

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19th DAY OF NOVEMBER 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; 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/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of October be approved with the following correction: After item #20 on page 14, it should indicate that Mr. Miller stepped down from the Board. 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 9th day of November 2009 in the Goshen News and on the 7th day of November 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 (*Miller/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.

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

5. A motion was made and seconded (*Homan/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 **Brian L. Campbell & Renee E. Troyer Campbell** for a renewal of a Use Variance to allow for the operation of an herb and dried flower business on property located on the South side of CR 40, 1,100 ft. West of CR 31, common address of 16206 CR 40 in Elkhart Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #16206County Road40-091015-1*.

There were 11 neighboring property owners notified of this request.

Renee Troyer, 16206 CR 40, Goshen, was present on behalf of this request. Mrs. Troyer explained she is requesting continuation from the Board of her Use Variance.

Mr. Homan asked if there have been any changes to the business and the petitioner said they have fewer business hours than what is listed in the conditions, but nothing else has changed.

Mrs. Wolgamood feels the petitioner is running a very good operation.

There were no remonstrators present.

She would like to include in her request that this be approved indefinitely. The Board then explained the staff is recommending no time limit on their recommendation for approval.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a renewal of a Use Variance to allow for the operation of an herb and dried flower business was approved as represented in the petitioner's application and in accordance with the site plan submitted with the following conditions imposed:

1. Approved for the growing of herbs and flowers on-site as currently conducted.
2. Approved for an indefinite period of time with the understanding that if a valid complaint is received by Code Enforcement, the request will be brought back before the Board of Zoning Appeals.
3. 75% of the product to be sold off-site.
4. No more than three non-family employees that live outside the residence on site.
5. Fifteen (15) to twenty (20) classes permitted per year with classes to be no larger than twenty (20) people at one time.
6. Sign no larger than the present sign on site.

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

8. The application of ***Dennis & Miriam Helmuth*** for a Use Variance for the manufacturing of doors and mouldings and retail sales of doors, mouldings and hardware, and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the West side of CR 35, 2,600 ft. North of CR 34, common address of 62337 CR 35 in Clinton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #62337CR 35-091019-1*. A letter in remonstrance to this request was submitted to the Board by Mrs. Prough at this time *[attached to file as Staff Exhibit #2]*.

There were 7 neighboring property owners notified of this request.

Dennis Helmuth, 62337 CR 35, Goshen, was present on behalf of this request. Mr. Helmuth explained he is requesting approval to replace a building that burned down during a fire on October 14, 2009. This would not be an additional structure on the property and it would only be a replacement. Mr. Helmuth feels the staff has some errors in their Staff Analysis.

The petitioner explained he lives east of Goshen on CR 35 and this is a rural, mixed use area. Many of the surrounding properties are owned by the Amish families and many of these properties have multiple structures on them in an effort for the Amish Community to be self sufficient. Mr. Helmuth has 60 acres of land and there are two residences on the property. The large residence has an attached two-car garage and the small residence has a detached garage.

His parents live in the small house and in addition, they have a large bank barn with an attached milking house. There is also an additional storage facility for the storage of buggies. Mr. Helmuth explained there is a storage shed on the property used to store lawn equipment. There is an old chicken coop building, which is not being used right now.

Prior to the fire, the petitioner had roughly a 100 ft. x 100 ft. shop building. The shop building had a power room attached and an agricultural workshop where the farm equipment was repaired. He has already received a permit to re-build the agricultural workshop. The neighbor who sent in the remonstrance letter thought the permit was to replace the large building. The petitioner's father also has a massage clinic building on-site, which had been previously approved by the Board. Mr. Helmuth would like to re-build his shop building in a different location on the property so it is not so close to the other buildings.

In regards to the Staff Analysis, the petitioner doesn't feel this would be injurious to the public health, safety, and general welfare of the community. Across the street from him is a property with a woodshop and south of him is another property with a woodshop. One third mile north, there is also another property with a woodshop, so Mr. Helmuth doesn't feel him having a shop would be unusual for the area. He generally only has four to five employees and he doesn't have any type of signage. He did not have a retail sales area and the customers that would come in the past were those who needed to pick out a color or an extra piece of trim. As noted about the neighboring properties having their own woodshops, Mr. Helmuth would not have a negative effect on their property values by having a shop. He would also keep the use similar to what they use their woodshop for.

The petitioner agrees to some extent that the need for the Variance does not arise from a condition that is peculiar to the property. However, the fire caused the need for the Variance and the occurrence of the fire is certainly a peculiar event.

Mr. Helmuth said without the shop building, he is unable to operate his small business and it would put four people out of work in a tough economy. While the massage clinic was granted a Special Use permit and the staff is concerned with an additional non-residential structure, the petitioner feels he has enough road frontage to separate the small house, garage, massage clinic, and buggy shed into a separate parcel. He feels that since they are all one family, it would be an unnecessary cost.

The petitioner feels that the creation of the Elkhart County Comprehensive Plan tends to look to create a perfect world. The types of properties located in the Amish Community do often conflict with the Elkhart County Comprehensive Plan. Mr. Helmuth feels Elkhart County has done a good job of determining if the property use fits the area where it is located.

He feels he has been a very responsible small businessman and homeowner because when the fire occurred, he had the site cleaned up within one week and the Elkhart County Health Department came out to do an inspection upon completion. Mr. Helmuth has also been working with D & B Environmental to make sure he was in compliance with all of the environmental rules. The petitioner then submitted a letter from Doug Elliot, D & B Environmental Services *[attached to file as Petitioner Exhibit #1]*, a copy of the notice of decision for approval from IDEM dated November 16, 2007 *[attached to file as Petitioner Exhibit #2]*, a copy of the notice of decision for approval from IDEM dated October 11, 2006 *[attached to file as Petitioner Exhibit #3]*, and a petition in favor of this request signed by four of the neighboring properties *[attached to file as Staff Exhibit #4]*.

Mr. Homan asked the petitioner if he has read the letter from the remonstrator in regards to the concerns about the fire and odor. Mr. Helmuth said they have always tried to run a very safe operation and keep the buildings safe. As far as the odor from the varnish, the petitioner said he wasn't aware of that smell. Their property is located on top of a hill and he was not aware that the neighbors were able to smell the varnish. If the neighbors would have talked with him before now, he would have definitely made some changes to accommodate that. Mr. Helmuth said they are now proposing to re-build the structure at a different location on the property, which will lessen the smell for the neighbors.

Mr. Homan asked what the cause of the fire was and Mr. Helmuth said a light bulb exploded.

He also questioned if the finishes used in the shop are oil based and latex and the petitioner said yes.

When asked by Mr. Homan if the woodshop was in operation prior to the fire, Mr. Helmuth said yes, without a retail space.

Mrs. Wolgamood asked how long the business was on site and the petitioner said about three years.

Mrs. Wolgamood asked if the building where the business was being ran out of was built for business purposes. Mr. Helmuth said the building was already in existence when he decided to start the business. He bought the property from his mom and dad and they tried farming for a little bit, but it didn't work out. He wanted to try and do something so he could stay at home with his family, so that is when he started the business.

Mr. Hesser asked how big the house is and Mrs. Wolgamood explained that information is included in the Board's packet.

Mr. Miller asked the petitioner who they supply mouldings for and the petitioner said he is a supplier for a lot of local houses.

Mr. Miller also questioned if they are physically fabricating the doors and the petitioner said no. They buy the door slabs and then pre-hang them into the frames.

When Mrs. Wolgamood asked if they build cabinets, the petitioner said yes.

Mr. Homan asked how many employees they have and the petitioner said four to five. Mr. Helmuth employees his brother and he has a sister, who works as his secretary, and she is a neighboring landowner. He typically has one or two other neighbors help out with the business.

Mr. Lantz explained the Board may be concerned about the business getting too large for its current location.

Mrs. Wolgamood then pointed out that the questionnaire states there will be six employees total and three will not be occupants of the residence on site. Mr. Helmuth indicated that varies and six would be the maximum he would need.

She also pointed out that the petitioner is requesting an additional driveway, which would mean there would be three driveways on-site. When asked if there is any way to combine the driveways, Mr. Helmuth said all of their buildings are so close together and they fear having a fire. If they don't have someone respond quickly enough to a fire if it were to happen, they would lose all of their buildings because they are so close together. In order to move the shop building in a direction that is far enough away from the other buildings, they have to go down the hill and off to the side, so he didn't see any way of combining the driveways. Mr. Homan asked if finishing is a big part of the business and the petitioner said yes. He indicated that finishing can be a fire hazard and asked the petitioner how he plans to safeguard the building.

Mr. Helmuth said he brings in people who are experts on fire and hazard and he will have a fire suppressant system installed. He has been working with the Elkhart County Health Department in making sure that everything is being contained in the proper manner.

Mr. Miller asked how many house packages they supply on average and the petitioner said four to six per month.

Mrs. Wolgamood asked if there is an area for turn around so vehicles aren't backing out onto the street and Mr. Helmuth said that is why they are trying to make a new driveway so they can do that.

There were no remonstrators present.

Mr. Miller asked the petitioner if the operation to the south is more intense than what he will be doing and the petitioner said yes, quite a bit more because they have 15 to 20 employees. They run a lot of very large equipment and there is a lot of dust and noise coming from that operation.

When asked by Mrs. Wolgamood how long that operation has been there, the petitioner indicated a long time. Mrs. Prough then pointed out they were granted a Special Use in 1989 for a home workshop/business and then in 1993, they received approval for a Use Variance for woodworking. They were allowed to build a 50 ft. x 80 ft. building on site. Mrs. Prough said the staff felt that this operation and Mr. Nissley's operation are too large.

Mr. Homan asked if all of the equipment can be stored inside or if some of it is stored outside. Mr. Helmuth said previously, some of the equipment had been stored on the outside of the building, which is why he is requesting a bigger building.

When Mr. Lantz asked the size of the building that burnt down, the petitioner said it was roughly 100 ft. x 100 ft., but it had been added onto several times over the years.

Mrs. Wolgamood asked if there were other buildings being used for the business and the petitioner said the other buildings were being used for storage for the business. The fire consumed five buildings, which add up to approximately 100 ft. by 100 ft.

When Mr. Miller asked how the new building will be heated, the petitioner said he hasn't really thought about that. In the past, they had used a natural gas furnace, but they have also talked about trying to use an outdoor boiler.

Mr. Miller asked if they continue to use oil based products, then will a paint booth be installed to adequately control the exhaust of the fumes and the petitioner said yes.

Mrs. Wolgamood asked if this would be required to go to the State and Mrs. Prough said yes.

The public hearing was closed at this time.

Mr. Homan feels this is clearly a commercial operation and it is not agricultural. He is concerned about this growing into a large operation and the neighbor has concerns about odor and fire hazards.

Mrs. Wolgamood feels there would be too many issues with a commercial operation of this size.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for the manufacturing of doors and mouldings and retail sales of doors, mouldings and hardware, and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be denied with no additional conditions

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

9. The application of *Elam Weaver* for a Special Use to allow for one prototype wind turbine with a 40 ft. pole and three wind turbines with 100 ft. poles (Specifications F - #31.50) on property located on the South side of CR 50, ½ mile East of CR 15, common address of 22534 CR 50 in Union Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #22534CR 50-091005-1*.

There were 4 neighboring property owners notified of this request.

Elam Weaver, 22534 CR 50, New Paris, was present on behalf of this request. Mr. Weaver said he is requesting to have wind generators on his property. Over the years, Mr. Weaver feels most of us have grumbled about the high cost of the energy we use for our homes, businesses, and vehicles. Most of us at some point have wondered about the sustainability of our consumption of the hydro-carbon fuels. In the constant struggle to keep or make the agricultural sector viable or sustainable, many avenues of harvest need to be utilized. Mr. Weaver trusts that most people see the need to become more environmentally sustainable. In addition, the United States Government is enacting more policies to encourage people to invest in renewable energy systems such as wind and solar power for homes and businesses.

The petitioner explained he is requesting to fly wind turbines in a viable and safe manner. He would need to have good steady wind to make this effective and the agricultural sectors have a better supply of wind than residential or industrial areas. He feels the staff is hesitant because he would like to design and develop his own wind turbine system.

Mr. Weaver doesn't feel that approving this petition would cause substantial or permanent injury to the use of neighboring property. In his application, the petitioner stated that the 40 ft. mast is for developing the system and assembling the equipment components, which is temporary and would be removed. The 100 ft. masts are for generation duty and his intent is to find a simple, efficient, and safe equipment combination that operates at a lower speed with the wind conditions that are prevalent in this area. He is building a turbine generator set using Probe and Designs, which is a very well known and respected wind turbine pioneer company.

The balance of the system circuits will be commercial and off the shelf components. Accidents can happen, but the overall safety record of the wind energy industry is commendable. Through his contact with the Northern Indiana Public Service Company, he finds them very helpful and cooperative to the alternative energy ideas. They have approved guidelines and methods whereby the systems can be safely integrated into the power grid.

Mr. Homan asked if the request is for three wind turbines and the petitioner said yes. He feels that bigger isn't always better and small turbines are generally a little more controllable.

When Mr. Homan questioned the height of the towers, the petitioner said the 40 ft. tower is just to get his system running. The 40 ft. tower will then be removed when the 100 ft. towers are placed on the west side of the woods and away from the buildings.

Mr. Lantz asked if he has checked to see if they work and the petitioner said it seems to be coming together now, but he is not 100 percent where they want to be. Some of his components are not quite integrated yet.

Mr. Homan asked if this is going to be a business or if it is only for private installation. Mr. Weaver said this is not a business, but he is constructing his wind turbines himself.

When the Board asked if he has any employees, the petitioner said no.

Mrs. Wolgamood questioned the location of the prototype and the petitioner pointed it out on the aerial photo. Mr. Weaver said he will have grid power back in that location to make sure everything works. The system (the three towers) will be on the west side of the woods on top of a little knoll. Mr. Homan clarified that the towers will be towards the northwest portion of the property, which is where the best wind current is.

Mr. Hesser asked if all three of the wind turbines will be for his use and the petitioner said yes. Mr. Weaver explained that Nipsco has three distinct levels of generation. The alternators for each wind turbine will be 3.3 kilowatts.

Mr. Homan asked the petitioner if he is far enough along on his design to know the size of the blades and the wire configuration. The petitioner said yes and indicated the size of the blades will be 20 ft. or less.

When Mrs. Wolgamood asked if the wind turbines will be 20 ft. per blade, the petitioner said they will be 20 ft. in diameter.

Mr. Hesser said he didn't see on the site plan where the specific location of the 100 ft. towers will be. The petitioner indicated he put that on the application somewhere, but Mr. Hesser explained the exact location wasn't shown. It was then clarified that the towers will be located 400 ft. from the west property line.

Mr. Miller asked if the reason he is doing this is because he is not content with something he can buy on the commercial market right now and the petitioner said yes. Mr. Weaver said there are a lot of commercial units out there that aren't worth the money.

Mrs. Wolgamood then asked if the wind turbine shown in the staff photo is the prototype and the petitioner said yes.

Mr. Hesser then indicated when he read through the questionnaire, he got the impression that Mr. Weaver was going to operate a business building wind turbines. He asked if the Staff's Analysis has changed since they have heard further information from the petitioner today. Mrs. Prough then explained the staff wasn't sure by the application and they thought he was going to be doing prototyping research, development, and manufacturing. If this will be for his personal use to help generate power to his property and business, then the staff doesn't have a problem with it. The petitioner has indicated that all three of the wind turbines would be part of the system and he would be required to get building permits for each of them, so the staff has no problem with this request.

Mr. Homan questioned the decibel measurement and the petitioner explained if you are 100 ft. away from the wind turbine, the sound isn't very audible.

Mrs. Wolgamood said the Board could require the petitioner to provide that and then the petitioner would have to construct it according to building code. That will be an issue he will need to work with the Building Department on since it is not pre-manufactured.

Mr. Homan asked about putting up just one and the petitioner said it's a matter of convenience.

There were no remonstrators present.

Mr. Homan asked the petitioner if it would be a burden for him if the Board only approved one wind turbine so they could see how it turns out and then amend the request in the

future for the other two. Mr. Weaver said it is a matter of convenience for him to go through the process all at once.

Mrs. Wolgamood asked how long he anticipates it taking him to complete one wind turbine and the petitioner said within three years.

Mr. Homan asked if he needs approval for the 40 ft. prototype that has already been installed and Mrs. Prough said yes. Mr. Weaver said that is not up right now as he has taken it down to do some design changes.

The public hearing was closed at this time.

Mr. Homan explained he would prefer approving the 40 ft. tower and one of the 100 ft. towers today to see how it looks and how noisy it is before the petitioner installs the two others.

Mrs. Wolgamood indicated she likes the idea of doing the phasing. She asked the other Board members if they would like the petitioner to come back before the Board for the following two towers or if it would be a staff approval. Mr. Hesser said he wouldn't object to approving all three towers and asking for a staff review to check the noise factor. If the staff is not satisfied, then it could be brought back before the Board.

Mr. Miller said since the tower policy and the building codes are in place, he would be comfortable approving all three of the towers if the petitioner could provide a decibel reading ahead of time indicating that the tower is compliant.

Mrs. Prough said the staff could have the petitioner provide the decibel information before the permits are issued.

Mr. Kolbus questioned what the decibel rating has been on the previous wind turbines and Mrs. Prough indicated most of the applications have been around 40 decibels.

Mr. Homan asked the petitioner if he would be able to get the decibel testing done. Mr. Weaver questioned how he would be able to get the decibel reading without running the wind turbine. He explained the noise issue is generally the turbine design itself because the noise is generated from the tips of the turbine.

Mrs. Wolgamood asked if each one of the wind turbines would be allowed 40 decibels and Mr. Homan indicated yes since there have been approvals in the past for multiple wind turbines.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Miller*) that this request for a Special Use to allow for one prototype wind turbine with a 40 ft. pole and three wind turbines with 100 ft. poles (Specifications F - #31.50) be approved as per site plan submitted with the following conditions imposed:

1. All necessary permits are to be obtained.
2. The petitioner is to submit proof of decibel testing indicating that the wind turbine can operate below a 50 decibel reading from the nearest property line.

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

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

10. The application of *Concord Community School (West Side School)* for an amendment to an existing Special Use for a school in an R-1 district to allow for additional parking (Specifications F - #38) on property located on the Northeast corner of Mishawaka Road (CR 20)

and Benham Avenue, common address of 230 Mishawaka Road in Concord 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 #230MishawakaRd-091015-1*.

There were 47 neighboring property owners notified of this request.

Andy Bearman, Foresight Consulting, 3810 New Vision Drive, Fort Wayne, was present representing Concord Community Schools. Mr. Bearman explained the project consists of adding ten additional parking spaces and a sidewalk along the back side. They also added landscaping along the north side of the parking lot to provide screening as recommended in the Staff Analysis.

Mr. Lantz asked what type of screening they will have and Mr. Bearman said two to three ft. tall bushes. A revised site plan was submitted to the Board at this time *[attached to file as Petitioner Exhibit #1]*.

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/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a school in an R-1 district to allow for additional parking (Specifications F - #38) be approved in accordance with the revised site plan submitted (Petitioner Exhibit #1) with a landscape buffer to be installed along the north side of the new parking area. After a unanimous roll call vote was taken, the motion was carried.

11. The application of **Concord Junior High School** for an amendment to a site plan for an existing Special Use for a school (Specifications F - #38) to allow for an electronic message board sign on property located on the Northwest corner of CR 24 and CR 11, common address of 59397 CR 11 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 #59397CR 11-091019-1*.

There were 35 neighboring property owners notified of this request.

Chad Bailey, Vanadco Signs, 10625 SR 10, Argos, was present representing Concord Junior High School. Mr. Bailey explained they are asking to put the message center out on the east side of the property. The sign was one of the forgotten things in the original site plan that was submitted. Where they would like to have the sign located is centered between the front doors of the school, which is also centered between the two residential houses. They will be out of the county right-of-way on CR 11.

Mr. Bailey explained the sign will dim at night and during the day it will be in full brightness. The sign does have a manual break system in it, so you won't be seeing full video capability on it. The sign will be double-sided and it will meet all of the brightness regulations from the Elkhart County Electronic Message Board Ordinance. The sign will be back further than 300 ft. away from any residential house and Mr. Bailey said he personally checked that himself.

Tim Tahara, Concord Community Schools, 59040 Minuteman Way, Elkhart, was present in favor of this request. Mr. Tahara said he doesn't feel this was an oversight on the original plan, but it was more of a budgetary item. They thought at that time, the only thing they could afford would be a monument type sign with two lights shining up at it. As the project has progressed, the school felt they would be able to do an electronic sign. They would be very aware of the brightness at night because they aren't trying to sell anything. They are only trying to offer information to the patrons as they drive by the building.

Mrs. Wolgamood asked if this sign will be the same height as the one at the high school and the petitioner said yes.

Marianna Lautzenheiser, 59515 CR 11, Elkhart, was present to voice a concern. Mrs. Lautzenheiser explained she lives on the corner of CR 11 and CR 24 and she is caddy corner from the new junior high school. She would like to know how far the sign will be from the corner, which she feels is very dangerous. She is not against the sign, but she feels the placement may not be in the best location.

Mr. Bailey then indicated they will locate the sign 500 ft. away from the intersection and it is at least 300 ft. from the school's main entrance.

Linda Wagner, 25138 CR 24, Elkhart, was also present to voice a concern. Mrs. Wagner indicated the drainage issues have improved in the area. With this being in a rural area, she objects to the height of the sign if it is like the one at the high school. When people drive by the high school, the sign needs to be high so it can be seen, but this is in a rural area. The church across the street has a shorter sign and she thought it could be a little more on the shorter side to better suit the community.

Mr. Lantz asked if she is close to where the sign is located and Mrs. Wagner said she lives on the south side of the road, but she will be able to see the sign from her house.

When asked if it would shine directly in her house if the height were brought down, Mrs. Wagner indicated no. She would like the sign to be in line with the rest of the things in the area since it is a rural setting.

Mr. Bailey said they try to keep the signs higher up in the air to eliminate vandalism and graffiti. The school would like to put some shrubbery around the sign to stop people from walking up to it. Another reason they like to have the sign up higher is because of safety issues. A sign that sits low to the ground would not allow you to see who is standing on the other side of it, so someone may run out from behind it and cause a safety hazard.

The public hearing was closed at this time.

Mrs. Wolgamood asked why the lights on the sign couldn't be turned off completely at 11:00 p.m. or another reasonable time at night. Mr. Bailey said the sign has full capability to be turned off at any time. Another reason is that there are a number of parents who work second and third shift and the messages can be good reminders for the parents if the students have an early release day, a day off of school, etc.

Mr. Lantz asked if signs can be turned off at night and Mr. Bailey said yes, but usually only businesses who are closed at night choose to do that.

Mr. Homan asked about luminosity and Mr. Nemeth said they don't have a light level maximum during the day time, but at night, they have to drop down to a maximum of 500 NIT. The school has decided to drop down to 250 at night, which will reduce the glare at night.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of

the Board, and based upon these Findings, this request for an amendment to a site plan for an existing Special Use for a school (Specifications F - #38) to allow for an electronic message board sign be approved in accordance with the site plan submitted with all building permits and inspections to be obtained. The motion was then carried with the following roll call vote results: Homan – yes; Wolgamood – no; Lantz – yes; and Miller – yes.

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

12. The application of **Ron & Patricia Payette** for a Special Use for a home workshop/business for a bulk food store (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the West side of CR 23, 1,050 ft. North of southerly portion of CR 146, common address of 69295 CR 23 in Jackson 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 #69295County Road23-091012-1*.

There were 10 neighboring property owners notified of this request.

Ronald Payette, 69295 CR 23, New Paris, was present on behalf of this request. Mr. Payette explained he has been in the area for a year now and he chose this area because of all of the open farmland. He lost his job four months ago in Elkhart County after moving here from Michigan. He has very unsuccessfully replaced that job in four months, so the bulk food store is something he would like to do. He was advised to check with neighbors within 300 ft. of him to find out their feelings for the bulk food store, but he went beyond that. Mr. Payette indicated he went to properties miles around him. He then submitted a petition in favor of this request signed by 85 neighbors *[attached to file as Petitioner Exhibit #1]*.

The petitioner explained that not one of the 85 neighbors he spoke to were in disapproval of the store. The feedback from the neighbors was fantastic and people were asking when the store was going to open. A picture was then submitted by the petitioner showing what the proposed bulk food store building would look like *[attached to file as Petitioner Exhibit #2]*. Mr. Payette explained he has done extensive research on this and he is also looking for an old country windmill to put next to it for appearance purposes. He has eliminated half the driveway because before he had planned to have it circle around the building. There will be huge Blue Spruce trees lining the whole side of the store. On the other side, there are several maple and oak trees that will line it. There will also be a very large tree in front of the building which works very nicely for landscaping.

Mr. Payette has gotten signatures from every residence from SR 6 all the way to the blinking light in town. He even got signatures from the hardware store, automotive store, engine repair store, and the pizza store in town. He also explained he has the owner of most of the buildings in town present in today's audience. Mr. Payette went to the subdivision behind him and talked to the President and Vice President from The World Missionary and they were in full support of this request.

Mr. Hesser questioned the driveway on the site plan and Mr. Payette indicated he has a revised site plan, which he then submitted to the Board *[attached to file as Petitioner Exhibit #3]*. Mr. Hesser then asked if the new configuration of the driveway would allow a semi to turn around on site

and the petitioner said yes. He did some research online to find out the turning radius on a semi and the revised configuration will work out easier.

Mr. Miller pointed out the Staff Analysis indicates there are other commercially zoned properties in New Paris that could support this type of retail business. Mr. Payette explained after checking with two of the leading bulk food store suppliers, Dutch Valley Foods and Chestnut Creek, their recommendation was to not put a bulk food store in town. These types of businesses thrive in a country rural setting.

Mr. Miller asked the petitioner if he feels he would be coming back before the Board later on to expand the building. Mr. Payette said he has done a lot of research on bulk food stores and most of them are around the size of his and some are even a little smaller. He took that into consideration and after speaking to the neighbors, he feels that a 40 ft. x 60 ft. building should cover him for years.

When Mr. Miller asked the petitioner if he is offering public restrooms, Mr. Payette said yes and indicated he is on city sewer. Mr. Payette feels he will meet all required codes, including the Elkhart County Health Department regulations.

Mr. Homan asked how long the M-1 zoning runs in proximity to this parcel. Mrs. Prough then clarified where the M-1 zoning is and she indicated the property north of the proposed parcel is zoned residential.

Kathy Holsopple, 69129 CR 23, New Paris, was present in favor of this request. Ms. Holsopple explained she lived at the property in question for 30 years. She would love to see a bulk food store at this location. She would like to attest to Mr. Payette's ability to keep the property looking nice. He has kept the property spotless and in addition, she would welcome a store like this close by. A business such as this is unique and she feels it does belong in a country setting. Overall, she would support and welcome a business like this into the area.

Jerry Vannoster, 68382 CR 23, New Paris, was present in favor of this request. Mr. Vannoster explained he supports this request and he feels it would be nice to have a convenience store like this in the area. He doesn't like to drive clear over to Shippshewana and there aren't any stores like this in the Milford area or New Paris area.

Mr. Miller questioned if there would be any outside storage and the petitioner said no.

The public hearing was closed at this time.

Mrs. Wolgamood asked if this is a legal drainage ditch and Mr. Burrow said it is not a regulated drainage ditch.

Mr. Lantz feels this business would be good for the community.

Mrs. Wolgamood indicated she doesn't feel this is a typical R-1 zone and it's more of an agricultural area. She feels there are some issues that may need to be addressed on a new site plan.

Mrs. Prough said she feels the questionnaire is adequate and the site plan submitted today contains a very minor change compared to what was originally submitted. The staff wouldn't have a problem accepting what has already been submitted.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that this request for a Special Use for a home workshop/business for a bulk food store (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be approved based on the following findings:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance by allowing a retail business in a residential zoning district.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. Will substantially serve the public convenience and welfare by allowing a retail business in a residential zoning district.

The following conditions were imposed:

1. Approved in accordance with the responses in the petitioner's questionnaire.
2. Approved for the owner/occupant of the residence on site.
3. Number of outside employees limited to two (2).
4. Days of hours of operation are to be Monday through Saturday, 8:00 a.m. to 6:00 p.m.
5. A revised site plan is to be submitted to the staff within thirty (30) days showing the petitioner's amended comments.
6. All necessary permits and inspections for signage, Health Department, and Highway Department are to be obtained.

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

13. The application of **Mervin & Ruth Ann Bontrager** for a Special Use for a home workshop/business for the sale of vegetables and baked goods (Specifications F - #45,) and a 38 ft. Variance to allow for an existing building 37 ft. from centerline of the right-of-way of CR 7 (Ordinance requires 75 ft.) on property located on the Northeast corner of CR 7 & CR 48, common address of 69852 CR 7 in Union Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #69852CR 7-091012*.

There 9 were neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. A packet of information was then submitted by Mr. Sloat including aerial photos, a site plan, pictures, a petition in favor of this request, and a list of proposed conditions *[attached to file as Petitioner Exhibit #1]*. Mr. Bontrager is a self-employed entrepreneur and his wife and children live at this property. He has 60 acres of farmland where he raises hay and feeds replacement dairy calves for a neighboring farmer. Mr. Bontrager also feeds steers and bull calves for the neighboring farmer.

The petitioner has a home occupation in his residence where he does mail orders for supplements, vitamins, and gift baskets. Last summer, he started selling some produce along the road. In the fall, he decided he would like to do this on a full-time basis, so he contacted the Elkhart County Health Department to inform them he would like to sell baked goods as well as produce. The Health Department worked with the petitioner and they thought he was in compliance with everything that needed to be done. The petitioner constructed a 10 ft. x 16 ft. portable building that is on skids and that is where he sells his produce and baked goods. Soon after the building was placed, Mr. Bontrager received a visit from Elkhart County Code Enforcement indicating he was in violation of his Special Use permit and the building was too close to the centerline of the road.

The petitioner would like to be in compliance, which is why they are here before the Board today. Mr. Sloat noted that the Elkhart County Health Department had filed the complaint

against Mr. Bontrager for being in non-compliance. The petitioner would like to provide additional work for his children and family. This business would not have any outside employees and this business is very nominal because the petitioner may only earn \$50 to \$150 per week. He is hoping this will turn into something that is worthwhile.

Mr. Hesser questioned one of the structures on the site plan and the petitioner indicated it is their water pump.

Mr. Sloat feels there are a lot of other roadside stands in the area and many of them are as close to the road as this one. He advised the petitioner that the parking should be kept at least 50 ft. from the road to eliminate any possibility of congestion and problems with cars backing up. Several of the neighbors have signed a petition in favor of this request and they have no objections to what Mr. Bontrager would like to do. Mr. Sloat then reviewed the proposed list of conditions with the Board.

Mr. Miller asked how long the building has been there and the petitioner's representative indicated one month. He had a portable stand there over the summer, but he decided to go with the portable shed as winter came on.

Mr. Sloat then asked the audience members in favor of this request to raise their hands and there were several.

The public hearing was closed at this time.

Mr. Miller indicated the house is close to the road and there are other structures in the area that are close to the road. As presented, he feels this business will be very low impact.

Mrs. Wolgamood said her concern is the distance from the road. She is in support of the roadside stand, but she feels it should be kept in line with the house or at the requested 75 ft. setback from the centerline of the road.

Mr. Homan said he is in favor of the Special Use, but not the Variance.

Mr. Sloat then suggested letting the petitioner try it for a year, and then he could come back before the Board. He also indicated that there are agricultural buildings on site and he doesn't feel it would be pleasing to put the portable stand next to those buildings.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that this request for a Special Use for a home workshop/business for the sale of vegetables and baked goods (Specifications F - #45) 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 neighboring property.
3. Will substantially serve the public convenience and welfare.

The following conditions submitted by the petitioner were imposed as follows:

1. Approved for a period of one (1) year with a renewal before the Board of Zoning Appeals.
2. Retail sales limited to the 10 ft. x 16 ft. portable building.
3. One (1) non-illuminated sign.
4. No employees.
5. Hours of operation to be Wednesday through Friday, 8:00 a.m. to 5:00 p.m. and Saturday from 8:00 a.m. to 12:00 p.m.
6. No customer parking within 50 ft. of the road.

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

A motion was then made and seconded (*Miller/Lantz*) that the 38 ft. Variance to allow for an existing building 37 ft. from centerline of the right-of-way of CR 7 (Ordinance requires 75 ft.) be approved with the following conditions imposed:

1. Approved for a period of one (1) year based on the site plan the petitioner submitted with the request to be brought back before the Board of Zoning Appeals as a staff item for review.
2. A sign is to be placed on the property indicating where the customer parking area is, which is to be visible as the customers exit CR 7.

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

14. The application of *Monolo Dosal* for an Appeal to allow for an existing accessory structure on property without a residence on property located on the East side of SR 19, 450 ft. South of CR 36, common address of 64084 SR 19 in Harrison Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #64084SR 19-091019-1*.

There 4 were neighboring property owners notified of this request.

Monolo Dosal, 1365 Maple Lane, Nappanee, was present on behalf of this request. Mr. Dosal explained he is waiting to sell his house so he can start on the new residence. It has been hard for him to have two mortgages, but he definitely wants to build. If he can sell his house in Nappanee, then he will build the new house on the proposed property. Mr. Dosal indicated he owns both tracts of land and the house on a separate parcel towards the front, which totals 18 acres. He understands he failed to comply with the requirements because his sale didn't go through.

Mr. Hesser asked if he owns the house in the southwest corner on a separate parcel and the petitioner said yes. Mr. Dosal indicated that house is where his mother lives.

When Mr. Miller asked if the accessory structure is there already, the petitioner said yes. It took him one year to finish the garage and they can't start building the house because the funds aren't available until they sell their current home.

Mr. Hesser asked if these are all buildable lots and Mrs. Prough said yes.

Mr. Hesser then asked the petitioner if he is living on this property and Mr. Dosal indicated he lives in Nappanee. When he bought the proposed property, the house on the separate parcel came with the land, which is where his mother is living.

Mrs. Wolgamood asked if has ever had a business at this location and the petitioner said no. Mr. Dosal explained he is a sub-contractor and there have been complaints about him running a business from this location. The Code Enforcement Investigator had been out to the site and looked through the building. He previously had a dump trailer and a skid loader on the property, but those have been removed. Everything being stored there now is for his personal use only.

Mr. Homan questioned the easement issue mentioned on the building permit, but Mrs. Prough explained that has all been resolved.

Mr. Miller asked if any construction related material will be on site and the petitioner said no. Before the Code Enforcement Investigator came out, Mr. Dosal didn't realize he couldn't have that equipment there.

Sandra Kreps, 27870 CR 36, Goshen, was present in opposition to this request. Ms. Kreps explained her property borders the petitioner's property. She is here to express her concern about having an accessory structure without a primary residence. There has been no attempt to follow the building and zoning procedures from the start. The petitioner started to build the garage without the proper permits and there was never an attempt to start building the residence. Until approximately three weeks ago, the building was being used to store business vehicles, flatbeds, trailers, and other business related materials. There has been a lot of traffic back and forth with business equipment being attached to some of the vehicles.

When Mrs. Dosal approached her about the easement, she said that the garage would be used for business equipment, but the permit states it is supposed to be used for personal storage. Mrs. Dosal assured him that the business would not be run from this location.

In rebuttal, Mr. Dosal said the only thing he failed to do was build his house and garage simultaneously. The only thing the garage is being used for is personal storage. He also feels he has taken very good care of the property.

The public hearing was closed at this time.

Mr. Hesser said he doesn't have a problem granting time to allow the petitioner to sell his current residence. The Board could try and approve the request for a year to see if a good faith effort has been made by that time, but if not, then the request will be denied.

Mr. Homan said if the Board approves this request, he would like to see evidence in one year or so showing the effort the petitioner has given to sell his existing house or raise money to build his new house.

Mrs. Wolgamood feels the Building Department issued the permits in good faith.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that this request for an Appeal to allow for an existing accessory structure on property without a residence be approved with the following conditions imposed:

1. Approved for a period of one (1) year with the petitioner to come back before the Board if construction has not been started by that time.
2. No commercial storage of any type of vehicles or commercially related construction equipment to be stored on site.
3. If this request is required to come back before the Board at the end of one (1) year, then the petitioner would need to provide positive proof to the Board that he has made a solid effort to sell the existing property (such as a listing agreement, mortgage commitment, or any items related to the pursuit of constructing a residence).

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

15. The application of *Douglas & Lisa Gaeddert* for an Appeal to allow for the construction of a second residence on a single zoning lot on property located on the South side of Mishawaka Road, 1,825 ft. West of CR 111, common address of 25128 Mishawaka Road 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 #25128Mishawaka Road-091019-1*.

There were 7 neighboring property owners notified of this request.

Rick Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9th Street, Goshen, was present representing the petitioners. Mr. Pharis explained Mr. and Mrs. Gaeddert would like to build a second home on a single zoning lot which is 28 acres. The petitioners built the existing home to use as a guest home with the intent of building their dream home. The existing house was pointed out on the aerial photo as well as the pole barn.

The staff has recommended that the petitioners should go through the subdivision process, but Mr. Pharis feels that would take a lot of time and expenses that aren't necessary. In addition, the dream home that the Gaeddert's are planning to build is an 8,000 sq. ft. home and would be located to the north of the existing home. An 8,000 sq. ft. home and a 1,000 sq. ft. home would not be compatible in a subdivision setting. The petitioners feel this would work better in an estate type setting with their primary residence to the rear and their guest house up front.

The guest house would be used for family because most of the Gaeddert's family lives out of state. Mr. Pharis explained it may also be used for friends or for the petitioner's parents as their health deteriorates. There is no intention of selling either one of these homes separately. If it were sold in the future, it would all be sold as one tract of land as an estate type setting.

The existing driveway would be used and Mr. Pharis has talked to Katie Niblock from the Elkhart County Highway Department. The highway department has no issues with the petitioners putting their dream home toward the back of the property and using the existing driveway.

In regards to the septic system for the new home, the line needs to run past the existing home to get to an area that is suitable for a septic system. During the excavation for the pond for the overpass, much of the property was run over with heavy equipment which has caused the land to be very compacted. Therefore, a septic system can't be placed anywhere out there and it needs to be put in a specific location.

When Mrs. Wolgamood questioned the location of the septic and Doug Gaeddert, 3815 Augusta Lane, Elkhart, explained the existing septic is in the northwest corner of the property. When the house was originally built, they had soil borings done three times because the land was so compacted, but they did find an acceptable location for the septic system. The new septic system would have to run on the north side of the barn.

Mr. Pharis explained the petitioners have no intention of selling either house separately. Monetary issues do not normally play a part in the Board's decision, but with the economy the way it is in Elkhart County, the construction of this million dollar dream home would keep local contractors and suppliers busy through the winter and add a tremendous tax base to Elkhart County upon completion of the home.

All of the surrounding land is currently zoned R-1 and he feels that future development would go high density. He doesn't see how this request would be injurious to any of the surrounding properties. He respectfully requested that the Board approve the request.

Mrs. Wolgamood pointed out that one of the reasons the petitioners did not want to subdivide was because of time restraints and she questioned how long they have owned this piece of property. Mr. Pharis indicated the guest house has been there for six or seven years.

When asked by Mrs. Wolgamood if the petitioners have always known they wanted to build a dream house there, Mr. Gaeddert said they have owned the property since 2002 and they decided to build the new home once their kids left the house within the last year.

Mrs. Wolgamood questioned how many acres the pond is and the petitioner said 18 to 20 acres.

Mrs. Wolgamood asked if the current house on the property is livable and the petitioner said yes. Mr. Gaeddert and his wife have spent one night in the house in the past year, but he does check on the property daily.

There were no remonstrators present.

The public hearing was closed at this time.

In situations like this, Mr. Hesser explained he worries about what happens down the road because the same people won't own the property forever. He doesn't see anything in this situation that eliminates that concern.

Mrs. Wolgamood feels there are some extenuating circumstances with this particular piece of property since 20 out of the 28 acres are pond area. Even if the petitioner subdivided, they would have to utilize the east side of the property for another residence or obtain easements to gain access to the second house on the west side. She feels that is an extenuating circumstance for this piece of property. She feels the petitioners have a lot of issues to overcome where it comes to the septic system. Mrs. Wolgamood's concern is that the property may be divided several years down the road, which may require septic system easements and more legal issues.

Mr. Hesser asked if the Board has the authority to place a restriction on a request like this that it may not be used for anything other than a guest house. Mr. Kolbus indicated that could be an enforceable condition.

When Mr. Miller asked if it could be a deed restriction to require that everything be sold together, Mr. Kolbus said as long as the petitioner's will commit to that. Mr. Gaeddert then indicated he would commit to that restriction.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood*) that this request for an Appeal to allow for the construction of a second residence on a single zoning lot be approved based on the following findings:

1. Will not be contrary to the public interest by allowing the construction of another residence on 28 acres of which 20 acres is covered with a pond.
2. Will not adversely affect other properties in the same zone or neighborhood considering there is single family residential surrounding the property.
3. Exceptional and extraordinary circumstances and conditions do apply in this case since 20 acres of the 28 acre parcel is covered with a pond and the configuration of the parcel itself.
4. That a literal enforcement of the provisions of the Ordinance would deny the applicant the necessary preservation and enjoyment of any substantial property rights possessed.

The following condition was imposed:

1. A deed restriction is to be placed indicating that this property remain a 28 acre parcel in perpetuity and the existing house (guest house) on the property be used as a guest house only.

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

16. The application of *Darrell & Nancy Thornton* for an Appeal to allow for the construction of an accessory structure prior to the construction of a residence (existing residence on site is uninhabitable) on property located on the East side of CR 11, 2,125 ft. South of CR 50 in Union Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 11-091002-1*. She then indicated that this property is in compliance with the Subdivision Control Ordinance based on an affidavit that was received from an Attorney. Therefore, this property is in compliance and would not have to be certified.

There were 8 neighboring property owners notified of this request.

Darrell Thornton, 257 N. Elm Street, Nappanee, was present on behalf of this request. Mr. Thornton explained he and his wife are in the process of moving from Plainfield, Indiana to Nappanee, Indiana. He and his wife are retired and they need a place to store their personal items. Their house in Plainfield will go on the market on January 1st and they own a house in Nappanee. At this point, he doesn't feel they can own three homes, which is why he wants to build a pole barn to store their personal belongings.

Mr. Thornton indicated they have a 16 ft. x 24 ft. storage area in Plainfield and a 10 ft. x 30 ft. rental storage building in Goshen. In those buildings, he is currently storing his personal items and antiques. He has talked to the Elkhart County Health Department about this and they indicated the land could be built on without any trouble. There is an abandoned home on site which previously belonged to his wife's grandparents.

Mrs. Wolgamood asked if there will be more than one overhead door and the petitioner said there will be two. They are looking at installing 14 ft. x 12 ft. doors because they are looking into buying a motor home and they would like to be able to pull it inside the building rather than park it outside.

When asked about the plans for the existing residence on site, the petitioner indicated that structure would be torn down before the construction on the new house has started.

Mr. Hesser asked if the existing house on site would be counted as a residence and Mrs. Prough said yes. If the Board decided to grant the accessory building prior to the residence, one of the conditions would need to be that the old house be demolished before the new house is constructed.

Mr. Homan questioned if the existing house on site is habitable because he indicated it didn't look habitable in the picture. The petitioner said it has not been lived in for other 60 years.

Mr. Hesser explained he's not clear why the petitioner needs an Appeal at this point, but Mrs. Wolgamood explained if he didn't get the Appeal, he would most likely need a Developmental Variance.

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 an accessory structure prior to the construction of a residence (existing residence

on site is uninhabitable) be denied with no additional conditions imposed. After a unanimous roll call vote was taken, the motion was carried.

17. The application of *Earthmovers, Inc.* for an amendment to a site plan for an existing Special Use for a landfill to allow for the construction of a gas to electric generating plant on property located on the South side of CR 26 and West side of CR 9, common address of 26488 CR 26 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 #26488CR 26-091019-1*.

There were 20 neighboring property owners notified of this request.

Brian Turley, Edwards-Rigdon Construction Company, Inc., 105 Commerce Drive, Danville, was present representing Earthmovers, Inc. Mr. Turley explained that Waste Management along with Wabash Valley Power Association has partnered on over a dozen projects in the State of Indiana to utilize landfill gas to create electricity for the consumer. Waste Management has had over 100 projects in its entirety that has generated savings in over seven million barrels of oil, which has generated 475 mega-watts of power for the nation.

Mr. Turley then pointed out the location of the existing entrance and the location of the proposed buildings on the site plan. This building is going to be constructed in front of the new water treatment plant. He then submitted photos to the Board showing what the building will look like when it is completed *[attached to file as Petitioner Exhibit #1]*.

One of the main concerns on projects like this is safety because methane gas is a flammable product. Twelve of these plants have been in operation in the State of Indiana without incident. These plants are constructed with built-in safety devices and there is a methane gas detection system in the facility. If the detection system detects any type of gas, the entire plant is shut down, the exhaust fans come on, and the gas valve that feeds this plant would be completely shut off.

Constructing this building will employ one individual who will become the operator of the facility and will do routine maintenance. He feels this project will benefit the economy and the environment. This specific building will generate just under five mega-watts of power, which means it will be providing electricity for approximately 3,500 to 4,000 homes and small businesses. They will be saving approximately 88,500 barrels of oil per year.

Mrs. Wolgamood asked if the structure they are proposing is twice as big as the one in the submitted photos. Mr. Turley said no, the project has been downsized and it will only be 50 percent bigger than what is shown. The plant will only be a six engine plant instead of an eight engine plant. The facility will be smaller than what had originally been discussed.

Mrs. Wolgamood asked if this will require an additional curb cut and the petitioner's representative said no, they will be using the existing one. They will be using the existing landfill road to access to this facility.

When asked by Mrs. Wolgamood how far away this structure will be from the roadway, the petitioner indicated 84 ft. from the property line.

She then asked if they are proposing any type of buffering between the building and the roadway and the petitioner's representative said no, but they would entertain some suggestions.

Mr. Hesser asked if the petitioner submitted a revised plan indicating there will only be six engines and Mrs. Prough clarified the questionnaire says eight, but they are proposing less.

Mrs. Wolgamood questioned who will utilize the electricity and Mr. Turley said Indiana Michigan Power Company.

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 an amendment to a site plan for an existing Special Use for a landfill to allow for the construction of a gas to electric generating plant be approved as represented in the petitioner's application and in accordance with the site plan submitted. A unanimous roll call vote was taken and the motion was carried.

18. The application of ***Jorge Pizana*** for a Special Use renewal for an existing baseball diamond (Specifications F - #4) on property located on the North side of CR 146, 1,200 ft. East of SR 13 in Benton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 146-091002-1*.

There were 3 neighboring property owners notified of this request.

Leroy Chupp, 11213 CR 38, Millersburg, was present representing Mr. Pizana. Mr. Chupp feels the complaints received from the neighbor have been dismissed. The petitioner would like to know what he has to do to be in compliance and play on the ball diamond legally.

Mrs. Wolgamood asked if they have abandoned the idea of having restrooms and Mr. Chupp indicated yes.

James Martin, 11722 W 950 N, Millersburg, was present in favor of this request. Mr. Martin explained his property is east of the proposed property. He has known Mr. Pizana since he bought the property and he feels he has been an honest neighbor. His hope and purpose was to make a ball field where young people could play together. Mr. Martin commends Mr. Pizana for the work he has put into this and the money he has put forth on the property. He asked that the Board let Mr. Pizana continue to play ball on the property. A letter in favor of this request was then submitted by Mr. Martin *[attached to file as Remonstrator Exhibit #1]*.

Mrs. Wolgamood asked if he lives on the property adjacent to the east and Mr. Martin said he does not live adjacent, but he owns property there.

Also present in favor of this request was Rudy Bontrager, 68276 CR 37, Millersburg. Mr. Bontrager indicated he is in favor of this request.

Adam Young, 11335 CR 146, Millersburg, was present in opposition to this request. Mr. Young explained he lives immediately west of the proposed property. He was here a few months ago when Mr. Pizana applied for the amendment to the Special Use and gave the Board a lot of information at that time. He has gone through the petitioner's questionnaire and has some questions about some of the information. At one point in the questionnaire, Mr. Pizana talks about local teams participating and Mr. Young asked how many teams there will be. The hours of operation are not very clear in the application and he feels that should be addressed.

Mr. Young indicated the number of parking spaces has increased since a few months ago. He feels there could only be 40 to 50 cars there at one time. The petitioner noted on the site plan that there will be a grass parking area and the petitioner was originally required to have a dust-

free parking area. After grass is parked on enough times, it has the capability of turning very dusty.

Mr. Young is concerned about the petitioner selling food because the Elkhart County Health Department has told him he can't sell food. About one month ago, Mr. Young watched the petitioner bring in a large concession trailer and back it into the barn.

As far as "normal spectator noise" on questionnaire item #10, Mr. Young asked what that consists of. He asked if that would be cars honking their horns, loud music playing, or people yelling and cheering. He feels there are a lot of issues that need to be addressed there. The petitioner also talks about the wooden privacy fence that was installed and Mr. Young said it was very poorly constructed. He feels it is an eyesore because the unappealing side faces his property. About two to three months ago, Mr. Pizana told Mrs. Prough that the fence would be completed within one week, but it is still incomplete. When they were drilling holes for the fence, they hit a farm tile. Mr. Young showed it to Mr. Pizana and he has yet to fix it.

As far as the rules the petitioner has listed in his questionnaire, Mr. Young doesn't feel having a sign posted with the rules will do any good because they won't be enforced. Mr. Pizana has told him that he can't control what people bring onto the property. He doesn't feel that having a sign up there will make things any better. There are some times that Mr. Pizana is not at the property and other people have keys to get into the ball diamond. The other day, there was a white car that had been wrecked that was not operable and it sat on the property for five days. Mr. Pizana has not spoken to Mr. Young about any of the previous issues, so he's not sure why the petitioner feels the issues have been dismissed.

The last time Mr. Young talked to the petitioner, he tried to sell him the property at a price of \$140,000 when Mr. Pizana only paid \$32,000 for it. Mr. Young indicated there had been drinking and drugs sold on the property. When talking about convenience and welfare of the community, Mr. Young feels that drugs being sold in the area would not help the community.

Mr. Pizana had originally told Mr. Young that the ball diamond would be for kids. He told some of the other neighbors that the ball diamond was owned and ran by a church. Mr. Young has talked with the petitioner in the past about taking care of things, but things don't get fixed. He feels Mr. Pizana's actions speak a lot louder than his words. Overall, Mr. Young feels the petitioner is telling the Board the things they want to hear.

Mr. Hesser asked how long he has lived at his property and Mr. Young said a little over one year. His property was purchased at the same time as Mr. Pizana's property. They both talked that night and Mr. Pizana indicated he was going to build a ball diamond for kids. Mr. Pizana asked Mr. Young what he wanted to do with the property and he indicated he was going to build a house. The petitioner's past reputation shows that he hasn't complied with the conditions of his Special Use and he has done things without seeking the proper avenue. His main concern is safety and he feels there are several other locations in the area where the petitioner could play ball. Mr. Young asked that the Board deny this request today.

In rebuttal, Jorge Pizana, 926 N. Main Street, Ligonier, indicated he never said he was building this for small kids. He and his friends like to play ball in the summertime, so it was never intended for kids only.

Mr. Homan asked how many teams are involved and asked if they played a full season. Mr. Pizana indicated they did play a full season and he indicated they played 14 teams this year. He thinks there will be more teams next year. Mr. Pizana would like to find another place to play ball, but he can't find one.

Mr. Homan asked how many nights a week they play and the petitioner said twice a week. When asked how many of the 14 teams practice on this particular diamond, Mr. Pizana said only one. They regularly have games on Saturdays or Sundays.

Mrs. Wolgamood asked the petitioner if he has a concession trailer and Mr. Pizana said no. A friend of his has an RV trailer and he lets him store it in the barn on site.

She then asked if any of the teams are children and Mr. Pizana said no, they are all adults.

The site plan shows a 90 ft. x 200 ft. parking area and Mrs. Wolgamood asked if that entire area is gravel. The petitioner said almost and indicated about 90 percent of it is gravel.

When asked if there has ever been alcohol on the site, the petitioner said no. He indicated people try and hide it and he makes them leave if he sees them with alcohol.

Mrs. Wolgamood asked if he has made people leave for having alcohol and Mr. Pizana said yes, but not very many.

She asked if everyone leaves by 8:00 p.m. or if they hang around and Mr. Pizana indicated they do hang around. He is going to let everyone know next season that as soon as the game is done, he would like everyone to leave.

Mr. Homan questioned what months the league plays and the petitioner indicated April through approximately November.

The public hearing was closed at this time.

Based on the history, Mr. Hesser indicated he has issues with the petitioner being in compliance.

Mr. Homan said as far as compliance in terms of the property, he feels the petitioner has complied. Mrs. Prough said Mr. Pizana is currently in compliance with the conditions that were granted. There were not very many conditions placed on the approval and Mr. Pizana did work for quite a long time to get the property in compliance with the site plan, but he is now. The petitioner has constructed the fence, the parking area has been put in, the curb cut has been installed and inspected by the Elkhart County Highway Department, and the building permits and inspections have been obtained.

Mrs. Wolgamood feels the Board granted this request in good faith. She feels it has exceeded what it was originally intended to be. She feels it is great that he is in compliance with all of the conditions, but it has taken him nearly two years.

Mr. Miller doesn't feel the request should be approved considering all of the compliance issues.

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 renewal for an existing baseball diamond (Specifications F - #4) be approved with the following conditions imposed:

1. Approved for a period of one (1) year.
2. No alcohol allowed on premises and no loitering beyond the permitted hours of operation, which are dawn to dusk or the hours represented in the petition (whichever are more restrictive depending on the time of year).

A roll call vote was taken and the motion did not carry due to the following results: Homan – yes; Wolgamood – no; Lantz – no, Miller – no; and Hesser – yes.

A motion was then made and seconded (*Hesser/Lantz*) that this request be denied with no additional conditions imposed based on the following findings:

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

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

19. The application of **Jorge Pizana** for an amendment to an existing Special Use for a private baseball diamond and accessory building to allow for the construction of an addition onto the accessory building for a restroom facility (Specifications F - #4) on property located on the North side of CR 146, 1,200 ft. East of SR 13 in Benton Township, zoned A-1, came on to be heard.

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

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

There were 3 neighboring property owners notified of this request.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a private baseball diamond and accessory building to allow for the construction of an addition onto the accessory building for a restroom facility (Specifications F - #4) be dismissed with no additional conditions imposed. A roll call vote was taken and the motion was carried unanimously.

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

20. The application of **Carriage Investments LLC (land contract purchaser) and Richard Kauffman (land contract holder)** for a 2,730 sq. ft. lot area Variance to allow for a five unit group house/garden apartment (Ordinance requires 30,000 sq. ft.) on property located on the East side of South Main Street (SR 13), 1,000 ft. South of Spring Street, common address of 500 S. Main Street in Middlebury Township, zoned B-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 #500SMainSt-090921-1(A)*.

There were 7 neighboring property owners notified of this request.

Devon Weaver, Carriage Investments, 260D North Village Drive, Shipshewana, was present on behalf of this request. Mr. Weaver explained they are asking for a Variance on this property. The property has 27,000 sq. ft. of land and it has five units with a commercial store on the first floor. The property has 16+ parking spaces along the side and the front of the property. The driveway on-site belongs to the adjacent property, but they do have a permanent recorded easement. Mr. Weaver explained they are requesting to convert the bottom units into apartments

so they will have five units total. They need 30,000 sq. ft. of land, so they are asking for a Variance since they only have 27,000 sq. ft. There won't be any outside structure added and all of the work will be done on the inside of the existing building. This is in a B-1 zoning district and they have all of the codes up to date in the building. The four existing units have already had their final inspections. Mr. Weaver then explained that the former owner, Richard Kauffman, is here today to give a brief history of what has been in the building in the past.

Richard Kauffman, 70415 Lake Trail, White Pigeon, Michigan, was also here on behalf of this request. Mr. Kauffman explained he has owned this property since 1972 and he changed the zoning to B-1 in 1982. Over the years, this building has operated as an apartment building, a furniture store, and as a fitness center. He sold this property to Carriage Investments in September and Mr. Kauffman indicated there have always been apartments on site. They are not adding any additional fixtures to the building. Mr. Kauffman explained he has always tried to be a good neighbor and he has always kept the property very neat and clean.

Mr. Homan asked how many parking spaces are on the property if it has been configured for five units and Mr. Weaver indicated 16. He indicated there is plenty of room to park all along the driveway.

Mr. Kauffman then explained that when they had the fitness center, there were as many as ten or twelve cars on site, plus the traffic from the furniture store. They have always had access for semi trucks to pull in and out. In the summertime, Mr. Kauffman would always have an annual tent sale out in the grassy area and there was a lot of traffic. He can see the apartments having significantly less traffic than what has been there in the past.

Mark Salee, Town Manager for Town of Middlebury, 418 N. Main Street, Middlebury, was present in opposition to this request. Mr. Salee explained the Town of Middlebury is the basis of the Appeal. The Town of Middlebury is in support of multi-family parking, but they are concerned about the parking and the number of vehicles. The Town of Middlebury has no way to regulate the number of occupants or number of vehicles that may be present at the apartment building, other than by limiting the number that would be appropriate based on the applicable standards. Mr. Salee explained they would like to keep the property within the current standards.

Mrs. Wolgamood asked if the proposed property uses the same driveway as the school and Mr. Salee said no.

Craig Baker, Middlebury Community Schools, 56853 Northridge Drive, Middlebury, was also present in opposition to this request. Mr. Baker explained the school is not opposed to multi-family housing, but they do have concerns about the parking issue. There is a house to the east where the pool is located and in the summertime, there is some encroachment of parking. The school's major concern is that if there are that many families there, they might have some issues with the number of parking spaces.

Mrs. Wolgamood asked if the school is to the north or south of this property and Mr. Baker indicated to the north.

In rebuttal, Mr. Weaver said they have a fence in between the proposed property and the school's property. He indicated the fence is approximately four or five feet high. He has no idea if anyone has ever parked at the school and walked over to the proposed property, but that is something that can be addressed to the tenants. The tenants have been told that they are allowed three parking spaces per unit. The four tenants they currently have in there are single people and have each got one car. As far as the property to the east, Mr. Weaver indicated that landowner

could not be here today, but he gave them easement to the proposed property. He is in absolute full favor of this request.

Mr. Kauffman said he was always conscious of the neighbors and when he was the owner of the property, he made a point of not having anyone use the school parking lot in any way.

Mr. Homan then questioned the 2nd floor layout and Mr. Weaver said there is one one-bedroom unit and one two-bedroom unit.

Mrs. Wolgamood then questioned the parking and Mrs. Prough indicated 16 parking spaces are adequate because they are only required to have two per unit.

The public hearing was closed at this time.

Mr. Homan said there has been traffic here all along and he doesn't feel that adding one more apartment will affect the traffic very much.

Mr. Lantz indicated there won't be very much of a change.

Mr. Miller then indicated if you are going from retail to residential, there will be a decrease in traffic. He feels they have adequate parking on-site for the tenants and guests.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 2,730 sq. ft. lot area Variance to allow for a five unit group house/garden apartment (Ordinance requires 30,000 sq. ft.) be approved in accordance with the site plan submitted. After a unanimous roll call vote was taken, the motion was carried.

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

21. The application of ***Edward & Deborah Knight*** for an Appeal to allow for the construction of an accessory structure without a primary residence on property located on the East side of Conrad Street, 140 ft. South of Ernest Street, being Lot 24 of Berry's 2nd Subdivision 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 #Conrad Street-090902-1*.

There were 3 neighboring property owners notified of this request.

Mr. Lantz indicated this is an older lot and he feels the petitioner should comply with the 25 ft. front yard setback.

Mrs. Wolgamood explained her concern is that all of the lots to the south may want to do the same thing.

Mr. Homan pointed out there is B-2 zoning in the area and he would have more of a problem with the request if it were completely residential or agricultural.

Mrs. Wolgamood indicated these lots have been vacant forever and no houses have ever been constructed on the lots.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of an accessory structure without a primary residence be approved with all required permits and inspections to be obtained, and all required setbacks to be maintained (i.e. the north

property line needs a 25 ft. setback from the property line). The accessory structure is to be used for personal domestic storage only. The motion was then carried with the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – yes; and Hesser – no.

22. The application of **Glen & Leona Miller** for a Special Use for a sawmill (Specifications F - #37) on property located on the South side of CR 18, 500 ft. East of CR 33 North, common address of 15162 CR 18 in Middlebury 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 #090806-15162CountyRoad 18-1*.

There were 8 neighboring property owners notified of this request.

Mr. Kolbus explained this request was tabled to allow Mr. Miller and Mr. Lantz to review all of the materials. Mr. Miller and Mr. Lantz then indicated they have reviewed all of the necessary materials.

Mr. Lantz doesn't feel that granting this request would impact the area a lot. He would like to see some crushed limestone or something to that effect where the logs are being stored. He feels this would be an asset to the petitioner's family and none of the neighboring property values would be affected.

Mr. Homan explained the staff had previously brought up some concerns regarding existing Special Uses. The main concerns of the remonstrator were in regards to fire and dust.

Mr. Homan asked the petitioner if he is currently purchasing the sawmill and Glen Miller, 15162 CR 18, Goshen, indicated he has paid a down payment.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that this request for a Special Use for a sawmill (Specifications F - #37) be approved with the following conditions imposed:

1. Approved as per site plan submitted and as per questionnaire information submitted.
2. Approved for a period of one (1) year with a renewal before the Board of Zoning Appeals.
3. The days and hours of operation are to be Monday through Saturday with the sawing operations to be limited to 6:00 a.m. to 8:00 p.m.
4. No outside employees.

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

23. The application of **Rudy Bontrager** for a Special Use for a sawmill and timber frame preparations (Specifications F - #37) and a Developmental Variance to allow for the total square footage of accessory structures (5,200) to exceed the total square footage in the primary structure (2,400), a difference of 2,800 sq. ft., on property located on the East side of CR 37, 1,215 ft. North of CR 46 in Benton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #68276CR 37-090828-1*.

There were 10 neighboring property owners notified of this request.

Rudy Bontrager, 68276 CR 37, Millersburg, was present on behalf of this request. Mr. Rudy Bontrager explained the sawmill has been in the family for years and his father is passing it

onto him. His father had purchased the sawmill 30+ years ago and Mr. Rudy Bontrager would like to re-locate on his property now.

Mr. Hesser asked what he will do with the sawdust and the petitioner said it would give it to the neighbors.

Mr. Rudy Bontrager then indicated he has 500 trees coming from the DNR to be placed along the south border. He has talked to the neighbors and they don't have any issues with the request.

When the number of employees was questioned by the Board, Mr. Rudy Bontrager indicated he currently has four outside employees working for his timber frame operation.

Mrs. Wolgamood asked if there are five employees involved with the sawmill operation and the construction business and Mr. Rudy Bontrager indicated yes.

David Bontrager, petitioner's father, 10054 CR 18, Middlebury, was present in favor of this request. Mr. David Bontrager explained he would like the Board to grant this request for his son. He bought the sawmill for his own timber framing operation, but it isn't always being used because it depends on how many jobs he gets.

Glen Miller, 15162 CR 18, Goshen, was present in favor of this request. Mr. Miller explained the work the Bontrager's do in their timber frame operation is an art that nobody else in the Amish Community does. They are good at what they do and he feels they are an asset to the community.

The public hearing was closed at this time.

Mr. Homan questioned the hours of operation and Mr. Rudy Bontrager indicated he is comfortable with whatever the Board feels is adequate.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a sawmill and timber frame preparations (Specifications F - #37) and a Developmental Variance to allow for the total square footage of accessory structures (5,200) to exceed the total square footage in the primary structure (2,400), a difference of 2,800 sq. ft., be approved as per site the revised site plans submitted to the staff on October 23, 2009, with the following conditions imposed:

1. The sawmill is limited to five (5) employees.
2. The hours of operation are to be 6:00 a.m. to 8:00 p.m.

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

24. At this time, Mr. Burrow presented the staff item regarding the **2010 Planning Calendar**. He explained that the Board of Zoning Appeals needs to approve the 2010 Planning Calendar based on the same way it was presented in 2009. A motion was then made and seconded (*Wolgamood/Lantz*) that the 2010 Planning Calendar be approved as presented.

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

26. There were no audience items.

27. There were no Staff/Board items.

28. The meeting was adjourned at 1:39 P.M.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary