

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF APRIL 2008 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Robert Homan, Meg Wolgamood, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Dan Piehl, Planner; Mick Slater, Code Enforcement Officer; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Lantz/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of January be approved with the following corrections: On page 11, the second paragraph is to say “shoulder mounts” and the third paragraph on page 15 should say “co-operated” instead of “operated.” Lastly, on page six, eight, and 21, it stated that Mr. Harrell read the staff report, but he wasn’t present at the meeting. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Wolgamood*) that the legal advertisements, having been published on the 5th day of April 2008 in the Goshen News and on the 7th day of April 2008 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Miller/Homan*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.

5. A motion was made and seconded (*Homan/Lantz*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.

6. There were no postponements of business items.

7. See page 5, item #10 for the petition regarding *Don Miller*.

8. The application of *Tyler Torrance* for a Use Variance for a park model home to be occupied by petitioner’s father, Larry Stump, on property located on the West side of CR 27, 2,100 ft. South of CR 24, common address of 60025 CR 27 in Jefferson Township, zoned A-1, came on to be heard.

One photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081470*.

There were 10 neighboring property owners notified of this request.

Cosette Torrance, 60025 CR 27, Goshen, was present on behalf of this request. Mrs. Torrance said she doesn’t feel that the park model is considered an RV, which was indicated in

the staff recommendation. She feels that the park model would be less injurious to the public rather than getting an older mobile home. The park model would need to be towed by a semi truck and can't be moved from place to place with a pick up truck.

Mrs. Torrance feels the park models are much nicer than many of the mobile homes she has seen. The neighbor that lives closest has a farm and she doesn't feel it would have a negative effect on their property.

The petitioner questioned #4 of the staff report. She explained that her father would be living in the park model alone because his wife passed away in February. She also indicated that the park model is a better fit for her dad because the mobile homes are too big.

The main reason she is asking for the Special Use is because she would like to move her father close. If something were to happen to him, then someone would know about it if he lived close. They looked at the option of having him live in their home, but there were some privacy issues and they also have stairs. Putting on an addition was also thought about, but Mrs. Torrance isn't sure what they would do with the extra space when he doesn't need it anymore.

In 1993, they had asked for a mobile home on their property. The mobile home was there for almost seven years and they did comply with the regulations. If this request were to be approved, then they would skirt it, do landscaping, and follow the guidelines. When the time came, the park model would be removed and sold.

Mr. Hesser asked if the location in the site plan is the same place where the mobile home was located. Mrs. Torrance said it's a little closer to the road and on the other side of the property.

Mr. Hesser asked the staff if it makes a difference whether it's a mobile home or park model and Mr. Harrell said they don't allow RV vehicles to be lived in. Mr. Hesser then asked if the request was for a mobile home, would the recommendation be different. Mr. Harrell said probably not because there is not a medical hardship involved.

Mr. Kolbus indicated it could be a Special Use request for a mobile home, which has different standards.

Mr. Homan asked why it would make a difference if it were a park model for a Use Variance or a Special Use for a mobile home. Mr. Harrell said it says specifically under the definition of a Special Use that park models are not allowed and the square footages are different.

Mr. Kolbus said mobile homes are defined in the Zoning Ordinance by the way the government describes them, which includes a certain size, etc. There are valid reasons why they are different because of the way each of them is built.

Mrs. Wolgamood asked what the minimum square footage is that is required for a mobile home in an agricultural zone. Mr. Harrell indicated at least 900 sq. ft.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan asked if age has ever been considered a hardship and Mrs. Wolgamood said no. The Elkhart County Ordinance says if it's not within 300 ft. of a conventionally constructed home, then you don't have to prove a hardship.

Mr. Homan said that the issue is the 300 ft., two residences on one property, and the square footage of the unit is not large enough.

Mrs. Wolgamood indicated that the 300 ft. would not include Mrs. Torrance's house. It only consists of neighboring properties.

Mr. Lantz said she is trying to do the right thing before her father does get bad. She wants to place a smaller unit on the property that would probably be built better than some of the mobile homes out there, which would have less impact. The park model could be moved or sold when they don't need it any longer.

Mr. Hesser said that if it were a mobile home, then a different standard would apply. The park models are under the statute of being an RV rather than a mobile home.

Mr. Lantz asked how a hardship is described. Mr. Harrell said a hardship needs to be a signed document by a doctor or hospital. Many times, it will be for cancer patients or individuals with Alzheimer's.

Mr. Harrell said a lot of people request this so they can park it on the property for a certain amount of time. He feels that once one is granted, then all of them should be.

Mrs. Wolgamood said they look at a variety of reasons for the placement of mobile homes on a monthly basis.

Mr. Lantz asked if she could ask for a mobile home and Mr. Hesser indicated she would need to apply for a Special Use for a mobile home, which has different findings. Given the fact that there was a previous Special Use for a mobile home, Mrs. Wolgamood thinks that would be a better situation.

Mr. Homan said if the Board turns down this request today and the petitioner wants to try a different avenue, then he hopes that there is some type of consultation as far as the cost.

Mrs. Wolgamood said there is a provision in the Elkhart County Zoning Ordinance that allows for subordinate dwelling. She advised the petitioner to talk to the staff regarding the definition of that.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for a park model home to be occupied by petitioner's father, Larry Stump, be denied. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – yes; Hesser – yes.

9. The application of **Aaron G. Meyer (buyer) and Scott L. Miller (seller)** for a Special Use for a home workshop/business for a real estate office (Specifications F - #45), and for a Use Variance to allow for an oversized 3 x 5 ft. sign (Ordinance allows 2 x 2 ft.) on property located on the East side of SR 15, 400 ft. North of Hackett Road, common address of 61370 SR 15 in Elkhart Township, zoned R-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081461*.

There were 7 neighboring property owners notified of this request.

Aaron Meyer, 411 S 3rd St, Goshen, was present on behalf of this request. Mr. Meyer made an amendment to the request and indicated he would like a 3 x 4 sign instead of a 3 x 5. He then submitted four photos of the sign to the Board *[attached to file as Petitioner Exhibit #1]*.

When they moved to this residential area on Third Street, the City of Goshen gave them some sign stipulations, which caused them to take down the old sign from the previous location. Mr. Meyer indicated he has a large financial investment in the sign.

The sign is in a residential area and conforms rather well to the surroundings. The bottom left hand picture of the petitioner's submission was taken 40 ft. away from the sign, which is the distance away from SR 15.

Mr. Hesser asked if he's operating in town and the petitioner said yes. They are operating under a permit and they sold the building to the city so they could complete their Third Street project. The petitioner said he feels that Jefferson is really growing and to move onto SR 15 is a lot better than sitting in the middle of a residential area in town.

Mrs. Wolgamood asked if they will live in the home and the petitioner said yes. On Third Street, he owned what used to be a dentist's office and the house next door to it. They lived in the home during the winter and operated the office, but stayed at their lake house in the summer. The intent for the new location is to do the same.

Mrs. Wolgamood asked if the business will be out of the house or the detached garage and Mr. Meyer said the house. He indicated that 95% of the business is done on the phone or at a client's home.

Mr. Hesser asked if the sign is lighted and Mr. Meyer said no, the city wouldn't allow it.

Mrs. Wolgamood said in the photographs submitted by staff, there were pictures of two signs. Mr. Hesser indicated those are for the Maplecrest Animal Clinic and Oaklawn. The petitioner indicated the Maplecrest Animal Clinic sign is next door and the Oaklawn sign is across the street.

Roger Zumfelde, 121 Hackett Road, Goshen, was present to voice a concern on this request. Mr. Zumfelde pointed out the location of his property on the aerial photo. When he heard that the parking for the business would be at the rear of the lot, it made him concerned. His house is very close to the petitioner's lot and he hopes there is some protection as far as parking to the rear of the lot.

Mr. Hesser asked if he has any problem with the way it's currently configured and Mr. Zumfelde said no. The petitioner indicated there is more than ample parking in the front and the rear is all fenced in.

Mr. Hesser doesn't think a sign that size in this area will be offensive, but it seems that in the past, the sizes of the home workshop signs have been strictly enforced. They are usually four ft. double sided or eight ft. single sided.

Mr. Hesser also indicated that there are a lot of businesses around the area.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a real estate office (Specifications F - #45) be approved with the following conditions imposed:

1. Approved for owner/occupant of the residence on site.
2. Days and hours of operation to be Monday through Friday, 9:00 a.m. to 5:00 p.m.
3. No backing onto SR 15 by any client.
4. One (1) sign limited to four (4) sq. ft. per side and unlighted.

A roll call vote was taken and the motion was unanimously carried.

Secondly, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, the request for a Use Variance to allow for an oversized 3 x 5 ft. sign (Ordinance allows 2 x 2 ft.) be denied. After a unanimous roll call vote was taken, the motion was carried.

10. The application of *Don Miller* for a renewal of an existing Use Variance for light manufacturing of lighted advertising signs on property located on the Southwest corner of CR 12 and Willow Street, being Lot 7 and part of Lot 8 in Locust Ridge Estates, common address of 13324-7 CR 12 in Middlebury Township, zoned A-1, came on to be heard.

There were 11 neighboring property owners notified of this request.

Mr. Kolbus indicated that requests in this situation are usually tabled until the next month. If the petitioner isn't present at that point, then the Board can act in their absence.

There were no remonstrators present.

A motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Use Variance for light manufacturing of lighted advertising signs be tabled until the May 15, 2008, Board of Zoning Appeals meeting. A roll call vote was taken and the motion was unanimously carried.

11. The application of *Joas Lambright* for a renewal of an existing Special Use for a saw mill in an A-1 district (Specifications F - #37) on property located on the East side of CR 43, 1,700 ft. North of CR 16, common address of 56246 CR 43 in Middlebury Township, zoned A-1, came on to be heard.

One photo of the property was submitted to the Board by the staff [attached to file as Staff Exhibit #1].

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as Case #20081346.

There were 6 neighboring property owners notified of this request.

Mr. Harrell indicated that the petitioner is in compliance with the existing Special Use.

Joas Lambright, 56246 CR 43, Middlebury, was present on behalf of this request. Mr. Lambright indicated he hasn't started sawing logs yet, but he is almost ready. He hopes to be in operation within two or three months. The petitioner said his plans are the same as they were when he requested the original Special Use.

Mr. Lantz asked if he's doing the sawing inside the building and he said yes.

Mr. Hesser asked if the site plan is the same one from before and Mr. Lambright said yes.

Mr. Lantz questioned how he handles his waste. The petitioner said everything will be hauled away.

It was pointed out by Mrs. Wolgamood that the site plan shows two enclosed semi trailers and she asked if that is the plan for removal. Mr. Lambright said they have thought about using bins instead of trailers, but he hasn't made any definite plans on that. He's finding that there is a big demand for saw dust, but he needs to figure out where to get rid of it and store it.

Mrs. Wolgamood asked if they use bins, will they be covered. Mr. Lambright said yes and the dust would be blown in.

Mrs. Wolgamood asked if that plan for removal was approved by staff and they indicated yes. The petitioner said he plans on using his trailers, but he has considered using the bins. Mr.

Harrell indicated he can use the trailers or the bins as long as he has a way to get rid of it. Mr. Lambright said the large trailers can get in, but he would like to stay with smaller supplies if possible.

The 32 x 56 building shown on the site plan was questioned and Mr. Lambright said it has already been constructed.

Mr. Lantz said his biggest concern is making sure the waste is disposed of and Mr. Lambright said that won't be a problem because he has several options.

Mrs. Wolgamood asked if the log storage area is still staked and the petitioner said yes, which Mrs. Prough verified is correct.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Kolbus suggested that the Board consider putting a time limit on the Special Use since he hasn't started operating yet. Mr. Hesser suggested having a two year renewal since he's close to getting started.

Mrs. Wolgamood suggested including an implementation plan in the conditions for the removal of dust if the request were approved.

Mr. Kolbus said the site plan approval could be brought back to the Board as a minor change if the petitioner wanted to show something different with the bins.

Mr. Lantz indicated he has a concern with the semi trailer.

Mrs. Wolgamood indicated they need to clarify which site plan is being approved.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Hesser*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Special Use for a saw mill in an A-1 district (Specifications F - #37) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site as per site plan submitted on August 21, 2006.
2. No employees outside of those who live in the residence on site.
3. Days and hours of operation to be 8:00 a.m. to 5:00 p.m., Monday through Friday.
4. Sawing limited to inside the building with reasonable measures taken to eliminate noise.
5. No burning or stockpiling of waste permitted on site.
6. Approved for a period of two (2) years with a renewal by the Board of Zoning Appeals.

A roll call vote was taken and the motion was carried unanimously.

12. The application of *Amish Church District 64-2 (buyers) and Calvin Lee & Inez Hochstetler (sellers)* for a Special Use for a cemetery in an A-1 district (Specifications F - #6) on property located on the 437 ft. East of CR 37, 2,640 South of CR 42, common address of in Benton Township, zoned A-1, came on to be heard.

One photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081440*.

There were 9 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the Amish Church District. Mr. Sloat submitted a packet of information regarding this petition which

includes pictures, a site plan, and a topographical map *[attached to file as Petitioner Exhibit #1]*. He explained there is a school that the Amish have recently constructed in the Millersburg area. The neighbor to the north is willing to sell in the 150 x 300 piece of land behind the school to use a cemetery plot.

The church member to the south has allowed them to put an easement in across the north edge of the property, which would be used as an access to the cemetery. This would allow them to use less of the school property. As indicated by staff, a recorded easement should be submitted for the file. Mr. Sloat said Mr. Doriot has done the survey work for this property in order to get the easement recorded.

Mr. Sloat indicated that the elevations are the highest at the south end of this parcel, so it does have a little bit of a slope to the north. They would like to have the driveway at the south end of the parcel to avoid that slope.

Mr. Hesser asked if the building shown in the photo is a new building and Mr. Sloat said it's relatively new, which is the reason why it's not shown on the aerial photo. He then asked where it's located on the site plan and Mr. Sloat pointed out the location. The cemetery will be to the rear behind the school and the ball field.

Mr. Lantz asked how big the plots will be and Mr. Sloat said there should be room for about 400 plots. They will primarily be at the south end of the parcel.

Mr. Lantz questioned the funding for the care of the cemetery and Mr. Sloat said the Amish Church would take care of that.

Dennis Miller, 13375 CR 42, Millersburg, was present as the neighbor/caretaker of the cemetery. Mr. Miller indicated the church district 64-2 will purchase the land and appoint people to take care of the grounds as far as mowing, etc.

Mr. Lantz asked if they have plans to make the cemetery bigger in the future. Mr. Miller said they had a funeral last summer and the closest cemetery was 12 miles away, which is a problem for the horses and buggies. As the community grows on to the southwest, this cemetery will service four to five churches at the most. Overall, he doesn't think they will need to expand in the future.

Mrs. Wolgamood asked if there will be an additional curb cut and Mr. Sloat said yes there will be one going onto CR 2. She then asked if the driveway for the school will be immediately north of that, which would make both of the driveways side by side. Mr. Miller said the neighbor from the south offered to let them go across his land, so they figured that would be easier.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood suggested adding that the Board allow a certain number of days before the easement has to be recorded.

The petitioners also need to comply with the Elkhart County Highway & Engineering Department standards for the curb cut.

Mrs. Wolgamood asked if 60 days would be ample time to get the easement recorded and Mr. Sloat said yes.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a cemetery in an A-1

district (Specifications F - #6) be approved as per site plan submitted with the following conditions imposed:

1. A recorded easement is to be submitted for the file within 60 days.
2. The Elkhart County Highway & Engineering Department curb cut standards are to be met.

After a roll call vote was taken, the motion was unanimously carried.

12. The application of **Wyman Miller** for an amendment to an existing Special Use for an agri-business (Specifications F - #56) for commercial repair of farm machinery and manufacturing of agricultural (cattle and hog) equipment to allow an existing building to be used for product storage on property located on the Southeast corner of CR 22 and CR 31, common address of 15980 CR 22 in Middlebury Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081496*.

There were 15 neighboring property owners notified of this request.

Andrew Lambright, 14304 CR 22, Goshen, was present representing Wyman Miller. When Mr. Miller started the business in 1997, he had one son helping him and now he has four. They would like to move storage into another building to add room for finished products because it's getting a little tight inside. The building labeled #6 on the site plan is the one that will be used in addition to the existing shop.

Mr. Hesser asked if the 70 x 120 area is the outside storage area and Mr. Lambright said that is correct.

Mr. Homan said there are two conditions on the original Special Use that are not repeated on the amendment. One of those conditions refers to a driveway (designated as #16 on the site plan) that was to be eliminated and the other one indicated that buildings #2 and #3 should be vacated upon completion of new shop building (#9 on site plan). Mr. Homan asked if those two conditions have been met and Mr. Lambright said yes.

In the pictures that were submitted by staff, Mrs. Wolgamood asked if the storage shown is related to this business. Mr. Lambright said that is the outside storage area and is designated on the site plan behind the shop.

Mrs. Wolgamood asked about the semi trailer shown in the picture and Mr. Lambright said it was probably there for repair. Mrs. Prough then indicated it wasn't on site yesterday when she drove by.

The Board asked how often there are semi tractors or trailers there for repair. Mr. Lambright thought it was fairly consistent, but indicated Mr. Miller could address that more completely.

Wyman Miller, 15980 CR 22, Middlebury, stated he doesn't always have semi's there, but it's not like he never has them there at all. He indicated he currently has two tractors there and they are doing re-attachments.

Mrs. Wolgamood asked if the semi trailer is farm related and the petitioner said it would be a farmer bi-product trailer to haul shavings of wood for animal bedding.

Mike Yoder, 59520 CR 31, Middlebury, was present in favor of this request. Mr. Yoder indicated he is Mr. Miller's neighbor and he fixes his farm machinery. Mr. Miller also fixes the trailers of the fiber bi-products from whom he buys his animal bedding from. There are semi

trailers there are on occasion, but there are only a few residents on that road. Mr. Yoder said he has been a good neighbor.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for an agri-business (Specifications F - #56) for commercial repair of farm machinery and manufacturing of agricultural (cattle and hog) equipment to allow an existing building to be used for product storage be approved with the following conditions imposed:

1. Only buildings marked #6, #9, and #13 are to be used for business purposes.
2. Outside storage to be confined to the 70 x 120 ft. area (#11 on site plan) as shown on the revised site plan dated March 24, 2008.
3. Parking and unloading areas for the business as per revised site plan submitted 3/24/08.
4. No storage of any materials or finished products between the buildings and CR 31.
5. No sign larger than four (4) sq. ft. per side unlighted.
6. No more than two (2) employees that live outside of the residence on site.
7. Approved for the owner/occupant of the residence on site.

A roll call vote was taken and the motion was carried unanimously.

13. The application of ***Phillip Blosser (L & P Excavating)*** for a Special Use for warehousing and storing for a construction storage yard (excavation business) in an A-1 zone (Specifications F - #44) on property located on the West side of CR 31, on the West end of CR 131, 1,700 ft. North of CR 14, common address of 55679 CR 31 in Jefferson Township, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081466*.

There were 8 neighboring property owners notified of this request.

Present on behalf of this request was Phillip Blosser, L & P Excavating, 55679 CR 31, Bristol. Mr. Blosser said he has two trucks, two trailers, and two excavators that he keeps in his trailers when they are parked. He doesn't take them off unless they need servicing. There is no equipment lying around because most of it is housed in the barns or the shop. As far as storage, he has dirt piles every once in a while, but he doesn't stockpile any stone or pipe material. The supplies are bought when he knows he's got the job.

Mr. Blosser explained he uses his shop where the truck service is located for maintaining his equipment and housing his motor home. He indicated they no longer have the flower shop on site because that has moved to downtown Goshen. In the winter when the excavating business is slow, that's when he works on trucks. The equipment he has is two dump trucks, two trailers, two excavators, and a skid loader.

When all of the larger vehicles come onto the property, Mrs. Wolgamood asked if they have a place to turn around so there is no backing out onto the road and Mr. Blosser said yes. The petitioner said he very seldom backs out onto the road and he usually pulls out. When he comes home in the evening, he can pull in and fuel everything and then back into the driveway. That allows him to pull the equipment out onto the road instead of backing out.

Mrs. Wolgamood asked how long he's had the excavating business at this site and he started the business in 1991 with Larry Miller in Millersburg. Most of the equipment was stored there until he passed away and then Mr. Blosser took over three or four years later.

The truck parking location on the site plan was questioned by Mrs. Wolgamood and Mr. Blosser clarified where the location is, which is north of the shop.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for warehousing and storing for a construction storage yard (excavation business) in an A-1 zone (Specifications F - #44) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. Petitioner to designate a parking/storage area.
3. Not to exceed the eight (8) described vehicles and equipment as represented by the petitioner on the questionnaire.
4. One 2 x 3 ft. double-faced non-illuminated sign permitted.
5. The existing Special Use permit for a home workshop/business for a flower shop to be revoked.
6. The petitioner is to provide an area for turn around to facilitate no backing out of vehicles onto CR 31.

A roll call vote was taken and the motion was unanimous carried.

14. The application of *Plainview School* for a Special Use for an existing school and to allow for the construction of a classroom/restroom addition (Specifications F - #38) on property located on the North side of CR 16, 35 ft. from the North end of CR 43, 3/4 mile East of CR 116, common address of 11017 CR 16 in Middlebury Township, zoned A-1, came on to be heard.

One photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081460*.

There were 6 neighboring property owners notified of this request.

Harley Bontrager, 57342 CR 116, Middlebury, was present on behalf of this request. Mr. Bontrager indicated they are outgrowing their school, so they would like to add on to the existing building rather than build a new one. They would also like to add indoor restrooms.

Mrs. Wolgamood asked if this is a single story additional and Mr. Bontrager said yes. The building has a basement and a single story.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an existing school and to allow for the construction of a classroom/restroom addition (Specifications F - #38) be approved as per site plan submitted, with all state and local permits and inspections to be obtained. After a unanimous roll call vote was taken, the motion was carried.

15. The application of *Charlie Whitaker (landowner) and Amanda K. Wetzel (business operator/occupant)* for a Special Use for a home workshop/business to allow pet grooming (Specifications F - #45) on property located on the South side of US 20, 550 ft. East of CR 19, common address of 20404 US 20 in Jefferson Township, zoned A-1, came on to be heard.

One photo of the property was submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081477*.

There were 12 neighboring property owners notified of this request.

Amanda Wetzel, 20404 US 20, Goshen, was present on behalf of this request. Ms. Wetzel explained she would like to have a small grooming shop to fill her spare time. She said she usually has an average of seven or eight customers per week, no later than 3:00 p.m. She doesn't use any chemicals or flea treatments in her grooming business.

Mr. Miller asked if she boards any dogs and she said no.

He also asked if this will grow into a full time business and the petitioner said she doesn't see that happening because she's a stay-at-home mom. She does it as more of a hobby and somewhat as a source of income.

In the questionnaire, Mr. Hesser pointed out that the drop off times are 8 a.m. to 9 a.m. and he asked what the normal hours of operation would be. Ms. Wetzel said drop off will be between 8:00 a.m. and 9:00 a.m. with occasional drop-offs from 9:00 a.m. to 10:00 a.m. The pick ups are from 1:00 p.m. to 3:00 p.m. She usually doesn't have anymore than one car in the driveway at a time. The driveway also has a turn around so there is no backing onto the road.

Mrs. Wolgamood asked how long she's had this business and she said since November of 2007 at this location, but she has six years of prior experience at a commercial location.

Mr. Hesser asked if the three days per week of operation include the weekends. Ms. Wetzel said she does two Saturdays a month, or every other Saturday.

Mrs. Wolgamood asked if the dog house sitting in the front yard is still there. She asked if that is there for a particular reason and the petitioner said it's only a location market since she doesn't have a sign.

Mr. Hesser asked if the dog house has a sign on it and Ms. Wetzel said it's plain.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said the dog house isn't indicated as a sign, but she would be permitted a sign of four sq. ft.

Mr. Hesser then asked Mr. Kolbus if he is comfortable with the wording in condition number one. Mr. Kolbus suggested taking out the word "present" and just stating "occupant of the residence on site."

Mr. Homan suggested having the days and hours of operation 8 a.m. to 3 p.m., Monday through Saturday.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business to allow pet grooming (Specifications F - #45) be approved with the following conditions imposed:

1. Approved for the occupant of the residence on site and shall be in compliance with the property owner's consent.
2. One (1) sign not to exceed four (4) sq. ft. per side and unlighted.
3. No employees that live outside of the residence on site.
4. Turn around on site to be maintained to eliminate backing onto US 20.
5. There shall be no overnight boarding on site.
6. Hours of operation to be 8 a.m. to 3 p.m., Monday through Saturday.

A roll call vote was taken and the motion was unanimously carried.

16. The application of **Jorge Pizana** for an amendment to an existing Special Use for a private baseball diamond (Specifications F - #4) and an accessory building for storage on property located on the North side of CR 146, 1,034 ft. East of SR 13 in Benton Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081506*.

There were 4 neighboring property owners notified of this request.

Mr. Harrell pointed out that there is a letter in the file from the Health Department stating that there will be no water allowed to this site. He indicated that public restrooms will be a problem and the curb cut needs to be approved by the Elkhart County Highway Department before anything is issued.

Jorge Pizana, 926 N. Main Street, Ligonier, was present on behalf of this request.

Mr. Hesser said the baseball diamond was approved, but at that time, the site plan didn't have accessory buildings or restrooms on site. The staff indicated that is correct. He asked if the intent was to have port-a-potties and Mrs. Prough said it was never addressed before.

Mr. Homan asked about the condition of water availability. Mr. Harrell then read the letter from the Health Department indicating that plumbing is not allowed in the accessory building.

Mr. Harrell indicated the curb cuts from original permit that was granted were never adhered to.

Mrs. Prough said the staff checked with the Elkhart County Highway & Engineering Department and they said they had never obtained a permit for the existing curb cut. Mrs. Wolgamood said she would like to hear from him regarding that issue.

The original Special Use was granted in September of 2007 and there was a discussion regarding port-a-potties, which weren't on site at that time.

Mrs. Wolgamood asked when the baseball season starts and the petitioner said it will start this month in April.

Mr. Miller asked if the reason they can't have water there is because there is no electric. Mrs. Wolgamood said there is to be no water in the accessory building, but if they want to put in restrooms, then they have to work with septic systems, plumbing, etc. She believes there are a lot of unanswered questions at this point.

Mr. Miller asked the petitioner what his plans are for restrooms for the facility. Mr. Pizana said he plans on using port-a-potties.

Mrs. Wolgamood asked if he used those last year and he said he doesn't play much at this location because it's usually only one game.

Mrs. Wolgamood indicated his questionnaire said he has eight teams. She then asked how many people are on eight teams. Mr. Pizana said those people don't play on his field every weekend. The teams are from different locations.

The Board asked if they also hold practice sessions on site and the petitioner said yes, but only a couple days a week. The practices normally only last for about an hour to an hour and a half in the afternoon.

Mr. Hesser asked if this is the home field for only one team and Mr. Pizana said yes.

Mr. Hesser said doesn't see the restrooms addressed in the questionnaire and Mrs. Prough explained it's shown on the site plan. The site plan indicates "future restrooms."

Based on what the Health Department said, they can't have a restroom facility. Mr. Harrell said they can't have any water in the building, but they would be allowed to store supplies in the building. The building cannot be built until the petitioner has proper curb cut approval.

Mr. Hesser asked if any bleachers have been built and Mr. Pizana said he has small ones. The fence has not yet been installed.

Mr. Homan said it's a rather large building for one baseball diamond. He asked what the petitioner plans to put in the building. Mr. Pizana said he would like to store his supplies in the building so they don't get wet. Mr. Homan asked if it will be for equipment only and the petitioner said yes.

Mr. Homan asked if the building will be used for meeting space or food preparation and Mr. Pizana said he doesn't think so at this point.

David Bontrager Jr., 59723 CR 33, Middlebury, indicated he has known the petitioner for a couple of years. Mr. Bontrager said the petitioner has had friends on site helping him clean up the diamond and he has been allowing Mr. Pizana to use his bobcat. Mr. Bontrager is in favor of this request and the petitioner has allowed some Amish friends to come out and play ball. He believes Mr. Pizana is trying to help out the community and he's a good friend.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said it makes sense that they would need a storage building on site for equipment. Before he proceeds with that step, the petitioner should comply with what was originally approved.

Mr. Kolbus suggested tabling the request and possibly having Mr. Bontrager assist the petitioner in discussing the requirements with the staff.

Mrs. Wolgamood indicated she is thoroughly in favor of tabling the request to allow the petitioner to come into compliance with the previous approval. The petitioner has no restroom facilities and nothing from the Elkhart County Highway Department.

Mr. Hesser said the use has already been approved, so that is an enforcement issue. The question now is whether or not he's going to address the issues to allow him to build the accessory building.

Mr. Kolbus suggested tabling the request for 60 days.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a private baseball diamond (Specifications F - #4) for an accessory building for storage be tabled until the June 19, 2008, Board of Zoning Appeals meeting, to allow the petitioner to

bring the property into compliance (with the original conditions of the Special Use) with monitoring by the staff. At the June meeting, the Board has requested a report indicating the level of compliance with the petitioner present at that time. A roll call vote was taken and the motion was unanimously carried.

Mr. Hesser stepped down from the Board at this time due to a potential conflict of interest.

17. The application of **Larry E. Miller** for a Special Use for a home workshop/business for a woodworking business (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (4,016) to exceed the total square footage in the primary structure (2,000), a difference of 2,016 sq. ft., on property located on the West side of CR 31, 1,775 ft. South of CR 14, common address of 56331 CR 31 in Jefferson Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081481*.

There were 8 neighboring property owners notified of this request.

Larry Miller, 56331 CR 31, Goshen, was present on behalf of this request. Mr. Miller said he started this business as a hobby three years ago, but it has turned into more than a hobby. He would like to make the business legal and he needs a little more space for storage.

Mr. Homan asked what type of products he builds and Mr. Miller said small crafts. The biggest product he makes is a stemware holder, which goes underneath an overhead cabinet to hang wine glasses. Jewelry boxes are also built in his shop.

Mr. Homan also asked what kind of truck traffic he anticipates as far as deliveries of material to the business. Mr. Miller said he gets deliveries twice a week with mostly pick-ups. When items are picked up from the shop, there are about three semi's there per week.

The Board then questioned how he handles storage and the petitioner said everything is stored inside apart from the forklift. He indicated that if this is approved, then he will also store that inside.

Mrs. Wolgamood asked how far away his property is from the residence to the south. Mr. Miller estimated around 300 ft. and said the proposed addition will be further away from the residence to the south than where the existing building is.

The site plan shows an 8 x 10 area that says "on skids" and Mrs. Wolgamood asked if that is where the generator is housed. The petitioner said yes and it will continue to be at that location.

David Bontrager Junior, 59723 CR 33, Middlebury, was present in favor of this request. Mr. Bontrager said Mr. Miller would like to make his business legal and add onto it. As far as the work he's doing, it will mostly stay in the old building. The proposed addition would be a storage area for the finished product. He indicated that the petitioner does this business full-time.

Mr. Bontrager said if there is a sound issue with the 8 x 12 building, then they could move it somewhere else. Enclosing the building more would also be an option. There were mufflers added to the generator and it has been enclosed more.

Mary Hesser, 56277 CR 31, Goshen, was present in opposition to this request. Mrs. Hesser indicated she lives immediately north of Mr. Miller's property. She and her husband have lived there for 21 ½ years. Prior to the Miller's moving in, the property was very similar to her's and was used as a residence. The property had also been used for horses and seasonal road crops.

The aerial photo is not very current because the fencing from the horse pasture has been taken out and a second access drive has been put onto the property. Mrs. Hesser indicated she made an inquiry about the second driveway access to the Elkhart County Highway Department.

Removing the pasture and adding a second driveway has significantly changed the whole front look of the property. The community is rural residential and there are only around 20 houses on this road. She is fully aware of the sites and sounds of being in the country, but this is a factory.

She understands that workshops can be hobbies, but when a second access driveway has to be put in to handle large semi trucks, then it's hard to believe that it's a home workshop.

In the questionnaire, Mr. Miller stated that there are two employees, but the staff conditions don't address how many employees he is allowed or the hours of operation. Mrs. Hesser indicated she doesn't want to cause problems because they are nice neighbors, but she does have some concerns.

Mr. Lantz asked if the generator is the biggest issue because of the noise and Mrs. Hesser said the noise from the shop is something she might hear regardless. That noise could be something she may hear from any other neighbors' house. She doesn't hear the generator like she used to and it has definitely improved. Mrs. Hesser said she's not sure at what point these workshops need to go to a commercially zoned area.

Mrs. Wolgamood asked about the truck traffic. Mrs. Hesser said the semi's don't want to pull into the driveway because they can't turn around, so they had been backing into the driveway, which isn't necessary anymore because of the second access driveway.

Mr. Lantz asked if there were some limitations put on this Special Use, would she be in favor of it. Mrs. Hesser indicated if it were approved, she would like have reviews periodically.

Mr. Miller then came back before the Board to speak on the remonstrator's concerns. He apologized to Mrs. Hesser for the noise problems and thanked her for speaking her concerns at today's meeting. Mr. Miller appreciated her planting the trees and he planted about 40 more of them. The trees are currently only a foot and a half high at this point, but they are fast growing hybrid willows.

Mr. Homan asked Mr. Miller if he got state approval for the second curb cut and he said no.

Mr. Miller said he wants a small business where he, his wife and children can work. He has no desire to be a big factory and it won't get that way.

Mr. Homan asked him to clarify the number of employees. Mr. Miller said he had one part time employee that worked approximately six to eight hours per week.

It was indicated by Mr. Homan that the site plan refers to a lean to on the side of the addition and asked what that will be used for. Mr. Miller indicated it will be an enclosed area for the horse and buggy parking.

Mr. Homan said if the forklift were able to be operated in the building, then it would be appropriate to have it stored in the building as one of the requirements.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lantz said if he keeps his forklift inside, limits his hours and truck traffic, then he wouldn't have a problem with this as a neighbor.

Mrs. Wolgamood said she is concerned with the Developmental Variance.

Mr. Homan said backing onto the property from CR 31 is unacceptable and it would be an issue with the Elkhart County Highway Department remaining a second curb cut.

Mr. Miller indicated he has a problem with the size of the building due to the intended use of the property.

Mr. Homan said he would like to see the home workshop running successfully before granting the Developmental Variance.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a woodworking business (Specifications F - #45) be approved as per site plan submitted with the following conditions imposed:

1. All conditions of the home workshop/business to be adhered to.
2. The business shall be operated by the owner/occupant of the residence.
3. One double faced sign no larger than four (4) sq. ft. per side and un-lighted (existing sign to be brought into compliance within thirty (30) days.)
4. Approved for a period of two (2) years with a renewal before the Board.
5. Hours of operation to be 6 a.m. to 5 p.m., Monday through Friday.
6. The existing second curb cut to be in compliance with the standards of the Elkhart County Highway Department and approved within sixty (60) days.
7. No more than two (2) employees who live outside of the residence on site.
8. No outside storage of materials or equipment.

A roll call vote was taken and the motion was unanimously carried.

Secondly, a motion was made and seconded (*Homan/Wolgamood*) that the Board deny the request for a Developmental Variance to allow the total square footage of accessory structures (4,016) to exceed the total square footage in the primary structure (2,000), a difference of 2,016 sq. ft. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – yes.

Mr. Hesser returned to the Board at this time.

18. The application of **Roscoe & Jacoline Anglemyer** for a Special Use for a mobile home to be occupied by daughter of petitioners, Marcia Anglemyer and family on property located on the East side of CR 11 N, 1,280 ft. North of Eva Avenue, common address of 51652 CR 11 N in Osolo Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20073781*.

There were 9 neighboring property owners notified of this request.

Marsha Anglemyer, 51652 CR 11 N, Elkhart, was present on behalf of this request. Ms. Anglemyer indicated she would like a Special Use to put a mobile home behind the existing residence where her father currently lives. The mobile home would be occupied by her and her

children. The petitioner explained that her mother has early stages of Alzheimer's disease and currently has dementia, which causes her to need several hours of care.

Mr. Homan asked the petitioners if they have worked on this with the staff and Ms. Anglemeyer said yes.

Mr. Hesser asked if this medical hardship has been documented and Mr. Harrell said yes, the staff has received it.

Mrs. Wolgamood said they did a very good job cleaning up the property and indicated if this petition were approved, the property would need to stay that way.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a mobile home to be occupied by daughter of petitioners, Marcia Anglemeyer and family, be approved for three (3) years with one (1) year review to verify compliance with Conditions "A", with the mobile home to be occupied by daughter of owner of property as long as a hardship exists. A roll call vote was taken and the motion was carried unanimously.

19. The application of *Crystal Smith (buyer) and Gabriela Zimmerman (seller)* for a Special Use for a kennel with indoor pens and outdoor walking area (Specifications F - #15.10) on property located on the 1,420 ft. North off of CR 8, 870 ft. West of Barrington Lane, common address of 21513 CR 8 in Washington Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081303*.

There were 20 neighboring property owners notified of this request.

Crystal Smith, 21513 CR 8, Bristol, was present on behalf of this request. Ms. Smith submitted a packet to the Board including information regarding the services she offers, prices, and business cards *[attached to file as Petitioner Exhibit #1]*. She explained that she ran a very large kennel for many years on CR 104 and CR 15. That area is becoming very developed and in the near future, there probably won't be the availability to have the business in that location. She had recently gotten a divorce and found this property through a client. By having the kennel in her home, she is able to provide for her children and pay her mortgage.

Most of her clients are from Pheasant Ridge Subdivision and they know her from her previous business. Ms. Smith said she is a retired Veterinary Technician who used to work in surgery. When she worked as a technician, a lot of her time was devoted to her job and she couldn't spend as much time with her children as she would've liked.

She wouldn't have a lot of new clients coming in because she has been working with most of her clients for five or six years.

Ms. Smith indicated the facility is very small and she doesn't do a lot of boarding or lodging. There are no cages in her facility and she explained it as very posh and comfortable. The rooms are small with vinyl floors, televisions, pillows, blankets, comforters, and sheets.

If an animal were to make a mess on the floor, she would pick it up with a paper towel and disinfectant spray as people do in their own homes. Most of the animals don't have that problem because they are used to being indoors and in that type of environment.

The petitioner said she can't groom more than six pets per day because she's the only employee. She has some volunteers and high school students who are interested in the field of veterinary medicine. Ms. Smith said she is following all of the safety issues and complying with all regulations when she has younger students working with her.

When a dog goes to the bathroom outside, the waste is disposed of in plastic bags to avoid any odors.

She doesn't have a lot of traffic, but there may be more around holidays. She has ten spaces available and can hold a total of 15 dogs. The reason she can hold 15 dogs is because some people have multiple dogs that can stay together in one room.

Mr. Homan asked about the driveway access and the petitioner said it is a shared easement and only a portion of it goes with the property.

Mr. Homan indicated that some of the neighbors had voiced a concern last month about loose dogs. Ms. Smith said one of her personal pets went after a squirrel or a cat one time, but that's it. She has found loose dogs in her yard and taken them around to the neighbors asking if they belong to them. Having the stray pets come over to her property is a potential danger for her clients' animals and her children. There is a lot of dog activity in her yard, so loose pets tend to congregate there. She then reassured the Board that the loose pets were not her personal pets or her clients' pets.

Mr. Kolbus then said the legal description that was obtained only references the rights and benefits of the points that access the easement and they are set out in another deed record that is not on file.

Mr. Hesser said another issue related to that is the amount of traffic considering the length of the driveway with cars coming in and out at the same time. He then asked how wide the driveway is and the petitioner said it used to be a narrow one way driveway, but it has been cleaned up so two cars can pass each other. At most given points, there is a place where one car could pull over to the side so the other could get past.

Mr. Hesser asked how many cars come in and out of the driveway each day and the Ms. Smith said she uses it a lot because her son is in extracurricular activities per day. As far as clients, there are no more than six separate clients for grooming coming in and out. On holidays, there may be a few more, but she works by appointment only. All business is finished between 6:30 p.m. and 7:00 p.m. each day. Most of her client's don't come to the site until after 8:00 a.m.

The number of days that she grooms per week was questioned by Mr. Homan. Ms. Smith said she works by appointment only Monday through Saturday, with less on Saturday. On Saturday, she prefers to have all of the dogs groomed by noon.

Mr. Hesser asked how many animals are usually on site at one time. The petitioner indicated she has four personal pets, which include three dogs and one bird. As far as clients' pets, she will only take a maximum of 15. Mr. Hesser said kennels usually have a limit that they are not to exceed and Mr. Harrell said there is no limit, but the Board can set that.

Mr. Hesser asked Mr. Harrell if 15 dogs would be an issue. Mr. Harrell said it would depend on the amount of noise. If the building wasn't well insulated, then 15 barking dogs could cause a problem. Ms. Smith said the building is well insulated because that was a concern when the building was converted. The Board questioned whether or not she was planning to expand and Ms. Smith said no.

Mr. Homan asked how long she has been running the business at this location and she said the building was finished in December and she hasn't done full business until she obtains a Special Use permit. She has serviced some of her past client's pets in that time period and done some short period boarding. Mr. Homan indicated this was in the result of a complaint because she doesn't have the proper permits. Ms. Smith said the business wasn't open when the complaint came in, but she had to put a sign up because the property is so far off of the road.

Mr. Homan asked if the dogs spend time outside and Ms. Smith said they have a secured area outside. They plan on securing that area so they can have three dogs out at one time. The dogs do get walked on leashes and there is some barking, but no more than residential dogs.

Mr. Hesser asked if there is any other fencing on the property apart from the garage area. Ms. Smith said not yet, but they have discussed putting up a barricade on the hill due to the two new homes nearby.

Mrs. Wolgamoood asked if the mound is on her property or the adjacent property and Ms. Smith said it is in the middle. The mound wraps around the garage and stops at the back of the fence. The mound was then pointed out on the aerial photo.

Jim Bache, President of Pheasant Ridge Homeowner's Association, 53602 Woodfield Lane, Bristol, was present in opposition to this request on behalf of the Pheasant Ridge Homeowner's Association. Mr. Bache was present last month to provide the Board with some additional information and some concerns. The initial concern he has is that the aerial photo is very outdated. There have been 11 new homes built since the aerial photo was taken. All of the lots are built on apart from one corner and every home has been sold apart from one. There are a lot of children surrounding the area and they are planning to put in a playground to the east of the property in question.

Mr. Bache's concern is from a neighborhood perspective for the safety of the residents. If none of the area had been developed, then this might not have been such an issue. The mound of dirt that was mentioned on the east side of the property, which backs the tennis courts, is Pheasant Ridge's property. Fencing would not be allowed on the mound and could only be placed to the west of that near the property line. He wasn't sure where the north property line is located.

The primary concern with this request is safety. Mr. Bache said he has been in the neighborhood for ten years and he pointed out his location on the aerial photo. He has a clear view of everything that goes on in this area of the neighborhood. For the past five years, he has made repeated calls on behalf of the neighborhood for loose dogs coming from that property. He isn't necessarily saying they are Ms. Smith's dogs, but there were three dogs on that property for an extended period of time and they made repeated calls to the Sheriff's Department. He isn't sure how it was resolved, but he assumes the dogs were removed from the property at one point. The main issue was that the dogs were chasing neighbors as they were riding their bikes or walking through the neighborhood. When the playground is put into the common area of the neighborhood, it will raise more concerns as far as the dogs getting loose. Children don't understand whether or not dogs are friendly.

Mr. Hesser asked if the loose dogs were a problem with the current occupant or a prior occupant. Mr. Bache said based on his understanding, the current owner of the property has been there for seven or eight years, so he assumes that the dogs belonged to them. He can't be certain of that because he's never spoken to them.

Mr. Lantz asked how many people in the area own dogs and Mr. Bache said about half a dozen in this area. There was discussion about the dogs being indoors after 5:00 p.m., but he questioned whether that will be practical during the summer hours.

Mr. Lantz asked if this is more of a noise or a safety issue. Mr. Bache indicated this would be more of a safety issue. Mr. Lantz said assuming the petitioner's dogs are under control and there are a lot of other dogs in the neighborhood, then what part of the safety issue is Ms. Smith's. Mr. Bache said the dogs are being attracted to her business because they smell her client's dogs. He also isn't sure whether the dogs she will be kenneling are more likely to be aggressive towards other people in the neighborhood. The noise issues have come up as complaints from other residents.

Two of the residents that were here to speak their concerns last month both live south of the property in question. They are the homeowners that own the road and have expressed a concern in the increase in traffic. The traffic is a concern because they have small children.

Present to speak in opposition to this request was Larry Podojil, 21465 Shannon Court, who lives southeast of the proposed property. Mr. Podojil said he would like to address the three issues of privacy, safety, and value. They bought the house a year and a half ago because it was a private area. Mr. Podojil also pointed out that his property line covers that access road. There never used to be much traffic on the road and he doesn't remember seeing a vehicle on that road for the first eight months of living there.

Mr. Podojil spent \$70,000 to upgrade the house and in the meantime, the kennel was put in. He didn't think much of it at first, but the traffic patterns have increased significantly since then. He indicated his family room opens up to the petitioner's backyard and it's no longer private. Every single neighbor who lives around Mr. Podojil is raising children. He has five grandchildren himself and they play in the backyard, so it is a safety issue.

The third issue is the real estate value. He isn't sure how it could impact the property, but it is a concern.

Mr. Homan indicated that the photograph submitted by the staff shows a large amount of brush along the east side of the property. Mr. Podojil said he has 200 ft. of property on the east side of garden area and sod. He said that area tends to be wooded and not manicured.

Mr. Homan then asked Mr. Podojil if he was aware of the easement when he bought the property. He said he was aware of the easement when he bought the property and he understood that it was used for a driveway. The person that developed the real estate area ended up selling that lot to someone who was using the access road as a driveway.

In the last 30 days, Mr. Podojil has noticed cars driving at speeds that he considers to be faster than what is safe. He believes that five to ten miles per hour would be plenty fast enough to get back to the property. The fast driving speeds concerns him with having his grandchildren and other children around.

Linda Weldy, 2505 Waterbend Drive, Elkhart, was present in opposition to this request. Mrs. Weldy explained that she purchased the 22 acre wooded area to the south of the proposed property. She recently received approval from the Board of Zoning Appeals to build two residences on the same parcel. The residences will be used as a recreational area for her family.

Mrs. Weldy said their main concern is hearing barking at all hours. Safety is also an issue because they have five grandchildren who visit often and play on the property. If the dogs were to get loose, they might bite her grandchildren. The last concern she has is the impact the

business will have on their property. Allowing this business to open might give other businesses in the area opportunities. The barking of the dogs at night is her biggest concern.

Mr. Homan asked if she has visited the property with this concern to try and discover whether or not the barking really is an issue. Mrs. Weldy said they purchased the property in January of this year and the moving in of this business was simultaneous to them buying the property.

Ms. Smith then addressed the remonstrators concerns and said she thinks everyone's concerns are valid. She said 60% of her business is coming from Pheasant Ridge and they don't have a problem with her business. Ms. Smith said the pets she grooms are other people's pets and they do use leashes or make sure that they are in a secured area. She goes out of her way to make sure none of the animals escape.

The petitioner indicated she is a graduate of Purdue University and it is her business to teach safety. She is also a behavior modification trainer and she helps people with the behavioral problems they have in their home with their pets.

Ms. Smith said they will never have night barking. The dogs she grooms are dogs that live in people's homes and in Pheasant Ridge neighborhood. The dogs are in and out the same amount that they would be in their homes.

As far as speed on the driveway is concerned, Ms. Smith said she has spoken up when she thinks her clients or construction workers have been driving too fast on that drive. She has a concern about the speed as well because her children play on the driveway. Ms. Smith said she is in the process of having a sign put up so people watch their speed because her driveway is being torn up. She indicated the traffic won't be as heavy now that she doesn't have construction workers and painters coming on site.

Mr. Homan asked if anyone helps her with the kennel since one of the remonstrators expressed that the kennel may be left unmanaged at certain times during the week. Ms. Smith said there is never an unmanaged time. She used to have a kennel that housed over 100 dogs at one time with her as the full-time employee and one part-time employee. Ms. Smith doesn't feel that handling a lot of dogs is hard, but it is time consuming. The dogs she boards in her facility are all non-aggressive.

Ms. Smith believes the concerns are valid, but she doesn't feel this business will change the neighborhood much apart from the amount of traffic. This is not a place where other businesses could pop up and arise.

Mr. Homan then asked the petitioner to clarify what her hours of operation are. The petitioner indicated she doesn't have set business hours because people call and make appointments at the last minute. She would like to keep the hours of operation between 8:00 a.m. and 6:30-7:00 p.m. She usually lets the dogs out to allow them to relieve themselves earlier than 8:00 a.m., but that doesn't mean she is open for business.

Mr. Kolbus indicated the staff is recommending a condition that all dogs be confined inside an enclosed building after 5:00 p.m. If dogs will be boarded there, then he asked how she would be able to take the dogs out to relieve themselves before bed. Ms. Smith said she is not sure how she would handle this issue. She lets the dogs out quickly to do their business, but she needs to have the capability of allowing them to go to the bathroom. Her personal pets are let out to go to the bathroom after 9:00 p.m. and she's not sure how someone would make the distinction between her personal pets and kennel pets.

Mr. Homan said he believes there is a distinction between having a dog in a pen and walking the dog. Ms. Smith said her dogs will never be penned up outside at any given time. They will be outside for periods between 8:00 a.m. and 5:00 p.m., but they will go potty and come back inside.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said that the most of the issues dealing with safety and traffic are tied to the number of animals which are permitted. He believes that the amount of dogs may be an issue because that requires more customer traffic. The speed on the driveway should also be addressed in the conditions if this request were approved.

Mrs. Prough explained in 1986, the Board of Zoning Appeals granted a permit for a mobile to placed on this property served by an easement. At that time, the Board approved the use of the easement.

Mr. Hesser said it would be appropriate to put time restraints on the hours for pick up and drop off. He also pointed out that the two lots immediately to the east are the tennis courts that are noisier during the day.

According to Mr. Homan, the restrictions should include hours of operation and the number of animals.

Mrs. Wolgamood indicated the easement was granted for residential purposes in 1986. Mr. Miller doesn't have much room on his property as it is and the added traffic will cause him to have less.

Mrs. Wolgamood pointed out that the house can't be seen from CR 8, but it can be seen from the subdivision streets in Pheasant Ridge. The house is in the backyard of eight different homes.

Mr. Miller said the garage on the property is in I & M's utility easement and it violates the east property line. Mr. Harrell said they considered that in the staff meeting and decided to leave it up to I & M whether they want it removed from the property.

Mr. Miller said he has a concern since this property borders eight neighboring properties and there is potential exposure and liability there, but he understands the nature of the request.

Mr. Homan asked how they would monitor the conduct and traffic on the easement. Mr. Kolbus said you can privately put up speed limit signs, but enforcing those is an entirely different issue.

Mr. Miller said he would support bringing this request back as a renewal in one year.

The number of dogs that should be allowed was questioned by Mr. Homan and Mr. Hesser suggested ten.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a kennel with indoor pens and outdoor walking area (Specifications F - #15.10) be approved with the following conditions imposed:

1. Sign limited to four (4) sq. ft. per side and unlighted.
2. All dogs must be confined inside an enclosed building after 5:00 p.m. or placed on a leash if outside the confined area.
3. All barking should be held to a minimum.
4. Approved for a period of one (1) year with renewal by the Board of Zoning Appeals.

5. Drop off and pick up hours are to be 8 a.m. to 6:30 p.m., Monday through Saturday.
6. A total of nine (9) dogs are allowed on the property at any one time, including the owner's three (3) personal dogs.
7. Approved for the owner/occupant of the residence on site.

A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – no; Lantz – no; Miller – yes; Hesser – yes.

20. The application of **Daniel R. Mullet** for a Special Use for a home workshop/business for metal cutting, wood routing and tool sharpening business (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (4,064) to exceed the total square footage of the primary structure (2,310), a difference of 1,754 sq. ft., on property located on the West side of CR 15, 1/4 mile South of CR 36, common address of 64297 CR 15 in Harrison Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081295*.

There were 9 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present on behalf of this request. Mr. Sloat then requested to have this petition tabled until next month to allow some of the issues to be worked out with the staff.

Mr. Harrell indicated the issues are with the Elkhart County Highway Department and they haven't gotten back with the petitioner yet. They also want to deed the two properties, but that hasn't been completed yet. The staff has no problem with tabling the request.

The public hearing will remain open to allow the Board to hear additional report items at the next meeting.

Devon Schrock, 1428 Hampton Circle, Goshen, was present in opposition to this request. Mr. Schrock indicated he has property in this area and pointed out his location on the aerial photo. He and his wife have a cottage in the woods and his primary concern is noise. He also indicated that one of his other neighbors has a business.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for metal cutting, wood routing and tool sharpening business (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (4,064) to exceed the total square footage of the primary structure (2,310), a difference of 1,754 sq. ft., be tabled for 30 days until the May 15, 2008, Board of Zoning Appeals meeting with all neighboring property owners to be re-notified to allow the following issues to be resolved:

1. The existing building is on a parcel without a primary structure (004).
2. The building permit for the existing building was issued on parcel 005 (with residence).
3. The existing building permit was issued for a 26 x 32 ft. part agricultural/part accessory building on property that is less than three acres in size (005). The site plan now shows an existing building of 32 x 40 ft. (004).
4. The existing building has never had final inspections through the Building Department.
5. The existing sign is in violation of the sign ordinance.

6. It appears the driveway on parcel 004 may not be legal.
7. There is no building permit for the existing 12 x 16 ft. accessory building on parcel 004. A roll call vote was taken, the motion was carried unanimously.

21. There were no items transferred from the Hearing Officer.
22. There were no audience items.
23. There were no Staff/Board items.
24. The meeting was adjourned at 12:38 P.M.

Respectfully submitted.

Kate A. Barghahn, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary