watering tank and to put up trees by his fence to help with the dust. Mr. Miller questioned the hours of operation. Mr. Hesser mentioned the petition states 5 P.M. to 9 P.M. every day, but only 2 to 3 hours a day. Mrs. Stutzman mentioned he will use the track in the evening to allow the neighbors to enjoy the pool during the day. Mrs. Weirick stressed both families work and will have the same time frame to enjoy their yards.

The public hearing was closed at this time.

Mrs. Weirick mentioned this is a plot of land, which has nothing to support it as a peculiar property or support approval of this Variance. She stressed previously in the meeting it was determined the property was not peculiar enough to support a recovery wrecker, and this petition is for a recreational use. She believes to evenly apply the standard of a property being peculiar there is no evidence to support this petition. Mr. Campanello responded he believes it is peculiar because Mr. Sargent owns the property. Mr. Hesser stated if this was in an agricultural zone it would still require a Special Use and a 1,000 ft. setback. He continued saying he cannot find grounds to approve this request. Mr. Campanello questioned how the Staff came up with finding #3. Attorney Kolbus stated it is true of any property, and Mr. Godlewski mentioned it is a broad statement. Mrs. Weirick stressed it should then be applied consistently. Mr. Hesser clarified this is a Use Variance and not a Special Use. He stressed the owner can repetition in six months or less if an agreement is met with the neighbors. He continued saying the Board deals with land use and not personal requests.

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

Motion: Action: Deny, Moved by Randy Hesser, **Seconded by** Suzanne Weirick that this request for a Use Variance for a private off road track be denied 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. The race track is not for commercial use and is for personal use only.

2. The use and value of the area adjacent to the property would be affected in a substantially adverse manner.
3. A need for the Use Variance does not arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

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

Yes: Suzanne Weirick, Randy Hesser.

No: Tony Campanello, Roger Miller, Denny Lyon.

Mr. Campanello stated if a motion is made for approval, the Board needs to determine days and hours of operation. Mr. Hesser mentioned in an agricultural zone a 1,000 ft. buffer is required, and this is a residential zone with no buffer. Mrs. Weirick stressed a property owner's rights should never impede upon their neighbor's rights. Mr. Campanello stated the remonstrators made the decision to build there, and Mrs. Weirick responded the remonstrators outdoor living space was built before the track was established. Mr. Campanello stated the petitioner seems to be doing what he can to work with the neighbors and also make their life comfortable. Mr. Miller suggested approving this request with added restrictions and a time frame. Mr. Hesser mentioned similar tracks have been allowed in situations with a larger buffer, and stressed this property is in the middle of a subdivision.

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 a Use Variance for a private off road track 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 9/9/16) and as represented in the Use Variance application.
2. For personal use only.
3. Reasonable steps to reduce noise to include:
 - a. Noise reduction fence and/or;
 - b. Additional noise reduction parts on the go-karts i.e. advanced mufflers or sound deadeners.
4. Dust control measures must be taken, included but not limited to:
 - a. Wetting the track or spraying the track down with water;
 - b. Optional: installation of dust-free surfaces.
5. Hours of Operation:
 - a. Monday thru Saturday
 - b. Dawn to dusk

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

Yes: Tony Campanello, Roger Miller, Denny Lyon.

No: Suzanne Weirick, Randy Hesser.

16. The application of **Scott Parson** for a Use Variance for warehousing and storing of a commercial vehicle on property located on the Northeast end of Oak Tree Lane, West of CR 19, 1,635 ft. North of CR 2, common address of 50744 Oak Tree Ln. in Washington Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0480-2016*.

There were 14 neighboring property owners notified of this request.

Scott Parson, 50744 Oak Tree Ln., Bristol, was present on behalf of this petition and stated he wishes to park the semi on his property during weekends for light maintenance. Mr. Hesser clarified this is for the semi tractor only and not the trailer. Mr. Lyon questioned what he considered light maintenance, and Mr. Parson responded polishing and cleaning. Mr. Parson submitted a petition signed by neighbors in favor of his request [Attached to file as Petitioner's Exhibit #1]. Mr. Hesser questioned if the subdivision has any restrictions, and he responded he is not aware of any restrictions. Attorney Kolbus asked for clarification on what the petitioner considers as the weekend. Mr. Parson responded Friday evening until when he leaves Sunday night or Monday morning. Mr. Campanello questioned if this would be every weekend, and he responded yes.

Michael and Felicia Netro, 50741 Oak Tree Ln., Bristol, came on in remonstrance of this petition and submitted a plot of the subdivision with highlighted lots and pictures [Attached to file as Remonstrator's Exhibit #1]. Mrs. Netro pointed out their home on the aerial and stated she has lived on the property with her husband for 25 years. She stressed they wanted a quiet place to live and have not had many problems. She went on to say she does not see why someone would spend \$250,000 on a house to park a semi. Mrs. Netro stressed this will make the property values in the subdivision decrease. Mr. Hesser questioned if the amount mentioned was the typical value for homes in the subdivision, and Mrs. Netro responded the Parsons' house is one of the more expensive homes in the subdivision. She also added she has spoken with some of her friends who drive semis, and she was told they do not bring their trucks home. Mr. Hesser stressed the Board deals with land use, not the people involved. Mrs. Netro mentioned when Mr. Parson washes his truck, the oil and grease goes into their groundwater.

Michael Netro, 50741 Oak Tree Ln., Bristol, came on in remonstrance. Mr. Netro stated the roads in the subdivision are residential roads, which are already in bad shape. He believes this semi will damage the roads even more and mentioned you cannot fit a semi and a car on the road at the same time. Mrs. Netro stated Mr. Parson does not just park his semi on the property Friday through Sunday, and she added she has heard it running during the early hours of the morning. Mrs. Netro questioned if he will be allowed to have more than one truck if this request is approved, and Mr. Hesser responded the request and approval will be for only one truck.

Scott Schnell, 50733 Oak Tree Ln., Bristol, came on in remonstrance and pointed out his home on the aerial. Mr. Schnell stressed his bedroom is right next to where Mr. Parson parks his truck and lets it run for hours in the early morning. He also stated his furnace picks up the diesel

fuel smell and drags it throughout his house. Mr. Schnell questioned why he would buy a house in a residential area to park a semi on his property.

Nancy Lambdin, 50877 Oak Tree Ln., was present in support of this petition and stated her daughter was the previous owner of the property in question. She added her daughter's boyfriend lived with her and parked his commercial truck and trailer in front of the large garage. She believes no one can see the truck, but a code complaint was filed. She continued saying when her daughter called about the complaint she was told the property was zoned commercial, and she could park the truck on her property. Mrs. Lambdin questioned why they were informed the property was in a commercial zone rather than a residential zone, and Mrs. Weirick stated the Board cannot speak to the past.

Richard Lambdin, 50877 Oak Tree Ln., was present in support of this petition and stated the semi is a show truck and well maintained. Mr. Lambdin stressed the subdivision is surrounded by an agricultural area with tractors, air planes, and other farm equipment coming through frequently. He questioned when the land was zoned residential, because he was under the impression it was zoned commercial. Mr. Hesser questioned how the subdivision would have been zoned commercial. Mr. Campanello mentioned the property could have received approval for a Special Use, and that could be what Mr. Lambdin is speaking to. Mr. Hesser questioned if the subdivision was zoned commercial, and Mr. Godlewski confirmed the entire subdivision is zoned residential.

Mrs. Netro stated the toll road has parking for trucks only three miles down the road. Mr. Schnell submitted pictures of the semi parked next to his property line [Attached to file as Remonstrator's Exhibit #2].

Mr. Parson showed the Board a second place finish award he received for showing his truck. He continued saying three garbage trucks go through the neighborhood every week, which weigh more than his semi. He also submitted pictures of a commercial painting van in the neighborhood [Attached to file as Petitioner's Exhibit #2]. Mr. Parson stressed since the complaint he starts the truck, runs it 15 minutes, and then leaves; he also shuts it off right after he returns home and does not run it all weekend. He went on to say when he bought the property he was not aware it was zoned R-1 or of any restrictions in that zone.

The public hearing was closed at this time.

Mr. Hesser stressed parking trucks on property in an R-1 zone is an issue the Commissioners should consider modifying. He continued saying he does not believe the truck is particularly invasive, however, the ordinance states you cannot park a commercial vehicle in a residential zone. He does not believe this property displays anything peculiar enough to allow for approval of a Use Variance. Mr. Campanello mentioned the recovery tow truck was denied earlier in the meeting.

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 Use Variance for warehousing and storing of a commercial vehicle be denied in accordance with findings #2, #3, and #4 of the Staff Analysis as the Findings and Conclusions of the Board:

2. The use and value of the area adjacent to the property will be affected in a substantially adverse manner. Commercial and heavy duty vehicles are not compatible in residential areas.

3. A need for the Use Variance does not arise from a condition that is peculiar to the property involved. This subdivision was established as an R-1 single-family neighborhood, and there are no conditions that are peculiar to justify this request.
4. Strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the property. There are properly zoned areas to park commercial and heavy duty vehicles.

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

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

17. The application of *Carlin J & Jayme R Yoder* for a Developmental Variance to allow for the construction of a residence on property served by an unimproved and non-maintained county road 2,000 ft. North off of SR 120, 6,800 ft. East of SR 13, 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 #DV-0442-2016*. Mr. Godlewski submitted a letter in remonstrance from Mr. and Mrs. Anthony Chump.

There were three neighboring property owners notified of this request.

Blake Doriot, B. Doriot and Associates, P.O. Box 465 New Paris, was present on behalf of this petition with Jayme and Trinity Yoder, James and Cami Peck, and realtor David Meyers. Mr. Doriot requested the 90 day Improvement Location Permit deadline recommended in the Staff Report be lengthened due to the property being for sale. Mrs. Weirick mentioned the Board has already discussed extending the deadline. Mr. Doriot stressed he is here to talk about land use, and stated the right-of-way was established in 1871. He continued saying he received a call from an Attorney working with the neighbor on the Northern end of the right-of-way who claimed it did not exist and was able to find a deed for the right-of-way. He went on to say in 1993 he platted a subdivision, and LaGrange County has also gone through four subdivisions on their side of the right-of-way. He stressed it is a dedicated right-of-way but not maintained. He also pointed out the Chupps' parcel to the South and the Yoders' parcel were created at the same time in 2002, predating the subdivision ordinance allowing them to be grandfathered in. Mr. Hesser questioned how the parcels were created. Mr. Doriot clarified the property was one parcel split to create two parcels, which were sold to the Chupps and Yoders. Blake also mentioned the Chupps then came before the Board sometime between 2002-2005 and received approval to build on an unimproved county right-of-way. Mr. Hesser asked Mr. Doriot as the County Surveyor if the landowners typically enter into an agreement on road maintenance in similar situations. Mr. Doriot responded no standard has been set for this situation. Mr. Doriot submitted a petition signed by both Lagrange and Elkhart County neighbors in favor of this request [Attached to file as Petitioner's Exhibit #1]. Mr. Doriot stressed the Board has approved other requests on this right-of-way as has LaGrange County. Mr. Hesser mentioned last month he felt as though the petitioners refused to enter into a maintenance agreement. Mr. Doriot responded the petitioners do not refuse to join into an agreement, but they refuse to join into the agreement presented to them. He stressed maintenance is an issue which needs to be worked out among private parties; the Board is here to discuss land use. He added this land use is consistent with previous Board actions. Mrs. Weirick requested clarification on the request. Mr. Miller stated it is to allow the construction of a residence on an unmaintained and unimproved county road.

David Meyer 2809 Ferndale Rd., Elkhart, was present in favor of this petition. Mr. Meyer stressed if this property is not buildable, it will be detrimental to its value. He also added even if he sells it for a different use, people will be using the road to access the property. Mr. Hesser questioned why this parcel was not brought before the Board at the same time as the Southern parcel.

Jayne Yoder 59246 SR 13, Middlebury, came on in favor of this petition. In response to Mr. Hesser's question Mrs. Yoder stated they purchased the property as hunting property and have used it as such for around 14 years. She continued saying Mr. Chupp purchased his parcel with the intent to build and came before the Board for approval. She then stated they sold it as either hunting property or land to build, and the potential buyers wish to build on the property. Mr. Lyon stated it is not up to the Board to determine the maintenance agreement. Mr. Campanello stated knowing the Chupps' and the Yoders' parcels were split from the same parcel, and Mr. Chupp gained approval to build makes a difference in this case. Mrs. Weirick questioned why access matters as regardless of the use of the property access is going to be needed. Mr. Hesser stressed this would not be an issue if the county maintained the road. Mr. Campanello stated each property on the right-of-way has gone before either the Elkhart or LaGrange County Board and gained approval to build. Mr. Doriot submitted a packet which laid out the LaGrange county approval for the subdivisions and houses on their side of the right-of-way [Attached to file as Petitioner Exhibit #2].

Shannon Long, 6405 N 1200 W, Middlebury, came on in remonstrance of this petition. Mr. Campanello questioned how Mr. Long has a Middlebury address when he live in LaGrange County. Mr. Hesser commented the address is related to the post office. Mrs. Weirick confirmed Mr. Long lives across the street from the subject property and also uses the right-of-way to access his property. Mr. Hesser stated he would like to address the issue with maintenance of the road as his impression was the petitioners refused to help. Mr. Long stated the other property owners have an agreement, but he does not have it with him. Mr. Miller mentioned this petition was tabled at the last meeting to allow Mr. Long time to look at legal options with his lawyer. Mr. Long responded he contacted Mr. Sloat, however, it was found Mr. Sloat represents Mr. Doriot. Mr. Campanello questioned why Mr. Long is against this request. Mr. Long stated he has three points; honesty, public health/safety, and proper documentation. Mr. Campanello stated he does not believe the issues listed deal with land use. Mr. Hesser disagreed and believes the issue is maintenance of the right-of-way. Mr. Campanello stressed a maintenance agreement needs to be worked out between the buyers and other property owners. Mrs. Weirick stated Mr. Long's first point honesty does not apply to land use, however, she would like to hear his public health and safety point. Mr. Long stated the road is a single lane road. Mr. Campanello stated if the remonstrator can access his home the petitioner should be allowed to also. Mr. Long stressed another home will increase traffic, and Mr. Campanello responded the road was already being used to access the property for hunting on that parcel. Mr. Hesser commented the petitioners do not hunt every day. Mr. Long mentioned a few of the neighbors have already had accidents on the road. He went on to say the Staff Report included a Use Variance form on which "Use" was crossed out and replaced by "Developmental". He stated he believes a Developmental Variance form that should have been filled out. Mr. Hesser questioned if the remonstrator has a concern with any questions on the Developmental Variance form which were not answered. Mr. Long questioned #9 on the form and mentioned the

increased traffic. Mr. Miller stated he does not agree with the petitioners refusing to help with road maintenance, however, the only reason this petition was tabled was to allow the remonstrators time to consult a lawyer. He continued stressing most of the neighbors on the LaGrange County side have signed a petition in favor of this request. Attorney Kolbus stressed the Rules of Procedure do not require us to notify neighbors in other counties. Mr. Long stated the questionnaire asked for a site plan, which he believes should show the house they are wanting to build. Mr. Campanello stated a site plan will be submitted when the Improvement Location Permit is pulled.

Mr. Hesser stated he does not have sympathy for the owners, because they created this situation. He stressed his big issue was he believed the neighbor and land owner were both being unreasonable. Mr. Doriot stated Mr. Bontrager, another neighbor, told him no one participates in maintenance of the road. He continued stressing LaGrange County has allowed six homes on their side of the right-of-way and Elkhart has also allowed one without this issue. He also stated they were never notified of an incomplete application, and it was found the application is not an issue.

James and Cami Peck, 2809 Ferndale, Elkhart, the purchasers of the property, came on in support of this petition. Mrs. Peck stated they were not informed they would need to help with road maintenance or what that would entail. She stressed they do not know what their fair share will be, and they have talked to the neighbors who stated they only pitch in here and there when repairs are needed. She continued saying they do not have a problem with being neighborly, but do have a problem with agreeing to conditions which are undefined.

Mr. Doriot stated the Pecks are not unreasonable people and will help out with reasonable requests.

The public hearing was closed at this time.

Mr. Hesser stated he would prefer the road maintenance issue be worked out prior to approval, but he is satisfied the petitioners are acting reasonable. He also questioned what the Board wishes to do with the 90 day Improvement Location Permit. Mr. Campanello suggested extending it to a year. Mr. Miller suggested 180 days as discussed earlier in the meeting. Mr. Campanello stated he does not believe that will be enough time for this property. Mr. Doriot stated they now need to schedule a closing, close on the property, receive a mortgage, find a contractor, ect. Mrs. Weirick stressed this deadline is only to start the home; the home does not have to be finished within that time frame. Mr. Doriot stressed the purchasers do not know how to design the site. Attorney Kolbus stated Staff is comfortable with a year, and Mr. Doriot agreed to a year.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Suzanne Weirick 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 the construction of a residence on property served by an unimproved and non-maintained county road 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 one year 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), when applicable.

2. Approved in accordance with the site plan submitted (dated 8/15/16) and as represented in the Developmental Variance application.

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

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

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

19. The meeting was adjourned at 12:48.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary