

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF SEPTEMBER 2009 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Robert Homan, Tom Lantz, and Doug Miller. Staff members present were: Ann Prough, Zoning Administrator; Mike Gard, Building Commissioner; Duane Burrow, Senior Planner; Ronnie Weiss, Code Enforcement Investigator; Robert Nemeth, Planner; Dan Piehl, Planner; Kathy Wilson, Office Administrator; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Lantz/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of August be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Lantz/Wolgamood*) that the legal advertisements, having been published on the 4th day of September 2009 in the Goshen News and on the 7th day of September 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 (*Lantz/Wolgamood*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Lantz/Homan*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.
6. There were no postponements of business items.
7. The application of **Christy Schmucker (buyer) and Robert Schmucker (seller)** for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on property located on the West side of CR 35, 900 ft. South of CR 30 in Clinton Township, zoned A-1, came on to be heard.

There were 6 neighboring property owners notified of this request.

Mrs. Prough explained the staff received a letter on September 2nd from the petitioners asking to withdraw the petition. They no longer need the three to one depth to width ratio Variance.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that this request for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence be withdrawn as requested by the petitioner. A roll call vote was taken and the motion was unanimously carried.
8. The application of **Greg Flora** for a Use Variance for use of an existing structure for automobile repair for five (5) years until business can be re-located to an M-1 zone on property

located on the West side of CR 13, 2,250 ft. North of CR 46, common address of 68607 CR 13 in Union Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #68607CR 13-090824-1*.

Mrs. Wolgamood questioned if the storage of vehicles related to the business includes employee vehicle parking. Mrs. Prough said no, they were considering the cars that are waiting to be repaired. There was also an issue with a large transportation trailer being stored on site. It is difficult for the petitioner to park that trailer on the west side of the building because the cars are parked back there. The staff doesn't have a problem as long as the trailer is kept on the south side of the building. Overall, they are trying to eliminate parking out front with the exception of employee parking.

There were 5 neighboring property owners notified of this request.

Present on behalf of this request was Loren Sloat, 102 Heritage Parkway, Nappanee. At this time, the petitioner's representative submitted a packet of information showing a site plan, photos, and a list of proposed conditions *[attached to file as Petitioner Exhibit #1]*. Mr. Sloat indicated he agrees with the staff's recommendation. The petitioner was required to apply for the Use Variance as he was in violation of the existing Special Use permit. Mr. Sloat then pointed out the location of the buildings on the site plan. The portion shown in yellow is where the Use Variance is required.

The auto repair business involves purchasing damaged vehicles and then bringing them in on a transport trailer. The vehicles are then unloaded, detailed, and are prepared for re-sale. The petitioner does not buy totally wrecked vehicles and repair them. They may do some suspension work in the shop, but they do primarily detailing. The vehicles are taken to a facility in New Paris after they are detailed to be put up for sale.

Mr. Hesser asked if they are doing any painting and Mr. Sloat said no, that is not their operation. He also indicated there have been no complaints on this business.

The plan is to move this operation in the future to US 6 into an M-1 zone. The detailing and sales would then both be done at that location.

Mr. Sloat then reviewed the proposed list of conditions with the Board.

When Mr. Homan questioned proposed condition #3, Mr. Sloat clarified that "buildings" should be singular.

There were no remonstrators present.

Mrs. Wolgamood asked what the highest number of inventory vehicles being parked on site at one time would be and Mr. Sloat said ten or twelve. A transport trailer only holds six or seven vehicles.

Mrs. Wolgamood asked if this building is currently served by a septic system and Mr. Sloat said no. There is running water to wash the vehicles, but that is drained out the door and dries outside.

Mr. Hesser asked if the staff has any concerns with the proposed conditions and Mrs. Prough indicated no.

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/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for use of

an existing structure for automobile repair for five (5) years until business can be re-located to an M-1 zone be approved with the conditions submitted by the petitioner's representative (as amended by the Board) imposed as follow:

1. The repair of motor vehicles shall be conducted as a Use Variance on the premises in the area identified on the site plan. The business shall be conducted only by petitioner and by no more than three (3) employees, associates or partners who are not occupants of the residence.
 2. In the event the operator of the business discontinues the use of the residence (or its replacement) located on the premises as his principal place of residence, or the expiration of five (5) years from the date hereof (whichever is the first to occur), the Use Variance hereby granted shall automatically expire and be of no further force or effect.
 3. The repair of motor vehicles shall be conducted within the accessory building.
 4. Hours of operation to be 7:00 a.m. to 5:00 p.m., five (5) days a week (Monday through Friday), Saturday 7:00 a.m. to 3:00 p.m. All times to be prevailing local time and provided, further, that nothing shall require said use to remain open during those hours.
 5. Exterior lighting for said premises, if any, shall be restricted to security rural dusk to dawn night guarded-type lighting.
 6. No exterior loud speakers shall be allowed on the premises.
 7. Any permanent buildings constructed on the site shall be approved by the Board of Zoning Appeals, and constructed in accordance with plans and specifications approved by appropriate governmental authority with building permits issued by the Elkhart County Building Department.
 8. No signs.
 9. A single access to site shall be from County Road 13 only, as shown on the site plan.
 10. There shall be no parking within thirty (3) feet of County Road 13.
 11. There shall be no further expansion without Board of Zoning Appeals approval.
 12. All outside storage of "inventory" vehicles related to the business to be parked/stored on the west side of the 50' x 80' building. Transport trailers and tractors are not subject to this condition and may be parked between the two buildings.
 13. Approval in accordance with site plan submitted.
 14. The existing Special Use permit (#19994441) to be terminated.
- After a unanimous roll call vote was taken, the motion was carried.

9. The application of **Brian Price** for a Special Use to allow for two wind turbines, each with a 60 ft. pole (Specifications F - #31.50) on property located on the East side of CR 39, 1,500 ft. South of CR 4, common address of 52270 CR 39 in York 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 #090814-52270County39Rd-1*.

There were 10 neighboring property owners notified of this request.

David Smith, Wind Wire, P.O. Box 10208, South Bend, was present on behalf of this request. The petitioner, Brian Price, 52270 CR 39, Middlebury, was also present on behalf of this request. Mr. Smith explained the petitioner would like to install two wind turbines to

provide electricity to the residence. The wind turbines would be Skystream monopole systems and the footprint will be a three ft. diameter foundation.

Mrs. Wolgamood asked why the petitioner needs two wind turbines and Mr. Smith indicated because the petitioner has a very high electric bill. He explained they have some clients that require four wind turbines to take away the burden of an electric bill.

Mrs. Wolgamood asked if this will service the garage and the barn and Mr. Smith said yes, since they are all on the same service.

Mr. Hesser asked if this will go into the grid and then offset the bill and the petitioner's representative said yes.

Mr. Smith explained that when they come in to apply for the building permit, they bring all of the specifications for the towers. The towers are built in Arizona and are UL rated with a Declaration of Conformity. By law, you can't tie into the grid unless all of the proper requirements have been met.

Mr. Hesser pointed out that one of the wind turbines is exactly 60 ft. from the property line. In the past, they usually require the wind turbine to stay on the property if it falls. He indicated this one would, but it would come awfully close, so he asked if that is a concern of the staff. Mrs. Prough said no and asked the petitioner's representative to address the collapsibility of the wind turbines.

Mr. Smith explained the poles are made by a company called Valmont. In order to get the five year warranty and the certifications they provide Wind Wire with, they have to use their pole. Valmont's poles are made to collapse down upon themselves. The poles are guaranteed up to 140 mph winds, which would be tornado winds. The requirement is to use a 24 inch foundation, but they use a 36 inch foundation because it is better and stronger.

Mrs. Prough indicated the 60 ft. setback does meet the tower policy.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for two wind turbines, each with a 60 ft. pole (Specifications F - #31.50) be approved in accordance with the site plan submitted with all required permits and inspections to be obtained. 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 staff item regarding ***Middlebury Community Schools proposed Ceramics Plaza*** was presented to the Board by Mrs. Prough at this time. Photos of the property showing the location of the proposed addition were submitted to the Board at this time [*attached to file as Staff Exhibit #1*]. She explained that Northridge High School would like to build an outdoor ceramic plaza and they would like the Board to consider this a minor change to their site plan. On Site Plan #1, it shows the location of the proposed plaza highlighted in yellow, which is located on the west side of the current school building. The submitted photos indicate that the area has already been excavated. There is also an area on Site Plan #1 that shows a dotted line for future additions for classroom space.

On Site Plan #3, there was an area shown on the site plan in dotted lines, but it was not designated as future classroom space. Mrs. Prough indicated it was intended for that and all of the calculations for parking, drainage, and water run-off were all based on that, but it was never labeled.

Mrs. Prough explained that Site Plan #2 shows the detail of the construction of the plaza. The plaza will have concrete masonry walls with a canopy over the west end. The school has received state approval and they have obtained a state release for the construction of the plaza. There is a sidewalk that will separate the structure from the school, so it will not be connected at all.

Overall, this area was designated on the original site plan with dotted lines, but it wasn't identified as future classroom space, which was intended. In the future, they are going to be constructing some classrooms and Mrs. Prough questioned if these changes would be considered a major or minor change.

Mrs. Wolgamood said she doesn't have any issues with declaring this as a minor change.

A motion was then made and seconded (*Wolgamood/Homan*) that the Board approve this request and declare this as a minor change. A roll call vote was taken and the motion was carried.

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

11. 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.

Glen Miller, 15162 CR 18, Goshen, was present on behalf of this request. Mr. Glen Miller explained this project started in February when he got laid off from Jayco. The tax preparation business is a hobby and he services about 40 clients per year. A normal tax preparation office would do 400 to 800 per year. His business will never grow because he doesn't have a computer and he never plans to have one. The furniture restoration is something he considers a paid hobby. He does the work on nights and weekends and enjoys meeting a lot of people. He has a lot of fun with woodworking and he makes a little bit of money too.

After the layoff, Mr. Miller needed something to add to his income. One of his friends he has known for many years asked if he wanted his sawmill and Mr. Glen Miller said yes, so that's how this all got started. He had been working with him for about a month and they only work about one day per week. With the return to the normal economy, he hopes the business will go to two days a week, but it will never be a major business. He hopes to make a living off of this business. He keeps his property very tidy and he asked that the Board to allow him to make a living at home with his children.

Mr. Doug Miller asked if the tax business is seasonal and the petitioner said yes. He asked if people drop off their returns and then come back to pick them up. The petitioner said a lot of times, the clients will come and spend the evening with them because they are friends and

many times it is the only time during the year he sees them. One or two of them will wait on their taxes to be done, but not very often.

When asked if the furniture repair items are dropped off and then picked up, the petitioner indicated yes. Mr. Glen Miller said he did a fairly extensive ad campaign in the South Bend Tribune in July for the furniture restoration business. That could happen again if he really needs the work, but he doesn't like to do that because it is very inefficient to run to South Bend for work.

Mr. Doug Miller asked if it is possible to operate the business from its existing location and the petitioner said no because the transportation is too hard with a horse and buggy. The business is located in LaGrange which is about an hour away.

Mr. Doug Miller asked if he would be cutting one or two logs per day and the petitioner said it will go in spurts. The logs vary in size because some are longer than others. The average right now is about five logs a week, which is about one log per day.

Mr. Doug Miller asked the petitioner if he feels this is a low impact business and the petitioner said yes, very much so. The waste is firewood and sawdust, which are both saleable. He is currently selling firewood to supplement his lay off and the local farmers buy the sawdust.

Mrs. Wolgamood asked how he transports the sawdust and the petitioner said the farmers will drive in with a pickup truck to pick it up.

As the saw travels back and forth, the sawdust will fly back towards the wall which creates a pile. Six weeks worth of sawdust creates about a 15 ft. section.

Mr. Homan asked if this is a portable mill or if it is permanently affixed to a foundation. The petitioner said it is portable, but it is electric because they use a generator.

Mr. Homan asked how the logs are sorted, acquired, and delivered. Mr. Glen Miller said he has to order what he wants and he will be stocking oak. There is a front end loader that would come with the sawmill business to unload the logs. He will stock oak in seven, eight, ten, twelve, and fourteen ft. lengths.

Mr. Doug Miller asked if the logs are stored outside and the petitioner said yes.

When the Board questioned where the front end loader would be parked, Mr. Glen Miller said he can park it inside. He has nine ft. ceilings and eight ft. doors and the top of the front end loader is about seven ft. The petitioner would like to put on an addition in the future to better suit the storage of the front end loader.

Mrs. Wolgamood asked what the size of the building is and Mr. Glen Miller indicated 40 ft by 48 ft. She asked if he will continue the woodworking in the same building where the sawmill is and the petitioner said yes. The building labeled "shop" on the site plan is where the businesses would be located.

When Mr. Doug Miller asked the petitioner how many logs will be retained outside at any one time, he estimated approximately 30.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Doug Miller said he is empathetic to someone who has tough economic times and wants to start a business, but he is a little bit nervous about three businesses in one location and creating an issue of outside storage. Mr. Doug Miller said he would support the Staff Analysis.

Mr. Lantz doesn't feel the sawmill will take up that much room because he's not transporting it from one farm to another.

Mrs. Wolgamood indicated he is already talking about adding onto the existing building which is not shown on the site plan at all.

If the Board knew where the addition was going to go and some restrictions were put on the log yard, Mr. Lantz doesn't feel that the business would be a high impact. He feels the biggest issue they have to look at is where the front end loader will be stored.

Mr. Homan questioned #2 on the Staff Analysis regarding safety. Mrs. Prough indicated the staff wasn't sure how the accumulated dust would be handled in regards to fire issues.

Mrs. Wolgamood said Mr. Lantz brought up some good issues, but she doesn't feel the site plan is acceptable. She is also concerned that the petitioner may be in to ask for a Variance in order to put an addition onto the building. She feels there are a lot of loose ends that need to be addressed. She commends the petitioner for doing what he is trying to do and take care of his family, but she doesn't feel the information given today is adequate.

Mr. Homan said there are issues about storage, but he asked if this is a location where a small sawmill could be operated. He also feels there are issues that have not been addressed. He's not terribly convinced there are three businesses on site. There was one Special Use issued for a very minor tax preparation business and the furniture repair happens in the same building in conjunction with the proposed sawmill. He doesn't feel there will be a huge change in impact.

Mrs. Wolgamood asked Mr. Homan if he has an issue with the petitioner doubling the size of the building. Mr. Homan said he's not currently asking for that, but Mrs. Wolgamood indicated those are his plans.

Mr. Lantz doesn't feel the number of businesses is an issue because the tax business is minor and Mrs. Wolgamood agreed.

Mrs. Wolgamood said the Board has been very adamant in the past with other sawmills in regards to knowing what will happen with the dust.

Mrs. Wolgamood feels there are a lot of unanswered questions.

Mr. Doug Miller said there are a lot of unresolved issues and suggested tabling the request so the petitioner can clarify those issues.

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 sawmill (Specifications F - #37) be tabled to allow the petitioner to submit a detailed site plan addressing the following issues:

1. Storage location of the loader
 2. Storage location for the logs
 3. Number of logs being stored on-site
 4. Type of surface the logs are being stored on
 5. Driveway location (ingress and egress)
 6. Clarification of what the building labeled "shop" on the original site plan will be used for
- After a unanimous roll call vote was taken, the motion was carried.

12. The application of *Glen & Mary Hershberger* for a Special Use for a home workshop/business for an auto detailing business on property located on the North side of CR 56, ¼ mile West of CR 29, common address of 16353 CR 56 in Jackson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #16353County Road56-090820-1*.

There were 3 neighboring property owners notified of this request.

Glen Hershberger, 16353 CR 56, Syracuse, was present on behalf of this request. Mr. Hershberger explained he was in a month ago for a Use Variance due to the bigger sign, which was denied. He is now requesting a Special Use permit to detail cars.

Mr. Miller asked what the dump truck sitting outside is used for and the petitioner clarified that is a vehicle he had detailed.

Mr. Miller asked how many cars he would work on and Mr. Hershberger said no more than two per week. This is just a part-time business as he works his regular job during the day.

Mrs. Wolgamood said under #2 in the questionnaire, it indicates there would never be more than one car in the shop and once in a while there is one sitting outside for the next appointment. She explained that Special Uses do not allow for outside storage and asked if there is any way he could keep everything stored inside the building. Mr. Hershberger said it depends on what he is doing. Once in a while, he gets a big camper that he has to totally wax down. He probably wouldn't be able to fit a camper and another vehicle inside the building at one time.

Mr. Hesser asked if the larger trucks and RV's are typically what he works on and Mr. Hershberger said yes, in the fall. He explained that it takes him a whole week to detail a camper.

When Mr. Hesser asked if he works on them inside, the petitioner said yes. He asked how long one would be parked outside and the petitioner said one week at the most. Mr. Hesser said unless the petitioner has two vehicles scheduled back to back, he will almost always have something stored outside.

Mr. Homan asked the staff if they were aware of the possibility of RV detailing and Mrs. Prough said no. When she was out twice before, there was no outside storage. Last time she was out, there was a dump truck there and she didn't realize that was there for the business. She recommended that the petitioner schedule his clients in a manner that would eliminate the outside storage. The petitioner indicated he could do that.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller feels if the petitioner can work around the outside storage issue, then he doesn't have a problem with the request.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for an auto detailing business be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. No employees who are not occupants of the residence on site.
3. One (1) sign not to exceed four (4) sq. ft. per side.
4. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
5. No outside storage.

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

13. The application of **Believers Fellowship** for an amendment to an existing Special Use for a church (Specifications F - #48) to allow for a temporary mobile classroom on property located on the West side of SR 13, ¼ mile North of SR 4, common address of 60781 SR 13 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 #60781SR 13-090824-1*.

There were 8 neighboring property owners notified of this request.

Darrell Schwartz, 131 N. Harrison Street, Topeka, was present representing Believers Fellowship. Mr. Schwartz explained the church would like to use the mobile classroom for a youth children classroom until they buy a new property or build on a new property. They are currently outgrowing their present building.

Mr. Lantz questioned the two locations and Mr. Schwartz said they weren't sure where it would fit best for their purposes, but either location would work out fine.

Mr. Hesser asked if they are only asking for one classroom because the questionnaire made references to two. The petitioner indicated they are only asking for one classroom, which will be 24 ft. x 52 ft.

Mrs. Wolgamood asked if the classroom will be a new unit and Mr. Schwartz said yes, it will match the existing building as far as design.

Mrs. Wolgamood pointed out the 24 ft. x 52 ft. structure is a little larger than what was indicated on the questionnaire. The staff then indicated they have no issue with the size as long as setback requirements can be maintained.

There were no remonstrators present.

The public hearing was closed at this time.

The Board then indicated they have no issues with either location shown on the site plan.

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 an existing Special Use for a church Specifications F - #48) to allow for one temporary mobile classroom be approved in accordance with the site plan submitted. After a unanimous roll call vote was taken, the motion was carried.

14. The application of **Ben & Gail Kersting** for a Special Use for a home workshop/business for a machine shop (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures (5,336) to exceed the total square footage in the primary structure (2,000), a difference of 3,336 sq. ft., on property located on the Northwest corner of CR 19 and CR 4, common address of 51755 CR 19 in Washington Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #51775County Road19-090821-1*.

There were 16 neighboring property owners notified of this request.

Ben Kersting, 51755 CR 19, Bristol, was present on behalf of this request. Mr. Kersting said the existing building was being used as a hobby shop. He feels using it as a machine shop

would help him and his wife financially. The petitioner said he is always conscious of the neighbors' properties and he likes them to be conscious of his property

Mr. Lantz asked what type of items he works on and the petitioner said he fixes up furniture.

Mr. Lantz indicated the sign would have to be a little smaller and the petitioner indicated he understands that.

When Mr. Lantz asked what kind of traffic he expects to have, the petitioner said there won't be any traffic 99% of the time. He usually goes out and picks up the furniture and then brings it on site to work on it. Traffic would be very rare and he might have two or three cars on site per year. He doesn't do any soliciting and the business is only by word of mouth.

Mr. Homan asked the petitioner if he does any welding or has any compressed gases on site and Mr. Kersting indicated he does have a welder.

Steve Schemenauer, 51840 CR 19, Bristol, was present to voice some concerns regarding this request. Mr. Schemenauer said he owns 180 acres across from the proposed property. He then submitted a packet of information including maps and photos of his property *[attached to file as Remonstrator Exhibit #1]*. He feels Mr. Kersting is a good neighbor and his property is very well presented. He has no problem with the petitioner putting up a small sign as long as it doesn't become a commercial enterprise. He doesn't see how adding a home workshop/business would hurt the neighborhood at all.

Mr. Kersting thanked Mr. Schemenauer for his comments. He understands his concerns, but there will be no expansion. The only thing that might occur down the road is a Variance for an addition when his grandkids get older.

Mr. Hesser asked if he understands that an expansion would require a new public hearing and the petitioner said yes.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she has been by the proposed property and she has no issues with this request. She feels the petitioner's property is immaculate.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a machine shop (Specifications F - #45), be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. No employees who do not reside in the residence on site.
3. One (1) sign no larger than four (4) sq. ft. per side.
4. The existing sign to be removed from the property within thirty (30) days in compliance with the sign requirement for a home workshop/business.
5. All required permits and inspections for the existing shop building to be obtained and brought into compliance within six (6) months.
6. Approved as per site plan submitted and as represented in the petitioner's application.

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

A motion was then made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Developmental Variance to allow the total square footage of accessory structures (5,336) to exceed the total

square footage in the primary structure (2,000), a difference of 3,336 sq. ft., be approved with no additional conditions imposed. A roll call vote was taken and the motion was unanimously carried.

15. The application of *Jayco, Inc.* for an amendment to an existing Special Use for soccer fields (Specifications F - #4) for additional acreage on property located on the West side of CR 37, 1,650 ft. North of CR 20, common address of 58685 CR 37 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 #58685CR 37-090824-1*.

There were 12 neighboring property owners notified of this request.

Present representing Jayco, Inc., was Greg Bowers, 58685 CR 37, Middlebury. Mr. Bowers submitted a packet of information including a drawing showing the future location of the soccer fields, the petitioner's remedies in regards to the Staff's Recommendation, and information regarding the water run-off land *[attached to file as Petitioner Exhibit #1]*. Mr. Bowers feels he has addressed the concerns in the submitted information. He has spoken to the Elkhart County Highway Department regarding the curb cut. The size and type of parking area is corrected on the site plan and the calculations for water run-off are included on the third page of the submitted information.

Mr. Bowers indicated that Mr. Burrow has helped him out throughout this process as well as the Town Manager of Middlebury. This land is being gifted by Jayco to the Town of Middlebury and is in the process of being transferred. He feels they have met the requirements listed in the Staff Analysis.

Mr. Burrow explained that when the petitioner came in, he went through the site plan and information with them. It appears to be that he addressed all of the staff's concerns and he contacted the Highway Department.

The drainage calculations are reasonably correct and they have adequate area to retain all of the water on site. The parking is also in compliance with the Elkhart County Zoning Ordinance. Mr. Burrow feels the site plan is adequate and the only issue that needs to be addressed is the buffer. Lastly, the staff agrees with using grass as a parking area because that is part of going "green" environmentally.

Mr. Bowers then explained they plan on doing an Erosion Control Plan and they are in the process of filling out the forms for that. The land is currently very flat and they will mound it slightly.

There were no remonstrators present.

Mr. Hesser asked if the staff has a different recommendation and Mr. Burrow said the staff feels the petitioner has adequately addressed the issues.

The public hearing was closed at this time.

Mrs. Wolgamood said she wishes every type of these requests the Board approves would look and be operated as well as this one.

Mr. Kolbus said if the Board is inclined to grant it, the Board should adopt the 2nd page as a condition of the approval.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that this request for an amendment to an existing

Special Use for soccer fields (Specifications F - #4) for additional acreage be approved based on the following findings:

1. Will be consistent with the spirit, purpose, and intent of the Zoning Ordinance.
2. Will not substantially or permanently injure the appropriate use of neighboring property.
3. Will substantially serve the public convenience and welfare.

The list of submitted conditions received from the petitioner were imposed as follows:

1. **The size and type of surface for the parking areas.** The parking area will be constructed in two phases. Phase one (1): The parking space themselves and the parkways drives leading to the spaces will be a rugged grass, specifically Kentucky 31 tall fescue grass per recommendation from Zac Reicher Professor/Turfgrass Extension Specialist, Purdue University Dept. of Agronomy. Phase two (2): will consist of adding gravel as the parking “drive” material, which will mimic that of the current Soccer field parking area. Should additional measures be needed in the future as suggested by the Elkhart County Engineering department or other compliance entity then the property owner and the associated soccer leagues will submit the necessary design information for improvements to the parking lot, will secure all necessary permits, will construct and install all improvements in a timely manner.
2. **The ratio used to establish the parking area (staff suggests a minimum of one (1) space for every two (2) players, officials, and spectators.** The parking lot size has been increased (see revised site plan) to include 477 parking spaces.
3. **Buffering along the east property line.** Greg Bowers spoke with most of the residents on the east side and the one resident on the south side of the fields about the need for buffering. These residents were complacent with the existing landscaping and felt the natural west horizon view was pleasant and should not be obstructed.
4. **Hours of operation:** The additional acreage/soccer fields needed are primarily for the Middlebury Youth Soccer organization that has one season from Mid July to Mid October. Practice hours are Monday thru Friday 3:30 p.m. to dusk. Saturday games 8:00 a.m. to dusk and Sunday games 12:00 p.m. to dusk.
5. **Compliance of the curb cut with the Elkhart County Highway Street Standards.** After consultation with Elkhart County Engineering it was decided by the Department that the existing drive should be maintained as presently constructed. Further, should the Elkhart County Engineering Department in the future determine that the increase traffic to this site warrants additional improvements. The property owner and the associated soccer leagues will submit the necessary design information for improvements to the driveway access, will secure all necessary permits, will construct and install all improvements in a timely manner.
6. **Professionally designed and engineered drainage plan and site plan.** The site plan and support document “A” (attached) shows drainage calculations and swell locations based on a 3” rain with 90% saturation in grass areas with minimal traffic, 70% saturation in grass areas with small amount of parking traffic and 10% saturation with gravel areas.

The following conditions from the original Special Use permit were also imposed as follows:

1. Portable restroom to be provided.
2. No lighting of the fields permitted.

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

16. The application of *Ervin & Sue Howard* for a Special Use for a home workshop/business for an embroidery business (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (5,920) to exceed the total square footage in the primary structure (3,900), a difference of 2,020 sq. ft., on property located on the West side of CR 13, 750 ft. South of CR 26, common address of 60171 CR 13 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 #60171CR 13-090824-1*.

There were 8 neighboring property owners notified of this request.

Ervin Howard, 60171 CR 13, Elkhart, was present on behalf of this request. Mr. Howard explained he is applying for a home workshop/business for embroidery and a Developmental Variance to allow for an addition onto the existing building. He and his wife are in agreement with the Staff Analysis.

Mrs. Wolgamood indicated the existing building is 36 ft. by 72 ft. with only one machine in it. She asked why they need that large of a building for one employee and one machine. The petitioner indicated he is semi-retired and his wife does this as a hobby. Mr. Howard uses the building to store his cars and other items he has acquired over the years. He also has a motor home that won't fit in the existing building because of the height requirements.

Mrs. Wolgamood asked what portion of the existing building is used for the business and the petitioner indicated one third. The rest of it is used for domestic storage.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if there are concerns with the accessory building and Mrs. Wolgamood indicated she would rather see them inside of a building rather than outside.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for an embroidery business (Specifications F - #45) be approved with the following conditions imposed:

1. Business to be operated by the owner/occupant of the residence on site.
2. Day and hours of operation to be Monday through Friday, 8:00 a.m. to 5:00 p.m.
3. No signs.
4. No employees who do not occupy the residence on site.

The motion was carried after a unanimous roll call vote was taken.

A motion was then made and seconded (*Hesser/Lantz*) that the request for a Developmental Variance to allow the total square footage of accessory structures (5,920) to exceed the total square footage in the primary structure (3,900), a difference of 2,020 sq. ft., be approved provided the addition is used for personal domestic storage only. After a unanimous roll call vote, the motion was carried.

17. The application of *Leonard Farmwald* for an Appeal to allow for the construction of an accessory structure prior to the construction of a residence on property located on the North side of CR 52, 802 ft. East of CR 100 in Locke Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 52-090824-1*.

There were 5 neighboring property owners notified of this request.

Leonard Farmwald, 29607 CR 52, Nappanee, was present on behalf of this request. Mr. Farmwald explained he is currently renting at his father-in-law's and storing his belongings in their building. He would like to put up an accessory building to store his personal belongings, but the building would later be used as a barn. He plans to build a house in the summer of 2010.

Mrs. Wolgamood asked what type of personal items will be stored and the petitioner said a living room set, kitchen utensils, etc.

Mr. Lantz asked if they plan to move into the barn and the petitioner said no.

There were no remonstrators present.

Mr. Hesser asked if the staff permits people to build residences and accessory structures at the same time. Mrs. Prough indicated she wouldn't release a permit for the accessory building until the house is framed. She explained they run into situations where the accessory building is built, but then the house never gets built.

Mr. Hesser asked the petitioner what his time frame is for building the barn. Mr. Farmwald said he plans to have the barn done by November or December. He would like to get started on the barn and get that paid off so they can continue with the house.

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 Appeal to allow for the construction of an accessory structure prior to the construction of a residence be denied with no additional conditions imposed. A roll call vote was taken and the motion was carried unanimously.

18. The application of *Michael Lewis* for an Appeal to allow for an addition to an existing accessory structure on property without a residence on property located on the Northwest corner of Perkins Street & Ne-Ce-Dah Drive, 535 ft. East of Keltner Road in Concord Township, zoned R-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OPERKINS-090824-1*.

There were 6 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat submitted a packet of information including an aerial photo, a summary of large structures, and facts regarding the accessory building and other accessory buildings in the area *[attached to file as Petitioner Exhibit #1]*.

Mr. Sloat explained he discussed the procedure for this hearing with Mr. Kolbus. The petitioner has re-filed a petition which they feel is a significant substantial change. In order to obtain approval to waive the six month waiting period requirement, there needs to be a unanimous vote for approval.

Mr. Kolbus said the Board must make a determination that they wish to hear this case without waiving the six month period. He feels Mr. Sloat should address the issue of the change and then the Board should make the determination. If the Board doesn't feel it is a unanimous change, then the petitioner would have to wait another five months until it is heard again.

Mr. Sloat said the information he has to present to the Board initially is with respect to the substantiation of why they feel this is a substantial change. He has gone through the property cards at the Assessor's Office and pulled the square footages of the other buildings in the area. Mr. Sloat then reviewed some of the other accessory buildings in the area in comparison to square footages of the owners' residences. The size of the proposed building has been reduced to 60 ft. by 80 ft., which is a 20 percent reduction.

Mr. Hesser questioned the square footage of the house. Mr. Sloat said he thought previously the house was about 2,400 sq. ft., but the petitioner has a finished basement.

He also asked the staff if the appropriate square footage of the house would be 2,400 sq. ft. or 3,832 sq. ft. Mrs. Prough explained the staff would use the square footage of finished living area.

Mr. Homan pointed out the concern in the past has been the visual impact of the building.

Mr. Lantz said he feels this is a significant enough change from the last request.

According to Mrs. Wolgamood, she doesn't feel a 20 percent reduction is a substantial change. She doesn't feel the comparisons of square footages between the house and accessory building makes a difference because this request is not for a Developmental Variance. She feels it is a good reference, but she doesn't feel this would be a substantial change.

Mr. Hesser and Mr. Miller then indicated they feel this is a substantial change.

A motion was then made and seconded (*Homan/Wolgamood*) that the petitioner has provided the Board with more information and this request be considered a substantial change. After a unanimous roll call vote was taken, the motion was carried.

Mr. Sloat then thanked the Board for considering this a substantial change. He would also like to incorporate all of the testimony presented last month into this month's hearing.

Mr. Hesser said he understood this was considered a whole new petition from scratch. He asked to what extent the Board is to consider what was presented before or if all of the previous presentation needs to be presented. Mr. Kolbus said the petitioner's representative would like to incorporate all of the background information by reference and then focus on the change and how that will affect the petition.

Mr. Sloat then explained that the Board's previous concern was that this is an overwhelmingly large building for the area. The square footage multiple on this accessory building in comparison to the other accessory buildings in the area is lower. Mr. Sloat feels the neighbors would much rather see vehicles and other storage inside of a building rather than sitting outside.

The proposed building will have a similar appearance as the petitioner's house. The building will have a shingled roof and there will be shrubs around the building.

Mr. Hesser asked if they plan to put trees along the back of the property and Mr. Sloat said yes. They plan to put in five to six ft. spruce trees on ten ft. centers. He doesn't want to put the trees too close together.

Mr. Sloat explained the change in the conditions is the increase in the size of screening trees and their density. He also indicated there have been several people in favor of this request and the petitioner also had a petition in favor of this request signed that had been previously submitted to the Board at the past public hearing.

Mr. Hesser asked Mr. Kolbus if they can approve this request with a condition stating that both lots are to be sold together. Mr. Kolbus said he can only remember that being done if

the parcels are adjoining. Mr. Sloat said they will offer that to the Board if it makes it easier for approval.

Mr. Miller questioned the tall side wall height and the petitioner's representative indicated a motor home needs to be able to fit in there.

Sally Weirich, 57226 Ne-Ce-Dah Drive, Elkhart, was present in favor of this request. Ms. Weirich explained she lives northeast of the proposed property and directly north of the petitioner's home. She didn't have an objection to the larger building, but she is glad Mr. Lewis has decided to make it a little smaller. She is also glad that he is going to be putting up screening trees.

Mr. Homan asked if she is aware that the request is for a 14 ft. high building and Ms. Weirich said yes. She has no issues with it and she would much rather see vehicles, motorcycles, and boats stored inside of a building rather than sitting outside.

Steve Rose, 24563 Perkins Avenue, Elkhart, was also present in favor of this request. Mr. Rose explained he lives to the west of the proposed property. He feels the petitioner has shown good faith by reducing the size of the building. Mr. Rose indicated he is still in favor of this request.

Karen Lemon, 24531 Ne-Ce-Dah Drive, Elkhart, was present in opposition to this request. Ms. Lemon feels the Board needs to consider that this building fronts the road on three sides. The way Ne-Ce-Dah drive angles with Perkins Avenue, you can see all three sides of this building from any street. She feels the 14 ft. high walls are too high and the building is too big for the area. The other buildings that have been put up in this area are in a woods area, behind the owner's house, or sit far back from the road. She indicated you really have to look to see those buildings and they aren't as visible as this one is from the road.

Mr. Kolbus asked Ms. Lemon if she still has the same objections as she had last month even though the size has been reduced and she indicated yes. Ms. Lemon then pointed out her property on the aerial photo.

In rebuttal, Mr. Sloat explained they are going to grow a woods on this parcel and have screening trees. He assumes the screening would be to Ms. Lemon's best interest because it will block the view from her property. As far as being able to see the property from all three sides, it would be much more pleasing to see this building than to drive by the dilapidated boats every day.

On the original petitioner's conditions from last month, Mr. Homan said the petitioner indicated screening 30 inch trees with 12 ft. centers. When asked what that has been changed to, Mr. Sloat said evergreen trees or Blue Spruce trees will be planted on the north end of the parcel for screening. The petitioner will also plant five to six ft. trees on ten ft. centers between the north end row of trees and trees to the north end of the lot maintaining adequate distance from existing trees to avoid competition.

The Board then discussed the size of the proposed building and sizes and heights of other accessory buildings in the area. When asked about the height of the door, Michael Lewis, 57244 Ne-Ce-Dah Drive, Elkhart, indicated he would like to have a 14 ft. tall door. Mr. Hesser then indicated that the questionnaire indicates a 12 ft. door. Mr. Lewis then indicated he wants the minimum amount that will allow him to pull the motor home inside.

Mr. Hesser said he is trying to get a feel for what the building would look like. Mr. Sloat indicated the door would be on the west side of the building. The petitioner also said the

building will have 14 ft. ceilings with a two ft. peak rise. The petitioner would like to add some windows to give it more of a residential feel.

Mr. Homan asked the petitioner if he will be using metal siding and metal roofing. The petitioner said he will be using metal siding that matches his existing home and he will be using an asphalt shingled roof. Mr. Homan indicated the reason he questioned the roof is because he believes you have to use a certain pitch of roof for shingled roof. If height is an issue with the Board, Mr. Homan asked the petitioner if he could adjust his thinking on the roofing material because a metal roof would have a lower slope. Mr. Lewis indicated he has had more headaches with metal roofs because they tend to buckle and crack. He said they also cost more, but he would consider it because he is tired of paying for storage.

Mrs. Prough said the Elkhart County Zoning Ordinance says that the normal maximum height permitted shall be 18 ft. or one and a half stories above the average level of the ground adjacent to the exterior walls of the building for accessory buildings. However, it also allows for accessory buildings to go up to 25 ft., provided they maintain more of a side yard setback.

Mr. Kolbus suggested the Board specify the height if this request is approved.

The public hearing was closed at this time.

Mr. Homan indicated he is where he was last month and he feels this is a big commercial looking building in the middle of a wide open neighborhood. He doesn't feel he could support this request. He feels the size issue is important as far as the height is concerned. From a construction standpoint, Mr. Homan said your walls typically have to be higher than your garage door. He said when you add the slope of the roof for a 60 ft. wide building, the minimum for a steel building would be 30 inches, which would add another three feet. He indicated the total minimum height would be around 18 feet.

Mrs. Prough said for every foot you want to go over 18 feet, you have to come in two more feet on the side yard setback.

If the Board wants to approve this request, Mr. Homan feels there are construction details that aren't completely addressed yet which he has a concern about.

Mr. Hesser felt the building was too big before and he feels it is still too big. If he lived in the neighborhood, he wouldn't want it built, but he is also taking into consideration that a lot of people were here in support of the request last month and this month. Most of the neighborhood seems like they don't have any objections to this request. In regards to the remonstrator that expressed the concern about the view, he feels that is a real concern and there needs to be a buffer there which has been addressed.

Mr. Hesser is also very concerned that this could easily become a commercial structure. Approving this request doesn't permit a commercial use of the building. The petitioner did offer to require as a condition that the parcels be sold together, which does minimize the concern of what may happen with the building in the future. He is also concerned that the height has increased from 12 ft. to 14 ft.

Mr. Lantz feels the petitioner is making an effort to store his items inside.

Mr. Miller feels this is a pretty eclectic neighborhood for Elkhart County. He feels the petitioner has made an effort to reduce the size and he would support tying the two properties together.

The Board had further discussion about the roof peak at this time.

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

Findings of the Board, and based upon these Findings, this request for an Appeal to allow for an addition to an existing accessory structure on property without a residence be denied. The motion then died due to the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – no; and Hesser – no.

A motion was then made and seconded (*Hesser/Lantz*) that this request be approved based on the following findings:

1. Will not be contrary to the public interest.
2. Will not adversely affect other properties in the same zone or neighborhood.
3. Exceptional or extraordinary circumstances and condition do apply in this case which are unique in nature because the owner owns a parcel on the river and these types of requests have been granted in the past.
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 motion further reflects that the request be approved based on the conditions, limitations, and restrictions as represented by the petitioner and his representative. The approval is also based on the material submitted by the petitioner's representative at the September 17, 2009, Board of Zoning Appeals meeting and the August 20, 2009, Board of Zoning Appeals meeting, as follows:

1. Exterior lighting limited to dusk to dawn lighting.
2. Exterior of building to be compatible with colors and textures of other structures in neighborhood.
3. Evergreen trees will be planted on north end of parcel for screening, 5-6 foot trees on 10 foot centers, between north end of the row of trees and trees to the north end of the lot. Maintaining adequate distance from existing trees to avoid competition.
4. No commercial use is to be permitted.
5. The parcel with the accessory building and the parcel containing the petitioner's home are to be sold together as offered by the petitioner.

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

19. The application of ***Greg Flora*** for an Appeal to allow for the construction of a second residence on a single zoning lot and for a Developmental Variance to allow the total square footage of accessory structures (9,982) to exceed the total square footage in the primary structure (2,800), a difference of 7,182 sq. ft., on property located on the West side of CR 13, 2,250 ft. North of CR 46, common address of 68607 CR 13 in Union Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092078*.

There were 9 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat indicated the petitioner would like to build a new home on this parcel. The new home would be 2,800 sq. ft. and will use the existing driveway. When the new home is completed, the old home will be demolished.

In regards to the Developmental Variance, the petitioner is asking for a difference of 750 sq. ft. In five years when the business is moved over to US 6, the petitioner would like to have a

building back by the new house for storage of his lawn equipment, bicycles, etc. Mr. Sloat asked that the Board approve both of the requests.

Mr. Homan asked if these are deeded as two separate parcels and Mr. Sloat said yes, but the petitioner owns both of them. They are currently being treated as one and the petitioner has no problem combining them if the Board would prefer them to be.

Mrs. Wolgamood asked if the area where the Use Variance was granted is also a part of this entire area and Mr. Sloat said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said he doesn't understand the Developmental Variance staff recommendation and he asked for a clarification. Mrs. Prough clarified that when the auto repair business is no longer operated on site and the Use Variance expires, then that building can be used for storage. When Mr. Homan asked if this is one piece of property, Mrs. Prough indicated that is correct. He asked if the petitioner would need a Developmental Variance anyway for the personal storage buildings. Mrs. Prough said since that was not addressed by the Board at the time when the Special Use for a home workshop/business was granted and approved, the staff didn't feel they could go back and address that. Therefore, the staff was only looking at the new proposed accessory space.

When the original Special Use was granted back in 1999, Mrs. Wolgamood explained they didn't look at the size of the buildings. The Board has only been granting Developmental Variances for about the last six years. She understands what the staff is saying and their reasoning for not addressing that issue.

Mrs. Wolgamood pointed out where the existing Use Variance is being operated and indicated it will become a personal storage building when the business is no longer there. The old house will be demolished when the new home is built if this request is approved. The drawing proportions of the new buildings on the site plan are not correct.

Mrs. Prough said the staff determined they shouldn't make a recommendation on that, but that doesn't mean the Board can't. The request is for the total square footage of accessory structures to exceed the living area by 7,000 sq. ft. She explained that includes the existing accessory structures, the proposed attached garage for the new house, and the proposed accessory structure. All of the structures on site were taken into account.

Mrs. Wolgamood said she doesn't have a big issue approving the Developmental Variance, but her major issue is the demolition of the house. She would feel more comfortable if the petitioner would provide a recorded commitment stating that the house will be demolished upon completion of the new residence.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of a second residence on a single zoning lot be approved with a recorded commitment to be provided indicating that the first residence will be demolished within thirty (30) days of the issuance of the Certificate of Occupancy for the new house. After a unanimous roll call vote was taken, the motion was carried.

A motion was then made and seconded (*Homan/Wolgamood*) that this request for a to allow the total square footage of the proposed new accessory structures (3,550 sq. ft.) to exceed the total square footage of the proposed primary structure (2,800), a difference of 750 sq. ft., be

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

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

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

Mr. Hesser indicated one person spoke at last month's public hearing and that will be taken as part of today's record.

There were 12 neighboring property owners notified of this request.

Barry Pharis, 1009 S. 9th Street, Goshen, was present representing the petitioners. Mr. Pharis explained residential treatment for addiction has a record of success. A record of success by removing the temptations and opportunities for addiction, by functioning on a testing ground for what life will be like without the daily use of drugs or alcohol, and by establishing strength between individuals living closely together and going through the same process or same difficult times. For many addicts, this residential facility will be the first time in many years they have been without drugs or alcohol. Around the country, many residential facilities and sites have been established. Nothing has been locally and nothing like New Day Treatment Center is even close to this community. New Day Treatment Center is established for men over the age of 18 with addictions and a desire to end that addiction in a Christian environment. There will be no preaching and only demonstrated faith.

The proposed treatment center will not treat anyone addicted to opiates or anyone court ordered for treatment. The desire to end addiction is critical for admission into the program. The initial interview will confirm the desire to end addiction and that the patient understands this program is ninety days in length with a twelve month outpatient follow-up program. The patients will not have vehicles and all patients will be driven to the facility.

Once accepted, new patients will be isolated and they will be required to complete an initial evaluation. The evaluation will determine whether or not they are healthy enough to undergo treatment. Hydration will occur to make sure that any drugs or alcohol in their system are eliminated. Another confirmation through drug test will assure they are not addicted to opiates and they will confirm the patient's desire to end addiction.

The staffing will include a minimum of two people on site 24 hours a day, seven days a week, with at least one of them being a registered nurse. The Director of Treatment will be Ron Chupp. Counselors, fitness instructors, and nutrition instructors will be available daily. Sober coaches will be on site day and evening so that no patient will have to wait to talk to anyone about a concern or a problem. Safety and security of the patients, staff, and the neighborhood is important. The home is over 600 feet from the county road and from the closest neighbor, the residence is 250 feet with a stream and a wooded area in between. The patients will be transported to any event they must attend whether it is Alcoholics Anonymous, Narcotics Anonymous, church, doctor, or even to get a haircut. The address of the home is not published and it is not provided on any brochures, literature, letters, or on the website.

The home itself is perfect for New Day Treatment Center. The house has six bedrooms, four baths, and will easily support a maximum of seven patients at the same time. The family

room will be converted to a meeting room and the recreation room will have exercise equipment, ping pong tables, treadmills, and games. There is a sport court located towards the south side of the property. There is also a tennis court and basketball court on site that can be flooded in the winter to become an ice skating rink. Additionally, there is a 3,200 sq. ft. building that is a heated and has an indoor basketball court. The wooded area behind the house is also part of the property in question and includes a gazebo with a swing and a deck for barbecuing.

Mr. Pharis indicated he has tried to answer three questions for the Board. The first question is why residential treatment and the answer is that it is proven to be successful. The second question is why this home and the answer is that the amenities and floor plan are perfect for what New Day Treatment Center would like to accomplish. The last question is what security has been put in place to assist that the patients, staff, and the neighborhood is secure and the answer is that there will be additional security features. There will be video cameras outside and there are intercoms in every room. Every opening in the home will have motion detectors as well. Mr. Pharis indicated he hopes the Board agrees with the staff's recommendation and grants approval of this request today.

Mr. Kolbus indicated the questionnaire states a maximum of twelve patients at one time, but that has been reduced to seven. The kind of patients this treatment center will attract will be professional people such as doctors, attorneys, clergy, educators, or business owners.

Mr. Pharis then questioned the property split and Mrs. Prough indicated this tract is being split off from a larger tract. Mr. Pharis said that is correct and Mrs. Prough said they will have to go through the subdivision process.

Mr. Homan asked where the treatment center anticipates referrals coming from if it is not advertised and promoted. Mr. Pharis indicated it is advertised through the website and there are brochures. Anyone who would fly in would be picked up by a limo at the airport and taken to the site. Anyone local would be picked up and taken to the site because they don't want the patient's vehicles on site. Mr. Pharis explained that even the patient's mail will be sent to a different location and hand delivered to them on a daily basis.

Mr. Homan asked Mr. Pharis if he can speak to the credentialing of the people purchasing the property and running the facility. The petitioner's representative indicated that Ron Chupp will be the Director of Treatment and he is well known in this area for his expertise in that subject. He has a master's degree and a teaching degree from Indiana Wesleyan University. Mrs. Watson is a Registered Nurse and the counselors are primary going through or have gone through addiction themselves. The New Day Treatment Center will be licensed by the State of Indiana and also inspected. The facility has already been inspected to verify that the house meets the state requirements.

Rose Watson, 58317 Oxbow Drive, Elkhart, explained that since starting this project, there have been a lot of professional people approaching her with interest in this because there is nothing in this area comparable. Ron Chupp lives in the community and he has a very long list of credentials. There are two other counselors who work at the Northeastern Center and one that works in Elkhart in a private practice. She has spoken to physicians who are on board with this treatment center as well. She indicated there is a psychiatrist in South Bend who would like to work with the patients. Mrs. Watson said her background includes nursing and she has had a home health care agency for the past 16 years in Elkhart. Addictions are a passion of her's and she feels there is a problem on the rise.

Mr. Homan asked if she has personally worked in a drug addiction program and Mrs. Watson said she worked with the renaissance program that the hospital used to have. She also worked in the Center for Behavioral Medicine for several years.

Mr. Lantz asked how the security will be handled. Mr. Pharis said there will be a security system inside and an alarm will sound whether someone is entering or leaving. There will be video observation outside to see anyone coming or going. If someone gets out, they will know who it is and what door or window they got out.

When someone enters a program like this, they voluntarily want to end their addiction. If they get to the program and the staff asks them to leave, then they will be taken to the airport or wherever they need to go. The kinds of people that will be admitted are not going to try and escape because they want to end their addiction.

Mr. Lantz asked what the cost of the program will be and Mr. Pharis indicated he was unsure. Mrs. Rose then indicated the average cost of this type of treatment in the United States ranges from \$24,000 to \$78,000 per month to stay there. The cost for this particular treatment center will be an average of about \$24,000 a month. The first month is the full rate, but the price drops during the next two months.

Mrs. Wolgamood asked if the exterior of this building will change and the petitioner's representative said no. There will be no signs or anything that will make you think it is an addiction clinic.

Mr. Hesser asked if this is only for substance addictions or if it deals with other addictions such as gambling, etc. Mr. Pharis said it will only be for substance addictions.

Andrew Borkholder, 16769 CR 36, Goshen, was present in opposition to this request. The vast majority of the residents in the surrounding neighborhood are opposed to the zoning change for the drug and alcohol clinic. The main reason is due to safety and security because there are children and people living in the area. His children bike past that property every day on their way to and from school. He knows some of the neighbors have even talked about getting something for personal protection. Secondly, this would be a private facility that would have little or no immediate benefit to the local public. With the information given, they are looking for the people with more money from bigger cities. Mr. Borkholder indicated he was unaware of the security system being installed. Thirdly, some of the neighbors have been asked if they could remove or alter some of the existing structures on their own personal property, so there is a concern about that. Lastly, Mr. Borkholder is considered about property values and there is a local realtor present today who will speak on that issue. He doesn't see how anyone could go to this facility without a compelling reason whether it be pressure from their loved ones or to avoid legal action. He feels the existing community should be protected and he feels the staff was in error when they recommended approval of this request. A copy of a letter in opposition to this request was submitted to the Board at this time by Mr. Borkholder *[attached to file as Remonstrator Exhibit #1]*.

Mr. Homan asked him to point out his property on the aerial photo and Mr. Borkholder indicated he lives south of the proposed property.

Phil Slabaugh, 63189 CR 31, Goshen, was also present in opposition to this request. Mr. Slabaugh explained he spent another night not sleeping well and this has gone on for about two months since they have met with the petitioner. His concerns are for the neighbors and his friends in the county. Mr. Slabaugh is a retired barber and he and his wife own a bed and breakfast. He is really concerned for the safety of their bed and breakfast guests who like to

walk, run, or ride bikes before breakfast. Last weekend, they had a guest who was a Deputy Sherriff for 30 years in a county in Michigan and Mr. Slabaugh told him about the possibility of having an addiction clinic in the area. The fact that the patients don't have vehicles means the patients can't be trusted. The Deputy's comment was that this is not the right location for this type of clinic. It should be located in town close to police, fire, and ambulance services. Another concern he has is that once a property is approved for a clinic, how could it ever be reverted back to a residence. Mr. Slabaugh then submitted a copy of a letter in remonstrance to this request *[attached to file as Remonstrator Exhibit #2]*.

Gary Kuhns, 63701 CR 31, Goshen, was also present in opposition to this request. Mr. Kuhns indicated his wife is unable to be here today, but she is opposed to the request as well. Mr. Kuhns then submitted a letter to the Board which includes a narrative of his presentation *[attached to file as Remonstrator Exhibit #3]*.

Also present in opposition to this request was Maynard Weaver, 63271 CR 31, Goshen. Mr. Weaver explained he has lived in the area for 13 years and most of the neighbors walk, jog, or ride their ponies past there. All of the neighbors know each other and he is concerned about the safety of the people in the community.

Steve and Alice Slabaugh, 63780 CR 31, Goshen, were present in opposition to this request. A packet of information was submitted to the Board at this time including a letter in opposition to the request, photos, and a site plan of the property *[attached to file as Remonstrator Exhibit #4]*. Mr. Slabaugh indicated there is no screen that separates their house from the proposed property. When the question was asked of Mrs. Watson what she will do if the request today is denied, she responded she will just move into the house herself and have guests.

Mr. Slabaugh said he would like to express concern for the safety of his wife, grandchildren, nieces, and other small children who visit his home on a weekly basis. Security is the biggest issue he has with this request.

At the last meeting with Mrs. Watson, she was asked how she plans on keeping the patients off other people's properties and she responded asking how Mr. Slabaugh plans on keeping his people off of her property. He feels the answer was very typical of the many answers she gave that evening. Mrs. Watson made no effort to include any concrete solutions to the security of the neighboring properties, which he feels deserves serious answers.

Mr. Slabaugh asked the Board to look at page four of the submitted packet which shows pictures of the bridge. On August 20, 2009, Mr. and Mrs. Slabaugh left right after the Board of Zoning Appeals meeting to go to Kansas. His son and daughter-in-law were house sitting and while they were gone, Mrs. Watson came to their front door and indicated she would like the bridge to be removed.

Mr. Slabaugh explained their lives have changed since he found out this clinic is going to be next door. He is now taking anti-depressants and many anxiety medications. He and his wife continue to wake in the middle of the night with thoughts of what will happen. They have invested their life savings in their property and putting a drug and rehab clinic next door, he asked what their realistic chances are to ever sell their property for its true value. He has never owned a handgun in his life, but for the first time, he feels the need to purchase one for security of himself and his family.

On June 30, 2009, Mrs. Watson stated at the meeting with the neighborhood that all patients will be screened and no person with a criminal record will be accepted. Mr. Slabaugh asked how many sex offenders and child abusers have not been prosecuted or even turned into

the authorities for their doings. There's not a day that goes by that Mr. Slabaugh doesn't think about what could happen to his grandchildren and the other children in the neighbor.

Mrs. Slabaugh then explained the patients undergoing treatment will experience withdrawal symptoms, which include confusion, agitation, depression, anxiety, etc. There will be conflicts among patients when they have to share the same bathroom. She indicated there are only 3 ½ baths and not four as stated by the petitioner's representative. She is afraid those conflicts will spill out of the clinic and into the neighborhood. Lastly, some of the patients will come to the proposed clinic because they want to be cured of their alcohol problem and others will be persuaded to come because of their urging of loved ones, business partners, or threats of legal action. If you really don't want to be cured, then you are not going to be successful. She is worried about the druggie friends of patients stashing drugs and alcohol on site. Mrs. Slabaugh worries that it may be very easy for a patient to slip out of the clinic at night undetected by using the egress windows and the two basement bedrooms. She worries because there is no police department close and they would have to rely on the Elkhart County Police Department for protection. Fire protection is eight miles away and Clinton Township does not provide its own ambulance service. She feels that a dream of one person may be a nightmare for many others. She asked that the Board deny this request so the neighborhood can have the feelings of peace and safety they once had and deserve.

Mr. Hesser asked how the June 30, 2009, meeting came about and Mr. Slabaugh said he invited Mrs. Watson to meet with the neighborhood group to explain what she is proposing. Instead of her talking to the neighborhood, he feels she talked down to them. Mrs. Watson made them feel like they were nothing.

Dana Miller, 63353 CR 31, Goshen, was also present in opposition to this request. Mr. Miller submitted a letter in remonstrance to this request which included a narrative of his presentation *[attached to file as Remonstrator Exhibit #5]*.

Bob Miller, 63289 CR 31, Goshen, submitted a copy of a letter in remonstrance to this request *[attached to file as Remonstrator Exhibit #6]*.

Mr. Hesser asked the audience if anyone has any evidence stating that the people who will be in this type of clinic will pose a higher risk for the community as far as physical attacks or molestation. There have been several references to it and he asked if anyone has any evidence to back that up. Mr. Slabaugh indicated he spent quite a bit of time on the internet looking for information. Especially in alcohol addictions, it pointed out that many of these alcoholics have other problems with abuse being one of the main ones.

James Miller, 63665 CR 31, Goshen, indicated a realtor is here today and questioned whether the Board would let him speak. The Board indicated they would allow him to speak.

Willie Miller, Real Estate Agent with Willie Miller Realty, was present to give some information to the Board regarding property values. Mr. Miller said he has been involved in real estate transactions for 25 to 30 years. When you take a buyer out to buy real estate, location is very important. A lot of times, people will buy a house in the right location even if the house isn't quite what they like. The residents who spoke today are concerned about their property values.

In rebuttal, Mr. Pharis said each person who came up to speak today talked about safety. They have implied that this is a drug clinic and it should be close to the town by the police department. Drug clinics are not what the petitioner is requesting and this is for a residential treatment facility. Mr. Pharis feels there is a big difference between the two of them. One of the

remonstrators talked about having no vehicles because the patients can't be trusted. He feels that isn't a matter of trust and it is a matter of security and isolating the patient from everything.

There were also some questions about this not being the right location for this type of business. Mr. Pharis explained that the Marriot of Georgia Residential Treatment Facility is in the middle of a subdivision with nothing but houses around it. There was also a question about zoning and how this could ever return to residential if approved. This is not a zoning issue, it is a Special Use and as long as Mrs. Watson owns the property, then it is what it is. As soon as the property transfers to someone else, then the Special Use expires.

In regards to the issue about safety, Mr. Pharis explained the patients are going to be spending \$24,000 a month to end an addiction. They will want to end the addiction and they won't be addicted to the type of drugs that typically create psychotic events. Anyone who has psychotic behavior already can be triggered by any substance abuse. Mr. Pharis believes that opiates are the only drugs that create psychotic actions. These people want to end an addiction. There was a question about the background checks and Mr. Pharis made it clear that in the initial interview, they do not have a court order requirement.

Mr. Pharis then spoke about the background checks and indicated in the initial interview, the staff will confirm the patient does not have a court order. The initial interview will also include a background check.

Mr. Hesser asked Mr. Pharis to specifically describe the background check. The petitioner's representative indicated they will do a formal criminal background check. They need to know they are not bringing in somebody who is court ordered because it could destroy the interaction with six other patients. Mr. Pharis indicated he has details on who can be included, who is excluded, and who gets exited and why. The patient will get a drug test as soon as they come to the treatment center and the staff will expect it to be positive the first time. Anyone who tests positive the second time around will be required to leave.

The type of clients New Day Treatment Center is trying to attract are not the type of people who are wanted by the police for a sex offence or are likely to commit a sex offense. On top of that, there are at least two staff members on site working with the patients 24 hours a day and seven days a week. If anyone leaves the facility after hours, an alarm will alert the staff that someone is leaving. He feels the petitioners are taking all kinds of steps to secure the security and safety of everybody.

In regards to the comments about the bridge, Mr. Pharis explained that word got to the petitioner that Mr. Slabaugh would like to get rid of the bridge. Mrs. Watson went to Mr. Slabaugh's home and told him that if he wanted the bridge gone, then Mrs. Watson would get it taken down. If the Slabaugh's would like the bridge to stay there, then it can stay. The meeting did get pretty testy and there were a few people in the audience who attacked Mrs. Watson, but he felt that some of Mrs. Watson's statements were pretty blunt. He doesn't feel he heard anything really ugly and he doesn't remember hearing the argument regarding what Mr. Slabaugh discussed earlier.

Mr. Pharis feels the issue about lease purchase is a little misleading. The bank asked that it be set up in this way for financial reasons. He feels they will become a good neighbor over time.

Mr. Homan questioned what defines an institution and Mrs. Rose said there are certain guidelines that the State of Indiana sets forth for different levels of residential treatment for

different areas. There are guidelines that one must follow and this is meant to be a sober living home. This treatment center will be privately financed by her and her husband.

Mr. Homan said the representation of clients that the petitioner has proposed is different in representation from what the community believes. As the Board considers this, Mr. Homan asked how they know what the representation of the clients is. Mrs. Watson explained that the state guidelines are very strict on these kinds of things.

Mr. Pharis then submitted a copy of the inclusion/exclusion information to the Board *[attached to file as Petitioner Exhibit #1]*.

Mr. Homan asked if they are self imposed guidelines and Mr. Pharis indicated yes. He indicated they would like those guidelines to become part of the request so that if there are complaints received, the staff will have something in writing.

The public hearing was closed at this time.

Mr. Homan said he is sensitive to the existing property owners in the area.

Mrs. Wolgamood said she can see both sides of this situation. She feels what Mrs. Watson is trying to do is admirable. The petitioners do not plan to change the exterior of the building at all and she feels seven people rather than twelve people is a substantial decrease in numbers. She also sympathizes with the neighbors because she understands there are major concerns. She understands there won't be a lot of vehicles coming and going and under normal circumstances; you wouldn't know anything is going on in that house unless you are an immediate neighbor. After all of the testimony that has been given, Mrs. Wolgamood feels Mr. Pharis has given a detailed explanation of the security which will be on site. She would like to hear the opinions of the other Board members, but Mrs. Wolgamood indicated she would go either way on this request. She doesn't have a huge problem with what is being asked for, but she does see the neighbors' concerns.

Mr. Homan said he keeps referring back to item #1 of the Staff Analysis, which states, "Will be consistent with the spirit, purpose, and intent of the Zoning Ordinance. Institutions for the care of adults are permitted in A-1 zones." When he thinks about that, he asks himself what is reflective of that in our community. It wouldn't surprise him if Oaklawn or a hospital were built on A-1 property because it is an established institution. Mrs. Prough indicated the Elkhart County Zoning Ordinance doesn't have a definition of an institution, so the staff goes to the Webster's Dictionary. That definition states, "An act of instituting, an establishment, a significant practice, relationship, or organization in a society or culture; something someone firmly associated with a place or thing; an established organization or corporation such as a college or university, a specialty of a public character."

As the concept, Mr. Lantz feels the idea of the clinic is a great concept and is a good idea. He can also understand the concerns of the neighbors regarding safety. Mr. Lantz indicated he is concerned that the location may not be right. If he was going to do this in his home and all of the neighbors were totally upset and against it, he's not sure he would follow through with it. The community is not happy with what the petitioner is trying to do.

Mr. Homan said he has heard a couple of times today from remonstrators that if someone breaks out, then where is the closest Sherriff. He indicated if someone leaves, then they haven't broken a law and they have left at their free will. He feels this illustrates the prejudice thoughts the community has about this particular topic. We assume that the specific person who has left the facility is a criminal. He feels this is a well thought out program, but he does have concerns about location. He feels there is so much hatred in community against this program.

Mr. Hesser feels the remonstrator's issues were addressed very well by Mr. Pharis. He indicated he would not object to this use and he feels that the remonstrators may have formed their opinion using assumptions. He feels it would be appropriate to put a time limit review on this request if it is approved.

Mr. Miller said he feels Mrs. Watson has a well thought out plan. He understands the dynamics and the concerns, but he agrees with Mr. Homan's comments regarding prejudice opinions in our community. He believes the dynamics of the community continually change and it is inappropriate for anybody to say we live in a totally safe community. Mr. Miller indicated he can see this plan working.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) the Findings of the Board, and based upon these Findings, this request for a Special Use for an addiction clinic in an A-1 zone (Specification F - #14) be approved based on the representations made by the petitioner with the following conditions imposed:

1. Approval is based on the inclusion/exclusion criteria submitted by the petitioner (see Petitioner Exhibit #1).
2. Approved for a period of one (1) year with a review before the Board of Zoning Appeals at that time.
3. The Special Use is limited to seven (7) clients.

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

*** (Mr. Lantz left the meeting at this time).*

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

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 #20092097*.

There were 14 neighboring property owners notified of this request.

Michael King, 30059 CR 12, Elkhart, was present on behalf of this request.

When Mrs. Wolgamood asked if he had received a copy of the revised staff report, Mr. King said yes. She questioned if anything has changed since he was here last and the petitioner said no.

Mr. King indicated he had every intention of buying a building in a commercial location, but the economy has been very bad.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Special Use for a home workshop/business for the repair of motorcycles (Specification F - #45) be approved with the following conditions imposed:

1. All operation and all storage for the business to be located within the building indicated on the site plan.
2. No more than two (2) outside employees.
3. Hours of operation are limited to Monday through Friday, 9:00 a.m. to 5:00 p.m., and Saturday, 9:00 a.m. to 3:00 p.m.
4. Sign limited to four (4) sq. ft. per side and unlighted.
5. The noise must be contained within the building.
6. Approved for the owner/occupant of the resident on site.
7. Approved as per site plan submitted.
8. Approved for an indefinite period of time with the Special Use to be referred to the Board of Zoning Appeals if valid complaints are received by Code Enforcement.

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

22. The application of *Lavern E. Yutzy* for an Appeal to allow for the construction of a second residence on a single zoning lot on property located on the West and South side of SR 13, 2,200 ft. North of CR 30, common address of 61571 SR 13 in Clinton Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20092040*. She explained this was tabled last month to allow the petitioner to work with the staff and the possibility of having the fee waived for a mobile home Special Use. Mr. Burrow worked with the petitioner and he is here if the Board has any questions. The staff received a copy of a revised site plan, which was included in with the Board's packets. Mrs. Prough indicated that no request for a mobile home Special Use has been applied for.

There were 6 neighboring property owners notified of this request.

Lavern Yutzy, 61571 SR 13, Middlebury, was present on behalf of this request. Mr. Yutzy explained he spoke to the staff about putting a mobile home on the property, but that was discouraged. Due to the cost of foundation, it is not feasible to do that and spend all the money when it will be removed in a few years. Therefore, Mr. Yutzy decided to ask for a permanent structure and attach it to the buggy shop/garage. The permanent structure will be a single family one story residence with one bedroom.

Mrs. Wolgamood asked if he is still requesting a 24 ft. by 38 ft. structure and the petitioner indicated yes.

Mr. Hesser asked what would happen with the house when the father is no longer living there. The petitioner indicated this would help accommodate and provide a restroom and kitchen in order for his family to provide services to the community such as weddings, etc.

Mrs. Wolgamood asked if anything has changed from last month's request apart from the new location of the house and the petitioner indicated no.

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/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of a second residence on a single zoning lot be denied with no additional conditions imposed. A roll call vote was taken and the motion was carried unanimously.

23. The application of *North Side Baptist Church* for an amendment to an existing Special Use for an addition for offices, entryway, and restrooms on property located on the East side of CR 9, 160 ft. South of Meadow Oak Lane, common address of 53198 CR 9 in Osolo Township, zoned R-1/M-2, came on to be heard.

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

There were 39 neighboring property owners notified of this request.

Jerry Krull, 27136 Country Lake Lane, Elkhart, was present representing North Side Baptist Church. Mr. Krull explained the church is requesting to add an addition onto the church which would include bathrooms, offices, and a large lobby. They are in the process of installing a septic system on the site. The septic system calls for 4,500 gallons of water in the septic tank and has a lift pump that takes it clear out to where the field system will be. The location of the lift pump will have a dozer pump with two pumps in it. The field system will be 3,800 sq. ft. The church is also planning to add additional storm retention area, which is also shown on the site plan. They will also be installing two dry wells to help dissipate the water on the parking lot.

Mr. Krull indicated parking is also an issue with this project. With the new addition, they will be losing 24 parking spaces. They currently have 222 spaces, which is very sufficient. They also plan this to add about 55 parking spaces this fall.

Mrs. Wolgamood asked if he has an issue with the buffer, which she explained to him at this time. Mrs. Prough then pointed out on the aerial photo where the buffer would be located. The staff clarified it is the visual impact they are concerned about since additional parking is being added.

Mr. Krull indicated there is a county ditch in the area that had recently been put in. When Mrs. Wolgamood asked how recently it was put in, the petitioner indicated about three months ago.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood feels the church has addressed everything they were asked to do. Her concern is the buffer and she asked if it would be appropriate to include a time limit as to when the buffer needs to be installed.

Mr. Hesser asked the representatives from the church if they have an issue with the buffering and they indicated no.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for an addition for offices, entryway, and restrooms be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted.
2. Buffering to be installed no later than June 1, 2010.
3. All required permits and inspections to be obtained including a Storm Water Pollution Protection Plan (SWPPP) from the Soil & Water Conservation District.

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

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

25. There were no audience items.

26. See page 4, item #10, for the Staff Item regarding *Middlebury Community Schools proposed Ceramics Plaza*.

27. The meeting was adjourned at 2:00 p.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary