

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21st DAY OF FEBRUARY 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, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Dan Piehl, Planner; Robert Nemeth, Planner; Ann Prough, Code Enforcement Officer; and James W. Kolbus, Attorney for the Board.
2. The approval of minutes for the Board of Zoning Appeals meeting held on January 17, 2008 was postponed until the March 20, 2008 meeting.
3. A motion was made and seconded (*Homan/Miller*) that the legal advertisements, having been published on the 9th day of February 2008 in the Goshen News and on the 11th day of February 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 (*Homan/Lantz*) 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. The application of *Lois Sellers Revocable Trust (lessor) and Cellco Partners d/b/a Verizon Wireless (lessee)* for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located 500 ft. North off of North Shore Drive, 4,000 ft. East of SR 19 in Osolo Township, zoned R-2, came on to be heard.

A 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 #20081008*.

There were 35 neighboring property owners notified of this request.

Stuart A. Harrison, Consultant from Verizon Wireless, 42 W. Spruce Street, Canton, Illinois, was present on behalf of this request. Mr. Harrison explained Verizon Wireless seeks to build a 120 ft. monopole in the back corner of the woods, which was pointed out on the aerial photo. All four sides would be buffered and no trees would be taken out in the area. The tower would be located 577 ft. from North Shore Drive and 124 ft. from the west boundary line, so they have no fall zone issues.

Verizon Wireless is attempting to fix the dead calls along the Michigan/Indiana border that Mr. Harrison brought up when he spoke in front of the Board six months ago.

The petitioner then submitted two plots to the Board *[attached to file as Petitioner Exhibit #1]*. The "With-Out North Shore Ec plot" shows the dead call zone in white at the top. The "North Shore Ec plot" shows the area that Verizon Wireless needs to take care of in blue.

The monopole will have a fence around it and will be secure. There will be no safety issues at all. The tower won't diminish any property values because it's setting so far away from all of the properties in the area. Residents along North Shore Drive won't really see the tower because it's in a heavily wooded area. They will basically only see the top of the tower. There is no adverse affect with the proposed tower. It will be a power base station and has no effect on health, safety, or welfare at all.

Mr. Harrison said they will be there once a month to service an antenna that may tilt improperly due to wind, but there won't be any traffic problems.

Verizon Wireless has attempted to collocate, but it would not work because the Radio Frequency Engineers indicated that they would have to move further north. In the result of that, they have to put it farther back into the woods.

Mr. Harrison said he has also provided an affidavit and they will permit collocation. The proposed tower could reach up to 120 ft., but the trees would lessen it to about 75-80 ft. He estimated that they could pick up two collocators, which would satisfy the ordinance.

At the end of the lease, the facility will be removed and dirt will be put back over the top of the concrete in order to restore it to the original premises.

Verizon Wireless seeks the Board's approval for the communications for the 911 service and the cellular service. The FFC license requires that they patch the holes that occur throughout the area. Mr. Harrison hopes they can take care of them as soon as possible.

Mr. Miller asked if the I&M lines that run north of the proposed property would have any affect on the tower and the petitioner said no. Those lines are approximately 85-90 ft. and the tower will be 120 ft.

Preston Joy, 50725 Dutton Drive, Elkhart, was present in opposition to this request. Mr. Joy said he lives west of the proposed property. A petition in opposition to the request was then submitted to the Board *[attached to file as Remonstrator Exhibit #1]* with 19 valid signatures. He could not contact everyone in the neighborhood, but 100 percent of the people who were contacted signed the petition.

As far as the safety issues, Mr. Joy has done a lot of research in the past month. He has found no definitive studies on this topic. There are a lot of children running around in this area. Mr. Joy also believes the tower will be very unsightly. He will definitely be able to see it, including the new development around the proposed property.

Mr. Joy went to a couple of websites and found out the tower will devaluate his property 10-20 percent within 400 yards. That was an average figure, but it could be less or more.

While doing research, he found that there is a law that only requires reasonable coverage, but not perfect coverage. There have been studies where they moved the towers a couple miles away. To the north and east, there is plenty of open farmland. He doesn't believe there is a need to put it right in the middle of a residential area. Mr. Joy said they have gone through a lot of trouble with the sewer system and this would only add to their problems.

If someone comes to look at a house to buy, the first thing they will see is this tower. Mr. Homan then asked him to point out his property, which is directly north of the proposed location. Mr. Joy also pointed out the location of duplexes and single family residences surrounding the property.

Lastly, Mr. Joy said he does realize the power lines are in a close proximity, but they were already there when he purchased his property.

Mr. Homan asked what his primary concerns are and he said property value and the safety of the children.

Mr. Homan asked what his concern is for the safety of the children. Mr. Joy said there is no definitive study that he could find, but the government says it's safe and he has to take their word for it. Mr. Joy is concerned that it might cause more lightening, but he couldn't find any research.

Charles Vetter, 25700 North Shore Drive, Elkhart, was present to express a couple of concerns. He asked whether or not the tower will have any interference with television signals. Mr. Vetter doesn't have cable television and he depends upon open airwaves.

Secondly, he wondered if granting this petition would have any effect on animal life. Mr. Vetter has made the property across the road an open area where he often sees deer and other wildlife, which he doesn't want scared away.

Pam Sellers-Hestermann, daughter of the petition, 3222 North Washington Road, Fort Wayne, was present in favor of this request. Ms. Sellers-Hestermann said Verizon Wireless has been wonderful working with the family. They have changed their plan three times to make sure it is far enough off of the road. If the tower was ever to fall, it has been positioned so Mr. Vetter's property will never be damaged. Ms. Sellers-Hestermann believes his property helps fence the views from the street. She and her four siblings came to the conclusion that this would be something they want to have happen.

There were no remonstrators present.

The petitioner came before the Board to speak on the remonstrator's concerns. The first issue that was brought up was concerning the safety and welfare of the children. The 1996 Telecommunications Acts prevents Mr. Harrison from discussing tower locations and sighting of towers. Someone would be required to climb the tower to have a risk because it's a low power base station. Mr. Harrison assured the Board that the tower will be risk free. He doesn't believe this will be any different than having a flood lamp in your yard. It sends the light out, but if you were to put your hand in front of the lamp, you would have a problem after several seconds. The situation is the same with a radio signal. The tower will be very low power and approximately 500 watts, such as an FM radio.

By federal code, Mr. Harrison is not permitted to discuss much more than what he has already. He indicated he could provide a letter showing the evidence for the Elkhart County Building Department.

In regards to the 10-20 percent property value decrease, they have built the towers next to houses within 50-100 feet. He said there has been no study done in the United States showing that property values have been declined because of the cell tower locations. The towers have been put in schools, cities, churches, etc. Mr. Harrison said the tower will be very well buffered because of the trees and the top of the tower will be the only part of it seen.

Mr. Harrison mentioned there was a concern about a lightening rod. He indicated the tower will have a grounding rod and circle around the outside which eliminates any problems due to lightening. The petitioner is also not aware of any towers that have fallen in the United States since 1989.

In regards to the interference problems, there will be no interference as far as radio or television at all. Those frequencies will be completely different than what Verizon's frequencies

would be. Everything has been licensed by the FFC, but if he were to have a problem then he could contact them. Mr. Harrison said the tower doesn't emit any problems concerning health, so it won't affect the wildlife.

Mr. Harrison indicated they are not attempting to mislead anyone. They are setting the tower back in the woods so it will be far away from the road and residents. They are trying to accommodate a problem that the FFC and Verizon Wireless Radio Frequency Engineers have designated as a dead call zone. This problem needs to be solved for 911 service and many other reasons.

Mr. Hesser asked if the area around the tower is fenced and the petitioner said yes. Due to development that could happen in the future, they are putting up a vinyl fence to accommodate the security of the tower.

The public hearing was closed at this time.

Mr. Miller indicated he walked the site yesterday and it is very heavily wooded. He believes in the summer time with all the leaves, it will be very well sheltered.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/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 wireless communications facility (Specifications F - #31.50) be approved as per site plan submitted with all provisions of the Elkhart County Tower Policy to be adhered to. A roll call vote was taken and the motion was unanimously carried.

8. The application of *Sarah Kagondu* for a Special Use for a home for the aged in an A-1 district (Specifications F - #53) on property located on the Northwest corner of CR 1 and CR 108, being Lot 1 of Parkview Estates, common address of 54489 CR 1 in Cleveland 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 #20081119*.

There were 16 neighboring property owners notified of this request.

Mr. Harrell said the Board feels that the house should be built with handicapped interiors. These types of Special Uses are granted to people who are immobile and there is a lot to consider before it were to be granted.

Mr. Homan asked Ms. Kagondu if she understands the request for more information and she said yes.

Mr. Homan then questioned if there is any point in taking testimony today or should it be tabled and advertised at a later date. Mr. Kolbus suggested seeing if anyone is present to speak on the request considering it had been advertised.

Mr. Harrell said he would be willing to work with them on their house plans. The house is under construction now and the initial inspections have been done, but they are concerned about the building itself and the proposed use. The inspections were based on a standard, residential home.

Mr. Homan asked the audience if anyone was present to speak for or against this request.

There were no remonstrators present.

Mr. Homan believes Ms. Kagundu needs to work more with the staff to work out the details. If the Board were to go ahead with this petition today, then there is a good chance that it would be turned down. In terms of design of the property, there is more work that needs to be done for proper consideration. Mr. Kolbus indicated the petition doesn't need to be re-advertised.

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/Miller*) that in accordance with the Staff Analysis, this request for a Special Use for a home for the aged in an A-1 district (Specifications F - #53) be tabled to allow for additional information, reference number of residents, safety features of building construction, etc.

9. The application of *Elvin Nolt* for a Special Use for an existing mobile home to be occupied by Erica Love on property located on the North side of CR 32, 700 ft. East of SR 19, common address of 27845 CR 32 in Harrison 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 #20081075.

There were 5 neighboring property owners notified of this request

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing Elvin Nolt. Mr. Sloat submitted a packet of information to the Board [attached to file as Petitioner Exhibit #1] containing pictures, a list of conditions, and Specifications J from the Elkhart County Ordinance. He pointed out Mr. Nolt's property on the aerial photo as well as the location of the mobile home. Mr. Sloat also pointed out the location of the modular home, duplex, and single family residence.

The mobile home was placed on the property in 1996 and the Special Use was granted in 1995 for Mr. Risser's daughter. Mr. Risser currently lives in the duplex and he is present today in support of this request. Mr. Sloat pointed out the farmhouse which Mr. Risser used to live in. Mr. Risser's daughter put up the modular home and his daughter was living in the mobile home. At that time, the 300 ft. setback was not an issue because of the hardship situation. That permit was renewed three times.

In May of 2004, the property containing the mobile home was sold to Hartman and was owner occupied for a period of time. In June of 2007, the mobile home and the three acres of land were put up for sale. When the Hartman's bought the mobile home, Mr. Risser sold the mobile home and the lot on the corner. He kept the parcel on the corner for himself and also the duplex for his daughter. Since that time, Mr. Nolt applied for and received a Special Use permit for his home workshop/business. He has improved the home and fixed it up with appropriate landscaping. The pictures of all of the homes were shown during a PowerPoint presentation.

After Mr. Nolt bought the mobile home, the appearance improved. He has a large family and he may need a place for his grandparents and children to live on a temporary basis.

When the mobile home gets to the point where it's no longer feasible to maintain, Mr. Nolt will remove it and build a modular or stick built home on the three acres of land. One of his concerns is if he doesn't own the property and someone were to remove the mobile home, they could build a home right next to his which he doesn't want. Mr. Sloat indicated this is a very close community with a lot of longevity.

The Staff recommends denial because of the 300 ft. setback issue. He indicated there is a copy of Specifications J in the packet. Nowhere in those specifications does it say that the mobile home must be owner occupied. In Mr. Sloat's opinion, the implementation of the 300 ft. setback is for the protection of the neighbors when you put a mobile home in for the first time. This particular mobile home has been there for 12 years and within 300 ft. of the adjoining property, which no one has had an issue with. He doesn't think the intention behind this particular specification is to address the situation today. If he wanted to place a mobile home on the property and there wasn't already one there, then he would need to comply with the 300 ft. setback.

The present occupant of the mobile home is the sister of the girl who lives on the adjoining property. She is helping to take care of her sister, so there is a hardship situation going on.

All of the neighbors support the approval of this petition. Mr. Sloat doesn't believe Mr. Nolt will be causing any substantial or permanent injury to the neighboring property owners. They will serve the public convenience because they are providing a place of residence for someone with limited income to live. It is consistent with the ordinance because it doesn't apply in this situation in regards to the 300 ft. setback rule. There is nothing in the ordinance that requires the mobile home to be owner/occupied.

Mr. Sloat suggested that this be renewed for three years. He explained it's sort of like a renewal because the first permit came up in December and Mr. Nolt bought the property in June. That permit is expired because of time and he needs to have a new permit because he's a new owner. He also requested that the Board allow his condition stating that the mobile home may not be owner occupied unless he owns it and lives/own on the parcel next door. If he were to sell any part of the property, then Mr. Sloat indicated the Board can revoke the permit. As long as he owns both of the properties, he should be able to control what happens to the property.

Mr. Homan asked if this is going to be a rental/lease agreement with the next door neighbor. Mr. Sloat said the lady that is living in the mobile home is paying rent, but it's not a profitable income. Mr. Nolt's primary concern is that he wants to control all three acres and control what goes on.

Daniel King, 27888 CR 32, Elkhart, was present in favor of this request. Mr. King indicated he would like the Board to allow Mr. Nolt to continue with the way his property currently is. Mr. Nolt and his family do a very good job of keeping up the property in both locations. Mr. King said he doesn't have any objection and isn't aware of any opposition in the neighborhood. He indicated they are a good family and take good care of their property, so he encouraged the Board to approve this request.

Wayne Risser, 27921 CR 32, Elkhart, was also present in favor of this request. Mr. Risser clarified that the home on Parcel C is a stick built home. Mr. Risser indicated when he sold it, it made more sense to have three acres in case someone wanted to build a house there in the future. The mobile home site is three acres and the mobile home is higher line with a shingled roof and more durability. Lastly, Mr. Risser believes it makes more sense to have a neighbor owning or renting this rather than someone who doesn't live next door.

Mr. Harrell then read Specifications J in the Elkhart County Ordinance to clarify the 300 ft. setback rule.

Mr. Homan asked if there was a medical condition when the Hartman's owned the property. Mr. Harrell indicated he believes there was a medical condition on one, but he's not sure that Mr. Risser's house was built at the time.

Mr. Sloat clarified that it was owned by Mr. Hartman, his wife, and their daughter. The father had the money in the homes and her name was on the deed since she lived there.

Mr. Sloat said he argues that the 300 ft. setback rule is for the initial placement of the mobile home, but doesn't necessarily apply to a subsequent application. He believes the only reason there would be a 300 ft. setback would be to protect the neighbors and in this case, none of the neighbors have a problem with it.

Mr. Hesser asked if there is a relationship between anyone living on the parcels and Mr. Sloat pointed out the locations where there is a relationship between residents. He also indicated that all of the residents and landowners are friends.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan indicated the ordinance is very specific when it says 300 ft., but everyone is in agreement in this situation and the property looks good.

Mr. Hesser said the property is very well maintained and the petitioner has done a wonderful job with that. His concern is making the exception based on a family member because that could come back and change.

Mr. Lantz said the rules are the best guidelines they can come up with. There is an exception here where it hasn't really caused a problem. He said the only concern of the Board is what will happen in the future when they are not friends. It is friendly now and he believes it will be for another three years or possibly more. As long as all of the bases are covered, Mr. Lantz doesn't have a problem with granting this request. The property has been established and it looks nice, so there is no reason to create a new problem.

Mr. Homan said there have been situations where there have been hardships where mobile homes have been set adjacent to a residence for a hardship. When the hardship goes away, the primary concern is what will happen with the mobile home.

Mr. Sloat pointed out the condition he added, which is that the petitioner will be owning both pieces of property and living on one of them. He indicated that would be the control because the petitioner doesn't want it to deteriorate.

Mr. Miller said he drove by and it's very well kept up. He pointed out that it's unusual to see a property that is so old and in such good condition. He understands strict enforcement of the ordinance, but he doesn't see this request being a detriment to the properties on either side. Mr. Homan said in practicality, it works well in this situation and the petitioner owns both pieces of property.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) that this request for a Special Use for an existing mobile home to be occupied by Erica Love be approved with the following conditions imposed:

1. Approved for a period of three (3) years with renewal before the Board.
2. Mobile home need not be owner occupied as long as there is common ownership of the two pieces of property.

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

10. The application of **Donal V. Rumfelt (landowner) and Rustin Rumfelt (business operator)** for a Special Use for warehousing and storing for a landscaping business in an A-1 district (Specifications F - #44), and for a Developmental Variance to allow the total square footage of the accessory structures (6,000) to exceed the total square footage in the primary structure (1,809), a difference of 4,191 sq. ft., on property located on the South side of CR 56, 1,700 ft. West of CR 29, common address of 16020 CR 56 in Jackson 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 #20081107*.

There were 6 neighboring property owners notified of this request.

Mr. Harrell read a letter from the petitioners requesting to withdraw their application.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request and a motion was made and seconded (*Lantz/Hesser*) that the Board accept the withdrawal of this request for a Special Use for warehousing and storing for a landscaping business in an A-1 district (Specifications F - #44), and for a Developmental Variance to allow the total square footage of the accessory structures (6,000) to exceed the total square footage in the primary structure (1,809), a difference of 4,191 sq. ft. After a unanimous roll call vote was taken, the motion was carried.

11. The application of **Indiana & Michigan Power Co. (buyer) and Pete Liegl (seller)** for a Special Use for a wireless communications facility (Specifications F - #31.50), and for an Appeal to allow for the placement of said wireless communications facility on property not subdivided in accordance with the Subdivision Control Ordinance on property located on the East side of CR 39, 1,000 ft. North of CR 4 in York Township, zoned M-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081114*.

There were 10 neighboring property owners notified of this request.

Rob Franciscus, 1 Riverside Plaza, Columbus, Ohio, was present on behalf of this request. Mr. Franciscus explained this request is for a wireless communications facility. Indiana & Michigan Power Company would like to build a tower for their network. The tower will be for the two way radio for their internal network. This will allow the employees in the trucks to talk to dispatchers.

They received a Special Use permit in May of 2007 on the adjoining parcel owned by Forest River, which was approved. As standard for towers, they had to go through a historical process where they were to submit applications to the historical preservation offices to wetlands surveys, Indian Tribe Assessments, etc. That process ensures that no one will have an issue with where they want to place the tower. It was determined during the process that the property on the west side of CR 31 was in the wetlands, which voided them to install the tower at that location.

Indiana & Michigan Power Company then went to Forest River to negotiate another part of the property. They are now proposing to put the tower on the east side of CR 39.

Mr. Hesser asked the petitioner to point out where the original tower was going to be placed. As Mr. Franciscus pointed out the location on the map, he explained that it is just south of the township ditch. The proposed location for the new tower was also pointed out.

Mr. Hesser also asked if this request is subject to the tower policy. Mr. Harrell said the policy is not a rule; it's just a policy that has been set up. According to the Staff's Recommendation, Mr. Hesser indicated there is no reference to that policy. He asked if that was intentional and Mr. Harrell said yes because Forest River owns the surrounding property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said the request had to be re-advertised to meet legal requirements, but if no one is showing up to object, then he has no problem with the request.

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 the Findings of the Board, and based upon these Findings, this request for a Special Use for a wireless communications facility (Specifications F - #31.50), and for an Appeal to allow for the placement of said wireless communications facility on property not subdivided in accordance with the Subdivision Control Ordinance be approved as per site plan submitted, with FAA permits to be obtained, and a letter addressing interference and collapsibility of the tower to be submitted for the file. After a unanimous roll call vote was taken, the motion was carried.

12. The application of **Ross Weldy** for an Appeal to allow for the construction of a residence on property served by an access easement and an Appeal to allow for the construction of said residence on property not subdivided in accordance with the Subdivision Control Ordinance (Parcel A); for an Appeal to allow for the construction of a residence on property served by an access easement and an Appeal to allow for the construction of an accessory structure prior to the construction of a residence (Parcel B) on property located on the East of Bethany Drive, 1,100 ft. North of CR 8 in Washington Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081113*.

There were 39 neighboring property owners notified of this request.

Kyle Weldy, 1646 Victoria Drive, Elkhart, was present representing his father, Ross Weldy. Mr. Weldy indicated they want to build two residences as a retirement place so they are able to downsize their homes. They would like an out building for car storage because they own around ten cars. It will mostly be used as a big recreational room for family get-togethers.

Mr. Hesser asked where the easement is located through which he would get access to the property. Mr. Weldy said the cul-de-sac touches their property and they want to build in the northwest corner.

Mr. Hesser also asked if it is a private road and the petitioner said it is a private road at the moment, but they are working with the owner to gain legal access.

It was clarified by Mr. Weldy that there will be two plots. One will contain a residence with an out building and the other will just have a residence. The out building will be built first so they have a place to store their tractors and other equipment in. The proposed locations of the residences were then pointed out on the aerial photo. It was clarified that the out building would be the eastern most building.

Mr. Miller asked if they would be accessing through Woodfield Estates and Mr. Weldy said yes. Mr. Miller indicated the high ground of that property is right in front and then it drops off towards the east, which Mr. Weldy said is correct.

Jim Mortrud, 53918 Kershner Lane, Elkhart, asked Mr. Weldy if he is purchasing the entire parcel. Mr. Weldy said he was and Mr. Mortrud said he is concerned that the parcel will be subdivided and used for other things. He indicated he doesn't have any problem with the request. Mr. Kolbus said if Mr. Weldy wanted to put any other improvements on the land, he would be required to come back before the Board.

Mr. Hesser clarified that the Board is being asked to approve the two residences, an out building, and to allow the out building to be constructed before the residences.

Mr. Harrell said if the property is in a registered wetland, he must go through the Armicore of Engineers. Mr. Mortrud said he isn't sure exactly where the wetlands are located. The Board can't supersede the Armicore of Engineers.

Mr. Mortrud said he has no problem with them building and it eases his mind about what else could've gone on that property. His property value would really be impacted if the land were subdivided because he owns all of the woods behind the proposed location.

Nancy Andrews, 21621 CR 8, Elkhart, was present to voice a concern. Ms. Andrews pointed out her property on the aerial photo. She said she is located along Woodland Hills where there is an easement to get back into the woods. She explained that she doesn't understand whether or not her driveway is going to become a part of the easement. As of today, she understands that will not be the case. Mr. Weldy indicated it won't even be close to her property. Ms. Andrews said she doesn't have a problem with this request.

Chris Parrin, 53862 Barrington Lane, Elkhart, asked the petitioner what type of machinery they will have in the out building. Mr. Weldy said he won't have any machinery and there won't be any type of business there.

Mr. Hesser asked if the out building will be 80 x 70 and 14 ft. high, and Mr. Weldy said that is correct.

From the drawing, Mr. Hesser said it appears to be landlocked. Mr. Weldy explained there is already a legal easement that goes through the property to give access to the neighbor to the north. They are looking at getting a legal easement off of the cul-de-sac.

Mr. Nemeth then submitted an aerial photo showing the location of the wetlands area *[attached to file as Staff Exhibit #1]*.

Mr. Homan asked if lots A & B will share a drive and Mr. Weldy said yes.

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 an Appeal to allow for the construction of a residence on property served by an access easement and an Appeal to allow for the construction of said residence on property not subdivided in accordance with the Subdivision Control Ordinance (Parcel A); for an Appeal to allow for the construction of a residence on property served by an access easement and an Appeal to allow for the construction of an accessory structure prior to the construction of a residence (Parcel B) be approved provided the easement is recorded and submitted prior to the issuance of any building permits. With a unanimous roll call vote, the motion was carried.

13. The application of **Jack E. & Colleen Doke** for a 7 ft. Variance to allow for the construction of an addition to an attached garage 3 ft. from the East side property line (Ordinance requires 10 ft.) on property located on the North side of CR 16, 845 ft. East of Ash Road, being lots 51 and 52 of Highland Park, common address of 30809 CR 16 W in Baugo 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 #20074085(A)*.

There were 3 neighboring property owners notified of this request.

Jack Doke, 30809 CR 16 West, Elkhart, was present on behalf of this request. Mr. Doke explained their present garage is attached and he has a 160 sq. ft. storage building, which was installed to the east of the garage 14 years ago. The storage building was built 18 inches from the property line. There is a common fence between him and his neighbor, which was there when he moved into the property over 21 years ago. The fence deteriorated and they went together and built a new fence. He has never had any complaints from his neighbors with his building being where it's located. They also have a summer house on the river which has never been a problem.

Mr. Doke said he would like to build a 36 ft. wide addition going around the present garage. There is an attached storage shed on the back of it. The length to get from the south to the north would be 56 ft. down the east side, which would bring the building within three ft. of the property line.

One of the concerns that was voiced was that it would limit the fireman's ability to get to the back of the house if there was a fire. Mr. Doke said you can't get to the back of any of those houses because of trees and utility poles. He went to the Baugo Fire Department and talked to the chief, who had been to that property in the past. The chief wrote him a letter, which was submitted to the Board, stating that the Fire Department only needs access to the front of the house *[attached to file as Petitioner Exhibit #1]*. The neighboring property owners don't have any opposition to this request.

Mr. Doke also indicated that he has a pontoon boat that he has to store in a different facility in the winter since they live on the river. He currently has a couple of cars in storage and he would like to end up with a hobby workshop contained within his garage. He would like to maintain his vehicles in a small workshop.

Mr. Hesser asked for clarification on the on-site building being within 18 inches of the property line. Mr. Doke said he has a storage shed on site, but as soon as the addition is built, he will no longer have the shed because he has already sold it to somebody.

Mr. Hesser asked if the east boundary is fenced and Mr. Doke said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser indicated the only thing unique about the property is because it's on the water. Due to the proximities of properties located on the water, the Board tends to be a little more lenient when it comes to setbacks. He believes Mr. Doke is asking for something that could probably be built in accordance with the ordinance regulations without a Variance.

The Board examined said request, and after due consideration and deliberation, 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, this request for a 7 ft. Variance to allow for the construction of an addition to an attached garage 3 ft. from the East side property line (Ordinance requires 10 ft.) be denied. The motion further reflects that the Hearing Officer's decision of approval of the Developmental Variance for the size of the proposed structure to exceed that of the primary structure by 360 sq. ft. be upheld. A roll call vote was taken and the motion was unanimously carried.

14. The application of **Glen C. Ramer** for a Special Use for a home workshop/business for manufacturing lawn furniture (Specifications F - #45) on property located on the West side of CR 21, 1/2 mile South of CR 146, common address of 69515 CR 21 in Jackson 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 #20074111*.

There were 10 neighboring property owners notified of this request.

Mr. Kolbus said this was tabled from the January meeting and there was an issue of outside storage. The request was tabled until the petitioner provided a revised site plan conforming with the Special Use Ordinance. The Board is looking for something to show how he could get the storage inside of a building.

Mr. Harrell said the staff has talked with Mr. Ramer since the January hearing and he has some off premise storage where he can place his materials.

Mr. Hesser asked if the public hearing was still open and Mr. Kolbus indicated it should be re-opened.

Mr. Hesser then moved to re-open the public hearing and there was a unanimous roll call vote.

Glen Ramer, 69515 CR 21, New Paris, was present on behalf of this request. Mr. Ramer indicated he wants to comply with the ordinance and have no outside storage. He has secured a location where he can store the wood that needs to be milled and finished, which can then be brought to his property and placed inside the existing building to do the work.

As it gets completed, then Mr. Ramer would take the finished product back to the off premise storage building to be put in storage. He will later be applying for a permit to have an addition on the pole barn, which was on the original request.

Mr. Hesser asked if this is storage of raw material and inventory and Mr. Ramer said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan asked if they should set a time limit for the staff to review. Mr. Hesser suggested having the Special Use reviewed in one year.

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 manufacturing lawn furniture (Specifications F - #45) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. No employees outside of those who live in the residence on site.

3. The operation to take place in the existing building and future addition as per site plan submitted.
 4. Days and hours of operation to be Monday through Saturday, 8:00 a.m. to 5:00 p.m.
 5. One (1) sign no larger than four (4) sq. ft. per side, double-faced and unlighted.
 6. No backing onto CR 21 by any delivery vehicle.
 7. Any improvements to the driveway to be in compliance with Elkhart County Highway Standards.
 8. Petitioner needs to review and acknowledge the restrictions established by the adjacent A-3 zone.
 9. The Special Use is to be reviewed by the staff in one (1) year.
- A roll call vote was taken and the motion was carried unanimously.

15. The application of **Carl Johnson** for a 2 ft. Variance to allow for a detached garage under construction 4 ft. (from the overhang) from the north property line (Ordinance requires 6. ft.) on property located on the West side of Southwood Drive, 350 ft. South of Plainfield Drive, 1,200 ft. West of CR 5, being lot 40 of Zook's Block C, common address of 54141 Southwood Drive in Osolo Township, zoned R-2, 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 #20074090*.

There were 9 neighboring property owners notified of this request.

Mr. Harrell explained that this request was tabled to have all of the unlicensed and inoperable vehicles, vehicle parts, and other debris removed from the site. Code Enforcement was on site and there are still two unlicensed cars that are inoperable, so Mr. Harrell recommended tabling the request for one more month. If the property was taken to court, it would cost a lot of money and they would rather not do that.

Carl Johnson, 54141 Southwood Drive, Elkhart, was present on behalf of this request. Mr. Homan asked if he is able and willing to comply within 30 days and he said he has already complied with it.

In regards to the two vehicles that are there, Mr. Johnson said one is licensed and insured and the other one is a 1976 roadrunner, which he bought for his brother-in-law. He had a police officer come and verify the VIN number, but it was off by one number. Mr. Johnson said his brother has to take the title back to Michigan and go through the correct process.

Mr. Homan asked Mr. Harrell what he needs to see for compliance. Mr. Harrell indicated it needs to be licensed and insured.

Mr. Homan asked if he has the license for it yet and whether he is working on the title work. The petitioner said it is insured, but he can't get plates for it.

Mr. Hesser asked when the photos printed on paper were taken and Mr. Harrell said yesterday, Wednesday, February 20, 2008. He noted that there are more than two cars shown in the photos. Mr. Johnson said he has five cars and he drives all of them, apart from one.

Mr. Hesser said he doesn't want to do anything until the Board has a recommendation from the staff.

Mr. Homan indicated the petitioner needs to finish up the registration and licensing. He would also prefer to table the request until they have a recommendation from the staff. The public hearing will remain open.

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/Miller*) that in accordance with the Staff Analysis, this request for a 2 ft. Variance to allow for a detached garage under construction 4 ft. (from the overhang) from the north property line (Ordinance requires 6. ft.) be tabled until the March 20, 2008 Board of Zoning Appeals meeting to allow for all unlicensed/inoperable vehicles, vehicle parts and other debris to be removed from the site. After a roll call vote was taken, the motion was unanimously carried.

Mr. Johnson asked what would happen if he moved the mustang off his property and Mr. Harrell said that would be fine as long as it's out of the county's jurisdiction. Mr. Kolbus indicated when the vehicle is licensed and insured, then it can be brought back to his property.

Mr. Slater asked Mr. Johnson to address the mustang since it's clearly inoperable and sitting on jack stands. Mr. Johnson said he bought it to restore and he cleaned it up. He explained it is no longer on jack stands and he can move it around.

Mr. Hesser said when and if that is cleaned up, then the staff can proceed with making their investigation recommendation.

Mr. Homan asked for a clarification of the county ordinance on vehicles sitting outside. Mr. Harrell said the car has to be operable and licensed or they have to go to court and it costs the county a lot of money, so that's something they would rather not do.

The petitioner asked if he can still do work on his garage and Mr. Homan said not until the Variance issue is settled and he has worked with the staff. Mr. Harrell indicated if the Variance isn't granted, then he will either have to move the garage or tear it down.

16. 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*.

Mr. Harrell indicated Mr. Anglemyer has been working hard, but he still has a little ways to go. He recommends they wait until next month to give the petitioner a chance to work with Mrs. Prough to get the property cleaned up.

There were 9 neighboring property owners notified of this request.

Mr. Homan asked the petitioner if he understands what needs to be done and he said yes. He indicated the snow has set him back on clean up.

Mr. Homan asked if 30 days would get the job done and Mr. Anglemyer requested 60 days.

Mrs. Prough then submitted photos of the property which were taken yesterday, Wednesday, February 20, 2008 *[attached to file as Staff Exhibit #2]*.

Mr. Hesser asked if they should set it for April and the Board thought that would be enough time.

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/Miller*) that in accordance with the Staff Analysis, this request for a Special Use for a mobile home to be occupied by daughter of petitioners, Marcia Anglemyer and family be tabled until the April 17, 2008, Board of Zoning Appeals meeting. A roll call vote was taken and the motion was carried unanimously.

Mr. Burrow said back in 1970 and 1995, a Special Use was granted for a church and then a parsonage. The parsonage has been sold to a couple for residential use, which is located on CR 52 and CR 35. Mr. Burrow thought it would be appropriate for the Board to accept their letter of converting it back to a residence. He then read the last paragraph of the letter, which requests that the property be converted back to residential.

Mr. Hesser asked if the fact that it's only two acres an issue, since the ordinance requires three. Mr. Burrow indicated it was approved as a buildable parcel at that time, even as a residence.

A motion was made and seconded (*Hesser/Lantz*) to accept the rescission of Special Use #95-4761 for Grace Bible Church. The motion was carried with a unanimous approval.

Mr. Watkins explained that at the last Plan Commission meeting, they introduced the potential for a couple of new zoning classifications. They are working on revising the Subdivision Control Ordinance out of necessity that will require that they revise an update to the Zoning Ordinance. He said they also had the issue of three acres and the exemption there of in terms of building in the county.

They have been looking at the term "urban growth area", which are areas that are designated by the signet cities that they think they will expand to every several years. The county needed an area that acted as a buffer between the urban growth areas and farmland, assuming farmland is maintained in the county.

The only significant change is that in the area, the minimum size residential lot will be one acre instead of a half acre. The other zone would be an A-2 zone, designated as Heritage Farm. This would require some rezoning, but they haven't gotten to how that would happen. Mr. Watkins indicated they have just introduced this to the Plan Commission at the last meeting. Those areas would be required to have at least 20 acres, or possibly have 20 acres collectively to be designated as Heritage Farm.

In those zones, residential development would be limited to the homestead in one lot. Those would be in the Zoning Ordinance.

They are also considering the potential for an Administrative Subdivision, which is a single split that would need to be at least three acres in size. It would allow the staff to review a single subdivision, but it would make the remainder of the property un-buildable without a full subdivision.

The fourth thing that was introduced at the Plan Commission meeting was a transportation plan. This would be an amendment to the Comprehensive Plan. It looks at the existing transportation routes and where they think they will need roads to move people in the next 20-30 years. From that point, there will be suggestions made in terms of whether or not they are accessed at all or what the isolation between drives are.

Mr. Watkins said he doesn't want to go into great detail, but he wants the Board to be aware that they are working on it. He is hoping that he can get the revisions to the Subdivision

Control Ordinance in a form that is reasonable for the Plan Commission to review at the next meeting.

17. There were no items transferred from the Hearing Officer.
18. There were no audience items.
19. There were no Staff/Board items.
20. The meeting was adjourned at

Respectfully submitted.

Kate A. Barghahn, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary