

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16th DAY OF JULY 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; Mick Slater, Code Enforcement Officer; 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 18th day of June be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Miller*) that the legal advertisements, having been published on the 3rd day of July 2009 in the Goshen News and on the 6th day of July 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/Wolgamood*) 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 (*Miller/Wolgamood*) 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 **National Oil & Gas, Inc.** for a 72 ft. Variance to allow for the placement of fueling pumps under canopy 48 ft. from the centerline of the right-of-way of SR 120 (Ordinance requires 120 ft.), and for a Variance to allow the establishment of parking at the front property line on property located on the Northwest corner of SR 120 and CR 17, common address of 22013 SR 120 in Osolo Township, zoned B-2, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091923*.

There were 6 neighboring property owners notified of this request.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9th Street, Goshen, was present representing National Oil & Gas, Inc. Mr. Pharis indicated that Gene Moser, owner of the property, is present in today's audience as well as Phil Troyer, the architect who is working on the project. This property is located on the northwest corner of SR 120 and CR 17. Mr. Pharis explained that this is the site of the re-construction of the six-span bridge with improvements of CR 17 and SR 120.

In order to accommodate the widening of CR 17, additional right-of-way has been taken from this site and the entrance from CR 17 has been rolled up. He said it has been eliminated and it can never be there. The changes required re-construction of the canopy from one location to another. The new location of the canopy was then pointed out on the aerial photo. With the change, the petitioner will need a Variance from the 120 ft. setback from the centerline of SR 120. This will not create any hazard for the driving public and the existing canopy is about the same distance from the property line as the new canopy will be. The re-location of this canopy will improve the safety and access at the intersection.

Mr. Pharis indicated this will adversely affect the neighboring properties and would create a significant hardship for the owner. The owner would have to close his business if the strict interpretation of the Zoning Ordinance were required.

Mr. Hesser questioned whether there would still be access to this facility from CR 17 and Mr. Pharis said no, it would be strictly on SR 120. He also asked if there was some compensation involved for the re-location and Mr. Pharis said yes.

Based on the drawing, Mr. Miller asked if there is an island that separates the two entrances to get to the pumps and Mr. Pharis said yes.

Mrs. Wolgamood pointed out that the existing sign on CR 17 seems to have been abandoned because a new electronic sign has been placed, and she asked if that sign is still shown on the site plan.

Gene Moser, President of National Oil & Gas, P.O. Box 476, Bluffton, Indiana, indicated there is an oil company sign on the north end of CR 17. He said that sign could be removed now.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she doesn't have an issue with this request.

Mr. Miller said he feels this will improve the area.

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 72 ft. Variance to allow for the placement of fueling pumps under canopy 48 ft. from the centerline of the right-of-way of SR 120 (Ordinance requires 120 ft.), and for a Variance to allow the establishment of parking at the front property line be approved with no additional conditions imposed. A roll call vote was taken and the motion was carried unanimously.

* * (*Mr. Homan stepped down from the Board at this time due to a potential conflict of interest*).

8. The application of ***Habitat for Humanity (buyer) and First Metropolitan Title (seller)*** for a 3 ft. lot width Variance for the construction of a residence on Parcel 'A', and for a 3 ft. lot width Variance for the construction of a residence on Parcel 'B' on property located on the South side of Lantz Boulevard, 215 ft. East of North/South portion of Lantz Boulevard, being Lot D 14 and East portion of Lot D 15 in Sun Ray Gardens Phase One Subdivision in Baugo Township, zoned R-2, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091929*.

There were 8 neighboring property owners notified of this request.

Tom McArthur, Executive Director of Habitat for Humanity, 2526 Peddler's Village Road, Goshen, was present on behalf of this request. Mr. McArthur explained he is requesting three ft. Variances on each of these lots. He intends to buy both lots and divide them into two equally sized lots. He then submitted a packet of information to the Board including responses to the Staff Analysis, an aerial photo showing the frontages of surrounding properties, a spreadsheet indicating the average value of houses in the area and average values of the homes Habitat for Humanity has built since December of 2008, and also four pictures of houses recently built by Habitat for Humanity in Elkhart and Nappanee *[attached to file as Petitioner Exhibit #1]*.

The petitioner explained that all of the lots developed in this area are on existing 77 ft. wide parcels. The Lantz Boulevard neighborhood goes from CR 3 up to the north with 28 houses in the neighborhood. There are 23 houses in that neighborhood. The aerial photo attached to the packet of submitted information shows the frontages and widths of all of the properties in the area. He explained that 22 out of all 28 lots in the area are less than 77 feet wide, so he disagrees with the Staff Analysis.

The second finding on the Staff Analysis states that the development will cause substantial adverse affect on the neighboring property. He's not sure what the staff means when they state that, but he assumes that they are referring to the value of the properties. Mr. McArthur has included a spreadsheet in the packet of submitted information showing the value of all of the houses in the neighborhood. The average value of all of the houses on Lantz Boulevard is \$95,000.

Mr. Hesser asked if they are proposing to split the two combined lots in half and Mr. McArthur said yes. The petitioner explained that after the two lots are split, they would be the exact same width.

Mr. Miller asked what the current width is of the narrowest lot and Mr. McArthur said 38.5 ft. When asked if that is part of the plat, the petitioner said he is unsure. It is exactly half of a 77 ft. lot, but he's not sure how it got split that way.

When looking at the bottom of the spreadsheet, Mr. McArthur explained that he listed the last six houses that Habitat for Humanity has built in Elkhart County. The average appraised value of those houses is \$102,333. Therefore, if the staff is suggesting that a Habitat for Humanity house would negatively affect the value of the neighborhood, then he would disagree. He feels that having one of their houses in the area would somewhat raise the average value of the real estate in this neighborhood.

The Staff Analysis also states that all adjacent parcels were developed on parcels of land which exceeded 77 feet. He then indicated that the lot to the east of the proposed lots is 77 ft., the west side of the proposed lots is a house that is on a corner and has frontage on both roads, and the lots across the street have skinny frontages. Mr. McArthur said the total combined frontage of the two proposed lots is 115 feet.

Mr. Miller asked if the lots are on public utilities and the petitioner said yes.

When questioned by Mr. Miller what the side yard setback is, Mr. Harrell indicated five feet.

Staff Analysis finding #3 states that enforcing the terms of the Zoning Ordinance by allowing one residence will not result in an unnecessary hardship in the use of the property. The Planning and Development Department has already approved new lots to the west with 40 ft. and

52 ft. frontages. He also indicated that 79 percent of the lots in the neighborhood are less than 77 feet.

Mr. McArthur said the R-2 zoning calls for a minimum lot size of 7,200 sq. ft. When dividing the two proposed lots into equal sized parcels, they will each be 7,507 sq. ft. American Dream Homes is the developer of the Sun Ray Addition and they support Habitat's inclusion in this neighborhood. They have received their site plan and building plans with them, which they are supportive of.

Lastly, the petitioner explained that the proposed lots meet the spirit and intent of the Zoning Ordinance. The value of the homes fit perfectly in the neighborhood because the average value is \$94,000. Habitat for Humanity is building homes that average around \$100,000, so he feels it will fit beautifully. Mr. McArthur said the lots will each end up being 57.75 ft. wide.

Ricardo Milton, Executive Director of American Home Dreams, 316 S. Eddy Street, South Bend, was present in favor of this request. Mr. Ricardo explained that Metropolitan Title is the Trustee of property in the area, Judge Robert Lewis is the owner, and American Home Dreams is the purchaser. They are in the process of building 105 units in Sun Ray Gardens over the next six years, which will be targeted for firemen, policemen, teachers, and low to moderate income level families. The prices will be anywhere between \$160,000 and \$195,000. They already have a home built for a disabled veteran as a model.

In August, American Dream Homes will start building another home in the area. The reason they are in favor of Habitat for Humanity building in the area is because it fits under the guidelines of the covenants and restrictions. The petitioner does meet the minimum standards as far as square footage of the homes. Mr. Milton said he disagrees with Habitat for Humanity on the design of the houses. American Home Dreams has made a commitment to help the petitioner with the design or do it for them so it meets the standards.

Mrs. Wolgamood asked if Habitat for Humanity requires that their homes be constructed with city services. In response to Mrs. Wolgamood's question, the petitioner indicated there is no requirement that they have to be on city services. He explained that they build all over the county.

Kevin Lemna, 29198 Lantz Boulevard, Elkhart, was present in opposition to this request. Mr. Lemna pointed out his property on the aerial photo. When he purchased the home, he bought a lot and a half. He then submitted a petition in opposition to this request signed by property owners in the area *[attached to file as Remonstrators Exhibit #1]*. Out of the 28 houses in the area, he could not find one residence that was in favor of this petition. He feels this will be way too close and it may cause a safety issue.

Mrs. Wolgamood asked if he has the understanding that the houses will be built three feet apart and Mr. Lemna said yes, he's assuming that's what they are saying. Mrs. Wolgamood then clarified exactly what the petitioner is requesting.

Mr. Lemna asked if the petitioner will maintain ten feet between the two houses and Mrs. Wolgamood said yes. He feels that ten feet is still too close, but Mrs. Wolgamood pointed out that the Zoning Ordinance would allow that setback.

Todd Doty, 29199 Lantz Boulevard, Elkhart, was present in opposition to this request as well. Mr. Doty explained that when he bought his home, he was told that the side yard setback was five feet. He was also told that there was a minimum width and the original seller said he would not build on less than one lot. The reason the lots in the corner have a small frontage is because they are irregular shaped. Even if they have the standard five feet between the houses

from the property line, he feels that is too close. If you try cramming two houses on two small lots, he feels that will affect the community. He asked why the petitioner doesn't build one nice house on both of the lots. Mr. Doty is concerned that this may set precedence in the area.

Cody Masuth, 29154 Lantz Boulevard, Elkhart, was also present in opposition to this request. Mr. Masuth said something is going on with the property lines on the aerial photo because he doesn't feel they are correct. He pointed out his property on the aerial photo at this time.

Mrs. Wolgamood then explained why the aerial photos may not be correct because there are two processes to go through when aerial photos are taken.

Mr. Masuth said he doesn't see why the petitioner would want to cram two houses on a lot and a half. He just purchased his house eight months ago and the property value went up. He would hate to see the value lost when he has spent so much time putting money into it.

Also present in opposition to this request was Jason Watts, 29230 CR 16 W, Elkhart. Mr. Watts feels there isn't enough frontage there to build two houses and it wouldn't be appropriate.

Keith Mikel, 29227 Lantz Boulevard, Elkhart, was present in opposition to this request. Mr. Mikel said he lives on the northern corner lot, which was pointed out on the aerial photo. When he purchased the property and had the home built, it was under the required frontage amount, but he was able to set the house back further so it wouldn't have an adverse affect on the neighbors. When the neighbor to the west put his home in, his house was also planned accordingly so it gave the appearance of more room between their two homes.

Mr. Mikel explained that there would be 47 ft. left on each lot to place a home if the Variances are approved. Even if 40 feet are taken up, there would only be seven feet left to get into the backyard. He asked where the garage would be located and how they would get back there. He feels there are more questions that need to be addressed here other than whether or not a house can fit on two lots.

Mr. Hesser asked if he disputes the fact that all of the lots east of Mr. Mikel have 65 ft. widths. Mr. Mikel said yes because all of the lots east of him are all 77 feet.

Mr. Hesser clarified that he is talking about the lots to the east of the proposed property. The lot directly to the east is 77 feet and everything east of that lot on the north side is 61 feet and 65 feet on the south. Mr. Mikel said he can't be positive of that because it is a separate subdivision.

Mr. Masuth then explained that most of the lots to the east and south of the proposed property are in a separate subdivision.

In rebuttal, Mr. McArthur said the measurements for the width of each lot were taken off of the subdivision plats from the Planning and Development Department.

Mrs. Wolgamood said they are printed very small on the aerial photo, but Mr. Miller has verified that the handwritten dimensions are correct.

Mr. Hesser asked if there are restrictive covenants in this subdivision. Mr. Milton then came before the Board to address that issue. He indicated yes, but said they only deal with the lot sizes and not the lot widths.

The petitioner explained that some of the issues which were brought up are concerns that he deals with often. He intentionally included some pictures in the back of the submitted packet to show the Board that they build quality homes. He explained that Habitat for Humanity builds the most energy efficient houses in Elkhart County. They are also adding nice architectural features and stonework to the homes.

Mr. Hesser asked if these houses are owner occupied and Mr. McArthur indicated yes.

The public hearing was closed at this time.

Mrs. Wolgamood explained that she heard one of the neighbors indicate that they wouldn't want to live next to a double dwelling, but this is an R-2 zone. Double dwellings and duplexes are permitted uses in R-2 zoning districts. The petitioner has indicated they will meet all of the setbacks and the houses will be on city services. Since the petitioner is only asking for relief from 27 inches on each lot, Mrs. Wolgamood said she doesn't have an issue with the request.

Mr. Miller indicated he doesn't have a problem with the request either. He is sensitive to all of the community issues, but the property is in an R-2 zone.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that this request for a 3 ft. lot width Variance for the construction of a residence on Parcel 'A', and for a 3 ft. lot width Variance for the construction of a residence on Parcel 'B' be approved with no additional conditions imposed based on the following findings:

1. Will not be injurious to the public health, safety, morals or general welfare.
2. Will not cause substantial adverse affect on 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.

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

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

9. The application of **Jonathan Martin** for a Special Use renewal for a home workshop/business for a body repair shop (Specifications F - #45) on property located on the North side of SR 119, 2,200 ft. East of CR 7, common address of 26619 SR 119 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]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091797*.

There were 12 neighboring property owners notified of this request.

Mr. Kolbus asked if there are a number of outside employees that the staff is willing to accept and Mr. Harrell indicated two.

Jonathan Martin, 26619 SR 119, Wakarusa, was present on behalf of this request. Mr. Martin explained that he is requesting the renewal of his Special Use that was granted one year ago. He is comfortable with the staff's report and would like to keep operating his business.

Mr. Hesser asked if there were any complaints received on this property and Mr. Harrell said no.

Mr. Homan asked the petitioner if he has any comments on the change of conditions regarding employees. Mr. Martin said he doesn't plan on expanding in the near future, but if the doors open to a couple of employees, then that may be possible in the future.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she doesn't have any issues with this request apart from the indefinite approval. Since this is a pretty good sized building and operation, she feels it should be reviewed at some point.

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 a Special Use renewal for a home workshop/business for a body repair shop (Specifications F - #45) be approved with the following conditions imposed:

1. Uses of the real estate shall be limited to the following: (1) primary use of the premises as a personal residence of the owner occupants and operators of the home workshop/business and (2) the ancillary and accessory uses of the auto body repair shop in a building constructed on the Petitioner's real estate. Unless otherwise subsequently agreed by action of the Elkhart County Board of Zoning Appeals after public hearing conducted in accordance with the rules of the Board and after giving of public notice as provided in said rules, said auto body repair business shall be conducted only by the owner occupant of the real estate and no more than one part-time employee who is not a resident of the real estate.
2. Hours of operation of the auto body repair business shall be not more than 8:00 a.m. to 6:00 p.m. (prevailing local time), Monday through Saturday. There shall be no Sunday business operations conducted on the real estate.
3. There shall be no exterior signs.
4. Ingress and egress to and from the real estate shall be by means of an existing driveway to and from SR 119.
5. All operations of said auto body repair workshop/business shall be conducted inside the accessory building located on the real estate. Parking areas and driveways shall be gravel surfaced and shall be of sufficient size to accommodate parking for at least two (2) personal vehicles.
6. No offensive noise, vibration, smoke, dust, odors, heat or glare shall be emitted from said auto body repair business which would constitute a private nuisance to any neighbor.
7. There shall be no outside loud speakers or sound systems used in connection with said workshop/business.
8. There shall be no outside illumination or lighting of said workshop/business or the accessory buildings other than by normal rural night guard and security lighting provided by the local electric public utility.
9. The auto body repair workshop/business be allowed two (2) outside employees.
10. No additional accessory buildings or additions to the existing accessory building shall be constructed on the real estate for use in the auto repair workshop/business without the prior written approval of the Elkhart County Board of Zoning Appeals after public hearing conducted in accordance with the rules of the Board and after the giving of notice as provided in said rules.
11. The new accessory building shall be modified as necessary to comply with applicable state and county building codes.
12. Surface water shall be retained and detained on the site in the manner approved by appropriate governmental authorities. The site shall be served by a private sanitary sewer system approved by appropriate state and county department authorities.

13. Approved for a period of three (3) years with a staff review at that time. If valid complaints are received by Code Enforcement, the request should be brought back before the Board of Zoning Appeals.
14. No outside storage related to the business, including but not limited to no outside parking or storage of vehicles on site for service by the business.
15. No expansion of the business without approval from the Board of Zoning Appeals.
16. If the staff has any concerns with any of the conditions, then the request will be brought back to next month's Board of Zoning Appeals meeting for further review as a staff item. A unanimous roll call vote was taken and the motion was carried.

10. The application of *Steve Comer* for a Special Use for an agricultural use for the keeping of seven chickens, one male turkey, and six pair of exotic pheasants in an A-1 zone on less than 3 acres (Specifications F - #1) on property located on the East side of Crestview Drive, 135 ft. South of Fairfax Avenue, being Lots 12 & 13 of Crestview Subdivision, common address of 59106 Crestview Drive 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]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091912*.

There were 23 neighboring property owners notified of this request.

A copy of the letter in remonstrance to this request was given to the petitioner at this time by Mr. Harrell.

Steve Comer, 59106 Crestview Drive, Elkhart, was present on behalf of this request. Mr. Comer said he has lived at this location for approximately twelve years and has had birds for about eight years. He hasn't had any problems in the past and he keeps the property nice and clean. There is a wild peacock in the area that has been there for four or five years and he comes onto the property to visit the chickens every now and then. Mr. Comer said his grandkids enjoy looking at the pheasants and watching the chickens lay eggs. The neighbors also like to look at the birds. He has had the turkey for around seven years and he would hate to have to get rid of him because he is blind in one eye. He doesn't feel the turkey has very many years left. The petitioner also indicated that he had roosters and goats in the past, but he has gotten rid of those to eliminate the noise.

Mr. Hesser asked if he would like to submit the petition as part of the record, but Mrs. Wolgamood clarified that it was included in the Board's packets.

Mr. Hesser asked if the pheasants are kept within a structure and Mr. Comer said yes, they are kept in separate pens. The chickens are kept in a separate pen which is away from the pheasants. One of the little hens needs special care and he's concerned that if he gave it away, it wouldn't be taken care of properly.

Mr. Homan asked if pheasants make any noise and the petitioner said they make a little noise during mating season. Mr. Comer feels there are dogs in the neighborhood that make more noise than the birds. The peacock makes a lot of noise, but that doesn't belong to him and it just hangs around the neighborhood.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked the petitioner how long he had the goats and he said less than one year. He saved the goats from being slaughtered and he had an ad in the paper to sell them.

Mr. Hesser indicated he doesn't have an objection to this request.

If the request is limited to what has been asked for, Mrs. Wolgamood said she doesn't have an issue with the request either.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that this request for a Special Use for an agricultural use for the keeping of seven chickens, one male turkey, and six pair of exotic pheasants in an A-1 zone on less than 3 acres (Specifications F - #1) be approved with no additional conditions imposed based on the following findings:

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

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

11. The application of ***Rick & Carol Stevens*** for a Special Use for a home workshop/business for a sewing business (Specifications F - #45) on property located on the East side of CR 35, 1,650 ft. South of SR 120, common address of 53316 CR 35 in Washington Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091899*.

There were 7 neighboring property owners notified of this request.

Present on behalf of this request was Carol Stevens, 53316 CR 35, Middlebury. Mrs. Stevens explained she would like to have a home sewing business. They would have four sewing machines and scissors. The business would have three employees including Mrs. Stevens and two of her daughters.

Mr. Hesser asked the petitioner if she has had a chance to see the letters submitted in remonstrance and Mrs. Stevens said no. She was then given copies of the letters to review.

He also asked who would own the business and Mrs. Stevens said she would. When asked if she is the owner of the property, Mrs. Stevens responded yes.

Mr. Homan asked what kind of products she is intending to produce and Brandie Bell, 53531 SR 15, Bristol, displayed a few samples of handbags they have made. He asked if they ever intend to do sewing for the RV industry and the petitioner and Mrs. Bell indicated no.

When asked by Mr. Hesser how many employees there will be, Mrs. Bell said it would be herself, Mrs. Stevens, and one other additional person. If at any point they outgrow the proposed facility, then they will move it somewhere else. They don't have a problem with that and she doesn't expect this location to be a permanent placement. The products would be low-scale sale items sold on eBay, floral shops, and maybe some hair salons.

Mr. Miller asked when the sewing takes place and the petitioner indicated in the evenings and on Saturdays.

Mrs. Wolgamood asked Mrs. Stevens whether or not she would physically be working there and she said yes.

Mrs. Wolgamood feels the request is significantly different this month from last month. Last month the business was for Mrs. Bell, but now they are stating that the business is for Mrs. Stevens. Mrs. Bell indicated she is responsible for design, but she doesn't live on site.

Dorothy Rose, 53398 CR 35, Middlebury, was present in opposition to this request. Mrs. Rose explained that she owns the property directly south of the Steven's property. She has submitted letters regarding this issue, but she would like to briefly mention a few things at today's meeting. Her family has enjoyed a friendly relationship with the Stevens during the 20 years they have been neighbors. The opposition to their zoning request is not because of bad history between them and she regrets that this has come between their friendship.

Mrs. Rose explained that her opposition to this Special Use request is because she doesn't feel the business is necessary and it doesn't fit in with the surrounding area. This is a genuine concern regarding the property values decreasing and their potential to sell in the future if a manufacturing business is nearby. There are five other businesses within a three mile area, but none of those are manufacturing at all. Mrs. Rose explained that she doesn't wish to be disturbed by additional traffic or noise from miscellaneous employees that could potentially be unsupervised by the petitioners because they all have full-time employment at other jobs. She feels there are many available vacant buildings that could be leased or purchased in Elkhart County to house their business which would most likely be zoned correctly.

When Mr. Hesser questioned the township, Mrs. Rose said they live in York Township. She said there is a school in this area and it causes a lot of traffic.

If this Special Use permit is granted, Mrs. Rose feels that it will open the door for the petitioners to sneak some other businesses in their building. She is worried that it may get out of control very quickly.

Also present in opposition to this request was Charles Imus, 53356 CR 35, Middlebury. Mr. Imus pointed out his property on the aerial photo, which is south of the proposed property. He explained that he is opposed to this request because he is concerned that it would open doors for other businesses. This area is predominantly residential/agricultural and he would like it to stay that way.

Sarah Neff, 53280 CR 35, Middlebury, was present in opposition to this request. Mrs. Neff explained that she lives just north of the Steven's property. She has lived at this location for around 50 years and it has always been a relatively quiet area with no excessive manufacturing going on. There is a lot of traffic on the highway and people use CR 35 as a thoroughfare for getting to Michigan from Middlebury. She feels there has been a substantial increase in traffic in the area. There is a small knoll to the south of her property and the Stevens driveway and her own property have blind driveways. She would like the area to stay peaceful without having manufacturing in the area.

In rebuttal, Mrs. Stevens explained that she didn't cause the increased traffic on CR 35. She and her husband have lived in the area for several years and they have done more improvements on their property than any neighbor on either side of them in the last five years. Mrs. Stevens said she and her husband are the last ones who want the property values to go down.

She doesn't feel that a sewing machine would make very much noise. They have been accused of riding motorcycles to the rear of the property, but she said the other neighbors ride and cause dust. Her grandkids haven't ridden this summer because their bikes have both been broke. Her family was also accused of shooting guns, but that was the other neighbors. She indicated that the Rose's have a trailer that they are renting out and they used to run a wire harness business. She's not sure why she became the bad neighbor for wanting to sew handbags.

Mr. Homan said that some of the concerns were that this operation would grow into a commercial/manufacturing operation. A comment was also made regarding unsupervised employees working on site. Mrs. Stevens said there wouldn't be anyone in the pole barn without her or her husband being there. Her husband works on cars and he won't let anyone in there that they don't know.

Mrs. Wolgamood asked where the sample purses shown today were manufactured and Mrs. Bell said they were made at 51231 SR 15, Bristol, in her basement on one sewing machine.

Mr. Hesser said he is concerned that this isn't really a home workshop/business. He doesn't think this is a use that should be particularly objected to by the neighbors. He feels it would be a very quiet and non-invasive operation. Mr. Hesser said he is sympathetic to concerns about opening the door to a manufacturing facility in an agricultural/rural residential area.

Mr. Hesser asked if they operate under a named business and Mrs. Stevens said RC Stevens, Incorporated. When Mrs. Wolgamood asked if that has been recently formed, Mrs. Stevens said it was within the last year.

Based on the hours of operation listed in the questionnaire, Mr. Miller said he feels that seems more like a manufacturing business. Mrs. Bell said they stated 6:00 a.m. to 8:00 p.m., Monday through Saturday, to give them the opportunity to work during the day if one of them were to leave a full-time position. Otherwise, the shifts would normally not start before 4:00 p.m. and would end by 8:00 or 8:30 p.m., with the exception of Saturdays. If they ran on Saturdays, they may be apt to start by around 8:00 a.m. and finish around 5:00 or 6:00 p.m.

The public hearing was closed at this time.

Mr. Hesser said he doesn't have an objection to this particular use because it is low impact, but he would like to add hours of operation as represented in the questionnaire.

Mr. Kolbus also suggested placing a time limit if the request is approved. Mr. Homan feels that intensity is a big concern.

Mrs. Wolgamood said if the Board is looking to say yes to this request, then she would suggest that the petitioners give some hours of operation that they are currently using. The Board could re-look at the time frame when they come before the Board the next 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 sewing business (Specifications F - #45) be approved with the following conditions imposed:

1. No increase in size or area of the proposed sewing business as per site plan submitted.
2. No additional employees other than what has been represented; one (1) who lives on site and two (2) who live off-site.
3. No signs.
4. Limited to the owner/occupant of the residence on site.
5. The hours of operation be limited to Monday through Saturday, 8:00 a.m. to 8:00 p.m.
6. Approved for a period of one (1) year with a Board renewal at that time.

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

12. The application of **Brian & Amy Maurer** for a Special Use to allow for a wind turbine including a 55 ft. pole (Specifications F - #31.50) on property located on the West side of CR 3,

1,160 ft. North of CR 38, common address of 64739 CR 3 in Olive Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091931*.

There were 11 neighboring property owners notified of this request.

Mrs. Wolgamood questioned why the questionnaire and the application have two different names on them. The petitioner explained that Mark Steiner was the wind turbine application from last month. The request for this month is for Brian and Amy Maurer on Ash Road.

Mr. Kolbus said the correct location was advertised, but the name is incorrect. Mr. Hesser asked if that affects the neighbors and Mr. Kolbus said no.

David Smith, Wind Wire, P.O. Box 10208, South Bend, Indiana, was present representing Brian and Amy Maurer.

Mrs. Wolgamood questioned if the site plan in the packet is the correct one for the property in question and Mr. Smith indicated yes.

The petitioner's representative explained that the petitioner would like to install a wind turbine. The height of the wind turbine would be 45 feet and it would help out with the petitioner's electric. The tower can handle up to 140 mph winds and if the pole were to break, it would collapse upon itself. A packet of information was submitted to the Board at this time including specifications on the Skystream 3.7 wind turbine, certificate of compliance, Declaration of Conformity, monopole foundation specifications, and several pictures of wind turbines.

Mr. Hesser asked if this is the type of generator that goes directly into the house and Mr. Smith said yes.

Mr. Hesser said the site plan shows the pole being 100 ft. from the property line and Mr. Smith said it will probably be over 100 feet. At some points, the setback is more like 500 or 600 feet. The tower will be the closest to the southern property line, which has a setback of 100 feet. That setback is well over the length of the tower.

Mr. Hesser asked how much these wind turbines cost and the petitioner said around \$16,000.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for a wind turbine including a 55 ft. pole (Specifications F - #31.50) be approved for Brian and Amy Maurer as per site plan submitted. After a unanimous roll call vote was taken, the motion was carried.

13. The application of ***Jennifer & Gary Ray (buyers) and Kathleen & Dennis Berg (sellers)*** for an Appeal to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance (Parent to Child exemption removed from Subdivision Control Ordinance) on property located on the South side of CR 28, 550 ft. West of CR 15 in Harrison Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091910*.

There were 8 neighboring property owners notified of this request.

Mr. Hesser asked Mr. Harrell what it means when the staff report states, "The exact adoption date could not be communicated at that time." Mr. Kolbus explained that when the Subdivision Control Ordinance was being worked on last fall, they were unsure of when it would be completed.

Mrs. Wolgamood asked the staff to look in the file and see what the date is on the previously submitted survey.

Kathleen Berg, 23128 CR 28, Elkhart, was present on behalf of this request. Mrs. Berg explained that she and her husband wanted to deed over a parcel of their land for their son-in-law and daughter to build their house. Last fall, all of the information was obtained regarding what was needed to do so. A survey was completed last fall as well as a soil boring from the Elkhart County Health Department. The deed didn't get completed by that time because they didn't feel it was necessary to do right away. Her daughter and son-in-law were unsure that they would even be able to build this year due to the economy, but they put their house up for sale in the spring and it sold within 30 days. At that time, they found out that the Subdivision Control Ordinance had changed and they couldn't get the deed work done.

Mrs. Wilson then indicated that the boundary survey in the file is for Kathleen and Dennis Berg and is dated October 7, 2008.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance (Parent to Child exemption removed from Subdivision Control Ordinance) be approved with no additional conditions imposed. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Miller – yes; and Hesser – no.

14. 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]*.

Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee, was present representing petitioner. Mr. Sloat said his concern this morning is that this is the second time the Board will have heard the same petitioner. Mr. Lewis came before the Board last fall and they had a unanimous vote for denial. There is not a full board today and Mr. Sloat feels it would be fairer if all Board members were present.

Mr. Sloat indicated there are three people present in support of this request today and one remonstrator. He has spoken with the people who are in support and they would be willing to come back next month, but he has not spoken with the remonstrator.

There were 7 neighboring property owners notified of this request.

Karen Lemon was present in remonstrance and indicated she would be willing to come back next month.

Mr. Kolbus indicated that Ms. Lemon should get notified of the new hearing date and time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that this request for an Appeal to allow for an addition onto an existing accessory structure on property without a primary residence be tabled as requested until the August 20, 2009, Board of Zoning Appeals meeting. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – no; Miller – yes; and Hesser – yes.

15. The application of **Jason R. Watts** for a Use Variance for a private off road track to ride ATV's and motorcycles in an R-1/R-2 district on property located on the South side of CR 16, 1,250 ft. West of CR 3, common address of 29230 CR 16 in Baugo Township, zoned R-1/R-2, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091747*.

There were 21 neighboring property owners notified of this request.

A motion was made and seconded (*Hesser/Wolgamood*) to re-open the public hearing. A unanimous roll call vote was taken and the motion was carried.

Jason Watts, 29230 CR 16, Elkhart, was present on behalf of this request. Mr. Watts said he had submitted a list of six proposed conditions and he went before the Drainage Board on Tuesday for permission to cross a county drain. He got that approved through the Surveyor's Office.

Mrs. Wolgamood pointed out that the staff has re-affirmed their recommendation for denial.

Mr. Homan said item #5 of the Staff Analysis reiterates that the Special Use setback for these tracks is typically 1,000 feet. Mr. Watts said he can't fence his property in, so he thought of the best condition that he felt was appropriate.

Mrs. Wolgamood asked if he got formal approval from the Surveyor's Office and Mr. Watts said he hasn't received the formal letter because the meeting was on July 14th.

Mrs. Wolgamood indicated there were four or five people in the immediate area with no objection to what is being proposed. There was one person in opposition to this request who owns property adjacent to the parcel in question, but he does not live adjacent to Mr. Watts.

Keith Mikel, 29227 Lantz Boulevard, Elkhart, was present in favor of this request. Mr. Mikel explained that he owns property directly south of the proposed property and he is the closest resident. He has seen and read the proposed restrictions and he is in favor of the request. As far as people trespassing onto Mr. Watts' property, Mr. Mikel indicated that has been blocked off. He doesn't think that will be an issue in the future.

Todd Doty, 29199 Lantz Boulevard, Elkhart, was present in favor of this request as well. Mr. Doty explained that he lives caddy corner to the petitioner and he doesn't feel the riding affects anyone in the neighborhood. This is not an issue with any of the neighbors in the community.

Also present in favor of this request was Cody Masuth, 29154 Lantz Boulevard, Elkhart. Mr. Masuth explained that he lives on the south side of Lantz Boulevard and he likes the fact that the petitioner's kids have something to do all the time because it keeps them busy.

Kevin Lemna, 29198 Lantz Boulevard, Elkhart, was present in favor of this request. Mr. Lemna said the kids have been having a great time back there and he doesn't have a problem with them riding on the track. He feels it is good for the kids and it keeps them out of trouble.

Robert Spaugh, 29816 CR 16 W, Elkhart, was present in opposition to this request. Mr. Spaugh indicated he lives directly south of the proposed property.

Mrs. Wolgamood asked Mr. Spaugh where his lot is located and he pointed it out on the aerial photo. The property to the west is being sold on land contract and he doesn't own any property in the subdivision.

Mr. Spaugh said his big problem with the ATV's is that they are riding all over his property. The petitioner's don't have enough property of their own to ride on and they don't come to him asking for permission to use his property. Mr. Spaugh said they are riding on property illegally that is owned by Judge Miller in South Bend.

Mr. Spaugh questioned who will be enforcing the proposed conditions and who will check up on the petitioner. He doesn't feel this makes sense in a residential area, especially when there is property that people would like to develop in the future.

JoAnn Spaugh, 29816 CR 16 W, Elkhart, was also present in opposition to this request. Mrs. Spaugh questioned why Mr. Watts is here asking for this zoning change if he feels the equipment is un-intrusive. She asked why he couldn't build a jungle gym, pool, or tree house for his children since they are only four and six.

The buffer of trees to the west has already been sold and it will be removed. She is concerned that the buffer will diminish and this will set a precedent in the neighborhood.

If this ruling remains in effect, Mrs. Spaugh asked what will happen when the petitioners want larger equipment. She asked if they would be required to come back and change it again.

In rebuttal, Mr. Watts said his kids only ride on his property. The proposed property is unable to be used, so that is why they ride in that area. As the kids get bigger, he said the equipment won't get bigger because there isn't enough room. He bought property outside of a subdivision so his kids could do various activities on the property.

Mr. Homan said the remonstrator had a concern regarding how the property would be enforced and how the proposed conditions would be controlled. Mr. Watts explained that the approval would be only for his immediate family, so he would be the one watching over it.

Mr. Homan asked if the property is fenced and Mr. Watts said no. The most reasonable thing would be to put up "No Trespassing" signs. If he were to fence in his entire property, it would cost quite a bit of money.

The public hearing was closed at this time.

Mr. Hesser indicated he leans in favor of this if it is placed on a renewal basis.

Mr. Homan said there has been a history of problems in this area, but this particular lot is peculiar because there is land you can't do anything with due to the easement. Mr. Homan asked the Board if they feel a Use Variance would impact the value of the property. The intention is to sell the surrounding property for development.

Mr. Hesser said if you look at the parcel immediately west, could the part to the south be built on. Mr. Watts said there would have to be a 75 ft. setback on each side of the ditch.

Mr. Miller indicated that someone could buy the property, build a pole barn, and want to start a home workshop there. He's not sure that one use would more adversely impact the property value than the other.

Mrs. Wolgamood said the piece of land to the south has been sold for manufacturing.

The proposed conditions are very restrictive and there are potential enforce issues, but Mr. Hesser feels you will have that problem with anything. The petitioner has specifically limited the requested to only family members. With the restrictions that Mr. Watts has imposed, He feels the disruption will be minimal.

Mrs. Wolgamood agreed and said if the Board is leaning towards approval, the revised site plan dated May 29, 2009, should be in the conditions. She would also like to include owner/occupant as a condition and possibly a three year renewal.

The petitioner has indicated that he has approval for the walkway across the ditch and Mrs. Wolgamood suggested having him submit a copy of that letter for the file.

The Board examined said request, and after due consideration and deliberation, a motion was made (*Homan*) 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 private off road track to ride ATV's and motorcycles in an R-1/R-2 district be denied. The motion then died due to lack of a second.

A motion was then made and seconded (*Wolgamood/Miller*) that this request for a Use Variance for a private off road track to ride ATV's and motorcycles in an R-1/R-2 district be approved based on the following findings:

1. The request will not 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 not be affected in a substantially adverse manner as testimony was given by the immediate neighbors to the south who would be most affected by this.
3. A need for the Variance does arise from a condition that is peculiar to the property involved because there is a drainage ditch and the site plan indicated the track will be on the south side of the drainage ditch. There isn't room for construction of a residence of any kind.
4. Strict enforcement of the terms of the Zoning Ordinance does constitute an unnecessary hardship if applied to the property.
5. The Variance will not interfere substantially with the Elkhart County Comprehensive Plan.

The following conditions were imposed:

1. Only members that reside at the address 29230 CR 16 West may ride.
2. Riding hours would be limited 12:00 p.m. – 7:30 p.m., Monday through Saturday, and no riding on Sunday.
3. The maximum size of machine allowed is 125 CC.
4. All machines will operate with stock exhaust systems.
5. The property will be posted no trespassing signs.
6. Riding will be limited to designed area called out on site plan.
7. The petitioner is to submit a letter from the Elkhart County Surveyor's Office indicating that he does have permission for the walkway.
8. Approved as per revised site plan submitted on May 29, 2009.

9. Limited to the owner/occupant of the residence on site.
10. Approved for a period of three (3) years with a Board renewal at that time.

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

Mr. Hesser said if there is a violation of any of the conditions, Mr. Spaugh can let the staff know and the request can be brought back as a basis for reviewing or rescinding this Use Variance.

16. The application of *Michael Williams* for a Special Use for an existing mobile home on property located on the Southwest corner of Gano Street and Baker Street, 950 ft. North of CR 20, being lots 74 & 75 of Revised Locust Grove, common address of 57507 Gano Street in Baugo Township, zoned R-2, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091606*.

There were 27 neighboring property owners notified of this request.

Mr. Harrell indicated that Code Enforcement had gone out this week and the property has been cleaned up. He explained that it is the cleanest it has been since the 1990's. The concern of the staff is whether or not it will stay cleaned up.

Michael Williams, 28367 CR 16, Elkhart, was present on behalf of this request. Mr. Williams said the problem was that there were a couple of boats sitting there and a truck. The truck on site wasn't licensed, but it is being restored. He feels that ninety percent of the people who have boats store them outside. Mr. Williams also explained that there are two trees on the property that have been contracted to be chopped down because they are dead and that should be done within the next two weeks.

Mr. Homan asked how long this has been a rental property and the petitioner said a little less than one year. When asked if he lived in the mobile home up until that time, Mr. Michaels said yes, he or his son lived there.

Mr. Harrell explained that the parcels were combined because the petitioner wanted to build a garage. A garage can't be built on a parcel with no primary residence.

Mr. Homan asked if a final inspection was ever done on the garage and Mr. Harrell said he did get a building permit for it.

Mr. Harrell said there is no issue regarding the garage at this point, but if the lots are separated, then the garage has to be removed.

When questioned by Mr. Homan about being 300 ft. away from a stick built home, Mr. Harrell said that doesn't apply because this is part of the mobile home subdivision. The majority of the homes in this area are mobile homes.

Mr. Williams said this isn't the only mobile home rented on this same street. He indicated he has pictures of some other mobile homes in the same area that are being rented.

There have been some issues raised regarding cleaning up trash and vehicles. Mr. Homan questioned what the problem is with taking care of those since there is a building where they can be put inside of. Mr. Williams then explained that he has an interest in re-building vehicles.

Mr. Hesser asked if the vehicles are unlicensed and the petitioner said only the pick-up truck on site is unlicensed.

Mr. Homan asked if the vehicles are in the garage on site and Mr. Williams said the truck is in the garage and the car is located on a different piece of property. The boat has been moved to Mr. Williams' personal residence, which is located on the river.

Mrs. Wolgamood said part of the issue was the junk and debris on the property. The new photograph that was submitted shows the property has been cleaned up and she feels the petitioner has made a good attempt.

Mrs. Wolgamood asked why one of the windows on the mobile home is boarded up. Mr. Williams said he has a replacement window to put in its place. There is a family currently living there with a young child who owns a BB gun and he has spoken with them regarding getting the window fixed. He said it is supposed to be fixed within a month.

Mr. Harrell asked what room that window goes to and Mr. Williams said the living room/dining room. The petitioner said he does plan to continue making improvements on the property. He plans to put new siding on the garage and he will try very hard to not have any outside storage.

Mr. Homan asked if the renters have any space in the garage to use and Mr. Williams said no.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said this is a mobile home development where the 300 ft. rule is not an issue and renting is not an issue. The debris around the mobile home seems to be the problem. He would think that would be more of an issue of condemning the property rather than applying for a Special Use. He asked why a Special Use is even required in this situation.

Mr. Harrell explained that most cities and states require mobile homes to go into mobile home parks. Elkhart County elected to put mobile homes under Special Uses years ago so they could be distributed around the county. The Special Uses gave the county some authority to control outside storage for mobile homes.

This mobile home was granted for a particular occupant at that point, but Mrs. Wolgamood explained that when the renewal came up, it was discovered that the occupant had changed. Under normal circumstances, the petition will then come back before the Hearing Officer to get that corrected. She explained that there were huge issues with this and she didn't feel comfortable saying yes or no as the Hearing Officer.

Mr. Hesser asked if the change in occupant is a concern at this point and Mrs. Wolgamood said no. She explained that there has been a past history of issues on this site for a long time.

Mr. Hesser asked if the property is satisfactory or non-satisfactory. Mr. Harrell said it is satisfactory at this point, but they will leave it up to the Board at this point.

Mrs. Wolgamood feels that the petitioner has made a belated effort. She wouldn't have a major problem leaving the mobile home there as is if the Board allowed him 30 days to get the new window in. She suggested granting it for one year and having the petitioner come back before the Board to account for it.

Mr. Homan feels the mobile home is pretty consistent with the other mobile homes in the area.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that this request for a Special Use for an existing mobile home be approved based on the following findings:

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

The following conditions were imposed:

1. Approved for a period of one (1) year with a renewal before the Board at the end of that time.
2. The petitioner is to remain in compliance with Conditions "A".
3. If the petitioner is not in compliance with the conditions at the time of the renewal, then the mobile home could be ordered to be removed from the property.
4. The broken and boarded window in the front of the mobile home is to be replaced within thirty (30) days with Code Enforcement to verify this has been done.

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

A copy of Conditions "A" was given to Mr. Williams at this time.

17. The staff item regarding the validity of Variances for *Michael Rhude (Case #20023728)* was presented at this time. Mr. Harrell explained that the petitioner bought some land on the south side of SR 120, which is just east of SR 13. At that time, several Variances were granted and the petitioner is now going through some family problems, so he needs to divide the property. He would like to use the same Variances he had in 2003, but the approved Variances became null and void after 90 days. The staff is requesting that the Board honor these Variances because nothing has changed in the area.

Mr. Hesser asked if it is expired and Mr. Harrell said yes.

When Mrs. Wolgamood asked what types of Variances were granted, Mr. Harrell said three to one depth to width ratio Variances and road frontage Variances.

Mrs. Wolgamood asked if there were neighboring property owners present at the meeting and Mr. Harrell said yes.

Mr. Harrell then read the motion from when the Variances were approved.

It was then clarified by Mr. Kolbus that neighboring property owners were notified, but none were present.

Mr. Hesser questioned whether the renewal can be done without a new hearing and Mr. Kolbus said the extensions for these types of requests are usually considered before the expiration date. There have been situations where the consideration was done reasonably close to the expiration date and the Board has approved them. Mr. Kolbus said he feels this needs another hearing.

At this time, Mr. Kanney submitted a letter to the Board from Mr. Rhude which is in the file for review. He explained that the petitioner is requesting an extension on the easement validity. Mr. Rhude was unaware that the deeds needed to be recorded within 90 days of the approval of the Variances.

In reviewing the minutes, Mr. Kanney said this big piece of property is really only suitable for three houses. Finding a location for more than three septic systems is virtually impossible.

Mrs. Wolgamood asked if Mr. Rhude had the property surveyed and Mr. Kanney said yes. When asked how long ago that was done, Mr. Kanney indicated September of 2002.

Mr. Hesser said he doesn't feel there would be a different outcome if the request were reheard, but since the time limit is far beyond being expired, he feels the petitioner should go through the procedure.

Mrs. Wolgamood said she is sorry about the petitioner's situation, but she feels seven years is a long time. Since the petition was transferred from the Hearing Officer to the full board, she feels it should be heard by the full board.

A motion was made and seconded (*Hesser/Wolgamood*) that the Board deny the request to re-activate the Variances and the petitioner would need to re-apply. After a unanimous roll call vote was taken, the motion was carried.

18. The staff item for *Nelson and Esther Lehman* regarding Special Use/Variance #20091534 was presented at this time by Mr. Harrell. He explained that the petitioners are requesting that the petition be reheard before the Board again and waive the six month waiting period based on the fact that new information may be available. The petitioners are unsure that the Board understands that the house and bakery will be started at the same time.

Mr. Hesser said when the Board talked about this before, the overwhelming consensus of the Board was that they were not going to consider the home workshop/business until the home was completed.

Mr. Kolbus explained that it takes unanimous ruling of the Board of the members present to waive the six month waiting period.

A motion was made (*Hesser*) that the Board permits the re-hearing of the Special Use/Variance for Nelson and Esther Lehman based on new information received with the six (6) month waiting period to be waived. The motion then died due to lack of a second.

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

20. There were no audience items.

21. The meeting was adjourned at 11:35 a.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary