

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20th DAY OF AUGUST 2009 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 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; Ann Prough, Code Enforcement Officer; Ronnie Weiss, Code Enforcement Officer; Mike Gard, Building Inspector, and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Miller/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of July be approved as read. The motion was carried with a unanimous roll call vote. Mr. Hesser indicated two corrections, which included changing the 2nd paragraph on page 11 to “sympathetic to concerns about” and taking out that the Board adopted the Staff Analysis on page 14.

3. A motion was made and seconded (*Homan/Miller*) that the legal advertisements, having been published on the 8th day of August 2009 in the Goshen News and on the 10th day of August 2009 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 (*Wolgamood/Homan*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.

* * (*Mr. Lantz arrived to the meeting at this time*). * *

5. A motion was made and seconded (*Wolgamood/Homan*) 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 **Michael S. Rhude** for a 3 to 1 depth to width ratio Variance to allow for an existing residence (Parcel 1), for a 3 to 1 depth to width ratio Variance and a 72 ft. lot width Variance (Ordinance requires 100 ft.) to allow for the construction of a residence (Parcel 2), and for a 3 to 1 depth to width ratio Variance and a 72 ft. lot width Variance (Ordinance requires 100 ft.) to allow for the construction of a residence (Parcel 3) on property located on the South side of SR 120, 360 ft. West of CR 43 and West side of CR 43, 1,550 ft. South of SR 120, common address of 10920 SR 120 in York 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*].

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as Case #20092101.

Mrs. Prough explained she received a call from Mr. Rhude and he requested that the Board act on the Variances today. He has an auction scheduled for September and he would like to proceed with the sale. Mr. Rhude has worked with Mr. Kanney regarding this petition and he suggested that the petition be submitted as is. The interior lot lines might vary which is why the petitioner didn't have exact legal descriptions of each tract. The lot width Variances would remain the same, but due to the pending auction, he would like the Board to act on the request today. Mrs. Prough said the staff recommends approval of all Variances.

There were 14 neighboring property owners notified of this request.

Michael Rhude, 10920 SR 120, Middlebury, was present on behalf of this request. Mr. Rhude asked that the Board approve his request today.

There were no remonstrators present.

Mr. Hesser said the only concern with the staff's original recommendation is that there isn't a survey. He asked the staff if they are satisfied that the petitioner will be in compliance based on the drawings and Mrs. Prough said yes. As long as the parcels don't change dramatically, the staff doesn't have a problem with the interior lot line. Mr. Rhude will still be required to go through the subdivision process.

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/Wolgamood*) that the Board adopt the revised Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 3 to 1 depth to width ratio Variance to allow for an existing residence (Parcel 1), for a 3 to 1 depth to width ratio Variance and a 72 ft. lot width Variance (Ordinance requires 100 ft.) to allow for the construction of a residence (Parcel 2), and for a 3 to 1 depth to width ratio Variance and a 72 ft. lot width Variance (Ordinance requires 100 ft.) to allow for the construction of a residence (Parcel 3) be approved with no additional conditions imposed. A roll call vote was taken and the motion was unanimously carried.

8. The application of **Wayne J. & Riena R. Sommers** for a Use Variance for a continued residential use of a portion of an existing building in a B-3 zone on property located on the North side of Old US 20, 340 ft. West of Rowe Street, common address of 2232 Toledo Road in Concord Township, zoned B-3, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092081*.

There were 10 neighboring property owners notified of this request.

Wayne and Riena Sommers, 23558 Williams Lane, Elkhart, were present on behalf of this request. Raymond Balogh, 2209 Woodlawn Court, Elkhart, was also present acting as the Sommers' representative. Mr. Balogh explained this house was constructed in the late 1950's and there was a greenhouse and office area attached to it. The county has considered this to be commercial property because the taxes and assessments were paid in the corporate name. He explained a survey was done in 1961 by John Weaver that indicates the building is a one-story concrete house with a one car attached garage. The greenhouses have been demolished and the property is being used for business of restoration after-market car parts. The home portion of the property has always been used as home. Mr. Balogh indicated they agree with the staff's recommendation.

The Sommers' do have an interest in placing a business there for alternative energy sources. The Land Use Plan finding regarding environmental responsibility would go very well with the alternative energy business.

Mr. Homan asked what is happening with the house and if anyone is living there. Mr. Balogh said a fire occurred there and the Sommers' son is living there. He is having to re-do the entire interior structure, which is how all of this came up. They would like to be able to complete the repairs on the house.

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 the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for a continued residential use of a portion of an existing building in a B-3 zone be approved based on a survey of the property done in 1961 by John Weaver indicating there was a residence on site. A roll call vote was taken and the motion was carried unanimously.

9. The application of **Scott Pelletier** for a Use Variance for a graphics business on property located on the East side of SR 15, 1,520 ft. South of CR 20, common address of 58718 SR 15 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092067*.

There were 23 neighboring property owners notified of this request.

Scott Pelletier, 58718 SR 15, Goshen, was present on behalf of this request. Mr. Pelletier explained he currently has a small graphic business being run from the pole barn to the rear of the property. His actual office is in downtown Goshen, so he doesn't have many people coming to and from the proposed property. He has a delivery truck on site approximately once a month. He has a sign on the property in order for people to locate the business.

Mr. Homan asked if there is a computer repair business operating on the property as well and the petitioner said no, not anymore.

Mr. Homan also questioned the temporary sign on the property, which has been removed. Mr. Pelletier said that was because an addition was being added onto the house and Priority One Construction had a remodeling sign out front.

The petitioner indicated the neighbors don't have a problem with the sign. The sign is just big enough for people to see and there are signs all around him which are two or three times the size of his.

Mr. Homan asked Mr. Pelletier if he talked to the staff about the home workshop/business option. The petitioner asked what the definition is, but Mrs. Prough indicated she has explained that to him already. Mrs. Prough said she did discuss that option with him because he would fit the home workshop/business with the exception of the sign.

Mrs. Wolgamood questioned what the other signs are in the area. Mr. Pelletier said two houses north, there is a Progressive Engineering sign. Two houses south is where the Broadmore Estates Subdivision sign is located. Across the street from the proposed property is an industry sign, but Mrs. Wolgamood indicated they are located in a manufacturing/commercial zone. There is another sign located just south of Broadmore Estates for a small gift shop.

Mr. Hesser asked if the facility in Goshen isn't big enough to work on the trucks. Mr. Pelletier said it's in downtown Goshen and there isn't a place to letter the trucks.

Mr. Hesser also questioned whether he has looked at buildings that would accommodate both businesses. Mr. Pelletier said his business isn't big enough to put in a manufacturing or business zoning district.

There were no remonstrators present.

Mr. Hesser asked if a home workshop/business can be done if the business is also operated off-site at another location. Mr. Kolbus said that would be treated as a separate business. He explained that a Special Use could not be granted today because it would need to be advertised as a Special Use request.

The public hearing was closed at this time.

Mr. Homan feels this piece of land is peculiar because of all of the manufacturing surrounding.

Mr. Hesser doesn't feel there is anything offensive about the use and it's not inconsistent with what is around, but there is nothing unique about the property.

When the size of the sign was questioned, Mrs. Prough indicated she went out on site to measure it. The sign is located too close to the centerline of the road and the Zoning Ordinance requires that the sign be back 50 ft. from the centerline of the road. The sign currently is at 45 ft. from the centerline of the road. The widest part of the sign is 48 inches wide and the smallest width was 27 inches at the bottom. If the pedestal was taken off, the sign would still be one and a half times too big.

Mr. Pelletier said his concern is that if the sign gets any smaller, then nobody will be able to see it.

Mr. Homan explained the Board is constrained by the definition of a Use Variance. He agrees with the findings of the Staff Analysis.

Mr. Pelletier questioned why he can't have a sign, but he can park his box truck on the property. Mr. Burrow explained if the box car has a sign on it, then it is also considered a sign.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for a graphics business be denied with the sign to be removed within ninety (90) days.

10. The application of **Glen Hershberger** for a Use Variance for an auto detailing business on property located on the North side of CR 56, ¼ mile West of CR 29, common address of 16353 CR 56 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091771*.

There were 3 neighboring property owners notified of this request.

Glen Hershberger, 16353 CR 56, Syracuse, was present on behalf of this request. Mr. Hershberger explained he doesn't have any signs up yet apart from a small temporary sign on the building. His request is for a 4 ft. by 3 ft. sign out by the road, but he could downsize if he needed to. He didn't realize there was a Zoning Ordinance regulation on the size of sign that is allowed, so he went out and ordered two signs for \$1,000. Mr. Hershberger is willing to work with the Board on the size of the sign.

Mr. Hesser asked Mr. Hershberger if he does painting and he indicated no. Mrs. Wolgamood asked if he is doing washing and waxing and the petitioner said yes.

When asked how many cars a day he works on, the petitioner indicated he only does two cars per week. Mr. Hershberger explained that he operates the business part-time and indicated one car takes 16 to 17 hours. He said it is more detailed than a normal auto detail shop.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she wishes the sign company would have told the petitioner he needed permits.

Mr. Hershberger indicated he is 400+ feet off of the road and he needs a sign that will be visible.

Mrs. Wolgamood feels the petitioner would definitely qualify for a home workshop/business.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that this request for a Use Variance for an auto detailing business be denied with no additional conditions imposed based on the following findings:

1. A need for the Variance does not arise from a condition that is peculiar to the property involved. The business may be operated as a home workshop/business with a Special Use granted by the Board of Zoning Appeals.
2. Strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the property as this petitioner has the option to apply for a Special Use for a home workshop/business, or petition to re-zone the property to a commercial zoning district.
3. The Variance does interfere substantially with the Elkhart County Comprehensive Plan.

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

11. The application of *Lift Jesus Higher Ministries* for an amendment to an existing Special Use for a church to reduce the size of the parcel (Specification F - #48) on property located on the Southwest corner of CR 15 & CR 6, common address of 53111 CR 15 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092096*.

A petition in support of this request was submitted to the Board at this time by Mrs. Prough *[attached to file as Staff Exhibit #2]*.

There were 16 neighboring property owners notified of this request.

Bill Kuhns, FM Stone Realty, 421 S. 2nd Street, Elkhart, was present representing Lift Jesus Higher Ministries. Mr. Kuhns explained there were two neighbors they couldn't get in contact with, but they did get a verbal approval. No negative feedback was received from any of the neighbors. The petitioners realize they have to go through the subdivision process, which Mr. Doriot is handling. The main reason for this request is to change the ownership from Crown of Life Lutheran Church to Lift Jesus Higher Ministries. The church realizes that anything beyond transferring the Special Use will require additional staff or Board approval.

Mr. Homan asked if the Special Use will only pertain to a smaller parcel being broken off. Mr. Kuhns said yes, they are in negotiation with the neighbor and he may buy it and sell it to the church on contract, but that has not been finalized.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood explained the application states that there is a possibility of putting a modular on site in the future. She said it is not shown on the site plan and asked if that changes anything.

Mrs. Prough said the staff is asking that the modular be included as part of the proposal. The staff will approve the site plan in the future when they get ready to place the modular because there is an existing foundation there.

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 an amendment to an existing Special Use for a church to reduce the size of the parcel (Specification F - #48) be approved with any future improvements as represented in the petitioner's application to be reviewed by the staff and a detailed site plan is to be submitted prior to issuances of any Improvement Location Permit or building permit. After a unanimous roll call vote was taken, the motion was carried.

12. The staff item regarding ***Larry Harrell's retirement and new staff positions*** was presented by Mr. Watkins at this time. Mr. Watkins said beginning September 1st, Mrs. Prough becomes the new Zoning Administrator. He also introduced Ronnie Weiss, who is moving into Mrs. Prough's position as Code Enforcement Officer, and Mike Gard, who will be the new Building Commissioner. Mr. Watkins said the Building Department will now be handling unsafe structures.

Mr. Watkins also indicated that Mr. Harrell will be retiring at the end of this month. He has been working for the Department of Public Services for 19 years. Mr. Harrell's retirement open house will be on August 28th from 2:00 p.m. to 4:00 p.m. He then congratulated Mr. Harrell on his wonderful career. At this time, Mr. Harrell gave a short speech to the Board regarding his retirement.

13. The application of ***Rose Watson (buyer) and Myron & Joyce Martin (sellers)*** for a Special Use for an addiction clinic in an A-1 zone (Specification F - #14) on property located on the East side of CR 31, 1,424 ft. North of CR 36, common address of 63700 CR 31 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092091*.

A letter was submitted to the Board at this time by Mrs. Prough regarding a request from Barry Pharis to table this petition for thirty days due to health reasons *[attached to file as Staff Exhibit #2]*. A letter in remonstrance to this request was submitted to the Board at this time *[attached to file as Staff Exhibit #3]* as well as a petition in remonstrance *[attached to file as Staff Exhibit #4]*.

There were 12 neighboring property owners notified of this request.

James Miller, 63665 CR 31, Goshen, was present in opposition to this request. Mr. Miller indicated he is the one who submitted the petition in opposition to this request.

Mr. Miller expressed his concern about the property values being affected. He explained that a lot of people in the area have spent money to invest in their properties. He is also concerned about children being around with an addiction clinic in the area.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for a Special Use for an addiction clinic in an A-1 zone (Specification F - #14) be tabled until the September 17, 2009, Board of Zoning Appeals meeting as requested by the petitioner's representative with all neighboring property owners to be re-notified. A roll call vote was taken and the motion was carried unanimously.

14. The application of *Mario Saldivar* for a Special Use to allow for an agricultural use (keeping of one horse) on a tract of land containing three acres or less (Specification F - #1) on property located on the Southwest corner of CR 22 & Fairwind Drive, 1,500 ft. East of CR 9 being Lot 1 of Fairwind Acres, common address of 25700 CR 22 in Concord 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092098*.

There were 14 neighboring property owners notified of this request.

Mario Saldivar, 25700 CR 22, Elkhart, was present on behalf of this request. Mr. Saldivar said his son would enjoy having the horse on the property.

Mrs. Wolgamood questioned how old his son is and Mr. Saldivar said nine years old. His daughter would also like to have the horse on the property.

She asked if he plans to keep it there on the weekends only or if the horse would be there full-time. Mr. Saldivar indicated he would like to have the horse on the property full-time.

When the Board asked how the manure would be handled, Reyna Hernandez, Elkhart County Health Department, interpreted for the petitioner and indicated he would like to use it as fertilizer for his garden. The staff then indicated that Mr. Saldivar has a fairly good sized garden.

Richard Dirmyer, 25647 Applewood Court, Elkhart, was present in opposition of this request. Mr. Dirmyer indicated he owns three properties to the southeast of the petitioner's property. He doesn't have a problem with one horse or one building, but his concern is control over the animals he has now. The police have been called out numerous times on Mr. Saldivar's dog that gets loose. Mr. Dirmyer said his wife can't walk the subdivision with their grandkids anymore because of the dogs. A neighbor who lives directly east of the petitioner has been bit by the dog and there are rabbits that run free through the neighborhood. His biggest concern is expansion because he doesn't want Mr. Saldivar to have more than one horse.

Mrs. Wolgamood then clarified that the petitioner is only asking for one horse. He feels it may be his responsibility to police the area due to the petitioner's past history.

Kathy Gasper, 59244 Fairwind Drive, Elkhart, was also present in opposition to this request. Mrs. Gasper explained that she lives south of the petitioner's property. She has had to slam on her brakes many times to keep from hitting the petitioner's dog. She has gone into his driveway and asked Mr. Saldivar to keep track of his dog. She is concerned that the horse may get loose from the property too. She doesn't feel he takes care of the animals he has currently.

Mr. Lantz asked if the rabbits are wild rabbits and Mrs. Gasper said they are all domesticated rabbits.

Mr. Homan asked how many rabbits the petitioner has on the property and Mrs. Gasper said she saw three and he also has one little Chihuahua.

Mr. Homan asked if the petitioner has housing for the rabbits and Mrs. Gasper indicated she is unsure.

Mrs. Hernandez said the petitioner does understand and acknowledge the issues with the animals.

When the petitioner was asked if he has rabbits, Mr. Saldivar indicated yes. She asked if he has housing for the rabbit and the petitioner said yes. When asked why they get loose all the time, Mrs. Hernandez indicated they sometimes get loose out of the house and go into the yard.

When asked by Mrs. Wolgamood how many dogs he has, Mr. Saldivar said two. Mrs. Hernandez indicated he understands the dogs need to be kept on the property.

Mr. Homan asked if the proposed area for the horse is completely fenced-in and Mrs. Hernandez translated that he doesn't have it fenced in at the moment, but if he is given permission, then a fence will be constructed.

Mrs. Wolgamood asked where the horse is currently kept during the week and the petitioner indicated he pays to have it boarded at a friend's ranch.

Mrs. Prough indicated the complaint was received one year ago and she informed the petitioner that he wasn't able to have the horse there at all. She doesn't believe he has brought the horse back since then because no complaints have been received.

Mr. Kolbus said if the Board does grant this request, it should be made clear to the petitioner that the horse is not to be on site until the fence is complete due to the current animals roaming the neighborhood.

The public hearing was closed at this time.

Mr. Homan said he is concerned that this would expand to more agricultural animals. If this request is granted, then it would be approved for one horse only and not for any other type of agricultural animals.

Mr. Hesser asked what the zoning is and Mrs. Prough indicated A-1.

Mr. Hesser asked if the staff is satisfied with the site plan since it doesn't show the eastern part of the fence. Mrs. Prough said she has a good idea of where the fence will be located. Mr. Saldivar's daughter explained to Mrs. Prough that the horse would be located on the west side of the property in the proposed building, which will be 30 ft. from the west property line. She indicated she doesn't have a problem with the current site plan.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board (as amended by the Board), and based upon these Findings, this request for a Special Use to allow for an agricultural use (keeping of one horse) on a tract of land containing three acres or less (Specification F - #1) be approved with the following conditions imposed:

1. Approved provided a substantial fence is constructed and inspected prior to the horse being brought to the property.
2. A building permit is to be taken out for the 12' x 20' ft. building and inspected by the Elkhart County Building Department.
3. No other agricultural animals allowed on site (inside or outside).
4. Approved for one (1) horse only.

5. The horse is to be kept on the west side of the property near the wooded area and away from the residential uses located to the east.
6. Approved for a period of six (6) months with a staff review at that time.

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

The Board then thanked Mrs. Hernandez for translating for the petitioner.

15. The application of **Michael King** for a renewal of an existing Special Use for a home workshop/business for the repair of motorcycles (Specification F - #45) on property located on the North side of CR 12, 320 ft. West of CR 1, common address of 30059 CR 12 in Cleveland Township, zoned R-1, came on to be heard.

There were 14 neighboring property owners notified of this request.

The petitioner was not present.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that this request for a renewal of an existing Special Use for a home workshop/business for the repair of motorcycles (Specification F - #45) be tabled until the September 17, 2009, Board of Zoning Appeals meeting with the request to be dismissed if the petitioner is not present. A roll call vote was taken and the motion was carried unanimously.

16. The application of **Danny L. Fry (lessor) and Steve Chupp, S & L Builders (lessee)** for a Special Use for warehousing and storing of construction equipment and vehicles, recreational vehicles, boats and personal storage in an A-1 district (Specification F - #44) on property located on the West side of SR 13, ½ mile South of CR 36, common address of 64455 SR 13 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092094*.

There were 6 neighboring property owners notified of this request.

Danny Fry, 64349 SR 13, Goshen, was present on behalf of this request. Mr. Fry explained he bought the building because he owns the property next to it and he wanted to control what went in it. He is planning to lease the building for storage of RV's and boats during the winter. Mr. Chupp has asked if he can use one end of the building for concrete equipment.

Mr. Lantz asked if outside storage would be a problem and Mr. Fry said the only thing being stored outside is a trailer because they don't have enough room to fit it inside.

Mr. Lantz asked if it will be a problem getting the grain bins moved in 30 days and the petitioner said no.

The staff recommendation shows different hours of operation than what the questionnaire indicated and Mr. Hesser asked if those hours would be acceptable. Mr. Fry said he feels the Staff Analysis is acceptable.

Mrs. Wolgamood asked if the code violations from April have been corrected and the petitioner indicated all of the equipment was removed from the property.

Chris Fisher, S & L Builders, 12924 CR 44, Millersburg, was present as the petitioners' representative.

When Mr. Hesser asked if the trailer with the backhoe is being stored outside and Mr. Fry said no, it's currently on a job site.

Mrs. Wolgamood asked where they are planning to keep the trailer, Mr. Fry said it would be stored toward the center of the property on the west side, which was pointed out on the aerial photo.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lantz said the only thing in question is the trailer in the back.

Mr. Fry indicated they talked to the neighbors and they have no problem with the request.

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 amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for warehousing and storing of construction equipment and vehicles, recreational vehicles, boats and personal storage in an A-1 district (Specification F - #44) be approved with the following conditions imposed:

1. No outside storage apart from the trailer and the backhoe.
2. Day and hours of operation to be Monday through Friday, 5:00 a.m. to 8:00 p.m., and 8:00 a.m. to noon on Saturday.
3. No signs permitted.
4. Grain bins currently stored on site to be removed within thirty (30) days.
5. The trailer and the backhoe are to be stored on the west side of the building where the grain bins are currently stored.

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

17. The application of ***Joseph & Cynthia Lewis*** for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the Northwest corner of CR 19 & CR 20, common address of 58913 CR 19 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092093*.

A copy of a letter in remonstrance to this request received on August 19, 2009 [*attached to file as Staff Exhibit #2*], a petition signed by neighboring property owners on August 18th, 2009 [*attached to file as Staff Exhibit #3*], and handouts regarding towers [*attached to file as Staff Exhibit #4*] were all submitted to the Board at this time. Copies of these documents were also given to the petitioner.

There were 16 neighboring property owners notified of this request.

Gene Cruzie, Maplenet Wireless, 4561 Pinecreek Road, Elkhart, was present as Mr. and Mrs. Lewis' representative. Mr. Cruzie explained they are proposing to build a 140 ft. communication tower. He said this is not a cell phone tower and it is light duty. The purpose of this tower is to provide broadband internet service to the residents in the community. Currently, there is another provider in the area that is operating off of a 75 ft. tall silo. The reason for the tower is to allow people to get service in areas where they are currently unavailable.

As part of their research, Maplenet Wireless went to the big Verizon tower on the corner of CR 20 & CR 19, but the owners had no interest in letting the petitioners use the tower. He

went down the road to another tower that is south of CR 20 and west of CR 19, which is available for use if you pay a large fee and rent. He explained that tower didn't work out because it costs too much and they are trying to provide affordable internet for the community. Mr. Cruzie indicated they also looked at using a nearby silo, but it didn't provide enough coverage.

The petitioner's representative explained that the equipment is all approved by the FCC and it puts out much less power than a cell phone. There are no concerns about radio frequency exposure or radiation. The equipment is limited to one watt of transmit. A microwave oven has more leakage than this tower would have. He also indicated there would be no lighting.

Mr. Homan said there was a packet of information received regarding radio frequency and asked if he has reviewed that. Mr. Cruzie said they are using wi-fi equipment, which is the technology used in laptops.

Edward Dils, 58159 CR 23, Goshen, was present in favor of this request. Mr. Dils explained that the current internet service he has is very lousy and they don't fix anything. He feels the current monthly charge is outrageous, so he would really like this tower to be installed so he can get decent broadband internet service.

Mr. Lantz asked where he lives and Mr. Dils said he lives about two miles away from the proposed location.

Kevin Maiden, 58901 CR 19, Goshen, was present in opposition to this request. His property is just north of the proposed location for the tower. Mr. Maiden has a home office for business and he currently has internet through another provider with absolutely no problems. He explained that the surrounding neighbors will look out of their houses and see a tower. Mr. Maiden indicated the tower would be located right outside of his bedroom window.

Mr. Maiden said the FCC information does not recommend installing towers in a residential area. He understands the area is zoned agricultural, but it is used for residences. He has a big concern about property values going down in the area due to a tower being put in. Mr. Maiden also indicated that the trees being used as a buffer are ten ft. tall apple trees, which definitely won't cover the tower.

Debra Maiden, 58901 CR 19, Goshen, was also present in opposition to this request. Mrs. Maiden explained that the handouts indicate that studies are inconclusive about radio waves. There have been some animal studies done showing that there can be an affect when animals are on medication. She said there are lots of animals in the animal and she's not sure what medications people in the area are taking.

When she looks out her front window, she sees a tower 500+ feet away with flashing lights. She also has a view of another tower out of her back window that is 2,700 feet away. She does not want to have another tower installed because her house will be surrounded by them. Mrs. Maiden feels there are a lot of better sites the petitioners could choose from.

Also present in opposition to this request was Kathy Fackelman, 58962 CR 19, Goshen. Mrs. Fackelman explained she doesn't want to look out her front window and see another tower right across the street. She has a five year old and a four year old and she worries about radiation surrounding them.

Ruth Wagner, 58761 CR 19, Goshen, was present in opposition to this request as well. Mrs. Wagner indicated she lives to the north of the tower within 400 or 500 feet. Her property is approximately five acres and she does have horses. Mrs. Wagner is concerned that a generator may be required to run the tower, so she is worried about noise.

In rebuttal, Mr. Cruzie said he understands all of the neighbor's concerns. The only concern he heard that he hasn't addressed already is the noise. The tower would be operated from 110 volts from the property owner's barn. There won't be any generators or equipment needed. The radio frequency exposure is not a concern because most people have computers in their homes with wi-fi internet.

Mr. Lantz asked if this will be more of an unsightly tower than all of the others and the petitioner's representative said no. This is a TV tower that is commonly seen at residences throughout the county, but it happens to be a little bit taller. They chose a tower that will be five feet at the base and 12 inches at the top. Maplenet Wireless is trying very hard to minimize the impact on the neighboring property owners.

Mrs. Wolgamood asked if they will allow for collocation and Mr. Cruzie said yes. It is a very small tower, so he doesn't think anyone would want to, but they would be allowed to do so.

Mr. Hesser noted that there is a buffer greater than the tower's length in all directions.

Mr. Homan asked if all other tower providers in the area have been contacted and Mr. Cruzie said yes. Mr. Cruzie indicated the proposed tower can provide for 40 to 50 customers and they would pay \$40 per month.

The public hearing was closed at this time.

Mr. Homan said he's concerned that the other towers aren't allowing for collocation.

Mr. Lantz indicated he feels there are too many towers in one spot in this situation.

Mr. Hesser said this particular tower would be enforced by the tower policy. The neighbors have expressed concerns, but those concerns have been addressed by the petitioner's representative.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that this request for a Special Use for a wireless communications facility (Specifications F - #31.50) be denied with no addition conditions based on the following findings:

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

The motion then died due to the following roll call results: Homan – no; Wolgamood – no; Lantz – yes; Miller – yes; and Hesser – no.

A motion was then made and seconded (*Hesser/Wolgamood*) that this request be approved in accordance with the site plan submitted and as represented in the petitioner's application. The motion was carried with the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – no; and Hesser – yes.

18. The application of ***North Side Baptist Church*** for an amendment to an existing Special Use for an addition for offices, entryway, and restrooms on property located on the East side of CR 9, 160 ft. South of Meadow Oak Lane, common address of 53198 CR 9 in Osolo Township, zoned R-1/M-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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092068*.

There were 39 neighboring property owners notified of this request.

Jerry Krull, 27136 Country Lake Lane, Elkhart, was present on behalf of this request. Mr. Krull explained that he works with the church and he is working with them as a retired contractor. He feels the Pastor of the church could answer the Board's questions better than he could.

Carl Henry, Pastor of North Side Baptist Church, 53198 CR 9, Elkhart, was present on behalf of this request as well. Mr. Henry said he's not sure if the Board will have any questions until they receive the revised site plan. They are working on the parking places and possibly having a sewage system installed. They are trying to get new offices, a foyer area, new entry, and restrooms inside of the existing building. He feels they are in need of these changes due to the church growing five percent each year.

Mr. Miller said he is concerned about drainage on the property and Mr. Henry indicated they are actively looking at that now. The drainage is currently going to the rear of the building, but they are looking at putting in some lift stations to allow the retaining area to be larger. He said that will be done whether or not they are allowed to expand the building or not. The designer didn't do the greatest job when he brought the pipes into the retaining area because they are placed too low, which only allows the water table to go up so high. Mr. Henry indicated there is very seldom any water lying on site. The church is looking at a \$8,000 cost to put in a lift station.

Mrs. Wolgamood said if this request is tabled, the entire plan needs to be submitted showing how many parking spaces were eliminated and how many they will have total. Mr. Henry said approximately 24 will be eliminated and 51 will be gained.

Mr. Homan asked if the church has city sewer and Mr. Henry said no, they have been waiting for the expansion, but it has not come to them yet.

Mr. Miller asked if that will be taken into consideration when planning out the restroom facilities in regards to the septic system. The petitioner said yes, they do have several on-site septic systems now. They aren't sure if the expansion of the septic system will be large enough to take care of everything. He explained they will do everything that needs to be taken care of.

Mr. Homan questioned the septic system and Mr. Miller indicated that is part of the permit process and the Health Department will handle that.

Mrs. Prough explained the Health Department must sign off before the building permit is issued. She has talked with the petitioners and they realize they have a big project, which they agree they need a good detailed site plan.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 an addition for offices, entryway, and restrooms be tabled indefinitely to allow the petitioner to submit a detailed site plan showing parking, drainage, setbacks, size of structures, use of structures, signs, etc., with all neighboring property owners to be re-notified. The revised site plan is to be submitted to the staff in time to be sent out with the Board's packets. A roll call vote was taken and the motion was carried unanimously.

19. The application of **Jorge Pizana** for an amendment to an existing Special Use for a private baseball diamond and accessory building to allow for the construction of an addition to

the accessory building for a restroom facility (Specifications F - #4) on property located on the North side of CR 146, 1,200 ft. East of SR 13 in Benton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092028*.

There were 3 neighboring property owners notified of this request.

When Mr. Miller questioned why the petitioner is back, Mrs. Prough said he wants to add onto the existing accessory building for restrooms. The building is existing and the petitioner wants to add on to it.

Jorge Pizana, 926 N. Main Street, Ligonier, was present on behalf of this request. Mr. Pizana explained he would like to put in restrooms on the north side of the building.

Mr. Miller asked the petitioner if he has been in contact with the Health Department regarding this issue and Mr. Pizana said not yet.

Leroy Chupp, 64587 CR 43, Goshen, was present as Mr. Pizana's representative. Mr. Chupp explained Mast Excavating has applied for a septic permit. He then submitted a detailed site plan to the Board *[attached to file as Petitioner Exhibit #1]*. He feels Mr. Pizana has done a good job trying to get the proper permits.

Mr. Miller asked if the excavation company has applied for the permit to install the septic system based on the county's recommendations. Mr. Chupp said the petitioner did some piping and plumbing without the proper permits. As far as the arrangements to proceed with the permits, he is willing to do what he needs to do.

Adam Young, 11335 CR 146, Millersburg, was present in opposition to this request. Mr. Young said he and Mr. Pizana bought their land at the same time at a land auction. When he asked the petitioner what he wanted to do with the property, Mr. Pizana indicated he wanted to build a ball diamond for some kids. He felt that was admirable and he wanted to be a good neighbor.

Mr. Young said he attended the first meeting regarding the original Special Use, but he did not speak for or against the request. The original conditions state that if no valid complaints are received within the first two years, then the request would be reviewed by the staff. If valid complaints were received, then it was to be brought back before the Board of Zoning. Mr. Young felt that was sufficient and he decided he would wait to see what happens with it.

During that time, Mr. Young had issues with several activities that were taking place on the site. He has talked to Mr. Pizana on many occasions and he said the issues would be corrected. The problems were never fixed and they always go back to the way they have always been.

About one year ago, Mr. Young came home and there was a baseball tournament on the proposed site with approximately 100 vehicles on the property. He said there were around 300 people playing baseball that day. He tried to sit in his house and watch football with the windows closed and the noise level was too great to do so. Mr. Young then proceeded to call the Sheriff Deputy to come out and talk to Mr. Pizana. The Sheriff spoke to the petitioner about the Elkhart County Noise Ordinance and Mr. Pizana indicated they were in their last inning getting ready to finish. At that time, Mr. Young also told the Sheriff about the large amount of drinking that was taking place on site and he is sure that people were driving intoxicated. Mr. Pizana's response was that he couldn't control what other people brought onto his property.

Mr. Young said he has three young children and he is concerned about their safety. He filed a complaint with Code Enforcement and Mrs. Prough had ordered him to stop using the baseball diamond at one point. After talking with Mrs. Prough, he found out that Mr. Pizana should not have been playing on the field because he wasn't in compliance. The petitioner has also told Mr. Young in the past that drugs have been sold on-site.

In regards to the storage barn on site, Mr. Young felt that was appropriate because they need a place to store their equipment. He thought the building was going to be a small storage building, but it ending up being a 40 x 75 ft. structure. Mr. Young is wondering what future plans he has for this building. In earlier meetings, Mr. Pizana had also indicated he would be using port-a-potties. He has already dug the footers for the bathroom facility.

Mr. Young explained that the hours of operation stated in the questionnaire are not true. The petitioner indicated "weekends" on the questionnaire, but in the spring, there are people out there almost every day. Mr. Young said they only have games on the weekends, but this facility is being used throughout the week at different times.

The petitioner has constructed a fence that is not aesthetically pleasing at all. He had to have Mr. Pizana remove some posts that were on his property and there are a lot of weeds growing right now. Mr. Young feels the petitioner has done everything as cheap as he possibly could have. He's wondering why Mr. Pizana spent so much extra money adding trusses to his barn if he has done everything else so much cheaper.

Mr. Young feels the petitioner will do whatever he wants to do. He has noted in the documentation from Mrs. Prough that the petitioner had talked to the Health Department about the restroom and drainage for the barn. He had told the Health Department he only wanted drainage. He feels a lot of information has been misrepresented by the petitioner and he continues to lie.

Mr. Young also pointed out the Special Use was granted two years ago, but Mr. Pizana didn't come into compliance until June 29th of this year. He feels this will continue and the petitioner will keep doing what he wants to do.

If a complaint wouldn't have been called in, Mr. Young feels the petitioner would have went ahead and built the addition and put in a septic system without Board approval or proper permits. He feels that every square inch of that property has been disturbed. A page of eight pictures of the property in question was submitted at this time *[attached to file as Petitioner Exhibit #1]*. Mr. Young would like to see this request tabled and then have the request revoked. The petitioner has failed to bring the property into compliance and he continues to be in violation.

Mr. Miller asked if there is any ball playing after dark and Mr. Young said there have been people sitting over there listening to music and drinking lots of beer after dark. There have been several occasions where they have left after dark. In the original Special Use approval, it states "dawn to dusk".

Bill Hartsuff, On-Site Program Supervisor, Elkhart County Health Department, 4230 Elkhart Road, Goshen, was present to inform the Board of the proper steps that need to be taken in order for the petitioner to obtain approval for a septic permit. Mr. Pizana will need to have the plans approved by the Elkhart County Health Department Food Supervisor for concessions. A building permit should not be released until the concession plans are approved. Mr. Hartsuff said a building permit is not to be issued for the bathroom facilities until the plans have been reviewed by the Elkhart County Health Department either. If the petitioner were to build them to the wrong specifications, he would incur additional expenses.

In regards to the restroom facilities, they are currently using port-a-potties. The petitioner has expressed a desire to have conventional restroom facilities. He would be required to have soil borings provided by a certified soil scientist and sent down to the state for approval. Once they have received that information, they would send back a list of minimum requirements for the septic system.

As of this date, the Elkhart County Health Department has not received any soil boring information regarding this site. He said it doesn't appear that any soil boring information has been provided. The petitioner will be required to continue using the port-a-potties and keeping them in a satisfactory sanitary condition. Anything that would concern the use of any running water would be prohibited at this point. If the petitioner has questions about this matter, he would need to contact Mike Hoover from the Health Department. Mr. Hartsuff feels he may already be overstepping his boundaries.

Mr. Kolbus questioned if the Elkhart County Health Department has done any investigation regarding the disturbed soil. Mr. Hartsuff said no, they won't know any information until the soil borings come back. He indicated the soil borings would show any disturbance, which may result in the Health Department not being able to issue a permit for the septic system. Mr. Hartsuff said that is yet to be determined.

Becky Moser was present in opposition to this request representing her parents, Robert & Donna Moser, who live at 69678 SR 13, Millersburg. Ms. Moser explained her parents own 160 acres just south of CR 146. When the storage building was constructed, her parents were never notified of the public hearing. Their concern is loud music and she is worried that the site will become an eyesore. The owner that lives on the other side of Mr. Young bought his property thinking he was going to buy a house, but he has changed his mind because he doesn't want to be around all of the noise.

Mr. Hesser said it seems very obvious that the Special Use will be before the Board for renewal within the next couple of months. At that point, he feels it would be more of an appropriate time to consider this request. He doesn't feel there is any point in considering a restroom if they aren't even sure if the Special Use will be continued.

Mr. Kolbus indicated there were valid complaints received by Code Enforcement and the petition would need to come back before the Board for renewal.

Mrs. Wolgamood said given the information received and the information received from Mr. Young indicating there are major problems out there, she doesn't want to consider this today. She feels the Board has ample cause to deny this request today.

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 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 private baseball diamond and accessory building to allow for the construction of an addition to the accessory building for a restroom facility (Specifications F - #4) be tabled as the petitioner is required to submit a detailed site plan and a renewal application which will be heard before the Board of Zoning Appeals (due to valid complaint received by Code Enforcement) for the existing baseball diamond as the Special Use permit expires on September 20, 2009. A roll call vote was taken and the motion was unanimously carried.

20. The application of **Laura Evans** for a Special Use for a home workshop/business for dog grooming (Specifications F - #45), and for a Use Variance to allow for the placement of a sign 35 ft. from centerline of the right-of-way (Ordinance requires 55 ft.) on property located on the East side of CR 105, 1,250 ft. South of CR 20, common address of 58030 CR 105 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092047*.

There were 20 neighboring property owners notified of this request.

Present on behalf of this request was Laura Evans, 58030 CR 105, Elkhart. Mrs. Evans explained she does dog grooming out of her home in the enclosed front porch area. She would like to have a sign out front so customers know where she is located.

Mr. Hesser asked if she will have any employees and Mrs. Evans said no.

Mr. Miller asked if the proposed staff conditions are acceptable and the petitioner indicated yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan asked if there is a turn around area in her driveway and Mrs. Evans said yes. She has a large driveway, so she doesn't feel that will be an issue. The petitioner also indicated the business operates with appointments only.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for dog grooming (Specifications F - #45), and for a Use Variance to allow for the placement of a sign 35 ft. from centerline of the right-of-way (Ordinance requires 55 ft.) be approved with the following conditions imposed:

1. Business to be operated by the owner/occupant of the residence on site.
2. Days and hours of operation to be Monday through Friday, 8:00 a.m. to 8:00 p.m., and 8:00 a.m. to noon on Saturday.
3. Approved as represented in the application and in accordance with the site plan submitted.
4. No outside kennels/runs.
5. No boarding of dogs.

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

21. The application of **Lavern E. Yutzy** for an Appeal to allow for the construction of a second residence on a single zoning lot on property located on the West and South side of SR 13, 2,200 ft. North of CR 30, common address of 61571 SR 13 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092040*.

There were 6 neighboring property owners notified of this request.

Lavern Yutzy, 61571 SR 13, Middlebury, was present on behalf of this request. Mr. Yutzy explained that he is looking for a dwelling for his father. His father has health

complications and he is currently residing with the petitioner's brother, but it has become too much for their family. Due to privacy issues for himself and his family, Mr. Yutzy said his family has decided to ask for the double dwelling. He explained they have decided to move the field system towards the buggy shop building. At this time, Mr. Yutzy submitted a site plan to the Board showing the proposed location of the field system *[attached to file as Petitioner Exhibit #1]*.

Mr. Homan asked what type of structure they would like to build and the petitioner said a stick built home. With the Zoning Ordinance not defining a temporary residence, they decided to build a permanent home. The home will be a one bedroom, single story home.

Mr. Homan asked about the health issues and Mr. Yutzy said his father has diabetes and part of his leg has been removed. This requires him to have constant care and it's too much for him to handle on his own.

The Board then asked the petitioner to explain the difference between the original site plan submitted and the new site plan submitted today. Mr. Yutzy said the original site plan shows the septic system closer to the house, but they are now proposing to have the septic area closer towards the buggy shop.

Mrs. Wolgamood asked why the petitioner can't put an addition onto his house and make it a double dwelling/duplex instead of asking for a second residence. A double dwelling is a permitted use in this zone. Mr. Yutzy said he went home and talked to his family about it and he feels it would disfigure the house and the landscaping. He has a large family with lots of activity going on and Mr. Yutzy is worried that the noise may disturb his father if the dwellings are attached.

Mrs. Wolgamood asked if they have considered a mobile home since that is considered more of a temporary structure. The petitioner indicated that was his first intention, but he felt they were discouraged from doing that.

There were no remonstrators present.

Mrs. Prough said she wasn't aware that the petitioner had considered a single wide mobile home. If he meets all of the criteria of a Special Use permit for a mobile home, then the staff would support that. She also indicated the petitioner could submit an application for a double wide mobile home on a temporary foundation. As long as the property is not located within 300 feet of a conventional built home, then he would meet the criteria of the Special Use.

Mr. Burrow feels the Board could still act on this under the existing request, but the petitioner needs to modify what the structure is because the Appeal is to establish a secondary dwelling. The reason they established the Special Use for a mobile home is because it is cheaper and it requires less setting aside of the Zoning Ordinance. The petitioner just needs to amend his site plan and re-submit it, which would still allow it to be considered under the second dwelling. Elkhart County is required to treat manufactured housing the same way as stick built homes.

Mrs. Wolgamood indicated she doesn't want the Board to set a precedent for mobile homes being considered second residences.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that this request for an Appeal to allow for the construction of a second residence on a single zoning lot be tabled until the September 17, 2009, Board of Zoning Appeals meeting to allow the petitioner to work with the staff regarding filing a Special Use for a mobile home and discussing the possibility of having the fee waived for the mobile home Special Use application. A roll call vote was taken and the motion was carried unanimously.

22. The application of **Preston Joy** for an Appeal to allow for the construction of a personal storage building with no primary structure on property located on the West side of Dutton Drive, 900 ft. North of North Shore Drive, common address of Dutton 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091975*.

There were 9 neighboring property owners notified of this request.

Preston Joy, 50725 Dutton Drive, Elkhart, was present on behalf of this request. Mr. Joy explained he is out of room in his house and he has several cars he needs to keep inside. He indicated this structure is going to be a metal pole building. He can't afford to construct a building with vinyl siding, shingles, and foundation. Mr. Joy then submitted a picture showing what the building would look like *[attached to file as Petitioner Exhibit #1]*. He has spoke with the neighbors and they have no issues with this request.

Mr. Kolbus indicated this would be treated as one zoning lot. Mr. Kolbus said there is a written commitment that gets recorded including enforceable language

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 this request for an Appeal to allow for the construction of a personal storage building with no primary structure be approved based on the findings in the Staff Analysis with the following revision to finding #2: Will not adversely affect other properties in the same zone or neighborhood provided the accessory building is a complimentary color that will fit in with the residences in the area and is a steel-sided structure as represented by the petitioner. The following conditions were imposed:

1. That both lots (24 and 25) are to be sold as one (1) zoning lot.
2. That no business shall be operated from the proposed accessory building.
3. The proposed accessory building is to be constructed in a complimentary manner as shown in the photographs submitted by the petitioner.

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

23. The application of **Greg Flora** for an Appeal to allow for the construction of a second residence on a single zoning lot and for a Developmental Variance to allow the total square footage of accessory structures (9,982) to exceed the total square footage in the primary structure (2,800), a difference of 7,182 sq. ft. on property located on the West side of CR 13, 2,250 ft. North of CR 46, common address of 68607 CR 13 in Union 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092078*. She explained that Mr. Sloat has talked to her about applying for a Use Variance.

There were 9 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat indicated he concurs with the request for tabling.

There were no remonstrators present.

Mr. Kolbus asked how long he wants the tabling and Mr. Sloat said one month. 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 second residence on a single zoning lot and for a Developmental Variance to allow the total square footage of accessory structures (9,982) to exceed the total square footage in the primary structure (2,800), a difference of 7,182 sq. ft., be tabled until the September 17, 2009, Board of Zoning Appeals meeting to allow the petitioner to address compliance with the originally established conditions of the home workshop/business (number of employees and outside storage). A roll call vote was taken and the motion was unanimously carried.

24. The application of *Dennis & Donna Myers (landowners) and Kevin & Tonya Rhodes (appellants)* for a 3 to 1 depth to width ratio Variance on Parcel 'A' for construction of a residence, and for a 3 to 1 depth to width ratio Variance on Parcel 'B' for an existing residence on property located on the North side of CR 22, 2,175 ft. East of CR 33, common address of 15141 CR 22 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091880(A)*. Copies of the result letter and the log notes from the previous hearing were submitted to the Board at this time *[attached to file as Staff Exhibit #1]*.

There were 9 neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465, New Paris, was present representing Mr. and Mrs. Myers. At this time, Mr. Doriot submitted two aerial photos of the property to the Board *[attached to file as Petitioner Exhibit #1 & Petitioner Exhibit #2]*. He explained this was heard last month at the Hearing Officer meeting and was given a favorable recommendation. The request was approved, but it was appealed by the neighboring property owners. He feels the staff is wrong because the legal description indicated the property goes to the centerline of CR 22.

Mr. Kolbus then clarified that sometimes when roadways are done, they dedicate the right-of-way or sometimes they deed it. Mr. Doriot said the title work shows that the Myers' own up to the centerline of CR 22, so they do have full access.

Mr. Doriot explained this is the first step in a two step process. The petitioners are going to go through the minor subdivision process. He doesn't feel the curve entrance is unsafe because there are 650 ft. from the location of where the drive will be to the top of the hill to the north. He feels the petitioners will have adequate site distance for the location of the drive.

Mr. Doriot pointed out the location where the Myers' currently live and the proposed location of where they would like to build the new house. He also pointed out the muck ground area which cannot be built on. The proposed location of the house will not be in front of the other houses or behind the existing barn. The Myers' also plan to plant a row of pine trees along the property line for a buffer. The petitioners also plan to arrange the drainage so it is diverted away from the neighboring properties. The Myers would like to build a ranch style home that would be 1,500 sq. ft. to 2,000 sq. ft. They plan to keep their horses on site as well.

Mr. Hesser asked if there are issues developing the rest of Parcel A and Mr. Doriot said it is impossible because it's unbuildable muck land.

When Mr. Homan questioned the text amendment, Mr. Burrow said that was to avoid requiring people with large acreages to have to apply for a 3 to 1 depth to width ratio Variance.

Mr. Doriot explained there are several narrow road frontage entrances in the area. The petitioners will not impact the value of the neighbors' properties. They have agreed to build at or above the standards of the neighbors.

Kevin Rhodes, 15231 CR 22, Goshen, was present in opposition to this request. Mr. Rhodes indicated he is the neighbor to the west of petitioners. He understands the property line does go down to the centerline of the road. He feels people drive around the curve very fast, so he is concerned about another driveway entrance. Mr. Rhodes said he's unsure how you can fit a house of 2,000 sq. ft. and a barn on a parcel that will be approximately 146 ft. wide.

Mr. Rhodes then questioned if the muck land towards the rear of the property wasn't unbuildable, then would the area up front where they are proposing to build the house still be considered buildable.

He indicated he bought land in this area to be out in the country and not in a subdivision. His concern is the congestion of another building or two being placed right beside the buildings on his property. Mr. Rhodes is also concerned that if the petitioners try to sell the property, he's not sure someone would want to buy a house with another house and barn right behind them or in front of them.

Tonya Rhodes, 15231 CR 22, Goshen, was also present in opposition to this request. She and her husband bought their home to have some space for their children to be raised. If they wanted to live in a subdivision, then they would have bought a lot in a subdivision. She feels that is what this is going to come to.

Mr. Hesser asked if her property is immediately west of the proposed property and Mrs. Rhodes indicated yes.

Mr. Hesser asked what the acreages of Parcels A and B will be. Mr. Doriot said Parcel A will be 3.5 acres and Parcel B will be around 12 acres.

Last month, there were five remonstrators present at the meeting and this month there are only two people remonstrating. Mr. Doriot said the petitioners went around to all of the remonstrators and explained to them what they want to do. One of the remonstrators indicated they got caught off guard by the notice which was received in the mail. Mr. Doriot then submitted a packet of photos showing the neighbor's property *[attached to file as Petitioner Exhibit #1]*.

Mr. Doriot indicated they can't do a minor subdivision without the Variance, so this is a two step process. The driveway will need to go through Tech Committee also and they prefer not to have a joint driveway. Mr. Doriot does not feel this will be injurious to the public because they are still required to meet the subdivision standards and go through the meetings.

The public hearing was closed at this time.

Mr. Hesser feels this is a very odd shaped parcel, but he doesn't see this as a problem.

Mr. Harrell had previously indicated that thirty percent of the properties in this area have received 3 to 1 depth to width ratio Variances. Mrs. Wolgamood also pointed out that the staff didn't know the rear portion of the property was muck land and non-buildable until after they made their recommendation for denial.

Mr. Miller said he doesn't see this as a big issue. The only issue he sees is the driveway and that has to be approved through the building permit process.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) this request for a 3 to 1 depth to width ratio Variance on Parcel 'A' for construction of a residence, and for a 3 to 1 depth to width ratio Variance on

Parcel 'B' for an existing residence be approved with no additional conditions imposed based on the following findings:

1. Will not be injurious to public health, safety, morals or general welfare.
2. Will not cause substantial adverse affect on the neighboring property.
3. Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance.

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

25. The application of **Lawrence Ramer** for an 8 ft. Variance to allow for an addition to an existing accessory building 2 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow the total square footage of accessory structures (11,860) to exceed the total square footage of the primary structure (3,648), a difference of 8,212 sq. ft., on property located on the North side of CR 38, 2,185 ft. West of CR 11, common address of 25445 CR 38 in Harrison Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083434*.

There were 3 neighboring property owners notified of this request.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present as Mr. Ramer's representative. Mr. Doriot explained the petitioner is filing for a Planned Unit Development (PUD). Mr. Ramer would like to acquire an eight ft. strip of property from the neighbor and they weren't sure how else to do it other than with a PUD. In the long run, it will give him better fire protection and better access to his property. Mr. Doriot indicated he is in agreement with the dismissal.

Loren Sloat, 102 Heritage Parkway, Nappanee, also indicated he is in agreement with the dismissal.

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/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an 8 ft. Variance to allow for an addition to an existing accessory building 2 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow the total square footage of accessory structures (11,860) to exceed the total square footage of the primary structure (3,648), a difference of 8,212 sq. ft., be dismissed. The motion was carried after a unanimous roll call vote was taken.

26. The application of **Michael Lewis** for an Appeal to allow for an addition onto an existing accessory structure on property without a primary residence on property located on the Northwest corner of Perkins Street and Ne-Ce-Dah Drive, being Lots 71 & 72 of Shore Acres Subdivision 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091925*.

There were 7 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat submitted a packet of information with pictures, aerial photos, maps showing locations

of other large accessory buildings in the area, minutes, and a list of proposed conditions *[attached to file as Petitioner Exhibit #1]*. He explained the petitioner was here last November asking for the same request, which was denied. The primary reason the Board voted against it was because they felt the accessory building was overwhelmingly large in an area that is primarily residential. The petition is the same today, but Mr. Sloat feels there are more facts available to be discussed than what were discussed at the November public hearing.

Mr. Sloat indicated this area is very unique because it is bordered by Hively Avenue on the south and by the river on the north and east. The area also has Sterling Avenue towards the west along with US 33. This is a very old part of Elkhart County and there are no restrictive covenants in these old subdivisions. Part of the area started out being zoned R-3, but then part of it was re-zoned to M-1 in the 1950's or 1960's. The Elkhart Environmental Center is also in the area, which is where leaves are taken to be composted. He pointed out the location of some houses, factories, and other large storage structures in the area on the aerial photo.

In 2004, the Board of Zoning Appeals approved a request for an accessory structure without a primary residence. Mr. Sloat has included a copy of the minutes from the meeting in with the submitted packet. The building that was approved is 8,000 sq. ft. and is in the general area of where the petitioner's structure is. He explained the houses in the area vary because some are very nice and some look like they need to be repaired. Some of the homes in the area are located in M-1 zoning districts.

Mr. Sloat explained that the petitioner would like to add onto his structure on the two lots. He has already brought in 2,000 yards of fill to bring it up above the flood plain. The petitioner has a lot of pontoon boats, speedboats, cars, and toys that he needs to store in this building. The structure is located right across the road from Mr. Lewis' house.

The petitioner's representative explained that Mr. Lewis has a manufacturing office close to this location. The building will be built by the same contractor who built his steel office building. The overhead doors will not be on the street side and the building will blend in with the community. Mr. Sloat explained the petitioner is proposing to plant trees to service as a screen to help minimize visual impact. There was a neighbor present in opposition to the request before, but Mr. Sloat doesn't feel she would see the structure much from her property. Everybody that has a view of the structure and everybody who the structure would visually impact at all have signed a petition in support of the request. He then reviewed the proposed conditions with the Board.

Mr. Hesser questioned the square footage of the petitioner's house and Mr. Sloat indicated 2,400 sq. ft.

Steve Rose, 24563 Perkins Avenue, Elkhart, was present in favor of this request. Mr. Rose explained that his lot is immediately west of the property in question. He was present at the meeting when the first owners built the original structure there and they had one antique car. This neighborhood has a lot of people who are into the car hobby. There are a lot of accessory structures in the area and Mr. Rose likes it. They live just outside of the city, but this is a very old subdivision with no restrictive covenants. There are a lot of people in this area that need accessory buildings larger than their homes.

Mr. Rose has been in the area for 43 years and built a brand new house, but he wouldn't have done that if it wasn't a good neighborhood to raise his kids in. He also indicated it is nice for him to ride around on his wheelchair and see everyone's antique cars. Mr. Rose pointed out that this building would be thirty percent smaller than one of the other accessory buildings in the

area. He feels the Board should be fair since there is already another accessory building in this area that is larger in size.

Mrs. Wolgamood asked if Mr. Ragland's house is across the street from his building and Mr. Rose indicated yes.

Sally Weirich, 57226 Ne-Ce-Dah Drive, Elkhart, was present in favor of this request. Ms. Weirich explained she and her husband finished building in 1985 and she enjoys the neighborhood very much. The previous neighbors built the original structure which was kept very nice and she's sure Mr. Lewis will do the same with the property.

Karen Lemon, 24531 Ne-Ce-Dah Drive, Elkhart, was present in opposition to this request. Ms. Lemon indicated she lives to the north of this property and she can see the structure from her house. She feels this building would de-value the neighborhood. The trees and shrubs the petitioner is proposing to plant will take a long time to grow. She thinks this building is way too big for a residential area. Everything around the structure is residential and all of the other areas that the attorney spoke about are not where this building is going to be.

Mr. Sloat said he appreciates the concerns of Mrs. Lemon. He feels that if Mrs. Lemon can see the structure, then it is an obstructed view. The petitioner will plant trees and they will block the view from her property. When looking at the floodplain map, the flood zone goes right through her home. His fear would be that the floodplain has more of an effect on her property for resale than the proposed accessory structure would. This is not a typical R-1 area and this type of building would not be put in a modern subdivision.

Mr. Homan asked where the large green building is that Mr. Rose spoke about earlier and Mr. Rose indicated it is right behind his house, which is to the northwest of the proposed property.

Mr. Hesser said they had previously been concerned about the size and not the appearance. More information has been provided to the Board, but the proposed structure is still more than twice the size of their home if it were all on one lot.

The public hearing was closed at this time.

Mr. Lantz said he doesn't feel this is that large of a building, but the petitioner could plant larger trees.

Mr. Miller indicated there are all different types of homes in this area. He said this is a unique part of Elkhart and he wonders how this happened in the first place. The people who are there have made investments and he is not opposed to this request.

Mrs. Wolgamood feels this is a huge building and it's in an R-1 zone. The addition will make it even bigger. She feels Mrs. Lemon's complaint is valid, but there are a lot of mixed uses in this area.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for an addition onto an existing accessory structure on property without a primary residence be denied. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – no; Hesser – yes.

After further discussion, the Board determined that a different size would be a substantially different request.

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

28. There were no audience items.

29. The meeting was adjourned at 1:12 p.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary