

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18th DAY OF AUGUST 2022 AT 9:00 A.M.
MEETING ROOMS 104, 106, & 108 – ADMINISTRATION BUILDING
117 N. 2nd STREET, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Chris Godlewski, Plan Director; Jason Auvil, Zoning Administrator; Danny Dean, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Roger Miller.

2. A motion was made and seconded (*Norman/Warner*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of July 2022 be approved as read. The motion was carried with a unanimous roll call vote.

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

****Deb Cramer stepped down from the Board at this time****

4. The application of *Giada Holdings LLC* for a Special Use for warehousing of RVs, boats, trailers, and shipping containers on property located on the North side of CR 10, 1,500 ft. East of CR 3, common address of 28443 CR 10 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0513-2022*.

There were 17 neighboring property owners notified of this request.

No petitioner was present at this time.

Kim Kramer, 52273 CR 11, Elkhart, was present in remonstrance. She stated she doesn't want this in her back yard. She showed on the aerial where she lives. She stressed she doesn't believe there is a need for this and the property should remain as it is currently.

The petitioner showed at this time.

Christopher Cory White, 215 Prairie St., Elkhart, was present for this petition. He stated that inside the fenced in area of the subject property he wants to add parking for RVs and boats. He explained this is an expansion of the storage units he already owns on the property to the south. He continued to say he owns 40 acres to the west and 5 acres to the south of the subject property. Mr. Hesser asked if the existing storage address was 28443 CR 10. Mr. White responded that was correct. Mr. Warner asked how many shipping containers he would store on the property. Mr. White responded there would be 40 to 50 storage containers, though storage would be primarily vehicles, boats, trailers, and RVs. Further, he went on to say he was receiving calls about outdoor storage, therefore he thought it was a good idea to use the land behind the storage units for outdoor storage as it can't be seen from the road. He stressed that the land can't be used for anything else due to the land being on the National Priority List. Mr. Warner asked if he would be using heavy

equipment to move the containers on site. Mr. White responded most likely no, he doesn't anticipate owning that kind of equipment, and he already has 6-8 shipping containers on the property. He continued to say that when he called the planning office he was informed that storage units aren't regulated in an A-1 zone, though that is only for personal storage, and not for commercial use. He stressed he will not be stacking them on site, and he doesn't expect to have any more shipping containers than what he has currently. Mr. Norman asked if the shipping containers are his for his own personal storage. Mr. White responded yes those are for his own use. Mr. Norman asked how many containers are on site currently. Mr. White responded he has 7.

The public hearing was closed at this time.

Mr. Hesser asked if there was a concern about limiting the amount of storage or shipping containers. He went on to say that in regards to the concerns of the remonstrator, these storage units will be on the opposite side of the road with a natural buffer that is already in place.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Ron Norman 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 warehousing of RVs, boats, trailers, and shipping containers 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. The request is approved in accordance with the site plan submitted (6/24/2022) and as represented in the Special Use application.
2. Any expansions to this Special Use will require a new DPUD or an amendment to the existing DPUD to the south.

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

Yes: Steve Warner, Ron Norman, David Miller, Randy Hesser.

Absent: Deb Cramer.

*****Deb Cramer returned to the Board at this time*****

5. The application of ***AMMF Trustee Corporation (Land Contract Holder) & Merle E. Miller & Mary E. Miller (Land Contract Purchaser)*** for a Special Use for a home workshop/business for a catering business on property located on the West side of CR 11, 320 ft. North of US 6, common address of 72433 CR 11 in Union Township, zoned A-1, came on to be heard.

There were nine neighboring property owners notified of this request.

Mr. Auvil submitted an email from the petitioner requesting that the petition be withdrawn

[Placed in file as Staff Exhibit #1].

No petitioner was present for 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: Withdraw, **Moved by** Randy Hesser, **Seconded by** Ron Norman that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a catering business was withdrawn at the request of the petitioner.

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

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

6. The application of *Jesus R. Torres & Maria V. Torres, Husband & Wife* for a Special Use for outdoor recreation (animal racing) on property located on the South side of CR 14, 1,260 ft. East of CR 17, in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0584-2022*.

There were 11 neighboring property owners notified of this request.

Jesus Torres, 505 Glenwood Dr., Goshen, was present for this petition. He stated on the left side of his property he wants to build a horse tract that is 50 ft. wide by 1,300 ft. long, for his family to train his horses. He continued to say they will be training on Tuesdays and Thursdays, and only have events once a month. Mr. Hesser asked if events will be once a month or twice a month. Mr. Torres responded once a month. Mr. Hesser asked if there will be any parking, stands, and seating. Mr. Torres responded there won't be stands just parking for vehicles and people can bring chairs. Mr. Hesser asked if there will be restrooms. Mr. Torres responded they will have a port-a-potty available. Mr. Hesser explained he would like to see bathrooms, viewing areas, and parking areas identified on the site plan. He went on to say that in the application it was mentioned that no alcohol, weapons, or gambling will be allowed on site, and asked how they propose to enforce those restrictions. Mr. Torres responded they will be taking donations for their church, and will watch to make sure there is no gambling. Mr. Hesser asked if there will be any on site pari-mutuel for gambling. Mr. Torres responded no, there won't be anything like that on the property and there will be a sign posted saying no weapons and gambling. He continued to explain they will try and have security and police on site when they have events. Mr. Norman asked him to clarify if he will or won't have police presence. Mr. Torres responded they have to have police on site for events. Mr. Norman asked how many people he expects to have attending their events. Mr. Torres responded this is his first time doing this type of event and believes maybe between 50 and 100 people. Mr. Miller asked if he currently does horse racing in Ligonier. Mr. Torres responded his family did racing in Ligonier, but this is his first time doing horse racing. Mrs. Cramer asked how many horses will be kept on the property. Mr. Torres responded they will have their horses on the property for training, though when other people come to the races there could be up to 20 horses. He continued to say that they are going to be putting sand down for the track and this is mainly for family gatherings. Mrs. Cramer asked where their horses will be kept on the property, and if there is a barn for the horses. Mr. Torres responded he will be keeping his horses on the property but there won't be a barn, and they won't be building a barn. Mr. Norman asked how many of his horses will be on the property full time. Mr. Torres responded there will be 4 horses. Mr. Hesser clarified there is a house next to the subject property even though the application says there aren't any houses nearby. Mr. Torres stated yes there is a house to the north, though the houses can't be seen from the subject property.

Susan Chilberg, 56898 Mark Manor Dr., Elkhart, was present in remonstrance. She stated she is against this petition due the petition reading animal race track so no one knew what kind of animal was being raced. She continued to say that she wants to know how the horses will be kept, where they are going to be kept, what veterinarians will be called in to keep the horses safe, who's going to make sure drugs aren't being brought on the property, what noise ordinances will be put in place, and who's going to keep them from gambling. She went on to say no one in the area wants this because it will diminish their property values. She stressed she loves horse racing, but there will be betting, noise, drug use, and this will attract human traffickers. She went on to say that CR 17 already has enough traffic and this will add more traffic.

Lisa Kuehne, 21746 CR 14, Elkhart, was present in remonstrance. She stated her biggest concern is with what they currently have on site. She explained there is minimal fencing, no parking, no water to the area to care for the horses, and no public bathrooms. Additionally, port-a-potty's and horse poop will smell, there will be noise, and their well could get contaminated. Further, she stated they have several barns on their property for storing their lawn equipment and is worried about security and keeping people off their property. She asked who will clean up the trash that is left over after events. She stated there are already people out there shooting guns on the subject property, though she doesn't know what they are shooting. She stressed her concern for the animals with no shelter or protection from bad weather, as well as lack of security. Mr. Hesser asked where the existing fence is she referred to on the subject property. She showed on the aerial where the fencing is located.

Pam Hutchins-Roth, 19927 Windy Ridge, Bristol, was present in remonstrance. She stated there are a few houses within a mile of this location and all property owners are concerned about noise. She went on to say that a mile from the Pumpkin Vine trail there is noise from the horse tracks, near Shipshewana, Indiana. She stressed she doesn't want to see events more often than the petitioner is stating they will happen.

Kevin Bullard, 1133 CR 17, Elkhart, was present in remonstrance. He stated his new address will be 21406 CR 14, and he then showed on the aerial where the new house is going to be built, as it will be closer to the subject property. He explained his neighbors, that are building a house next to his, are also opposed to this petition. Mr. Hesser asked if he used to own the subject parcel. Mr. Bullard responded no, but he tried to buy it. He went on to say he has farmed the entire 600 acres surrounding this property, as well as the subject property, and when it rains this whole property floods. Further, he stated the property is not in the flood plain but is in the flood way, as the ditch isn't a ditch it is a creek that overflows when it rains. He stressed that when the posts were put in for the fencing, they were driven down into water and they will not hold. He continued to say it took 2 trucks and 2 tractors to pull a truck off the property that had sunk into the ground. He stated that there is gun fire happening on the property just next to the ditch, and they do target practice into the ditch. He reiterated this land isn't good for anything, because the ground is too saturated. He read a letter from a neighboring property owner, MZTT, who expresses they haven't given permission for anyone to be on their property for any purpose. He went on to explain there is a traffic study going on that will eventually put in an access road from Benchmark to connect onto CR 14 by Pine Creek.

Ben Baier, 56741 Ramble Wood Ln., Elkhart, was present in remonstrance. He stated he owns a building in Tuscany Square that is adjacent to the subject property. He showed on the aerial where it was located. He explained he has dislodged a 9mm bullet casing from the column of his

office's porch. He continued to say he is 300 ft. from the west property line. Mr. Baier referred back to the incident mentioned by Mr. Bullard, with the truck that was lodged in the mud, noting they had to use his private road to get access to and remove that truck. Further, he stated this is characterized as an agricultural area, and this proposed use will not enhance the area at all. He stressed his concerns are for the noise, activities that will happen on site and the smells. He feels as though people will not invest in the open areas within this commercial area if this is approved. Mr. Hesser asked if there are horses on the property now. Mr. Baier responded no, he doesn't believe so, but there is shooting happening all throughout the day and night.

Tony Anagnos, 101 Homan Ave., Elkhart, was present in remonstrance. He stated his new address will be 20494 CR 14. There was clarification as to where his new home was going to be built in location to the subject property. He stated he is concerned about the traffic and the beautiful development that is happening in that area will come to a halt if this is allowed. He stressed there are enough buildings in Elkhart, and there needs to be more housing.

Dan Brekke, 25928 North Shore Dr., Elkhart, was present in remonstrance. He stated he has business interest in the area and they are against this request. He continued to say he has been buying and developing this area since 2005, to help the area grow commercially, as the housing development has taken a toll. He stressed this area is a flood area and it can't be built on which is why he didn't buy it when it was for sale. He stated this use would work better in a more rural area of the county and not this close to the commercial area and where housing is going to start to grow as well.

Mr. Hesser stated his law office is in 861 Parkway Ave. and they have no position in respect to this petition.

The public hearing was closed at this time.

Mr. Hesser stated he is concerned with the current owner using the property as a shooting range, when he is stating there won't be weapons on site, though he doesn't have opposition to the use itself. He went on to say when buying property next to agricultural property there is a chance that it will be used for agricultural uses. He stressed he feels there is misrepresentation on the questionnaire itself including the statement that there isn't surrounding homes when, in fact, there are houses. He went on to say his concerns are on the questionnaire, the lack of detail on the site plan, and the statements made by the petitioner, that he doesn't believe to be accurate. Mrs. Cramer stated if the land is that wet having 20 horses and 20 vehicles with trailers on the property, she doesn't see how the land will be able to hold all of that traffic. She went on to say there is no barn for the horses in the plan. Mr. Hesser stated the petitioner wants animals on the property full time, and generally the Board isn't in favor of that happening. Mr. Auvil stated they can have horses by right since it is an A-1 zone with more than 3 acres. Mr. Warner stated he is comfortable with the livestock on site, but here are too many unknowns in the petition and mixing current usage with a plan that isn't fully thought out.

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

Motion: Action: Deny, Moved by Steve Warner, Seconded by Randy Hesser that this request for a Special Use for outdoor recreation (animal racing) be denied based on the following findings and conclusions of the Board:

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

2. The Special Use will cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will not substantially serve the public convenience and welfare.

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

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

7. The application of **Tery W. Moore** for a Special Use for warehousing of RVs on property located on the East side of CR 131, 2,395 ft. South of CR 4, common address of 52468 CR 131 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0512-2022*.

There were 20 neighboring property owners notified of this request.

Tery Moore, 52468 CR 131, Bristol, was present for this petition. He stated there is a lot of opposition, but Elkhart County prides themselves on giving families the opportunity to make their lives better. He went on to say he just wants a chance to move forward in life and make a temporary opportunity for himself, as he is not causing any harm to any of the neighbors. He stressed there is no travel to or from the subject property before 7:00 am, except for himself, there is no weekend travel or travel after 5:00 pm. He continued to say the traffic was bad when they shut down the SR 15 bridge, when they could have re-routed traffic down the state highway instead of these small county roads. Further, he stated he has been robbed and this will help protect himself and his neighbors. Mr. Hesser asked what was robbed on this property before. Mr. Moore responded his equipment and vehicles have been vandalized and stolen. Mr. Hesser asked what the property is currently being used for. Mr. Moore responded he tried to farm the property but the ground won't take without irrigation and he can't afford to put that in on the property. He explained this is an opportunity to better himself by having a few campers on the property. He went on to say the trash in the yards, just down the street from him, looks worse than this will look. He stressed he keeps this property well maintained. Mr. Hesser asked if he lived near this site. Mr. Moore responded he lives in Cassopolis, Michigan. Mrs. Cramer asked if there were any buildings on site. Mr. Moore responded there is a storage shed.

Lorie Petersheim, 52358 CR 131, Bristol, was present in remonstrance. She explained her address is the address Mr. Moore uses for his mail, as there is a land contract between her mother and Mr. Moore for the subject property. She stated she has lived in this house for 15 years. She continued to say Mr. Moore has never lived on site, and has illegally put the RVs on the property. She stressed there is a pending court case due to him breaking the county rule of not having RV storage on the property. Mr. Hesser asked who has the pending court case against Mr. Moore. Mrs. Petersheim responded Elkhart County. Mr. Godlewski explained there is a code enforcement case open for this property. Mrs. Petersheim stressed none of the neighbors want this and it is a residential area. She further added that the kids aren't waving at Mr. Moore because he doesn't live there, and he recently removed the RVs for today's meeting.

Dustin Kaehr, 52135 CR 31, Bristol, was present in remonstrance. He stated he was present for the meeting in April when Pinnacle Transport wanted to put in an RV storage lot and his concerns haven't changed from that request to this request, because it causes traffic for English and Amish communities. He continued to say there is a new Amish school going in down the road and they ride their bikes to and from school, and the road isn't built for transporting RVs. He

stressed there are safety issues with the railroad crossing not having arms, as there is just a stop sign that no one seems to heed. It was clarified where the railroad track was located. He reiterated the traffic down CR 131 shouldn't become commercial traffic, and the travel between SR 120 and CR 4 is already causing many issues.

John Vollmer, 52516 CR 131, Bristol, was present in remonstrance. He stated his home faces north and is 50 ft. from the fence line of the subject property, where he has had to look at the RVs parked on the fence line all summer long. He stressed campers are being pulled in and out all day and night long, not just at certain times. He stressed he doesn't want this in his front yard. He asked what his liability would be if his trees where to fall on the campers. Mr. Hesser asked if the trees along the property line were on his property or the subject property. Mr. Vollmer responded they are mostly on his property.

Sonny Kliever, 52241 CR 131, Bristol, was present in remonstrance. She stated she was also opposed to the RV lot in April and within days of that being denied, the subject property started filling up with RVs, without permission. She stressed the drivers fly down the road and they take up both lanes when making the turn on and off the property. She stated there is a bridge that goes over the toll road, and it is narrow, and the RV tow drivers take up most of the road. She reiterated that on any given day she watches the drivers blow through the stop sign by the railroad, as there are trees that block the view of the tracks, which is a huge safety concern. She went on to say she understands that Mr. Moore doesn't get affected by this because he doesn't live in this area, he has nothing to lose but everything to gain.

Jerry Greensides, 15273 Foxtail Dr., Bristol, was present in remonstrance. He stated he can't stand seeing these RVs. He explained the drivers drive way too fast and have to slam on their brakes to stop and make the turn coming over the bridge, as well as they are diesel trucks causing lots of noise all day and night long. He stressed the noise wakes up his children at night. He continued to say that with school buses now picking up and dropping children off that causes concerns, as well as the Amish kids riding their bikes to and from school. He stated in his opinion, Mr. Moore should store the RVs on the property he lives at where he has to look at them and not force the neighbors to look at them.

Heidi Eash, 15485 CR 4, Bristol, was present in remonstrance. She stated she seconds everything that has been said previously from the other remonstrators. She reiterated she has witnessed an accident on the railroad tracks. She stressed lights from the trucks shine through her windows, and this effects their property values in a negative way.

Dan Holtz, 22665 Greenleaf Blvd., Elkhart, was present in remonstrance. He stated he moved to a subdivision because the zoning laws are consistent with living in a subdivision, and he owns a factory in an industrial park knowing that he can do commercial business there. He went on to say he bought land on CR 4 because it was for agricultural uses, as he will have a farmer grow hay on the land, and he has no intentions of using the land for anything other than agricultural. He stressed he supports the process of the Board and Zoning in Elkhart County, but when agricultural land is bought for the purpose of making it commercial, it isn't a good enough reason to ask for a variance or appeal on that land.

Tery Moore came back on to respond. He stated he has an address that is filed through the county with a deed in his name. He went on to say the mother-in-law uses her address for the land contract purchase only. Further, he stated he is not building anything and the units aren't damaging roads, if they were, then where is the proof and where are the pictures. He stressed the trucks

coming in and out after hours is not for the RVs, but is himself in his semi-truck. He stated the trees are on his property, not his neighbors. He asked if it is okay for his neighbor to have a shooting range on their property, but campers aren't allowed. He stressed he grew up Amish, but having an Amish community in the area isn't going to stop people from driving in the county. He continued to say these are licensed drivers that have good records and aren't going to do anything to lose their license. He went on to say the original driveway to this property is big enough for a semi to pull in without any issues. He then stated he is not destroying property values, and not causing any issues. He explained he hasn't been served lawsuit paperwork, and there are neighbors that want him to have this but aren't here at this meeting. He reiterated the drivers are professional drivers.

The public hearing was closed at this time.

Mr. Hesser stated the issue is really the use of the land and there is no doubt there is a need for this kind of use in the County, though to his recollection, with that much housing near by the Board hasn't approved the storage of RVs.

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

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Deb Cramer that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for warehousing of RVs be denied based on the following Findings and Conclusions of the Board:

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

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

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

8. The application of *Daniel L. George & George Hiland, Joint Tenants with full Rights of Survivorship* for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the North side of Greenleaf Blvd., 1,250 ft. West of CR 15, in Osolo Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0502-2022*.

There were 32 neighboring property owners notified of this request.

Daniel George, 22978 Greenleaf Blvd., Elkhart, was present for this request. He stated this property has been in his wife's family for generations, and the land was put into a trust in order to keep it residential. He continued to explain that he deeded the land to his nephew with the provision that the property can't be sold. He went on to say he originally was asking for a 30 ft. by 60 ft. storage building but he actually needs 36 ft. by 48 ft. There was discussion and it was clarified which parcel was the subject parcel on the aerial. Further, he stated this property is completely wooded and he only intends to clear enough trees to make room for the new building. He continued to say he talked to his neighbor to the east and he is in support of this plan. Mr. Hesser asked if he would be willing to deed the two properties together. Mr. George responded he has no objection to deeding the properties together, because his intent and his will states his nephew, George, will

inherit the property when he passes. Mr. Norman asked if George understands these two parcels can't be sold separately, they must be sold as one property. Mr. George responded yes, his nephew understands. Mr. Hesser asked why no one has ever built homes on these lots. Mr. George responded the land has been in the family for generations and no one has ever wanted to have a neighbor on that land. He went on to say there is another vacant lot next to the subject parcel, and that owner also wants to put a storage building on his lot.

Brett Bachert, 22988 Gardena Pl., Elkhart, was present in remonstrance. He explained Greenleaf Blvd. is really nice with lots of beautiful homes, and his concern is if this building goes up, then it sets the precedence for more people to put up storage buildings on other vacant lots. He stated he was under the impression that these lots would someday have houses on them. He stressed within a 10 minute drive there are really nice and secure storage places that Mr. George could store his boats and personal items. He reiterated that if this is allowed then what is to stop more people who own other vacant lots to come and ask for storage buildings on their lots.

Rachel Kohn, 22970 Gardena Pl., Elkhart, was present in remonstrance. She explained she has lived in her home since 2010, with no plans to sell, and the main reason for buying her home was for the serenity behind her. She stated she realizes that a home could be built behind her, and that would be fine. She continued to say that an accessory building is a concern if it gets turned into a commercial business without permission. She went on to say she is concerned about noise, traffic, and who will be making sure the building stays secure and maintained. She stressed this will devalue her property as there is a housing shortage in Elkhart County and this lot should remain vacant until a house is built on the land. She went on to say that having a variance makes no sense, since there is no other property in this neighborhood that has just a storage building without a home. She added her concerns about people jumping over her fence to get into the building that would be located behind her property. Mrs. Kohn also noted that not knowing how the building will look, or how this impacts the area for the future, are concerns for her.

Mr. George came back on to respond. He stated he doesn't understand the concerns because right now when looking at the property he owns it is just trees and brush, it isn't see-through. He stressed he doesn't intend to change the view at all and he isn't going to be putting up some junk building or storing junk. He went on to say if he were to strip the property and put in a home then that person would be accessible to his neighbor's pool. He continued to say if he is denied this, then he will strip the property bare and never build anything, and then they will have the noise and traffic that the trees block from their view.

The public hearing was closed at this time.

Mrs. Kohn asked if they could see the plan of how the building will look. Mr. Hesser responded that is something the Board will discuss. Mr. Bachert asked how tall the building will be. Mr. Hesser responded that will be discussed by the Board. He continued to say that he doesn't have a doubt that the building will be a nice building, but if this is to be approved the Board should get more detail about the specifics of what will be built. He stressed this request is the most strict with the highest requirements and he can't see how this fits into bullet point #3 on the Staff Analysis. Mrs. Cramer asked if they would still need a Use Variance if Mr. George were to join the two parcels onto one deed. Mr. Hesser responded that it would still need the Use Variance, because it is still its own parcel since the road divides the parcels. Mr. Norman stated that the Board denied a request like this one that was down the road of the subject property. Mr. Hesser stated that the lot was unbuildable and there was no house on a joining lot. Mr. Norman stated

these look like buildable lots. Mr. Hesser stressed this isn't an issue of whether or not a house can go on the lot because the petitioner doesn't want a house. Mr. Norman clarified that the site plan given to the Board is the only one submitted. Mrs. Cramer stated that the petitioner wants a different size building than what was asked for in the petition.

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

Motion: Action: Deny, Moved by Randy Hesser, Seconded by Ron Norman that this request for a Use Variance to allow for the construction of an accessory structure without a residence be denied based on the following findings and conclusions of the Board:

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

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

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

9. The application of **RAJ LLC** for a Use Variance to allow for retail sales and service of RV parts and appliances on property located on the South side of CR 4, 825 ft. West of CR 11, common address of 25250 CR 4 in Osolo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0582-2022*.

There were 13 neighboring property owners notified of this request.

Jeromy Hobson, 51064 SR 19, Elkhart, was present for this petition. He stated he wants to work on campers and wants to sell the parts related to campers. Mr. Norman asked if he was going to use the buildings that are currently on the property. Mr. Hobson responded yes. Mr. Hesser asked about the need for storing of the RVs on the property. Mr. Hobson responded there isn't any storage of RVs. Mr. Hobson clarified the RVs would be dropped off for him to work on, and then would be picked up when he is finished working on them. Mr. Miller clarified he is only asking for 10 RV units on the property at a time. Mr. Norman asked if he was going to have to clear trees to make room for parking. Mr. Hobson responded no, there is already a parking lot.

Ronald Swanson, 25051 CR 4, Elkhart, was present in remonstrance. He stated that one of the problems is that there wouldn't be any development in the area, other than residential, from Osolo Creek all the way to CR 17. He continued to say that this Use Variance is just opening the door to more development that isn't for housing or agricultural uses. Further, he went on to say that the area has never been anything other than agricultural with residential use. He explained the existing zoning is A-1, not for commercial use, and there has been no BZA or land use history, though there was previously a nursery on the property. He reiterated he doesn't want to see a precedence set to allow commercial uses in agricultural and residential areas. He stressed a comprehensive plan should be put in place for any commercial projects that want to be put into an A-1 zone to ensure that it isn't going to cause substantial future issues. Mr. Hesser clarified that the concerns need to deal with the subject property and request for a Use Variance. Mr. Swanson submitted a packet of information with concerns and a photo [Placed in file as Remonstrator Exhibit #1 and #2].

Jeromy Hobson came back on to respond. He stated he is trying to get use out of the commercial buildings that are existing on the lot currently, and the neighbor that would be impacted the most by this use of the property, is in favor of him using the vacant buildings. He continued to say he will work on 1 to 4 campers a day and he doesn't feel this will impact anyone in a negative way.

The public hearing was closed at this time.

Mr. Hesser asked Mr. Hobson if the property has 3 buildings on site. Mr. Hobson responded the only other building on the property is a 60-100 sq. ft. shed that is west of the big buildings. Mr. Hesser asked Staff if the Trinity Gardens Landscaping business was ever permitted. Mr. Auvil responded no history was ever found for Trinity Gardens, or any other Special Uses or Use Variances. Mr. Hesser stated his concern for the Use Variance is that if there was a previous commercial use that was not approved, and without the Use Variance, this wouldn't be allowed, though he isn't sure this is sufficient to support this current request. Mr. Norman clarified there is no history for when this was a garden center. Mr. Auvil stressed there is no Planning, BZA history, or permits for the commercial buildings, so there is no way to validate what the buildings were used for in the past. He went on to say this petition for a Use Variance is limited to what is granted by the Board, and if the use were to change the petitioner would have to come back in front of the Board for permission. Further, he stated that Staff feels that instead of having vacant and abandoned buildings, seeing them utilized is better. Mr. Hesser stated he doesn't believe the proposed use will have a negative effect on the surrounding neighborhood, but he has a hard time getting past bullet points 3 and 4 on the Staff Analysis Report. Mr. Warner explained the area lends itself to the use of what is being asked for today. Mrs. Cramer stated the zoning isn't changing, and at least the buildings, that haven't been used for years, are being used for something. Mr. Miller noted Mr. Hobson would be limited to the 10 RVs, to ensure there isn't any expansion to a bigger use.

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

Motion: Action: Approve, **Moved by** Deb Cramer, **Seconded by** Ron Norman 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 retail sales and service of RV parts and appliances 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. The request is approved in accordance with the site plan submitted (7/18/2022) and as represented in the Use Variance application.
2. The number of RV units allowed onsite at any one time is limited to a maximum of ten (10) units.

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

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

No: Randy Hesser.

10. The meeting was adjourned at 11:11 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary