

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>th</sup> DAY OF DECEMBER 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, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Administrator; 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 19<sup>th</sup> day of November be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Lantz/Wolgamood*) that the legal advertisements, having been published on the 5<sup>th</sup> day of December 2009 in the Goshen News and on the 7<sup>th</sup> day of December 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 (*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 (*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 ***Charlie & Nancy Kline*** for a Special Use to allow for two wind turbines (Specifications F - #31.50) on property located on the West side of CR 27, 1,770 ft. South of CR 8, common address of 53845 CR 27 in Washington Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.  
Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #53845CR 27Rd-091030-1*.  
There were 14 neighboring property owners notified of this request.  
Glen Smith, Wind Wire, 5066 US 31 S, Lakeville, was present representing the petitioners. Mr. Smith explained Wind Wire is the third largest residential wind turbine company in the nation. The two proposed wind turbines will be at least 100 ft. away from each of the property lines. The model type is the Skystream and at least a dozen of these have been put up in Elkhart County. The wind turbines are guaranteed up to 100 mph winds and have a noise decibel level of 40. The main feed comes in through the barn and into the house. Mr. Smith feels the petitioners have plenty of room to place the wind turbines on their property.

Mr. Miller asked why the petitioners need two wind turbines and Mr. Smith said both of them will go into the same panel to power the facilities on site. The main feed comes from the house and goes into the barn. The petitioners raise around 20 horses, so they need more electricity than the average property.

Mr. Miller asked if the wind turbines will be in an area fenced off from the horses. Mr. Smith said no, the wind turbines will be located in one of the horse pastures. Everything will be accessible, but there won't be anything on the outside of the pole that could be tampered with.

Mr. Hesser indicated this is one of the areas being looked at for the new Zoning Ordinance and asked if these wind turbines would be consistent with the things being talked about in respect to wind turbines. Mrs. Prough said the new Zoning Ordinance states that they would be permitted uses in certain zoning districts (A-1 districts) and they would have to maintain their setbacks.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller said the Board has seen a lot of these and this seems to be a good location.

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 to allow for two wind turbines (Specifications F - #31.50) be approved in accordance with the site plan submitted with all building permits and inspections to be obtained. A roll call vote was taken and the motion was carried unanimously.

8. The application of **Mahlon Jay & Tammy Bontrager** for a Special Use for a wind turbine (Specifications F - #31.50) on property located on the Northwest side of CR 22, 895 ft. Southeast of CR 127, common address of 17151 CR 22 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 #17151CR 22-091105-1*.

There were 10 neighboring property owners notified of this request.

Glen Smith, Wind Wire, 5066 US 31 S, Lakeville, was present representing the petitioners. Mr. Smith explained this model is also going to be a Skystream model and can handle up to 100 mph winds. The tower will be 45 ft. tall and the decibel level will be 40. The tower will be located in a horse pasture about 200 ft. away from the barn on site. The electricity will feed into the barn and back into the house. The petitioner only needs one system at this time, but if he needs another one in the future, he understands they need to follow the regulations in the Zoning Ordinance.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller indicated they meet all requirements.

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 a wind turbine (Specifications F - #31.50) be approved with all building permits and inspections to be obtained. After a unanimous roll call vote was taken, the motion was carried.

9. The application of ***Terry & Lisa Arendt*** for a Special Use for a home workshop/business for a realty office (Specifications F - #45) on property located on the South side of CR 24, 1,830 ft. East of CR 9, common address of 25650 CR 24 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 #25650County Road24-091105-1*.

There were 12 neighboring property owners notified of this request.

Terry Arendt, 25650 CR 24, Elkhart, was present on behalf of this request. Mr. Arendt explained his wife is intending on turning the detached garage into an office with a reception area and conference room. There won't be any hazardous materials stored outside and he believes there is ample room for parking.

Mr. Miller asked if the driveway is set up so the customers don't have to physically back out onto the county road and the petitioner indicated there is plenty of room to turn around in the driveway area.

The days and hours of operation were then questioned by Mr. Miller. Mr. Arendt explained that any business done after the working hours is done over the phone or the agent will meet at the customer's residence.

Mr. Hesser asked if the house is existing because the site plan indicated "proposed house", but Mr. Arendt clarified that they used an old site plan and the house is existing.

Mr. Miller asked if the only changes will be inside of the building and the petitioner said yes.

When Mrs. Wolgamood asked if the building is currently heated, Mr. Arendt said no and indicated they would be getting the permit for that.

She then questioned if there is currently a bathroom in the building. Mr. Arendt said they did some checking on that and it is not required to have one in the building, but they are getting prices for having one installed.

Mr. Homan asked the petitioner if he feels a 4 sq. ft. double-faced sign would be acceptable and Mr. Arendt said yes. Mr. Miller then indicated the signs are generally unlighted as well.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood feels they have covered all of their bases.

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 a realty office (Specifications F - #45) be approved for the owner/occupant of the residence on site and in accordance with the site plan submitted and as represented in the petitioner's application. A unanimous roll call vote was taken and the motion was carried.

10. The staff item regarding ***Special Use 55535SR 15-090921-1 for David & Michele Muir*** was presented at this time by Mr. Burrow. Due to business reasons, the petitioners are asking to be able to separate the parcel into two distinct legal descriptions. On the original site plan, the

Board approved the area in the northeast corner of the parcel to place the winery and tasting barn, but because of corporation issues and trying to protect the personal assets of the business, they would like to create a separate legal description. Mr. Burrow wanted to review this with the Board and he asked that they consider this a minor change. The petitioners are investing a lot of money and a lot of time into this and he doesn't want them to have to come back and go through a Planned Unit Development that would be unforeseen.

Mrs. Wolgamood asked if this request was for a Special Use for a home workshop/business and Mr. Burrow indicated yes. Mr. Kolbus indicated they would be separating the home from the business.

Mrs. Wolgamood asked if it would be possible for the petitioner to make a commitment to the Board of Zoning Appeals and then have it recorded indicating that it would always be under one ownership. Mr. Kolbus said the Special Use would still have to be maintained on both parcels even though they will be separated.

Mr. Hesser said some schools do it strictly for financing measures and Mr. Burrow said that's what the petitioners would like to do. They are asking to separate the corporation's assets from their personal assets.

Mr. Homan asked how you could sign a commitment for something like this and Mr. Kolbus indicated there would be two separate owners, the corporation and the individuals. Mr. Burrow explained the corporation is going to be maintained by the owners of the property.

Mr. Burrow indicated if the Board is not comfortable discussing this as a staff item, it could be brought back for a public hearing. The other alternative to this would be to have the petitioners go through the Planned Unit Development process, which run about \$15,000 to \$20,000.

Mr. Hesser asked if part of the property could be leased. Mr. Burrow said as long as the Board doesn't feel that would be a violation of what was approved, then he wouldn't have any problem issuing the permits even if they create the legal description under a lease.

The Board had further discussion at this time.

Mr. Burrow said if the Board feels the petitioners should record a commitment, they are willing to do that. The commitment would be signed by the corporation and by the real estate holders (petitioners), which would treat it as one zoning lot.

Mr. Hesser indicated he doesn't have a problem with considering this a minor change as long as the commitment can be made and enforced.

A motion was made and seconded (*Wolgamood/Lantz*) that the Board accepts a commitment from David & Michelle Muir and Fruit Hills Winery Orchard stating that they will maintain the original tract after it is split into two parcels as one zoning lot for the purposes of operating their winery as a home workshop/business. Based on that commitment, this is considered a minor change to the Special Use. A unanimous roll call vote was taken and the motion was carried.

11. The application of *Dan & Kathy Emmans* for a Special Use for two wind turbines (Specifications F - #31.50) on property located on the West side of SR 15, at intersection of SR 15 and Michigan state line, common address of 50779 SR 15 in Washington Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #50779SR 15-091123-1*.

There were 3 neighboring property owners notified of this request.

Keith Yoder, contractor from Doug Yoder Construction, 19477 Sun Circle Court, Goshen, was present representing the petitioners. Mr. Yoder submitted a flyer at this time showing what the wind turbine will look like and all of the specifications [attached to file as *Petitioner Exhibit #1*]. He explained these are a little different looking than what people perceive as windmills. These windmills do not go very high in the air and they are very quiet. Mr. Yoder indicated he agrees with the staff report because this will provide alternative energy for the petitioners and he feels that is a good thing.

Mr. Lantz questioned the stability of the tower and the noise level. Mr. Yoder indicated the back side of the flyer indicates the towers can handle up to 100 mph winds. He also indicated the generators have a decibel rating of 20.

Mr. Homan asked how tall these wind turbines are and the petitioner's representative indicated 30 ft. There are no neighbors behind the petitioner who will see the wind turbine. If you are driving by the property, you will have to look through the trees to see it.

Mrs. Wolgamood indicated she likes the look of these wind turbines and she feels they look more appealing than the ones with the blades.

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 (*Lantz/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for two wind turbines (Specifications F - #31.50) be approved in accordance with the site plan submitted with all building permits and inspections to be obtained. A roll call vote was taken and the motion unanimously carried.

12. The application of *State of Indiana* for a Special Use for a private park in an A-1 district (Specifications F - #29) on property located on the Northwest corner of CR 1 & Toll Road, South of CR 4 in Cleveland 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 #CR 4-091026-1*.

There were 16 neighboring property owners notified of this request.

Matt Pierce, 50575 Trails North, Granger, was present representing the State of Indiana. Some improvements have been made to this particular property over a number of years. A softball field was put in this year for employee use only and there are no lights because it is only used during daylight hours. There are no tax dollars being used on this property because it is donated time and materials from the employees and their families.

Mr. Lantz asked how long the park has been there and the petitioner's representative said since 1956.

Mr. Hesser said the complaint indicates that other people were looking to rent out the facility. Mr. Pierce indicated there isn't any rental ability. Mrs. Prough said she believes that is what the complainant's concern was.

Mrs. Wolgamood questioned lighting and Mr. Pierce said there will be no lighting.

She then questioned maximum number of employees that will be there at one time and Mr. Pierce said they employ 57 officers at the District 21 Post and they employ another 300 workers on the Indiana Toll Road. Approximately 20 percent of the employees participate in the use of the recreational area. The fee for the employees is 50 cents a year and many of them have decided not to pay that fee.

Mrs. Wolgamood indicated the site plan doesn't show where parking is and Mr. Pierce said the parking areas are to the south of the camping sites. He pointed out the entrance gates and the parking area on the aerial photo. He also pointed out the location of the pavilion, sand volleyball court, softball court, and a small lake on site.

Mr. Homan said the Board has had some issues with ball diamonds in the past and they seem to revolve around league playing. Mr. Pierce said there will be no future improvements and the facility will not be used for any sort of league playing because it is only for intramural within the company.

There were no remonstrators present.

Mr. Pierce explained they have many equipment operators involved with this and the company was kind enough to offer use of the machinery. He explained that is how they built the baseball diamond.

The public hearing was closed at this time.

Mrs. Wolgamood explained she feels this is a great thing, but the site plan is inadequate. She thinks they need a site plan that shows exactly what Mr. Pierce has talked about today. If the request is approved, then she asks that one of the conditions be that a detailed site plan is to be submitted and the petitioner's representative could work with the staff on that.

Mrs. Prough suggested having a deadline as to when the detailed site plan should be submitted to the staff. The petitioner's representative then indicated he could have it completed by the end of January.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/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 private park in an A-1 district (Specifications F - #29) be approved in accordance with the site plan submitted and as represented in the petitioner's application. A detailed site plan is to be submitted to the staff by February 1, 2010. A roll call vote was taken the motion was unanimously carried.

13. The staff item regarding *Status of New Rules of Procedure* was presented by Mr. Watkins at this time. He explained there was a workshop a couple weeks ago on the proposed changes to the Rules of Procedure. The sense he got from people at the meeting was that they needed to hold off until they had all of the forms ready to go with the Rules of Procedure. He asked the Board if they feel there are any other changes they need to make prior to bringing it before them in January. Mr. Watkins indicated Mrs. Prough has been working on all of the forms and he hopes the Board will have the final package before next month's meeting.

Mr. Kolbus said the policy in the past has been when the Hearing Officer transfers an item to the full board, it gets transferred to the following month instead of the following day. If the item were to be transferred to the next day, the Board wouldn't have adequate time to review the information. He said it should be formalized in the Rules of Procedure that when the Hearing

Officer transfers an item, it will go to the next month's regularly scheduled Board of Zoning Appeals meeting.

14. The *Agreement for Legal Services for 2010* was presented at this time. A motion was made and seconded (*Wolgamood/Lantz*) that the Board accept the 2010 Agreement for Legal Services. After a unanimous roll call vote was taken, the motion was carried.

15. The application of *Leonard & Janet Cook* for a Special Use for a home workshop/business for a counseling office (Specifications F - #45) on property located on the Northeast side of CR 5, 1,200 ft. North of Bristol Street (CR 10), common address of 54306 CR 5 in Osolo 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 #54306CR 5-091123-1*.

There were 27 neighboring property owners notified of this request.

Janet Cook, 54306 CR 5, Elkhart, was present on behalf of this request. Mrs. Cook explained she would like to have a counseling office in one of the buildings located on her property.

Mrs. Wolgamood explained there is already a Special Use for a pet grooming business on site, but both of the businesses would be run out of the same building.

Mrs. Wolgamood asked if the 16 parking spaces includes the area for the dog grooming business. Mrs. Cook explained the businesses wouldn't be operating at the same time. The dog grooming business has been cut back to three mornings per week from 7 a.m. to 12 p.m. Therefore, the dog grooming business would not be open during the times that the counseling would be going on.

Mrs. Wolgamood asked the petitioner if her daughter is helping with the dog grooming business and Mrs. Cook said yes.

When asked if she is the one who will be doing the counseling, Mrs. Cook said she will be doing it with her husband. They work as Pastors at River of Life Community Church in Elkhart and she has a counseling office there. She has found that many people desire counseling and help, but they don't want to park on a busy street or let people know they are there. Having the building on her property would bring in a privacy element in which she doesn't have at the current location in the church.

With the economy drop, Mrs. Cook indicated the dog grooming business is just about done.

Mrs. Wolgamood asked if there is an existing sign on site and the petitioner said yes. When asked about the proposed sign, Mrs. Cook said the sign would be on the building indicating which half of the building is for the counseling business. She explained it would only be a 4 ft. by 1 ft. sign. The building sits pretty far off of the street which is the reason she would like it to be that size.

Mrs. Wolgamood asked if the employees would be herself and her husband and Mrs. Cook indicated that is correct, but she does 95 percent of the counseling.

In respect to the signage, Mr. Hesser asked if the limit of four sq. ft. per side total would apply to both businesses. Mrs. Prough explained the petitioner could have one sign for the dog grooming business and one sign for the counseling business.

Mr. Hesser asked if the sign on the building counts as a sign and Mrs. Prough said yes.

There were no remonstrators present.

The public hearing was closed at this time.

In the past, Mr. Hesser said there have been concerns about having multiple Special Uses on one property. He feels they have allowed them in cases where they are low impact when combined. He doesn't have any objection to this request.

Mr. Homan feels this type of business seems pretty low key.

Mrs. Wolgamood then questioned what type of counseling this business would entail. Mrs. Cook explained she is a certified nutritionist and many times, emotional and mental health problems are based on diet and what people are eating. She won't be selling products, she will just be consulting.

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 a Special Use for a home workshop/business for a counseling office (Specifications F - #45) be approved for the owner/occupant of the residence on site and in accordance with the site plan submitted and as represented in the petitioner's application. After a unanimous roll call vote was taken, the motion was carried.

16. The application of ***Ernest Dean Fry (landowner) and Glen R. Fry (business operator)*** for a Special Use for a home workshop/business for a firearms business (Specifications F - #45) on property located on the North side of CR 32, 1,250 ft. West of CR 43, common address of 10951 CR 32 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 #10951CR 32Rd-091113-1*.

There were 6 neighboring property owners notified of this request.

Glen Fry, 10951 CR 32, Goshen, was present on behalf of this request.

Mr. Hesser asked if he has an indoor facility where he can test the firearms. Mr. Fry said no, he would have to go to a public shooting range.

Mr. Homan questioned security because he will be a target if people know he is doing gun work. He also asked about the federal guidelines as far as how much ammunition he is allowed to store and what he would do to secure the firearms on site. Mr. Fry explained he has a back room behind cement blocks and he has a fire proof safe that he puts the ammunition and gun powder in. He also has a separate safe for the guns.

Mr. Homan questioned limitations of how much ammunition you are allowed to keep in a residence. Mr. Fry said there is a limitation, but he only does reloading for friends and family.

Mr. Miller asked if there is any use of lead when reloading and the petitioner said yes. He then asked Mr. Fry if he is certified in lead safe practices and the petitioner said no, he was unaware that he needed to be. Mr. Miller said lead is a huge issue and is very susceptible to children and he suggested that lead safe practices be used.

Mrs. Wolgamood said the questionnaire indicates that the basement has been used as a shop for years and asked if that is part of the firearms business. Mr. Fry said no and indicated his mom used to do upholstery, but she is out of that business now.



Mrs. Wolgamood asked if there is a sign out by the mailbox and Mr. Fry said at one time, that was going to be a sign for the upholstery business, but it never happened. There are no words listed on the sign.

She then questioned where the equipment is moved to when it is moved out of the main part of the basement. Mr. Fry said there are two separate storage rooms in the back and one of them he keeps the gun powder and ammunition. He was hoping to move his work area back there as well.

When the retail sales were questioned by the Board, Mr. Fry said he is not planning on having a showroom at this point.

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/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 a firearms business (Specifications F - #45) be approved for the owner and/or occupants of the residence on site and in accordance with the site plan submitted and as represented in the petitioner's application. All required local and state permits are to be obtained. A roll call vote was taken and the motion was unanimously carried.

17. The application of ***Maria Ramirez*** for a Special Use for an agricultural use (keeping of chickens) on a tract of land containing three acres or less (Specifications F - #1) on property located on the North side of CR 10, 2,300 ft. East of CR 3, common address of 28333 CR 10 in Cleveland 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 #28333CR 10-091026-1*.

There were 10 neighboring property owners notified of this request.

Maria Ramirez, 28333 CR 10, Elkhart, was present on behalf of this request. Ms. Ramirez explained she is asking for permission to keep chickens on her property.

When Mr. Hesser asked how long she has had the chickens, the petitioner said about two and a half years.

The Board questioned whether she has had any concerns from the neighbors and the petitioner said no.

Mr. Hesser asked if any of the properties in the area have chickens and the petitioner said yes, some of the properties on the surrounding county roads do have chickens.

Mrs. Wolgamood asked what they do with all of the chickens as she feels 80 chickens is a lot. Daisy Rodriguez, 3424 West Hill Court, Apt. B, Elkhart, explained that Mrs. Ramirez's husband likes to have chickens as pets. They eat the eggs and they also eat the chicken, but they don't sell any of them.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser feels this is a very large number of chickens. He asked what they do with the waste and the petitioner said she cleans it up and puts it in bags. The bags are then thrown away in the trash for the trash service company to pick up.

Mrs. Prough said the complaint was generated because the chickens were running loose. In Mr. Weiss's complaint file, it states that he spoke with the complainant a couple of times and he didn't have a big issue with the chickens as long as they were kept contained. However, then the complainant called back and indicated some roosters had been added to the property.

On the September 4, 2009 complaint entry, it states that the complainant had seen cock fighting on the property. Mr. Homan asked if that is an organized activity or if the birds were just fighting. Ronnie Weiss, Code Enforcement Investigator, explained the complainant didn't describe it as an organized event. The problem the complainant had was that the chickens were going across his fence and his dog was chasing them. He didn't state that there was an organized event of any kind.

If the petitioner were to come back with a request for a much smaller number of chickens, Mr. Hesser said that would probably be a substantially different request. The containment issues need to be addressed and the roosters would need to be eliminated. He explained he is considering denying the request and giving the petitioner 60 days to remove the chickens. If they want to submit a smaller request, then the petitioner will have that option.

Mr. Homan questioned what a reasonable number of chickens would be if the petitioner were to re-apply, but Mr. Hesser feels the petitioner should talk with the staff.

Mr. Hesser asked the petitioner how many hens they have the petitioner said 40. When the Board asked how many eggs they get per day, Ms. Rodriguez explained right now they aren't getting any eggs because it is cold outside, but in the summer, they get around 30 to 40 per day.

When Mr. Lantz asked what they do with the extra eggs, Ms. Rodriguez explained the petitioner gives them to her family.

Mr. Lantz asked the petitioner how many hens she could get by with and Ms. Ramirez indicated ten.

Mrs. Wolgamood said she's leaning towards denial and then the petitioner could come back with a new request that is a substantial change. She agrees with the Staff Analysis which indicates that the chickens be removed from the property within 60 days.

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 amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agricultural use (keeping of chickens) on a tract of land containing three acres or less (Specifications F - #1) be denied with the chickens to be removed from the property within sixty (60) days. After a unanimous roll call vote, the motion was carried.

When the Board questioned the pens that the chickens are placed in, Mrs. Prough indicated each pen is less than 120 sq. ft. and no building permit would be required.

18. The application of ***Willard A. Stutzman (landowner) and Mark A. Miller (business operator)*** for a Use Variance for a tattoo parlor on property located on the North side of US 33, 315 ft. West of Lewis Avenue, common address of 23737 US 33 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 #23737Us Highway 33-091118-1*.

There were 22 neighboring property owners notified of this request.

Ben Pfaff, Attorney, 220 W. High Street, Elkhart, was present representing Mr. Mark Miller. Mr. Pfaff explained that Mr. Miller is the proposed tenant to the commercial strip area. The landowner/landlord is Willard Stutzman, who has consented to this request for a Use Variance for a tattoo parlor. He indicated he can answer any questions the Board may have.

Mrs. Wolgamood questioned why this was requested as a Use Variance because she knows that tattoo parlors are Special Use permits in a B-3 zoning district. When she started looking at the criteria for a tattoo parlor, the Zoning Ordinance indicates that it would need to be at least 1,000 ft. from any "R" district, church, school, daycare, public park, or any residential use to be listed as a Special Use. When she looked at the staff's map and did the measuring, she realized that the proposal is within approximately 500 ft. of a school, 500 ft. of a church, and between 160 ft. to 500 ft. of a number of residences in the area. The proposed location of this business is immediately across the street from an R-2 zoning district. Of six of the items listed in the Zoning Ordinance, this request would be in violation of four of those, which is why they are here for a Use Variance instead of a Special Use.

Mrs. Wolgamood said the site plan indicates 1,400 ft. to the school, but she feels that is incorrect. Mr. Pfaff said he feels that was Mr. Mark Miller's measurement and he would defer to what the staff indicates. Mrs. Prough explained the staff did measure it and it is approximately 470 ft. to the school, 550 ft. to the church, and the closest residence is 160 ft. away. She explained that does not change the staff's recommendation.

The number of parking spaces was then questioned by Mrs. Wolgamood as the questionnaire states 25 to 30 spaces. She then asked if that is for the entire mall area and Mark Miller, 145 Fremont Street, Elkhart, indicated yes.

The Board asked if the 4 ft. x 6 ft. sign is existing and the petitioner said no, it would be a new sign.

Mrs. Wolgamood noted that the questionnaire states this business was previously located on CR 6 and she asked if that was the one in the strip mall by the bus terminal. Mr. Mark Miller indicated yes and Mrs. Prough explained that property is in the county.

Mr. Homan indicated a lot of tattoo parlors have neon signs, but he suggested that be very limited here due to the close proximity of the residences. Mr. Pfaff explained the lease does limit what the petitioner can do as far as signage. He feels the petitioner's sign will be consistent with what is already up there. He doesn't feel they need to address a neon sign at this point.

Mrs. Prough then indicated the petitioner would have to obtain a permit for the sign and he would have to abide by the sign regulations for a B-3 zoning district. At that time, he will be required to bring in a complete site plan showing all signs on site. If there are any signs on site that are not in compliance, then they will have to be removed and the property will have to be brought into compliance prior to the issuance of a building permit for a new sign. She also indicated there are a couple portable signs on site that are not in compliance.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for a Use Variance for a tattoo parlor be denied with no additional conditions imposed based on the following findings:

1. The request will be injurious to the public health, safety, morals and general welfare of the community.

2. The use and value of the area adjacent to the property will be affected in a substantially adverse manner as there are single family residences within 160 ft.
3. A need for the Variance does not arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the property because this property is in a B-3 zone and there are a number of other businesses that could be located in this zoning district.
5. The Variance does interfere substantially with the Elkhart County Comprehensive Plan. This business would be located well within the 1,000 ft. of an "R" district, a church, a school, and a residential use.

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

19. There were no items transferred from the Hearing Officer.
20. There were no audience items.
21. There were no Staff/Board items.
22. The meeting was adjourned at 10:27 a.m.

Respectfully submitted.

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Kate A. Keil, Recording Secretary

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Randy Hesser, Chairman

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Tom Lantz, Secretary