

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF SEPTEMBER 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: Meg Wolgamood, Robert Homan, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; Mick Slater, Code Enforcement Officer; and James W. Kolbus, Attorney for the Board.

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

3. A motion was made and seconded (*Homan/Lantz*) that the legal advertisements, having been published on the 6th day of September 2008 in the Goshen News and on the 7th day of September 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 ***Jerry L. & Sara Schrock (land contract purchasers) and Alvin Schrock, Jr. (owner)*** for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel 'A', and for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel 'B' located on the South side of CR 34, 1,176 ft. East of CR 41 in Clinton Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082776*.

There were 11 neighboring property owners notified of this request.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9th Street, Goshen, was present representing the petitioners. Mr. Pharis indicated that Jerry and Alvin Schrock were also present at today's meeting. About one month ago, Mr. Jerry Schrock presented one of these parcels to the Hearing Officer and the minutes of that denial indicate Mrs. Wolgamood was concerned about the other parcel, shared driveway, and being on a parcel that wasn't part of the petition. Mr. Pharis reviewed those issues and they have re-submitted the entire 45+ acres. Mr. Jerry Schrock and Mr. Alvin Schrock are brothers and they would like to build their homes close

to each other. They would like to help each other out and raise their families together. Individually, neither of the petitioners could purchase the entire 45+ acres without significant financial burden. If they divided the property, they would be able to meet the mortgage and tax obligations as well as finance the construction of a barn and residence. Mr. Jerry Schrock will be taking about 20 acres and Mr. Alvin Schrock will be taking around 25 acres.

The shared driveway is another means of sharing the expenses of this process. Brads-Ko Engineering & Surveying has completed a survey on CR 34 for that ingress/egress point, which they are ready to submit to the Elkhart County Highway Department if this request is approved. They are confident that this creates a safe ingress/egress access, even for horse drawn carriages.

Mr. Pharis explained that this property is not prime agricultural. The 20+ acres to the south is heavily wooded and has never been farmed. It does provide sufficient and tillable land to support a barn and a residence on each tract of land with neither set of structures imposing on each other or any adjacent landowners. The property will provide ample space for both tracts to have pasture land for their horses as well as tillable land for the growth of animal feed and large gardens for their families.

The wooded areas have been split so each landowner has about ten acres and provides an outstanding recreational area. Staff faces a very difficult decision in these cases because they must apply a strict application of the Elkhart County Zoning Ordinance and they cannot consider any of the financial impacts. Mr. Pharis then submitted a petition in favor of this request and a map showing the location of each person who signed [*attached to file as Petitioner Exhibit #1*].

The community from SR 13 to LaGrange County Line on CR 34 is a perfect site-scape for Elkhart County. It is a true mix of Amish and English businesses and residences. There is a beautiful subdivision against Fish Lake and there are large and small farms. The Amish and the English all work together.

Mr. Jerry Schrock and Mr. Alvin Schrock hope that the Board will permit two residences on these 45 acres and allow two more families to join in this community. Mr. Pharis said the approval of the Board would be greatly appreciated.

Mr. Homan asked what provision the petitioners will make for the driveway. Mr. Pharis said a cross access easement and cross maintenance agreement will be prepared and the legal description has already been created. A legal council will prepare the agreement that will assure each party is responsible for the construction and the maintenance of the driveway. He understands that 40 years from now, the property could be owned by two unrelated parties. This will be a deed restricted covenant that will assure the driveway is maintained equally by both parties.

Mr. Homan asked if the petitioner owns any adjacent additional property and Mr. Pharis said no, only the 45 acres.

Mr. Hesser asked how long ago the bigger parcel was created and Mr. Pharis said he was not sure. Brads-Ko Engineering & Surveying didn't do the survey work, so they didn't pull any of the deeds. Mr. Pharis feels that it seems to be a good deal of time that it's been there.

Mr. Homan said the questionnaire states that a larger parcel was divided in March of 2008, so he asked if the deed work has already been done. Mr. Pharis said yes, there are separate deeds on each of the tracts of land.

Jerry Schrock, 62306 CR 37, Goshen, was present on behalf of this request. Mr. Jerry Schrock indicated he is one of the owners of this property. He explained they had asked the neighbors if they had anything against this request and everyone said they would support it one

hundred percent. Some of the neighbors were asked to come along to the meeting and most of them couldn't because they had to work. One of the neighbors was off work today and was going to be present in support of the request, but he had too much work with his business.

Mr. Schrock explained they have the intention of building two homes. He pointed out the proposed locations of both homes on the aerial photo. He would also like to have some horses to the north of the parcel and use that area for farmland as well. The woods will be preserved for wildlife and used for their own pleasure.

Alvin Schrock Jr., 11227 CR 20, Middlebury, was present on behalf of this request. Mr. Alvin Schrock said he owns the other parcel and there is strong community support for this request. He would like to use the woods for recreation, use some land for farming, and also have residences.

The public hearing was closed, but was then re-opened to allow a remonstrator to speak in favor of this request.

Joe Yoder, 4925 S 200 W, Wolcottville, was present in favor of this request. Mr. Yoder explained that the petitioners have hired contractors and would like to get started before it starts snowing. The petitioners are renting a property until the houses are built.

The public hearing was then closed at this time.

Mr. Homan said flag lots are something the Board has certainly stayed away from. Given that, he feels the location of the houses are better than what they have seen in the past on flag lots. He asked if there are any other peculiarities other than the obvious financial issues that the petitioner raised.

Mr. Homan explained the Board can dispute number one and two of the staff findings due to the community being presented. The third finding is true, but he would like some input from the staff.

Mr. Hesser agreed and said staff finding number three is the primary issue. They don't like these requests, but they are all over in this area.

Mr. Homan asked the staff what the view is on item number three of the staff report. Mr. Harrell said they don't endorse flag lots, but they have a lot of them. Several of them have been granted, but Mr. Harrell feels the Board should make a decision based on what they hear today.

Mr. Kolbus said one of the problems with flag lots is when they put houses behind the other ones in front. If the Board does grant this request, the location of the home should be limited to what has been presented to prevent that from happening.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that based on the findings that this will not be injurious to public health, safety, morals or general welfare; will not cause substantial adverse affect on the neighboring property; and will result in a hardship in terms of the use by the petitioner and the proposed development of the land as residential usage, this request for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel 'A', and for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel 'B' be approved as demonstrated on the site plan provided by the petitioner. A roll call vote was taken and the motion was unanimously carried.

8. The application of ***Russell & Kay Culver*** for an amendment to an existing Special Use for a kennel, including the boarding of dogs and cats in an A-1 district (Specifications F - #15) to include the use of a portion of an existing storage building for kennel and boarding purposes and

to include three part time employees on property located on the North side of CR 10, 2,100 ft. West of SR 13, common address of 11925 CR 10 in York 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 #20082704*.

There were 7 neighboring property owners notified of this request.

Russell Culver, 11925 CR 10, Middlebury, was present on behalf of this request. Mr. Culver explained that he and his wife own Dog Town, which was built in 2001. They rescued dogs from shelters from euthanasia and as things evolved, they started boarding dogs. They board dogs only and there are normally no cats. The boarding business has gone so well that last Christmas, they had a waiting list of 50 people.

Building kennels are very expensive, but it occurred to Mr. Culver that he has an existing barn that could be converted into a kennel at a realistic price. He has the advantage that his younger brother owns a construction company and gives him a good price. They have an existing barn where he could install an additional eleven kennels. Mr. Culver would like to put in a heated floor and he anticipates the building being full 20 percent of the time. It would be full during Christmas, 4th of July, spring break, and some weekends during the summer. His customers appreciate them doing this because they don't want to be turned down during the busy times of the year.

Mr. Hesser asked if 50 dogs is the maximum and the petitioner said yes. Even with this additional number of kennels, he couldn't imagine having 50 dogs at any one time. They currently have 18 kennels, but there might be two or three dogs in one kennel. Having 50 dogs at one time would require there to be three dogs in each kennel at one time, which is very unlikely.

Mr. Homan asked if any of the proposed conditions imposed a problem and the petitioner said no.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood then questioned condition number six and asked for a proper definition of "verified complaints." Mr. Kolbus said he discussed that with the staff and it should be condition violations that are verified by Code Enforcement. He recommended that end of condition number six be amended to read, "...if any condition violations are verified by Code Enforcement." He said you have to have concrete standards and that standard is a condition the Board has imposed.

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 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 a kennel, including the boarding of dogs and cats in an A-1 district (Specifications F - #15) be approved with the following conditions imposed:

1. Kennel to be operated by the owner/occupant of the residence on site.
2. One (1) sign permitted, four (4) sq. ft. per side and unlighted.
3. The number of dogs limited to 50 and the number of cats limited to 20.
4. Approved in accordance with the site plan submitted.
5. Three (3) employees who are not occupants of the residence on site.

6. Approved for an indefinite period of time with the Special Use to be returned to the Board of Zoning Appeals if any condition violations are verified by Code Enforcement. A roll call vote was taken and the motion was unanimously carried.

9. The application of **Jack Warner** for an amendment to an existing Special Use for a landfill for an 8 x 8 ft. sign at the entrance on property located on the East of CR 45, 1,100 ft. South of Florence Avenue, common address of 24399 CR 45 in Concord 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 #20082706*.

There were 49 neighboring property owners notified of this request.

Mr. Harrell indicated he received a letter for the withdrawal of this petition. The petition will be re-filed because they are adding a different perspective to the landfill itself. There is more going on there than the Board had originally granted, but they wanted to bring it back and have it verified.

Mr. Kolbus indicated that new notification letters will go out to the neighboring property owners when the petition is re-filed.

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/Lantz*) that this request for an amendment to an existing Special Use for a landfill for an 8 x 8 ft. sign at the entrance be withdrawn. After a unanimous roll call vote was taken, the motion was carried.

10. The application of **Jeff Ax** for a renewal of a Special Use for warehousing and storing of a semi-trailer and tractor in an A-1 district (Specifications F - #44) on property located on the West side of East County Line Road, 1,320 ft. North of CR 38, common address of 64711 East County Line Road in Clinton 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 #20082727*.

Mrs. Wolgamood asked if number five of the revised site plan was submitted and Mr. Harrell said yes, there is plenty of room for the turn around.

There were 3 neighboring property owners notified of this request.

Jeff Ax, 64711 E. County Line Road, Millersburg, was present on behalf of this request. Mr. Ax explained he's not sure what to do because he can't afford to build a home on this lot yet. He has been paying down his business debt and with the economy being slow, it has caused his business to become quite a bit slower. He has less income coming in and the price of diesel fuel has skyrocketed in the last couple of years.

The petitioner is in the process of buying some more land in order to build a house to the rear of his home. Mr. Ax is not sure whether he will have that completed in one year or if he will need to take out the mobile home on the property and place a sectional home on a crawlspace. That process would cost him approximately \$75,000 to \$80,000 and it isn't exactly what he

wants. He asked if this could be put off for a while because it will cost him around \$150,000 to \$200,000 to build a home like he wants.

Mr. Ax indicated there is no business being done on the property. The truck is parked in the garage when he's not driving it. Considering the money he has invested in his equipment, he would like to keep it inside and out of the way. He currently has a lot of hay and straw in the building because he is raising some steers and horses at his parent's place.

Mr. Miller asked if the pole barn has been at this location since 2006 and the petitioner said yes. When he is not on the road, the semi is stored inside the building. Mr. Miller indicated the economy is pretty tough right now, but the concern is having an accessory structure larger than the residence. Mr. Ax explained that his goal is to purchase more property from his parents and build a house further back by the woods.

Mr. Hesser indicated the petitioner has had three years to do this.

Mr. Ax said he has paid \$80,000 to \$85,000 down on his business debt in the last two years and ten months.

Jean Ax, mother of petitioner, 5965 S 1200 W, Millersburg, was present in favor of this request. Ms. Ax indicated she and her sister own the additional property that Mr. Ax had talked about. She and her sister are completely in support of the building and the mobile home. This particular property has been in the family for over 90 years and they would like to keep it that way. Ms. Ax also feels that with the economy the way it is, she would hate to see her son have to go deeply into debt at this time.

The public hearing was closed at this time.

Mr. Hesser said the concern he has is whenever they do these types of requests, the concern is always about allowing the petitioner to build the accessory building and then the house never gets built. Therefore, they are left with an accessory building and no house, but there is a mobile home on the property in this case. The request was previously granted with the notion of the house being built as an integral part of that process. Mr. Hesser said he would be open to being flexible on time, but he feels they should stick to the view of having a house built there.

Mr. Kolbus feels Mr. Hesser has raised a good point. If the Board is inclined to grant the request, the fact is that there is some type of residence there as compared to none like some other situations they have had.

Mrs. Wolgamood said she pulled the 2006 minutes from the original request. When the Board asked him at that time if he could have the house built in two years, Mr. Ax indicated he didn't think so. With the Board saying yes to the request at that time while knowing that the petitioner wasn't sure if the house was going to be built by this time, it really imposes a hardship on him.

The petitioner keeps everything inside of the 50 x 100 ft. building and it looks like a farm building. Mrs. Wolgamood said she would support the approval of this request with no conditions.

Mr. Miller said this is a family parcel and the petitioner is not moving off of it. Mr. Hesser indicated it could be sold to someone else and then it would not be a family member parcel, which is his concern.

Mr. Miller asked the Board if they feel more comfortable with or without a time restraint. Mr. Hesser said he feels more comfortable having one on there and he realizes it may need to be

extended again. The petitioner is working toward that goal, but he doesn't want to tell him he doesn't have to build the house at all.

Mrs. Wolgamood said she would be comfortable giving him a three or four year extension.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that this request for a renewal of a Special Use for warehousing and storing of a semi-trailer and tractor in an A-1 district (Specifications F - #44) be approved with the following conditions imposed:

1. Approved for warehousing and storing of one (1) semi tractor and two (2) trailers.
2. All tractors and trailers to be parked inside the proposed accessory building.
3. Approved for a period of four (4) years at which time a new residence must be built on site; at the end of four (4) years, the Special Use must be renewed by the Board of Zoning Appeals.
4. No backing up off the road with the trucks.

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.)*

11. The application of **Sherry Wilkerson (buyer) and Jerry & Marie Corliss (sellers)** for a Special Use for an existing bed and breakfast homestay in an A-1 district (Specifications F - #12.75) on property located on the West side of SR 13, 1,180 ft. South of CR 4, common address of 52215 SR 13 in York 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 #20082763*.

There were 5 neighboring property owners notified of this request.

Sherry Wilkerson, 11606 Hanover Road, Cincinnati, Ohio, was present on behalf of this request. Ms. Wilkerson said she would like to use this as her residence and also as a bed and breakfast.

Mr. Miller asked if there used to be a detached building that was the bed and breakfast and the petitioner said yes. Ms. Wilkerson explained she would like to use the house and the additional building for the bed and breakfast.

Mrs. Wolgamood asked how many bedrooms they will have and the petitioner said five.

The questionnaire indicates that Ms. Wilkerson wants a four by four ft. sign and Mrs. Wolgamood indicated that is not permitted. The petitioner thought that's what she read in the specifications, but she may have misunderstood it.

Ms. Wilkerson said there used to be a sign there, but it's gone now. Mrs. Wolgamood said the definition of a homestay doesn't allow for anything other than a small sign consisting of four sq. ft. per side. She also indicated that the sign cannot be lighted.

Ms. Wilkerson said those were items that were needed due to people arriving in the evening. She thought it would be helpful if there was light so the sign could be seen.

Mr. Miller asked if that creates an issue and the petitioner said it's a concern because the area is very dark at night time. She would have to make sure that people know exactly where they are going and there would have to be some type of a landmark so they know where she is located.

Mr. Lantz asked if a rock is considered a sign and Mr. Kolbus said yes, it can be.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she doesn't have an issue with this request at all. The home is lovely as well as the accessory building and the Corliss family was quite successful with what they were doing. The house is located on a pretty heavily traveled right-of-way. The only concern she has is the four by four lighted sign.

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 a Special Use for an existing bed and breakfast homestay in an A-1 district (Specifications F - #12.75) be approved with the following conditions imposed:

1. Approved for five (5) rental units on site.
2. The bed and breakfast homestay is to be operated by the owner/occupant of the residence on site.
3. Approved as per site plan submitted.
4. All state and local permits to be maintained.
5. One (1) sign limited to four (4) sq. ft. per side and unlighted.

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

12. The application of *Concord Community Schools* for an amendment to an existing Special Use for a school (for 5th and 6th grades) (Specifications F - #38) to allow for additions to the school and to include additional property and for a 42 ft. Variance to allow for said addition 78 ft. from centerline of the right-of-way of CR 20 (Ordinance requires 120 ft.) on property located on the Southwest corner of CR 20 and US 33, common address of 24050 CR 20 in Concord Township, zoned A-1/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 #20082755*.

Mrs. Wolgamood indicated there is no recommendation for the Variance, but Mr. Harrell said the staff is also recommending approval for that.

She also questioned the location of the medical clinic and Mr. Harrell said it's located at the rear south off of a little stub street and it was granted in 2006.

There were 60 neighboring property owners notified of this request.

Bryan Clevenger, Foresight Consulting, LLC, 3810 New Vision Drive, Fort Wayne, was present representing Concord Community Schools. Also present on behalf of this request was Andy Bearman, Civil Engineer for Foresight Consulting; George Dyer, Superintendent for Concord Community Schools; and Larry Jacoviak, Assistant Superintendent for Concord Community Schools.

Mr. Clevenger said he has an existing site plan which has labels on it. He pointed out the existing building on the map and the small parking area to the north, which is where the main entry is. There is also an existing parking area to the south which is next to the tennis courts. Balboa Court is a small stub street that comes into the school and is the access point for the school. They are currently going through the vacation process for that road. In that parking area

is an alternative school building and south of that is the medical clinic. Myers Avenue is the road that runs just south of the clinic.

Currently, some of the issues with the site involve circulation. There is an existing cut through on the site that has been creating some problems. All of the parking is not consolidated into one area, which causes people to go everywhere. The intent with the proposed design, in addition to allowing for a few school additions, is to relocate the main entry to the south portion of the building where the school has additional property. This would also allow them to relocate a lot of their circulation and parking needs to better address the new front entry of the building. Doing so would also create a safer environment for pedestrians within a school campus.

Mr. Clevenger then explained the intentions of the proposed plan. The area in the light brown shading is the building addition that will represent the new main entry for the building. All of the area to the south is where they will be re-organizing the circulation. When you don't have to be bound by the existing roads and the creek, you have a little more room to consolidate things and make it more straight forward.

The main parking area was then pointed out on the site plan. They are showing about 205 parking spaces on site. The yellow dashed line shows the proposed parent drop off route, which will allow parents to stack without lining up along the road. It does take the main vehicle entry to the site down to Myers Aveue, as opposed to Balboa Court.

The petitioner explained that there will be a bus stacking zone on site. The school currently has 35 to 38 buses and part of the school's program is to reduce the number of buses that might need to service this facility. They would like to get down to a dozen at the most and the area can also be used as hard surface play area such as basketball courts. The property could also be used for overflow vehicular parking.

There are some service access points on the west side of the building and they are proposing to keep the service there. There is a grade difference between the main parking area and the bus stacking area of about two to three ft. All of the stormwater from the area will be drained into a stormwater holding facility before they release into the creek. There are some service access points in the center and there is a slope of two to three feet from the bus stacking and parking area.

Along the west side of the building, the alternative school is proposed to be moved into the building. Therefore, they have provided a drop off for that facility on the west side. There may be a bus or two that uses that drop off, so they are proposing to take the current entry and turn it into a gated exit only for those buses. The reason for that is because they don't have adequate room for a bus to turn around and head back towards the south. They hope to limit the access point to exit only for the alternative school buses.

Mr. Clevenger indicated they have had conversations with the Surveyor's Office and they have worked out the drainage plans with them. They have approval for their concept of taking the stormwater from where it currently is, holding it in the proposed location, and then releasing it into the creek. The school is currently working with and has had some approvals from the Elkhart County Highway Department for road improvements that need to happen along CR 13 and Myers Avenue. They are proposing to widen the roads around this intersection and the lanes that need to service that intersection. He hopes that plan will limit some of the traffic congestion.

There have also been some conversations with neighboring properties and some of the concerns that came up were some trees that exist along CR 13, the possibility for a pedestrian

sidewalk, and road widening. They are looking to create a plan that will allow for a sidewalk that runs along CR 13 and they will try to save as many of the trees as possible. Mr. Clevenger said they will also allow for any road improvements that they are required to have by the Elkhart County Highway Department.

Mrs. Wolgamood asked if the medical clinic is going away and the petitioner indicated it will move away from this campus. The new location of the clinic has yet to be determined.

The number of gates on the west driveway going north was questioned by Mrs. Wolgamood and the petitioner said there will only be one. Mr. Clevenger said there will be signage, so people who utilize that area will know the gate is there.

Mrs. Wolgamood said she greatly admires what they have done with eliminating the cut through to the north. She said that has been a disaster for years.

Mr. Clevenger had indicated that the Hoover property, which was pointed out on the map, is under contract for purchase.

Mrs. Wolgamood asked if they have filed for the second petition to vacate and the petitioner said yes. The first one was heard last month and is going onto the Commissioner's.

Mr. Homan questioned the outlet onto CR 20 because that would concern him as a parent. As traffic increases, it will make it harder to pull out at this location. Mr. Clevenger said they are currently coordinating their plans with the INDOT plans for improvements along US 33. He believes those improvements include a median in that area to prevent left turns.

The situation that Mrs. Wolgamood sees happening is when they leave the school and enter onto Myers Avenue and CR 13, they will be entering into a residential area. There will be an enormous amount of traffic onto Myers Avenue.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she feels this will be a huge improvement.

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 an amendment to an existing Special Use for a school (for 5th and 6th grades) (Specifications F - #38) to allow for additions to the school and to include additional property and for a 42 ft. Variance to allow for said addition 78 ft. from centerline of the right-of-way of CR 20 (Ordinance requires 120 ft.) be approved as presented and as per site plan submitted with all state and local building permits and inspections to be obtained. After a unanimous roll call vote was taken, the motion was carried.

**(Mr. Hesser returned to the Board at this time.)*

13. The application of **James C. & Katharine E. Schrock** for an Appeal to allow for the construction of a second residence on a single zoning lot on property located on the East side of CR 21, ½ mile South of SR 119, common address of 63828 CR 21 in Elkhart 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 #20082770*.

There were 13 neighboring property owners notified of this request.

James Schrock, 63828 CR 21, Goshen, was present on behalf of this request. Mr. Schrock explained that his 21 year old son, Carter, was involved in an off-road motorcycle accident and is paralyzed, which is the primary reason they are here now. The main house is the old farmhouse that served all of the farm ground. One of the buildings on the property was turned into a nice woodworking shop by the previous owner of the property. About halfway between the woodshop and the main house is their swimming pool. They have been talking about the potential of converting the woodshop into a pool house and guest house. Mr. Schrock has a large family with seven kids and when they come to visit, he thought it would be nice for them to have an extra room for them to stay in.

When his son was injured at the end of July, that concept took on more momentum so Carter would have a place to reside. He initially is going to live with his mother, so this won't be his primary residence. They like the idea that this would be a self contained unit where Carter could live in the future when he becomes more self sufficient.

After talking to staff, Mr. Schrock understands that if he didn't have a kitchen in the building, then they wouldn't even need to do this. For him to truly be self sufficient, he needs to be able to prepare his own meals when he feels like it. The plan is to put a small 18 x 18 ft. addition to the north of the facility. The facility is insulated and already has electrical in it. Mr. Schrock said he almost needs to gut the exterior walls and replace the drywall, electrical, doors, and flooring. The concrete floor is currently a little bit too low and he also needs to install plumbing and mechanical.

Mr. Schrock said he came in and talked with Mr. Harrell to clarify that the words "residence" and "dwelling" wouldn't create a misunderstanding. The staff recommendation indicated that it shouldn't be used as a rental, which Mr. Schrock has no intentions of doing. It also states that the facility shouldn't be used as a second residence, but he thinks residence and dwelling almost define the same thing. He wants to be clear about what the intended use is because the facility won't be used for anyone other than family. If Carter isn't living there in the future, but his mother was, he didn't want to have a potential problem from that.

There were no remonstrators present.

Mr. Kolbus noted that language was added to the end of condition number three to read, "The second residence is not to be rented or used as a separate residence to the general public." The staff reports that the Board has do not have that language at the end of condition number three.

Mrs. Wolgamood indicated these types of requests are always difficult because adding second residences on single zoning lots are something they don't normally grant. In her opinion, Mr. Schrock has really described a guesthouse other than the kitchen.

Mr. Hesser said he wouldn't have a problem with the request as long as it's made clear that it's for relatives and not for the public.

If the Schrock's move from this property, Mr. Homan asked what will happen when there are two residences left on the property. He wondered if the Board could state that in the event that this hardship goes away or the Schrock's leave the property, then the second residence become disabled. He feels that would be a way of addressing the long term issues of this request. Mr. Homan suggested stating, "If the hardship ceases to exist, then the secondary residence be reverted back to non-residential."

Mr. Kolbus indicated all they would have to do is take the kitchen out.

Mrs. Wolgamood said that would be something that is very difficult to enforce. When she was reading the application and the staff report, she kept trying to remove the whole idea of a hardship and look at the land use. She's not sure that an Appeal should be based on a hardship.

The public hearing was closed at this time.

Mrs. Wolgamood feels they need to grant it and not put that condition on it.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) 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 Appeal to allow for the construction of a second residence on a single zoning lot be approved with the following conditions imposed:

1. Approved as per site plan submitted.
2. The building must be constructed to the one and two family building codes.
3. The second residence is not to be rented or used as a separate residence to the general public.

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

14. The application of **Gerald Lutrell** for an Appeal to allow for construction of a second residence on a single zoning lot and for a 3 to 1 depth to width ratio Variance to allow for the residences on property located on the South side of CR 106, 72 ft. East of Ada Drive, common address of 23742 CR 106 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 #20082771*. He then clarified that the Variance is recommended for approval, but the Appeal is recommended for denial.

There were 12 neighboring property owners notified of this request.

Gerald Lutrell, 23742 CR 106, Elkhart, was present on behalf of this request. The second residence will be for Mr. Lutrell's son, who is currently living with him.

Mr. Lantz asked where the second residence would be placed and the petitioner said it would be towards the back part of the property. Mrs. Wolgamood indicated that is shown on the site plan.

There were no remonstrators present.

Mrs. Wolgamood asked if he spoke with the staff about splitting the property. He indicated he did, but he decided to do it this way.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she's not sure she would support this request.

Mr. Lantz then questioned some other options because he doesn't want to discourage the petitioner completely.

Mrs. Wolgamood asked if there are any farm animals on site and the petitioner said no.

On the lot to the right of this one was brought in for an Appeal for a second residence and Mr. Harrell explained that has been denied.

The main issue according to Mr. Hesser is when the land is sold, it creates a problem having both houses on one parcel.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the amended Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow

for construction of a second residence on a single zoning lot be denied and the request for a 3 to 1 depth to width ratio Variance to allow for the residences be approved with no additional conditions imposed. 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.

15. The application of *Charles Watson, Jr.* for a Special Use for an existing mobile home to be used as a rental on property located on the North side of CR 20, 116 ft. West of Curtis Street, being Lot 6 of Hoffman, common address of 30833 CR 20 in Baugo Township, zoned R-2, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082495*.

There were 21 neighboring property owners notified of this request.

Charles Watson, 56652 Best Avenue, Elkhart, was present on behalf of this request. At this time, Mr. Watson submitted copies of the title certificate from the mortgage company to the Board as well as a packet of pictures of the property *[attached to file as Petitioner Exhibit #1]*. When he bought this property, he bought the house and land together. Due to what the mortgage company has told him, he can't move the mobile home off of the property.

The property size is 58 feet wide and 148 feet long, so it's not big enough to place a regular house on. He also explained that there are pictures of the property next door in the packet given to the Board, which is a complete dump at this point. He has talked to Burkett Insurance and they would like to buy the property next door to clean it up. Mr. Watson talked to the insurance company about buying the property in question as well, but they are not interested.

There are currently two adults and three children living in the mobile home, who are good friends of the petitioner's fiancé. Having them live in the mobile home worked out as a benefit to them because they were going through some hardships. Their middle daughter had some medical problems and they got stuck with some medical bills. Mr. Watson presented them a place to live that was cheaper than where they were at.

In regards to the letter in remonstrance, Mr. Watson said he's not sure where they are getting the 13 vehicles being hauled away. The occupants previously had two vehicles there which were removed right away.

Mr. Kolbus then clarified that when he read the letter, he understood that the 13 vehicles came from the property next door.

Mr. Watson then pointed out the easement owned by Conrail on the aerial photo. He explained that Conrail owns seven ft. on each side of the fence.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood questioned one of the photos and the petitioner said he believes the neighboring property is vacant, but there are cars that come and go all the time.

As the Hearing Officer, Mrs. Wolgamood indicated that this was a tough request for her to deny because there has been a mobile home at this location for around 32 years. There is a cemetery in the area and she sees what the people in the area have to deal with because of the property to the north.

Mrs. Wolgamood believes that the property immediately to the east is a business, which is an insurance company. Mr. Watson indicated that is correct, the business is known as Burkett Insurance.

Mr. Kolbus asked that the Board focus on the fact that it's a mobile home only. He's not sure that the fact that this is a rental is relevant anymore and he has instructed the staff to treat these requests that way. He also stated that 'Conditions A' addresses some of the concerns of rentals.

Mr. Hesser asked about the foundation issue and Mr. Kolbus said that is a valid condition to look at. Mr. Harrell said they used to put them on ribbons, but now they go on a pillar. They are stacked up from the pillar to the mobile home with cement blocks.

The Board questioned whether this mobile home is validly placed and Mr. Harrell said he's sure it is.

Mrs. Wolgamood said she wonders if this mobile home is the same one that was placed when the permit was issued in 1999.

Mr. Kolbus asked why number three is part of the Staff Analysis. Mr. Harrell clarified that when they originally came up with the Special Uses for single wide mobile homes back in the 70's, they were considered as non-permanent structures if they were not on a permanent foundation.

Mr. Kolbus then indicated that the mobile home is not invalid, but it's on a temporary foundation rather than a permanent foundation that has been there for a long time.

Mr. Hesser asked if the petitioner would be able to build a stick built house on the property and Mr. Harrell said it would depend a lot on the septic system and the soils.

It was questioned by Mr. Lantz if the Board would like to re-visit this request in a few years. Mrs. Wolgamood said under normal circumstances when she has a mobile home in front of her, she doesn't know that it's ever approved for any longer than three years with a one year review by the staff. At the end of three years, the request usually comes back to the Hearing Officer. Another condition that is always placed on the request is that the petitioner must be in compliance with 'Conditions A.' Mr. Kolbus then submitted a copy of 'Conditions A' to the Board *[attached to file as Staff Exhibit #1]*.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that this request for a Special Use for an existing mobile home to be used as a rental be approved with the following conditions imposed:

1. Conditions "A":
 - a. The mobile home shall be adequately stabilized, skirted and have tie-downs installed.
 - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
 - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools and vehicles, except licensed motor vehicles.
 - d. At all times, the premises shall be kept free of abandoned junk vehicles or parts thereof as described by Indiana State Law.
2. Approved for a period of three years with a one year review to verify compliance with Conditions "A".
3. Upon renewal of the Special Use, it is to be heard by the Hearing Officer.

After a unanimous roll call vote was taken, the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – yes; Hesser – no.

16. The application of **Samuel Schmucker** for a Special Use for a home workshop/business for small engine repair and sales (Specifications F - #45) on property located on the East side of CR 35, 1,650 ft. North of SR 4, common address of 61262 CR 35 in Clinton 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 #20082251*.

There were 8 neighboring property owners notified of this request.

Samuel Schmucker, 61262 CR 35, Goshen, was present on behalf of this request. Mr. Schmucker indicated he has no issues with the proposed conditions.

There were no remonstrators present.

The public hearing was closed at this time.

Given the history of the prior testimony, Mr. Homan doesn't feel the petitioner has any intentions of abiding by the rules of the home workshop. He would like the staff to drive by and have a look in a year to see how it's going.

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 home workshop/business for small engine repair and sales (Specifications F - #45) approved with the following conditions imposed:

1. Home workshop/business to be operated by the owner/occupant of the residence on site.
2. Days and hours of operation to be Monday through Saturday, 2:30 p.m. to 5:00 p.m.
3. No employees who do not occupy the residence on site.
4. One (1) sign not to exceed four (4) sq. ft. per side and unlighted.
5. The business to be limited to small engine repair, sales, and wringer washer repair.
6. The business to be operated out of the 30 x 50 ft. shop building currently on site.
7. No outside storage or display related to the business.
8. The Special Use to be reviewed by the staff at their discretion to verify compliance with the conditions.

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

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

18. Mr. Burrow explained he has a request for a minor change to the Total Wrapture Special Use for **Robin Fizer** (#20072105) for a portable sign. The property is located at the corner of US 33 and CR 13. The issue is whether or not a portable sign/temporary sign is a permissible use on this property. The area is definitely not residential, but in 2007, it was approved for a Special Use for a beauty shop and day spa. Mr. Burrow then reviewed the conditions from the Special Use with the Board. The temporary sign is allowed on a commercial property for approximately 30 days and has to be off for 15 days, but it can then be put back on for 30 days. The question is, since it wasn't shown on the site plan, is something the staff can continue to issue or would the petitioner need to come back and amend the Special Use site plan.

Mr. Kolbus indicated that according to the conditions, the portable sign that was on the site at the time needed to be removed.

Mr. Burrow explained that one of the issues they wanted it removed was because it didn't have a permit to be there. When it was originally established, it was only allowed a four sq. ft. sign because it's a home workshop/business. What precipitated this coming back was that the petitioner had a larger sign. The request then went through Plan Commission and Commissioner's to rezone it to a B-1, but that didn't go through because the Plan Commission wanted a Planned Unit Development. The petitioner then withdrew the B-1 rezoning request and submitted a request for a beauty salon which allows more flexibility as far as the signage.

Mr. Hesser asked if other types of businesses with this zoning are allowed signs. Mr. Burrow said the way the Zoning Ordinance is written, any signage outside of 20 sq. ft. on any Special Use has to be approved by the Board of Zoning Appeals. The only exception is if the property is prohibited by the definition and this request doesn't have a definition that prohibits signage.

Mrs. Wolgamood asked if the Board gave approval for a permanent four by four ft. sign and Mr. Burrow said yes.

The Board felt the size of the sign was larger than normal and Mr. Burrow said there is no standard established for signs under a Special Use. He clarified that this is not a home workshop/business, it's a beauty shop/day spa under a Special Use.

Mrs. Wolgamood asked if Robin Fizer still lives on site and Mr. Burrow said yes.

She then asked if the Elkhart County Zoning Ordinance allows a temporary sign in an R-2 zone. Mr. Burrow said not by right, but the Ordinance does specify that the signage is based on the approved Special Use.

After the previous meetings, Mr. Burrow said some of the feelings he got from the Plan Commission was to make this work. Therefore, he felt it was appropriate to issue the permit in the first place.

Mr. Kolbus said the petitioner is requesting a minor change, which is consistent with everybody's interpretations. The request may not be permitted by right, but it may be permitted as part of the Special Use. The petitioner may need a Use Variance because the definition is not permitted in this particular zoning.

Mr. Burrow said the Ordinance does specify that signs are an accessory use to a business or to the principle use of the property.

Mrs. Wolgamood feels that when the Board granted the petitioner a four by four ft. sign, they were stretching it at that point. If they were going with a temporary sign, she doesn't think it would be consistent with an R-2 zone with a Special Use.

Mr. Burrow said he feels it is consistent with the corridor that it is presently on. There are portable signs all up and down through the area.

Mr. Kolbus said he's hearing from Mrs. Wolgamood that it's a major change and it would need a full public hearing.

Mrs. Wolgamood indicated she remembers some neighbors being present at the meeting. Mr. Burrow said the neighbors were here about the re-zoning because they didn't want it to be commercial.

Mr. Homan asked how many days the sign can be out and Mr. Kolbus indicated 60 days per calendar year.

The sign dispute as to whether or not the signs are allowed in residential zones was questioned by Mr. Hesser. Mr. Burrow said the fact that the Elkhart County Zoning Ordinance is outdated and antiquated cannot be disputed. The accessory use definition specifically states

signs as an accessory use. There is also a statement in the sign ordinance section that says signs are based in residential zones on whatever the Board of Zoning Appeals approves.

The Board then decided it may be better to have a full public hearing for this request.

Mr. Burrow asked if the petitioner will need to apply for a Use Variance and the Board indicated yes.

A motion was then made and seconded (*Wolgamood/Lantz*) that this request for a temporary sign for Total Wrapture (Special Use #20072105) be considered a major change. A roll call vote was taken and the motion was carried with the following results: Homan – no; Wolgamood – yes; Lantz – yes; Miller – yes; Hesser – yes.

19. Mr. Watkins said each of the Board members should have received an invitation to the open house for the Northwest Gateway Area Plan. He hopes that the Board members will attend so they will have an understanding on what is being proposed and where they are headed.

20. The meeting was adjourned at 10:59 a.m.

Respectfully submitted.

Kate A. Barghahn, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary