

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15th DAY OF APRIL 2010 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Robert Homan, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Lantz*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of March 2010 be approved with the following changes: On page 7, line 3 in the last paragraph should read "...used to be a home on lot 223." Also, in item #14 on page 13, the words "The schoolhouse" should be removed from the last line in paragraph two. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Homan*) that the legal advertisements, having been published on the 3rd day of April 2010 in the Goshen News and on the 4th day of April 2010 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous roll call vote, the motion was carried.

4. A motion was made and seconded (*Homan/Miller*) 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 (*Homan/Lantz*) 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 ***Daniel Castro*** for a 12 ft. Variance to allow for the construction of a residence 38 ft. from the south side centerline of the right-of-way of Knoll Drive (Ordinance requires 50 ft.) on property located on the Northwest corner of Rosewood Drive & Knoll Drive, being Lot 93 of Crestview Subdivision, common address of 59111 Rosewood Drive in Concord Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #59111RosewoodDr-100322-1*.

There were 6 neighboring property owners notified of this request.

David Jarrett, Jarrett Construction, 22196 Lone Oak Lane, Goshen, was present representing the petitioner. Currently, the garage is 38 feet from the south side of the centerline

of the right-of-way of Knoll Drive. The petitioner is asking for a 12 ft. Variance to construct a new building. The old building has been completely torn down and removed due to fire damage.

Mr. Homan questioned if they are using the original footings and the petitioner said no, everything was completely taken out.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lantz doesn't feel there are any issues with this request.

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 12 ft. Variance to allow for the construction of a residence 38 ft. from the south side centerline of the right-of-way of Knoll Drive (Ordinance requires 50 ft.) be approved in accordance with the site plan submitted and as represented in the petitioner's application. A roll call vote was taken and the motion was unanimously carried.

8. The application of ***Jefferson Brethren Church of Goshen, Indiana, Inc.*** for a 157 ft. Developmental Variance to allow for the placement of an electronic message board sign within 143 ft. of a residence (Sign Ordinance requires 300 ft. separation) on property located on the West side of SR 15, 2,700 ft. South of CR 20, common address of 58915 SR 15 in Jefferson Township, zoned B-3, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #58915State Road15-100319-1*. Staff Analysis finding #2 was revised to read "Will cause substantial adverse affect on the neighboring property as the electronic message board sign is located within 300 feet of four residential structures."

There were 14 neighboring property owners notified of this request.

Ron Spyker, Senior Pastor of Jefferson Brethren Church, 58915 SR 15, Goshen, was present on behalf of this request. Mr. Spyker explained they are requesting a 157 ft. Developmental Variance for the replacement of the current illuminated sign. He is asking that the Board grant the Variance in order in for the church to better inform the community of all the opportunities that take place through ministry and mission of the church.

The church has been at its present location since 1968 and it has been through an initial building process. There have been two additional expansions since then and the third expansion may lie in the near future.

Mr. Spyker feels the times have changed as well as some of the technology. One of the dramatic changes that has taken place in the last two decades is they are no longer an oral society. He feels we are a visual society that likes to see things. People are attracted to things that are flashy and draw attention to the eye.

Jefferson Brethren Church houses the Jefferson Township food pantry, which usually provides dry goods and canned goods. Every now and then, the pantry has pastry products and bread available. The church has no way to inform people of the days those items are available. The Jefferson Township Ambulance Service donated \$1,200 to the food pantry fund. The church would have liked to been able to put a thank you message on their sign.

In the summertime, the church offers a day camp program that allows their children to be involved in 4-H, swim times, and day trips. It would be nice for the church to be able to

advertise that program, as well as the preschool. Throughout the school year, they offer four to five classes of two different age groups for preschool. The church would like to do announcements from 6:00 a.m. to 9:00 p.m. and the rest of the time it would display the name of the church, and possibly time and temperature. The sign would be dimmed in the nighttime hours below the 500 NIT regulation.

Mr. Spyker said there are pre-existing signs in neighborhoods, but he realizes most of those were installed before the Sign Ordinance came into affect in August of 2009. He asked if everyone from that point forward who wants a sign is disallowed simply because of locations. If they could move their whole facility to a new location that is 300 feet from any residence, then that might be an option, although it is not viable. There are four of five residences within the 300 ft. radius, so he contacted all of them apart from one and nobody had an objection to this request.

Mrs. Wolgamood asked if the current sign is lighted all night long and the petitioner said yes. When she asked if it flashes or scrolls, Mr. Spyker said no. On the proposed sign, the church would like to have scrolling with some images, but no flashing.

Mrs. Wolgamood questioned when the sign would be dimmed at night. Mr. Spyker said 6:00 a.m. to 9:00 p.m. the sign would be advertising church activities. After 9:00 p.m., the lights would all be dimmed and the wording would be parked to "Jefferson Brethren Church" with the service times, and possibly time and temperature. He said they may be able to scroll the time and temperature underneath the "Jefferson Brethren Church" wording. Mrs. Wolgamood commended the petitioner for talking to neighbors regarding this request.

Mr. Homan asked if the lighting will be a specific color and Mr. Spyker said it will be multi-colored.

Mrs. Prough said the staff wasn't previously aware that the church would be willing to have the sign parked in the evening.

Eric Huber, 18586 CR 18, Goshen, was present in favor of this request. Mr. Huber explained he belongs to this church and they do a lot of services for the community that people don't hear about. He feels having the electronic message board would be a good idea.

At this time, Mr. Spyker submitted a copy of his presentation for the record *[attached to file as Petitioner Exhibit #1]*.

The public hearing was closed at this time.

Mr. Hesser said the concern he has with these types of sign is traffic. He feels electronic message boards have a lower visual impact than a regular sign. He is concerned because Elkhart County adopted a specific rule last August and that is what the Board is subject to. The Elkhart County Sign Ordinance focuses more on not having signs in residential areas and he feels this area is very residential.

Mr. Lantz feels this wouldn't have a big impact on the traffic because drivers already have distractions such as GIS systems, cell phones, radios, and other people talking in the car.

In the past when the Board has approved these signs, Mr. Hesser said they usually put a condition on the approval regarding the frequency of when the sign changes because that makes a big difference in distractions.

Mrs. Prough indicated the Elkhart County Sign Ordinance prohibits flashing.

The Board questioned what type of message will be displayed and the frequency it will change. Mr. Spyker said one of the reasons they want this size of a sign is to allow them to display a message on the screen and leave it there, which would eliminate scrolling. They plan

to put the whole message on the display screen and leave it there for about five seconds, and then the next announcement will be another whole message.

Mr. Miller said he understands the regulation as it's written, but he doesn't feel this is a mega church. This is a church serving the community in a residential area. He feels this situation is a bit more unique than a business wanting to put a sign in a residential area. If the sign is going to be dimmed and not flashing, then he doesn't struggle with the church having the ability to get their messages out to the public.

Mrs. Wolgamood agreed and said she doesn't have any issues with this request. The property is in a B-3 zoning district and it is not in a residential zoning district. She feels the only signs of this type the Board has had issues with are the ones they didn't require to have dimmed at night. If the petitioner is committed to dimming the sign at night between the hours of 9:00 p.m. and 6:00 a.m. and they agree to not have any scrolling, then she doesn't have any issues with the request.

Mrs. Prough indicated the Sign Ordinance already states that electronic message board signs have to be dimmed to 500 NIT's at night. She also suggested the hours for the sign to be dimmed at night be between 8:00 p.m. and 6:00 a.m. There was a similar request approved at the Hearing Office meeting yesterday and she feels the Board may want to be consistent with the times required for the signs to be dimmed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the revised Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 157 ft. Developmental Variance to allow for the placement of an electronic message board sign within 143 ft. of a residence (Sign Ordinance requires 300 ft. separation) be approved with the following conditions imposed:

1. The electronic message board is to be turned off between the hours of 8:00 p.m. and 6:00 a.m.
2. The messages are to be displayed in a complete phrase rather than having scrolling.

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

Mrs. Prough questioned whether the sign has to be completely turned off between 8:00 p.m. and 6:00 p.m. and Mr. Lantz said yes.

9. The application of **Dale R. & Esther E. Borkholder** for a Use Variance to allow for the construction of a second residence on a single zoning parcel on property located on the Northeast corner of CR 50 & CR 117, common address of 21407 CR 50 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 #21407CR 50-100318-1*.

There were 3 neighboring property owners notified of this request.

Mrs. Wolgamood asked if all of the building permits issued on April 10, 2006, were issued to Mr. Borkholder as the landowner, and Mrs. Prough said yes.

Lamar Borkholder, petitioner's brother, 20736 CR 50, New Paris, was present representing Dale & Esther Borkholder. Mr. Borkholder explained the petitioners would like to

build a new house. They currently live in the shop house and would like to remain there until the new house is built.

Mrs. Wolgamood asked if the petitioners want to keep the bathroom and the kitchen in the shop house and Mr. Borkholder said yes. When she asked if that would be an issue with building codes or zoning, Mrs. Prough said no, as long as it's not being lived in.

Mrs. Wolgamood asked if his brother is aware of these deadlines (completing the house and converting the shop/residence into an accessory building by October 31, 2011) and Mr. Borkholder said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lantz said he doesn't feel there are any issues with this request.

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 Use Variance to allow for the construction of a second residence on a single zoning parcel be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The new residence is to be completed and the existing shop/residence is to be converted into an accessory structure by October 31, 2011.

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

10. The application of **John A. Bontrager** for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence and for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of an accessory structure on property located on the North side of CR 14, 3,145 ft. East of SR 13 in Middlebury 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 #OCR 14-100312-1*.

There were 5 neighboring property owners notified of this request.

John Bontrager, 2525 S 1125 W, Millersburg, was present on behalf of this request. Mr. Bontrager explained the reason he would like the accessory structure is to keep his lawn maintenance equipment on site. He is trying to clean up the property and make it look better in order to increase the property value.

Mr. Homan asked the petitioner if he was aware of the Elkhart County Ordinance regulations regarding accessory buildings or road frontage. Mr. Bontrager said no and indicated this is all new to him. He wasn't aware of anything until he came in to attempt to get the permit for the accessory building.

Mr. Hesser asked where this property is located and the petitioner said it is east of SR 13 and CR 43 is the next road east.

When questioned how long he has owned the property, Mr. Bontrager said since March of 2008. Mr. Homan noted the property looks like farmland on the aerial photo. The petitioner

explained it is currently farmland and he plans to keep it that way. He planted a lot of trees around the edges of the property to improve the look of the site.

Mr. Homan asked if the parcel of land to the south used to be part of the proposed parcel and Mr. Bontrager said yes.

Mr. Hesser explained the Board very rarely grants these types of requests unless there is a plan in place to build a house on the property, or if the petitioner owns a residence that is adjacent to the proposed property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan feels the Zoning Ordinance is specifically written to not allow accessory buildings and there is also a frontage issue.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence and for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of an accessory structure be denied. A roll call vote was taken with the following results: Homan – yes; Wolgamood – no; Lantz – no; Miller – no; and Hesser – yes. The motion did not carry.

Mrs. Wolgamood said in most instances, the Board looks at requests asking for much larger buildings than this. The petitioner is asking for a 12 ft. x 20 ft. building, which is 240 sq. ft. In reality, the petitioner could put up two 10 ft. x 12 ft. buildings and be perfectly legal.

Mrs. Prough said if the buildings are for personal storage, then he couldn't build them without a house there. She indicated a 10 ft. x 12 ft. building would require an Improvement Location Permit.

Mrs. Wolgamood then retracted her prior statement. Nevertheless, she feels this is a very small building. The petitioner purchased the property in 2008 and he admittedly said it was purchased by someone else prior to that. They now have this piece of property with adequate road frontage and all the petitioner needs is a 3 to 1 depth to width ratio Variance to build a house on it. In saying no to the three to one Variance, she feels the Board is saying no to allow for a residence on that property.

Mr. Hesser said the request is not for a 3 to 1 depth to width ratio Variance to build a house. Mrs. Wolgamood indicated if the three to one Variance is granted, then it would be automatic. Mr. Hesser said he feels the focus of this issue would be the accessory structure.

Mr. Homan said the Developmental Variance is a little confusing when the Zoning Ordinance text amendment adopted in 2002 encourages parcels to be configured with 250 ft. of road frontage. He noted that if the property had 250 ft. of road frontage, then it wouldn't matter how deep the lot is. He explained he is not going to support the Use Variance, but he might support the Developmental Variance if there is a reason to do so. He feels whoever created this flagpole lot made a mistake.

Mr. Hesser indicated he doesn't agree with flagpole lots, but the Board has approved several of them. He feels it would be premature to approve this request without a site plan indicating location of where the residence would be located.

A motion was then made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a

Use Variance to allow for the construction of an accessory structure prior to the construction of a residence be denied. The motion was carried with a unanimous roll call vote.

Secondly, a motion was made (*Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, the request for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of an accessory structure be denied.

Mr. Hesser then suggested tabling the request for the 3 to 1 depth to width ratio Variance pending additional information. He is not prepared to vote on this request without seeing a site plan showing a proposed location for the house.

Mr. Homan withdrew his motion at this time.

A motion was then made (*Hesser/Miller*) that the request for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of an accessory structure be tabled.

Mr. Homan said if the Board tables this request indefinitely or if it were to be denied, he asked if it would be permanently denied. Mr. Kolbus said the new Rules of Procedure indicate the petitioner would need to wait 12 months to re-file.

Mr. Kolbus said the request today is for the accessory structure site plan. If this request is denied by the Board, the petitioner could re-file for the house if the Board would consider the house to be a major change. He indicated they are considered two significantly different things, which would not require him to wait the 12 months to re-apply. Mr. Hesser asked if the petitioner would have to pay another fee and Mr. Kolbus said that is correct.

Mrs. Prough said the Board would have to make the decision as to whether it was a major or a minor change after the petitioner submits documentation. If it was considered a major change, then the petitioner would need to re-apply and pay a new fee.

Mrs. Wolgamood explained she was unaware that the 3 to 1 Variance pertained to anything other than a residence. Mrs. Prough said since this is a personal domestic storage building, then the 3 to 1 Variance comes into play. If it were for an agricultural building, then he would not need the 3 to 1 Variance.

If the Board were to grant the 3 to 1 Variance, Mrs. Prough said the petitioner is still under the restriction that he would have to go through the subdivision process. After everything was done and recorded, then he would be alright to continue. If not, there is a restriction that you have to start building within 90 days or have a recorded lot subdivided.

Mrs. Prough suggested tabling the request if the Board feels this would be looked at differently if it were a house. The Board could request that the petitioner come back with a site plan showing the proposed residence and review it at next month's meeting.

Mr. Homan asked the petitioner what his timeline is for building the new house. Mr. Bontrager said he's hoping within one or two years when he is financially capable to do so.

If an amendment increases the intensity of a use or substantially affects the proposal in any way that is less restrictive, then Mr. Kolbus explained it should be treated as a new application. He indicated the Board is to make that decision.

At this time, Mr. Hesser withdrew his motion to table this request. There were no objections to the withdrawal.

Mr. Hesser feels this request is premature and he would not support a 3 to 1 Variance without knowing what the site plan is.

Mr. Homan asked Mrs. Wolgamood if it would save the petitioner time to go through the subdivision process. Mrs. Wolgamood feels it would save the petitioner time because if he was approved for the 3 to 1 Variance today, then he would have to go through the subdivision

regulations, which is a two to four month process. The petitioner has indicated he is not financially ready to do that, so she doesn't feel it would have much of a benefit at this point.

A motion was then made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, and the request for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of an accessory structure be denied. After a unanimous roll call vote was taken, the motion was carried.

11. The application of *AMMF Trustee Corporation Trustee* for a renewal of an existing Special Use for a home workshop/business to fabricate enclosed shipping crates and residential trim molding (Specifications F - #45) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of CR 100, 388 ft. North of CR 52, common address of 71428 CR 100 in Locke 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 #71428CR 100-100322-1*. Staff Analysis finding #2 for the Developmental Variance was revised to read "Will not cause substantial adverse affect on the neighboring property. The replacement of the old structure will be an improvement to the property. The proposed structure will be constructed in accordance with State and local building code standards."

There were 8 neighboring property owners notified of this request.

Charles Zercher, Attorney with Kindig & Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Zercher explained Mr. Farmwald is the owner/occupant of the residence and he is the land contract buyer from AMMF Trustee Corporation. The original Special Use for a home workshop/business was approved in November of 2007. The motivation for being here today is the Developmental Variance for the new structure. The location of the property is west of Nappanee and north of CR 52 on CR 100.

The current work area is congested from the standpoint of moving supplies around. Mr. Farmwald primarily makes crates to house portable water drums for the U.S. Government. With the size of the crates, it makes it difficult to move around in the current building. The petitioner is proposing to replace the current hog barn with a structure of the same length, but 20 feet wider extended out to the north. The eastern 20 feet of the new structure would be set aside for horses and agricultural use.

There is currently a gap between the hog barn and the present shop, which is now enclosed on the back and used for personal storage. The petitioner's intention is to fully enclose that area so there would be a continuous structure all the way through. This would make it much more efficient for Mr. Farmwald to move his equipment around in the building. Mr. Zercher explained there won't be any change or expansion in operations. This request is only for the expansion of the building to make the petitioner's business operations more efficient and to keep everything stored inside as much as possible. He indicated Mr. Farmwald is present in the audience if the Board has any questions for him.

Mrs. Wolgamood questioned Mr. Zercher's statement of keeping everything inside as much as possible. Mr. Zercher clarified all of the moving of inventory and storage would be done inside of the building.

Mr. Hesser asked if the current shop area would be used for storage only and Mr. Zercher said Mrs. Prough said the petitioner is going to continue to use the shop building as he's using it now and the new expansion will be for storage.

David Farmwald, 71428 CR 100, Nappanee, clarified the proposed building would be ten feet wider and not 20 feet as stated by Mr. Zercher. The current shop is 30 ft. x 40 ft. and they are proposing a 40 ft. x 56 ft. expansion to that building.

Mr. Farmwald explained if you look at page 4 of the information included with the Board's packets, it shows the enclosed area he is using for storage. The 16 feet of storage would move right beside the 20 feet for the horses and horse stalls. There will be 16 feet on the west side of that which will be used for storage, which is how the building is currently situated. Mr. Farmwald indicated the only difference would be they will be putting doors on it. Overall, everything will be shifted down and there will be no outside storage.

Mrs. Wolgamood questioned if this will become part of the shop and everything to the east of that will become storage, with the exception of the 20 easterly feet for the horses. Mr. Farmwald indicated that is correct.

Mrs. Wolgamood questioned the crushed stone turn-around area and asked if that is existing. Mr. Zercher said that is something that is possible and the area could be used for that in the future if necessary.

She then asked how the semi's get in and out of the property and Mr. Zercher said they use the lane to back in and out.

Mr. Homan asked the petitioner if he has semi tractors coming into the property and Mr. Farmwald said no, just trucks at this time. The trucks can pull into the property, turn around, and drive back out onto the road.

There were no remonstrators present.

The conditions were questioned by Mr. Hesser. Mrs. Prough explained the staff recommended the Board approve the request as per site plan submitted, which should be the new site plan after improvements, and as represented in the application. She didn't feel the staff needed to reiterate those conditions, but the Board can always add those back.

Mr. Hesser asked if the staff feels there should be a renewal and Mrs. Prough said no.

Mr. Homan asked if it would be appropriate to add a condition stating that there be no semi tractor trailer deliveries unless there was a turn-around on site. Mrs. Prough indicated that would not be a problem.

Mr. Zercher questioned if that would mean no semi traffic at all, or they would be permitted if the petitioner provides a turn-around. Mr. Homan feels if there is a turn-around adequate for a tractor trailer, then the Board would probably say that is fine. At this point, it is not represented on the site plan, so the Board has to state no semi tractor trailers at all. The petitioner could also ask for amendment to his site plan in the future.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board adopt the revised 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 to fabricate enclosed shipping crates and residential trim molding (Specifications F - #45) be approved as per site plan submitted and as represented in the petitioner's application with the following conditions imposed:

1. No outside storage of anything related to the business.

2. Exterior lighting shall be restricted to security dusk-to-dawn lighting.
3. No exterior loud speakers allowed on the premises.
4. One (1) sign, four (4) square feet per side and unlighted.
5. No retail sales.
6. The number of employees limited to four (4) part-time or two (2) full-time equivalents who are not residents of the property.
7. The residence on site to be occupied by the owner/operators of the business.
8. The petitioner is to maintain the screening of evergreen trees.
9. The hours of operation shall be Monday through Friday, 2:00 p.m. to 6:00 p.m.
10. No semi deliveries to or from the property are allowed to occur.

The motion further reflects that the request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved as per site plan submitted. All required permits and inspections to be obtained. A roll call vote was taken and the motion was unanimously carried.

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

12. The application of **Larry E. & Doretta S. Miller** for a renewal of an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45) on property located on the West side of CR 31, 1,775 ft. South of CR 14, common address of 56331 CR 31 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #56331County Road31-100322-1*.

There were 6 neighboring property owners notified of this request.

Larry Miller, 56331 CR 31, Goshen, was present on behalf of this request. Mr. Larry Miller explained he is asking to renew his application for a home workshop/business for a woodworking business.

Mr. Homan asked if there have been any material changes in terms of operation since the business began and the petitioner said no.

The petitioner has a sufficient turn-around on site and Mr. Homan indicated he has support from the neighbors.

Mrs. Wolgamood questioned the definition of wholesale crafts and asked what the petitioner makes. Mr. Larry Miller said jewelry boxes and some small bedroom furniture.

She also asked where Mr. Elmer Yoder lives and the petitioner pointed out his property on the aerial photo. He also pointed out the Obren's property on the aerial photo, which is just across the street to the south.

Mrs. Wolgamood pointed out that several trees have been planted since the last time the petitioner came before the Board.

She asked Mr. Larry Miller if he stores the forklift inside now and he indicated yes. The location where the horses were before is where the forklift is being stored now. Everything related to the business is now being stored inside.

Arlene Obren, 56452 CR 31, Goshen, was present in favor of the request. Mrs. Obren explained she lives caddy corner to the petitioner. She feels the petitioners are good neighbors and hard working people. She explained you would never know there is a business there.

The public hearing was closed at this time.

Mr. Homan feels the petitioner is operating within the restrictions of a home workshop/business.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45) be approved in accordance with the site plan submitted and as represented in the petitioner's application with the following conditions imposed:

1. The business shall be occupied by the owner/occupant.
2. To be in compliance with the definition of a home workshop business.

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

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

13. The application of **Lloyd & Martha Yoder** for a Special Use for a schoolhouse (Specifications F - #38) on property located on the South side of SR 4, 1,160 ft. West of CR 37 in Clinton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OSR 4-100319-1*.

There were 10 neighboring property owners notified of this request.

Mervin Stoltzfus, 61921 SR 13, Middlebury, was present representing the petitioners and the Amish Community. Mr. Stoltzfus explained the community has another schoolhouse not far from this location which is getting overcrowded. They won't have 40 students right away, but they plan to have that many in the future. At this point, they would have 25 students who would occupy the school.

Mrs. Wolgamood questioned the teacher's quarters they would like to have in the building. Mr. Stoltzfus said there are Amish girls teaching schools and sometimes they have to travel a distance. The school would provide a sleeping quarters for three nights out of the week on the second floor.

She asked if there will be kitchen facilities and Mr. Stoltzfus said there will be kitchen cabinets, a fridge, and a stove. There would also be bathroom facilities in the building.

When asked by Mr. Hesser if the barn is an existing building, Mr. Stoltzfus said no, there aren't any existing structures on the property. The barn would be used for the children's ponies and horses, and to store a lawn mower.

When the teacher's quarters were questioned, Mrs. Prough said the staff reviewed that and they don't have any issues with it providing the petitioners obtain all of the proper permits. They will be required to go to the state and meet the building code requirements.

Mr. Stoltzfus then indicated they are working with Barr Design Group on the plans they will be sending to the State.

There were no remonstrators present.

The public hearing was closed at this time.

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

of the Board, and based upon these Findings, this request for a Special Use for a schoolhouse (Specifications F - #38) be approved in accordance with the site plan submitted and as represented in the petitioner's application. All required permits and inspections are to be obtained. After a unanimous roll call vote was taken, the motion was carried.

14. The application of **Jacqueline R. Wetter** for a Special Use for an indoor kennel for cats (Specifications F - #15.00) on property located on the Northeast corner of Sunbury Drive and CR 18, 437 ft. West of CR 3, common address of 57974 Sunbury Drive in Baugo 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 #57974SunburyDr-100312-1*.

There were 22 neighboring property owners notified of this request.

Jacqueline R. Wetter, 57974 Sunbury Drive, Elkhart, was present on behalf of this request. She works for a veterinarian and fosters and rescues cats, which she said she's been doing at this location for 16 years. She said she was not aware she needed a permit to do this.

When asked where she gets the cats, Ms. Wetter said from the vet hospital as people will drop them off outside and leave notes. She has also taken in cats for people who couldn't take care of them.

Ms. Wetter then submitted three letters in support of this request *[attached to file as Petitioner Exhibits #1, #2, and #3]*. Two of the letters are from her neighbors, Steven & Sharon McCloughan and Andy Brower. The third letter is from the Baugo Township Fire Department.

Mrs. Wolgamood questioned the number of cats she currently has and the petitioner said 25. She said the most cats she's had at one time was 42, and once they are old enough, the cats are spayed, neutered, and vaccinated. She then sees how they react with the other cats and dog in the house so she can place them in proper homes.

When Mr. Hesser asked if most are placed in homes, Ms. Wetter said yes; however, she has 15 that are permanently at her residence, which she's had anywhere from ten to 18 years.

Mrs. Wolgamood asked what she does with the waste and Mrs. Wetter said she cleans the litter boxes daily and it goes in her trash.

Present in support of this request was the petitioner's mother, Marsha Williams, 55890 River Shore Lane, Elkhart, who said she takes care of the cats when Ms. Wetter goes out of town. If you would walk in Jackie's house, she said you would never know she has a cat. She said the petitioner cares for these cats on her own and doesn't ask anyone for money to help with the care of these cats.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an indoor kennel for cats (Specifications F - #15.00) be approved in accordance with the site plan submitted and as represented in the petitioner's application. The motion was carried with the following results of a roll call vote results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – yes; and Hesser – yes.

15. The application of *Gerald & Shari Snider (lessor) and CST Tower Holdings, LLC (lessee)* for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the 250 ft. East off of CR 13, 600 ft. South of CR 38 in Harrison Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 13-100322-1*. The first sentence of Finding #2 in the Staff Analysis was revised to read, "Will not cause substantial and permanent injury to the appropriate use of neighboring property." One (1) letter in opposition to this request and additional articles regarding the dangers of cell phone towers from Carl and Stacy Walker were submitted to the Board at this time *[attached to file as Staff Exhibit #2 & 3]*.

There were 19 neighboring property owners notified of this request.

Sean Boylan, CST Tower Holdings LLC, 323 South Hale Street, Suite 100, Wheaton, Illinois 60187, was present representing the petitioners on behalf of this request. Mr. Boylan explained that they are requesting a 250 ft. lattice type tower to be located on Mr. and Mrs. Snider's property. He said they do meet or exceed all of the development use requirements set forth in the Elkhart County Zoning Ordinance. The staff recommendation noted that the Indiana Tall Structures Act would need to be required and met, and Mr. Boylan submitted a copy of the FAA's Determination of No Hazard to Air Navigation for 255 ft. *[attached to file as Petitioner Exhibit #1]*, which he received yesterday. He said the Indiana Tall Structures Act only requires that you make filing with the local airport if you are within five miles and they are six miles from the airport so the Indiana Tall Structures Act does apply to this site.

Mr. Miller asked if this tower has a potential for co-habitation and Mr. Boylan said yes. He said the tower is capable of holding four carriers, which is the reason they are asking for the additional 50 ft. There is no tower within four miles of this site so he said they are trying to service SR 119, which has nothing between Wakarusa and Goshen. In the past, he said they have been able to structurally enhance their sites so if a fifth or sixth carrier comes to them, they would not refuse them collocation.

Mr. Homan asked how many towers their company has in Elkhart County. Mr. Boylan said he's not sure as he's only a representative for the company and not an employee.

Mr. Homan commented that there have been petitioners come before the Board saying they are a wireless provider and they would like to collocate; however, the tower near their location is too cost prohibitive or too restrictive so they're not able to collocate. Just because they're available for collocation, he wonders if they actually do collocate. He also asked how much capacity is used on the industry's towers for collocation.

According to Mr. Boylan, the difference between a tower company verses a wireless carrier that represents they will allow co-location on their towers is that the wireless carriers are all competitors. It's not that the wireless carrier won't collocate, but he said they make it a very expensive process whereas a tower company looks at it more from a real estate investment perspective and it is to their best interest. In Tab 4 of the materials submitted with their application, he said CST does represent with a collocation commitment that if a wireless carrier meets the reasonable terms that are set forth with industry standards, they will make every attempt to allow them to collocate on their tower.

If they only received permission to construct a 200 ft. tower, which would eliminate the collocation issue, Mrs. Wolgamood asked if the tower would still be built. Mr. Boylan said it

would make it tough from a marketing standpoint, especially when there is not a tower within four miles. With a 250 ft. tower, he said the carriers would be at 250, 240, 230 and the bottom at 220 ft. A 200 ft. tower would have carriers at 195, 185, 175 and the bottom at 165 ft. so there would be a difference of about 60 ft.

Mr. Boylan then asked the Board how to approach the maximum height, which he's never seen. Originally, he said he had filed for a variance, but then was told the variance was not necessary. Mrs. Prough explained that they could not process a variance because it's not in the actual ordinance. There is a tower policy, but she said we can't make exceptions or variances from a policy. When the policy was written, she believes it was written with the Tall Structures Standards in mind, which Mr. Boylan has indicated they do not need to comply with due to the location of this proposed tower.

Mrs. Wolgamood said the Special Use would allow the Board to place reasonable conditions and Mrs. Prough said that is correct.

In defense of the additional 50 ft., Mr. Boylan said one of the nice things about having one tower servicing that entire location is that there should not be a need for additional towers. If they were limited to 200 ft., he said another tower may be needed in the future.

Stacy Walker, who lives three houses from the proposed tower location at 23794 CR 38, Goshen, addressed the Board at this time. She explained that she and her husband sent in a letter in opposition to this request (see Staff Exhibit #3), and she is also present on behalf of the neighbors on both sides of her property and directly across the street. She also submitted a letter in opposition to this request from Crist and Marianne Helmuth who reside at 23805 CR 38, Goshen *[attached to file as Remonstrators Exhibit #1]*.

Mrs. Walker said they are concerned about how close this tower will be to their homes. This is farmland, but she said there is a very clear line of site as they can easily see the Snider's property and the pond from her backyard. She then explained that her grandfather and their next door neighbor's son both have defibrillators and some of these devices are affected by some of the signals. According to Mrs. Walker, her grandfather cannot use a cell phone or lean over a running car so they are trying to find out if having this site so close to their home will interfere with these devices.

Mrs. Walker explained that they purchased this property a year ago hoping to have her grandfather live with them in the future and they are remodeling the home accordingly. Initially they didn't think much about it when they learned this tower was going to be there, but they became more concerned when they tried to find out what some of the dangers were. They've tried to call different organizations to see if they can verify whether or not they are safe, but she said there are no studies that show the long-term effects of people living so close to these towers. She did say there are some health issues such as Leukemia and lack of production in dairy cows that come with living near some of these towers.

This is a very large tower and Mrs. Walker said there is another tower located five miles away. Some of her neighbors are opposed to this request for aesthetic reasons because they don't want to have to look at this every day, but she is more concerned about health. She said the neighbor who submitted the letter did not purchase other houses they looked at prior to buying the house across the street from her because they either had electric lines running through the property or a cell phone tower nearby.

Although the proposed tower might benefit some, Mrs. Walker said they have a high concentration of Amish who do not use cell phones in the area. She also pointed out that the

tower located on CR 36 and SR 119 is farther away from houses with the closest building being a business. There is a lot of vacant farmland in the area and they feel the cell phone company could find another tract of land to lease for the tower that wouldn't be as close to all of the residences in this area. She said they bought their property so their children could have farm animals for 4-H, and they bought it without all of these structures and potential dangers.

Mrs. Walker reiterated that there are no studies to show what living near a tower is going to do to your health over time or how that will affect the defibrillators. Those devices are very new and they have the capability of shocking your heart so she's very concerned about how this proposed tower can affect her grandfather long-term. They know the Sniders will probably have a monetary benefit from this and she said they are not opposing this to hurt them in any way, they are just trying to keep their family safe.

Mr. Boylan said he understands and sympathizes with Mrs. Walker's concerns. He knows that CST has identified this location and he said they went through rigorous negotiations and attempts to find multiple landowners who were willing to lease land to them. The statement in Mrs. Walker's letter that the Federal Telecommunications Act of 1996 prohibits zoning jurisdictions from prohibiting cell phone towers based on health effects because they are regulated by the FCC is correct. He said licensed carriers do spend billions of dollars operating underneath those specific frequencies. Mr. Boylan said he really can't address a health concern question when there has not been a lot of discussion and decision made on it, especially when the remonstrator has admitted in her own research on the Internet that there is no conclusive evidence one way or another as to health benefits or detriments.

Mr. Miller asked how a location is determined for a tower and Mr. Boylan said CST received information from the cell phone carriers that there is a hole in this area. As you are collocating on existing structures, he said it creates a donut in the middle, which is where there is coverage needs. He is not familiar with the tower five and half miles away, but he said there is a monopole tower at SR 19/SR 119 and a self-support tower a little farther north with three or four carriers. Between those two towers, he said there are probably five or six different carriers so that is probably the closest location some of these carriers are on right now.

Mr. Miller asked if there is some latitude as to where a tower can go and Mr. Boylan said yes, but he doesn't know what latitude. He was given a center of a search ring and this area was in the middle of it.

The staff was then asked by Mr. Homan if the County has looked into the health impact from radio frequencies. Mrs. Prough said Mrs. Wolgamood worked on the development of the Tower Policy so she could address that question. However, she said the draft of the new zoning ordinance proposes that towers will be permitted in certain zoning districts with setbacks and a maximum height of 199 ft.

Mrs. Prough then asked if this tower is sending and receiving signals or just receiving and Mr. Boylan said it's sending out signals. If it's just receiving, Mrs. Prough said there may not be as big of a health issue, but she can't answer how much research was done concerning health issues when the policy was written and Mrs. Wolgamood interjected that it didn't come into play.

Mr. Kolbus then reviewed the Telecommunications Act that was referenced, which says, *"No state or local government, or instrumentality thereof, may regulate the placement, construction, and modification of the personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with*

the Commission's regulations concerning such emissions." Mr. Boylan has stated they comply with their emissions requirements so he said the Board cannot regulate on that basis and that may be why they didn't look into the health issue.

If the new zoning ordinance was in affect today, Mr. Hesser said this would still require a variance of 50 ft. and Mrs. Prough said that is correct because there is a standard that the tower cannot exceed 199 ft.

Mr. Boylan then noted that the map is a little deceiving as the standard for setback requirements from adjacent properties in R-1 zones is one and a half times, which is 375 ft. They are 565 ft. so they are a little over a tenth of a mile from the residences on CR 38 so he said the tower is not right next door.

When asked if they have given any consideration to placing the tower anywhere else on the property such as down off of SR 119, Mr. Boylan said no because the proposed location is where the landlord wanted it. He explained that they have two people they have to satisfy; the first to get the lease is with the landlord. They have guidelines they have to follow within the zoning ordinance in order to dictate to them where it can go, and at that point, they say where they want it to go ultimately. In this case, he said the tower is separating the pasture from the farm field.

Mr. Lantz asked if the landlord would be more flexible if the location were turned down; however, Mr. Boylan said they meet or exceed all of the requirements for the special exception under state law, which makes it a permitted use.

The public hearing was closed at this time.

Mrs. Walker said the Sniders rent the entire property out for agricultural use so she doesn't feel they will be impacted because they do not live on the property.

During discussion, concerns were expressed with the proposed height of the tower due to aesthetics, health concerns of the neighbors, and the distance from the western border of the property, which is not much more than the height of the proposed tower. However, it was pointed out that moving the tower farther east does not address the neighbors' issues, and that the health impact is regulated by the FCC so the Board has no legal standing.

Mr. Kolbus advised that the Board has the right to make their decisions on traditional zoning criteria including aesthetics, but they cannot effectively prohibit them from filling a coverage gap. He then cited a case out of Indiana that says, "*The petitioner has to demonstrate it's the only feasible plan for filling a gap and no other solutions*" so he said it gets into exact location.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the revised Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a wireless communications facility (Specifications F - #31.50) be approved in accordance with the site plan submitted and as represented in the petitioner's application. All required permits and inspections are to be obtained. A roll call vote was taken and the motion was carried unanimously.

16. The application of **Matthew & Jodee Moseng** for a Special Use for warehousing and storing of excavating equipment in an A-1 district (Specifications F - #44) on property located on the East side of Old Farm Road, 400 ft. South of CR 6, common address of 53076 Old Farm Road in Cleveland Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #53076OldFarmRd-100322-1*.

There were 13 neighboring property owners notified of this request.

Matthew Moseng, 53076 Old Farm Road, Elkhart, was present on behalf of this request. He would like to start a small excavation business, and he explained the equipment he would be using is small and compact. Some future equipment he may purchase would also be small in scale. According to Mr. Moseng, this causes less impact on the environment with regards to compaction of the soil, it leaves minimal damage, and it keeps down the actual cost of the excavation work. Mr. Moseng feels this business will provide a smaller, lighter type of excavation work for the community. The type of work he plans to do is sidewalks, driveways, tree removal, and backfilling with the largest job being a crawlspace.

The petitioner indicated that he submitted photos of his equipment with his application, which illustrates the type of equipment he will use. He said all equipment will be kept inside a locked facility. The staff then submitted the photos to the Board for review *[attached to file as Staff Exhibit #2]*.

Mr. Moseng described his equipment as a Ford pickup truck, an excavator backhoe, and a 24 ft. trailer. The equipment is currently being kept inside his 22 ft. x 27 ft. attached garage, but he said it is cramped. His proposal is to construct a 32 ft. x 33 ft. building in the back with ten (10) ft. sidewalls, which he said includes a porch to give the building a home aesthetic look. The building will have the same siding, roofing color, and window type as the present home.

Based on the site plan, Mr. Miller asked if he currently backs out or pulls out onto the county road. Mr. Moseng said he can come in forward, turn around and back into the garage so he is able to drive forward out onto the street.

To clarify pick-up and deliveries to the site (#14 in questionnaire), Mr. Moseng explained that he would leave in the morning with the equipment to go to the job site, then he would return in the afternoon or evening after the workday is done.

When Mr. Miller asked if there is just one overhead door, the petitioner said there will be a 12 ft. x 10 ft. door and an 8 ft. x 8 ft. door. When asked if would be able to keep all of his equipment inside, he replied yes.

At this time, the petitioner submitted three (3) letters in support of this request from neighbors who were unable to attend today's meeting. The letters are from Ed Fry *[attached to file as Petitioner Exhibit #1]*, Kevin Foy *[attached to file as Petitioner Exhibit #2]*, and Benjamin and Lynette Joy *[attached to file as Petitioner Exhibit #3]*.

Present in support of this request was Barry Vitou, 53097 Old Farm Road, Elkhart. He said he lives directly across and a little south of the petitioner and the location of his property was then pointed out on the aerial photo. Mr. Vitou said he has lived in this area and has known the petitioner for many years. Mr. Moseng is very honest and he said he is the first person in the neighborhood to give you a hand if you need something. He feels this proposed business will be a benefit to the neighborhood rather than a hindrance.

Gary McAllister, 53135 Old Farm Road, Elkhart, was also present in support of this request. His property is located about four lots south of the petitioner on the west side of the road. He said the petitioner has been in the neighborhood for quite a few years and he is an asset to everybody. Mr. Moseng has been working on his business plan for a year now and he wants to do something that is beneficial. His property is one of the cleanest in the neighborhood and he

takes good care of his equipment, and Mr. McAllister said any building he puts up will be very neat and tidy. He then indicated that the petitioner's Kabota tractor fits inside his garage so he is not talking about large, heavy equipment. It's his feeling that this will remain a small operation by doing some of the things that some of the excavation companies will not take on.

Last to address the Board in support of this request was Clarence Mosing, who lives on the curve at 53166 Old Farm Road, Elkhart. Matthew Moseng is his son and he said the work he does in keeping up his property is tremendous. When his son says he will do something, Mr. Moseng said he knows he will do it.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said his only concern would be backing the trailer in the driveway into the building, but since this is a side street and a smaller trailer, he doesn't think it is material to the function of the property.

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 warehousing and storing of excavating equipment in an A-1 district (Specifications F - #44) be approved in accordance with the site plan submitted and as represented in the petitioner's application. The motion was carried with a unanimous roll call vote.

17. The application of *Leonardo & Citlali Gallegos* for a Special Use for a home workshop/business for car repair (Specifications F - #45) and for a Developmental Variance to allow for the total square footage of existing accessory structures to exceed the total square footage in the primary structure on property located on the South side of SR 4, 450 ft. West of CR 29, common address of 16902 SR 4 in Elkhart 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 #16902SR 4-100322-1*.

There were 13 neighboring property owners notified of this request.

Citlali Gallegos, 16902 SR 4, Goshen, was present on behalf of this request. She said they do not feel their shop will cause any damage to the zoning area as there is an auto repair shop less than a mile away and other types of businesses in the area. She also said the closest neighbor they have is 400 ft. away. According to Mrs. Gallegos, the purpose for buying this property is because this is the location they chose for the business. They will start out small and they eventually hope to grow into a larger company if given the opportunity.

Mrs. Wolgamood asked if the proposed business will be operated in the existing building and Mrs. Gallegos said yes. She said the pole barn is already heated.

Mr. Hesser then clarified that what they are adding is additional parking area and the petitioner said yes; however, she indicated that would be done in the future.

When asked if Leonardo would be running the business and repairing the automobiles, Mrs. Gallegos again said yes.

In discussing the location and size of the proposed sign, Mrs. Gallegos said it would be placed on the wall of the building, but they have not decided on the size. The petitioner was advised that they would have to comply with the sign standards for a home workshop/business, which is four square feet per side.

Mrs. Wolgamood then questioned the use of the two small storage buildings on the east side of the property. The petitioner said they currently have chickens and they are used for storage.

When Mr. Homan asked if the business is already in operation, Mrs. Gallegos said they are doing auto repair now. She explained that they applied for their EIN and Tax ID numbers the same day they applied for a permit, but they thought it was just a matter of filling out paperwork and didn't realize they had to go through the zoning process.

The number of customers they serve in a week's time was also questioned and Mr. Gallegos, who was in the audience, said five to ten.

Mr. Homan explained that one of the critical aspects of a home workshop/business is that everything is stored inside. He asked if they've been able to store all vehicles inside the building. Mrs. Gallegos said the building has the capacity to store an average of 12 vehicles inside, but they think it can hold more. If approved, she acknowledged they will have to comply with that requirement.

It was pointed out that the staff photos show three or four vehicles that are parked outside. While reviewing the photos with the Board, Mrs. Gallegos explained which vehicles they own and those that are on the property to be repaired.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan asked the staff if an auto repair business is looked at differently than other home workshop/businesses if it operates within the parameters of a home workshop/business. Mrs. Prough said it's not looked at differently as they still have to meet the requirements of a home workshop/business; however, when you get into auto repair, she said you usually are not going to be able to have everything stored inside. Mr. Hesser agreed, but he said the petitioner has represented that they can keep all of the vehicles inside.

Mr. Homan recalled the petitioner's testimony is that they want to be successful and they want to grow, which will be difficult on their home workshop restriction. If inclined to approve this under a home workshop/business, he suggested they impose a timeframe for review. He also feels they need to discuss the difficulty in enforcing those restrictions.

If granted, Mr. Kolbus recommended they grant it in accordance with the site plan submitted because that shows outside parking and storage.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for car repair (Specifications F - #45) be denied with no additional conditions imposed. The motion was carried with the following results of a roll call vote: Homan – yes; Wolgamood – yes; Lantz – no; Miller – yes; and Hesser – no.

A motion was then made and seconded (*Wolgamood/Homan*) that the request for a Developmental Variance to allow for the total square footage of existing accessory structures to exceed the total square footage in the primary structure be approved. After a unanimous roll call vote was taken, the motion was carried.

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

18. The application of ***Patricia Gottschalk & William Wroblewski (buyers) and Nancy A. Stetz (seller)*** for a Special Use for a home workshop/business for mechanical and electrical repair of automobiles, boats, recreational vehicles and trucks (Specifications F - #45) and a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the South side of US 20, 1,000 ft. East of CR 23, common address of 19018 US 20 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #19018US 20-100322-1*.

There were 14 neighboring property owners notified of this request.

Attorney Charles Grodnick, 228 W. High Street, Elkhart, was present representing Nancy Stetz on behalf of this request. He said the emphasis on the business is absolutely over-emphasized as opposed to what the purchaser intends to do with this structure. He indicated that he has a PowerPoint presentation, but Mr. Wroblewski, the purchaser of the subject property, and Karl Graber, his contractor, will address the Board before he finishes the presentation.

William Wroblewski, 18025 Commercial Avenue, Lansing, IL, said he intends to use the building as a retirement project base and to store everything he has accumulated, which includes a camper, boats, jet ski, motorcycles, and antiques. He never really had an idea to do a business, but when he talked to the staff about this workshop, he didn't want to say there would never be someone else coming in. This will not be an advertised business, and he said he would not be bringing in cars, trucks, boats, etc. into this location to do work for other people. If that did happen, Mr. Wroblewski said it would be on a very limited basis. He then described his work as rebuilding antique tractors and agricultural equipment.

Next to address the Board was Karl Graber of Pacemaker Buildings, 101 Acorn Street, Syracuse. He indicated that his company has a contract to construct the proposed building if this request is approved. He then submitted numerous photos to the Board *[attached to file as Petitioner Exhibit #1]*, which includes photos of several post frame buildings to illustrate the type of building being proposed, and photos taken from the proposed building site so the Board could have a better perspective of where the proposed building will be located and how it will affect the surrounding neighbors.

According to Mr. Graber, the proposed building is the same type of building a farmer would construct for an agricultural use or machinery storage. It is very similar to a lot of the buildings in the surrounding area. The roof on the house is also in disrepair so he said the color and scheme will be done so the buildings match and the property will be aesthetically pleasing.

Mr. Graber said the petitioner has a lot of hobbies and the building will be large enough for him to keep everything inside. He feels it is much more beneficial to have someone apply for an oversized building and do things right rather than having things sitting all over the property. This building could be used as a farm shop should someone purchase the property in the future, and he also said it would be good for RV storage. The size and nature of the building fits this 14 acre parcel very well and there is still a lot of open space as the building will sit farther off the road than the surrounding residences.

In conclusion, Mr. Graber said the petitioner is being upfront about his building with the Board, and he pointed out that this type of building would be far less intrusive than other permitted uses such as a 3,000 sq. ft. duck barn. He feels Mr. Wroblewski is trying to be very

conscientious in the placement and the overall aesthetics of the building to make sure it is an asset for him, as well as for the surrounding neighbors.

Mr. Grodnick said this property has been owned by his client and her family for 55 years. It is located near the busy intersection of US 20 and SR 15, and what was once a rural highway is now traveled by trucks, trailers being pulled by commercial haulers, and other assorted commercial and private vehicles. The front of Ms. Stetz's house is less than 150 feet from the fog line of the present road, and when that road is expanded to five lanes, a great deal of the front yard will be taken. He feels that makes it a little problematical as far as the agricultural/residential, and he said it should be obvious to all that the character of this parcel and the surrounding land will change forever.

Mr. Grodnick went on to say that Ms. Stetz has agreed to sell the land to Mr. Wroblewski and Ms. Gottschalk who want to move to the Elkhart area from Illinois. The use of the building would be to store boats, jet skis, antique motorcycles and machines, campers, and other assorted motorized toys. In addition, Mr. Wroblewski is a "tinkerer", and if someone would come in and ask him to work on something, he wants to be able to do it with the proper permits so he applied for the home workshop/business permit.

According to Mr. Grodnick, there will be no outside storage and no sign. The main reason he wants to construct the building is for storage of his personal items. He will not have employees and there will be no advertising. He said Mr. Wroblewski intends to use the building for projects in his retirement.

At this time, Mr. Grodnick used a PowerPoint presentation to show a picture of the existing house and explained the new building will be constructed to the back of the property on the west side. He indicated the building will most likely not be seen from the road. The next photograph was of US 20 showing how busy it can be with commercial traffic. Mr. Grodnick explained, three-tenths of a mile down the road from this property is an ATV fix-it business where he saw a flatbed stored outside.

Mr. Grodnick played a video of the traffic that goes by the house. It showed trucks, including a concrete truck going by, as there is a concrete plant at the intersection of US 20 and SR 15, just east of this property.

Mr. Grodnick continued by showing pictures of the surrounding area. He talked about a structure on the northeast corner of the intersection. Mrs. Wolgamood asked which intersection and Mr. Grodnick said US 20 and SR 15 which is east of this property.

Mr. Grodnick continued showing pictures of surrounding properties such as Circle L, the Fix-it business and a Speedway station.

Mr. Grodnick stated he feels the Special Use for a home workshop/business would be consistent with the spirit, purpose and intent of the Zoning Ordinance because the activities and storage will be inside. It will not cause substantial and permanent injury to the appropriate use of neighboring property. The fact that the ATV fix-it business is so close to this property seems to contradict the staff analysis for this area. He explained the proposed use is not a business. They may do an occasional job for someone else. Mr. Grodnick feels it will serve the public convenience and welfare as it will preserve this 14 acre parcel in its present condition as you would hope to have in this location.

Mr. Grodnick also feels the Developmental Variance will not be injurious to public health, safety, morals or general welfare. The buildings that will be constructed will be a lot nicer than what was shown earlier in his presentation. He also feels the proposed use and

building will have a positive affect on the neighboring property. He disagrees with the staff analysis stating the use will not result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance. The staff indicated the petitioner can still use the property for agricultural/residential purposes. Mr. Grodnick feels that is wrong, especially residential use, given the character of the neighborhood.

Mr. Grodnick explained US 20 has become a major thoroughfare and it is now going to be widened. This property has been on the market for several years and Mr. Wroblewski and his fiancé want to purchase it. Ms. Stetz is an artist and she will have an art studio in one of the buildings on site. The 14 acres will suit his needs, and renovation of the house and pole buildings will be attractive and complement one another. There are many houses and manufacturing plants that are empty, and he said many of the Elkhart County tax sale parcels have no bids. Mr. Wroblewski wants to purchase this property, construct a reasonable building, renovate the house, move in, and pay taxes in Elkhart County. As a citizen of Elkhart County, he said he is excited to find someone who finds Elkhart County a desirable place to live and wants to move here.

In conclusion, Mr. Grodnick believes that denying this petition would be short-sighted and unfair, both to the seller and the purchaser, and he asked that the Board grant this request to the petitioners.

Mrs. Wolgamood questioned the percentages of the building that will be used for personal storage and business. Mr. Grodnick said it will all be used as personal storage as Mr. Wroblewski will have a workshop there to work on his things. If someone asks him to rebuild a vehicle for instance, he supposes he will use the same workshop, but he doesn't expect the petitioner will have two vehicles that he is working on there at one time. He then estimated four or five percent usage if there is a project going on with the rest of the time being zero percent.

Mr. Homan questioned the purpose of the home workshop/business because there will be no sign or employees and he doesn't advertise. He may once in a while do some work for someone he meets or knows here, and he questioned if that is a business. He feels the issue here is the Developmental Variance.

Mrs. Wolgamood agreed, but most likely, when the petitioner talked with the staff, they were probably trying to cover all bases. She feels it would be stretching it for the staff to classify this as a home occupation.

Mrs. Prough said the petitioners asked to construct the two buildings and the staff questioned their use. He said he wanted to have personal storage for all of his items, but he also indicated he wanted to do repair for others. When you start bringing in people for repair, it is no longer a home occupation, it's a business. The Developmental Variance was the main issue, but she said that evolved into work for other people. It was then clarified that even if this was not a request for home workshop/business, it would still require a Developmental Variance because it exceeds the total square footage of the residence.

Larry Berkey, 19106 US 20, which is adjacent to the east of the property in question. He is not concerned about the proposed buildings they want to construct because he has toys as well, but he has had heavy equipment in the past and it is very hard to get out onto US 20. His property exits to the south and west and he can come out on CR 23. They are going to build a five lane highway and he understands it will be like US 33 with a turning lane in the center. Because of the traffic, Mr. Berkey said his children go east and down to the corner where they turn around and go west.

According to an article in the Elkhart Truth on March 4, 2010, Mr. Berkey said there are 21,000 cars a day traveling US 20. Although there will be a turning lane, there are two lanes you will have to cross. There has been multiple accidents at CR 23, which “T’s” out to US 20, and a school bus has been hit in past years. At 8:00 a.m., Mr. Berkey said traffic is backed up to SR 15 past his property, and again at 4:00 or 5:00 p.m. He’s looking at this in terms of public safety and he feels this is just another accident waiting to happen. Although the petitioner’s intentions may be good, he is concerned it may open up a window for more traffic, especially if you are pulling trailers.

Also present was Darwin Getz, 18957 US 20, Bristol, whose property is located on the northeast corner of US 20 and CR 23. He is confused about the Developmental Variance and asked if they are rezoning this property from A-1 to another zoning district. He asked if they will be selling the property for development to build more houses there. He was misled as he thought this garage would be for car, truck and boat repairs, and his other concern is if there will be a lot of blacktop and cement added. He explained that his property is on low land with a ditch going across US 20 on both sides of his land and into Indian Creek. The ditch is full, and he said they have a lot of water running off since they did the intersection. He has water problems now and he said he doesn’t need any more.

Mr. Getz said Ms. Stetz has been a good neighbor, and if approved, he hopes the new owners will be as well. He doesn’t agree with her attorney because there are some nice areas and buildings in the area.

Mr. Kolbus then clarified that this request is not a rezoning and the A-1 zoning will remain in place. They have asked for a Special Use, which is an exception to the zoning. He explained that A-1 allows certain uses, and a Special Use only allows you to pull a use out of another zone and put it in this A-1 zone. It is not for a residential development, it is for a large structure for the storage of his personal property that he will be working on, in addition to occasionally working on objects for other people.

Michael O’Bryan, 56734 Sapphire Blvd., Elkhart, addressed the Board about the article about the widening of US 20 on March 4th in the Elkhart Truth. He explained that this was an economical development meeting in which the vice-president of the public policy for the Elkhart Chamber of Commerce said this widening is obviously the first phase, there are also more long-term benefits. Those benefits include improved infrastructure, it allows more rapid business expansion and growth, which is something the Chamber hopes to see happen along the highway. Mr. O’Bryan said this is probably the first time the Board has been approached by someone wanting to do a business in this location, but after US 20 is widened, he thinks they will see more requests of people wanting to expand business along that highway. He does not feel what the petitioner is requesting will be a major issue.

In response to drainage, Mr. Grodnick said the rules are that you have to hold your own water so the petitioner couldn’t put water on anyone else’s land.

Mr. Graber then indicated that the parking area will be limestone and will all drain to the south.

Mr. Grodnick went on to say that INDOT will look at the traffic safety, but essentially, the traffic going out will be the two people living where no one is living there now.

Mr. Homan asked why he needs two buildings and Mr. Wroblewski said he will use the one building as a garage. He said he wants to keep it away from the rebuilding work he’s doing

because there is saw dust that would go all over the units. They were going to try to put it all in one place at first, but the location of the septic system would not facilitate it.

When the eave height of the two proposed buildings was questioned, Mr. Graber said the small building by the house is 12 feet, which will be for personal storage. The shop is a 17 ft. eave, which allows a 16 ft. clearance with 14 ft. doors. He said anything can go in there, which is the type of building they do for any kind of storage building for a motor home.

Mr. Homan asked the petitioner if he has a motor home and all he has now is a 26 ft. hobby trailer; however, he said they were thinking of getting a larger one.

The public hearing was closed at this time.

Mr. Homan feels the home workshop/business seems a little sketchy. He doesn't know if it would be better for the petitioner to have it or not have it.

Mrs. Wolgamood said when she initially reviewed all of the information, her first thought was this operation is way too large. The petitioner has indicated this will be on a very small scale. She doesn't feel either one of the remonstrators are against the construction of the buildings. The petitioner has also indicated he will have no outside storage, no signs, and no employees. Due to the five lane expansion, she feels it does change the character of the neighborhood. Mrs. Wolgamood said she doesn't have a huge issue with this request.

Mr. Homan said the intensity of this proposed use is much less than some of the other home workshop/business requests the Board has had. He feels the land use impact will be negligible. When a Special Use for a home workshop/business is approved, the petitioner must live within the restrictions of the Special Use, but they also have rights to the definition of a home workshop/business. He questioned whether the Board could restrict the request to the petitioner's representation of having no employees, no signs, etc. Mr. Kolbus said the Board could state those specifically as additional conditions.

Mrs. Prough indicated the petitioner will get approval through INDOT for existing or a new driveway. She said the Board could place a limitation on the request that they are not to have a new driveway.

Secondly, Mrs. Prough said there is a potential for having a restroom in the accessory building being used for the home workshop/business, but that would be subject to Health Department approval.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that this request for a Special Use for a home workshop/business for mechanical and electrical repair of automobiles, boats, recreational vehicles and trucks (Specifications F - #45) be approved based on the following findings:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance as the petitioner has indicated that all storage will be located inside the building.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring property due to the widening of US 20 and the close proximity of other larger buildings and commercial activities in the area.
3. Will substantially serve the public convenience and welfare by allowing the buildings to be used for the home workshop/business occasionally to do occasional jobs for others, as represented by the petitioner.

The following conditions were imposed:

1. No outside storage.
2. Approval is to be obtained from the Elkhart County Health Department for the bathroom.

3. No signs permitted.
4. No employees.
5. The existing driveway is to be utilized with permission from INDOT or the Elkhart County Highway Department.
6. Approved in accordance with the site plan submitted and as represented in the petitioner's application, except as modified in the motion.

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

A motion was then made and seconded (*Wolgamood/Lantz*) that this request for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be approved based on the following findings:

1. Will not be injurious to public health, safety, morals or general welfare by allowing the construction of two oversized buildings (an excess of accessory square footage of 5,000 sq. ft.) in this agricultural/residential area.
2. Will not cause substantial adverse affect on the neighboring property.
3. Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance due to the character of the neighborhood and the widening of US 20.

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

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

19. The application of ***Jonathan Stahr (lessor) and Bonnie Barrett (lessee)*** for a Use Variance for a tattoo studio in a B-2 district on property located on the East side of Charles Street, 150 ft. South of Vistula Street (SR 120), common address of 102 Charles Street in Washington Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #102CharlesSt-100224-1*.

There were seven (7) neighboring property owners notified of this request.

Present on behalf of this request was Carl Barrett representing Boardwalk Studios and Boardwalk, Inc., located at 102 Charles Street, Bristol. The property is owned by Jon Stahr who he said resides in Florida. Mr. Barrett explained that Boardwalk Studio is owned by Bonnie Barrett and has been in this building since 1996. Boardwalk, Inc., the tattoo parlor, has been there for about five years and he said this is an art studio where they do body art.

Evidently, Mr. Barrett said they were turned in by a competitor who used to work for them. He said they were not aware they were not zoned correctly to have a tattoo parlor there; therefore, they are asking for a variance so they can continue operating the business. According to Mr. Barrett, the tattoo parlor employs about five people and Ms. Barrett's studio employs four. There is also an awning business in the rear of the building with one employee. They are bringing business into the community and he said they have never had any problems there whatsoever.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she is familiar with Bristol and it took her a while to realize there was a tattoo parlor there. She commented that most tattoo parlors are in commercial zones and

she noted there is no school in this area shown on the zoning map. There's one church within the circle, but she said it's on the west side of SR 15 and no one is here to speak against it.

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 a tattoo studio in a B-2 district be approved in accordance with the site plan submitted and as represented in the petitioner's application. A roll call vote was taken and the motion was unanimously carried.

20. Mrs. Prough presented a written commitment for ***Carl L. & Mary H. Jones, Trustees of Jones Revocable Trust*** to the Board for approval. She explained that a Variance was granted to allow for the construction of an attached carport on this property, which is located on the South side of 1st Street and the North side of 2nd Street, 95 ft. West of Heaton Vista in Osolo Township. The Board requested that a commitment be prepared and recorded with the following conditions imposed:

1. The structure is to remain a carport and not be enclosed in any way.
2. The carport is to be removed from the property when Mary H. Jones no longer resides at this site.
3. The carport is to be constructed as represented by Mr. Fireline.

Mrs. Prough said this commitment has been reviewed by the staff and they request that it be approved and signed by Mr. Hesser.

Mrs. Wolgamood moved to approve Written Commitment 2009-01412 dated March 24, 2010, from Carl L. & Mary H. Jones, Trustees of Jones Revocable Trust, as written and submitted. The motion was seconded by Mr. Miller and carried with a unanimous roll call vote.

21. Mr. Watkins reported that several meetings were held on Monday (April 12) for the proposed zoning draft, and he thought those meetings were fairly well attended with 18 to 30 people at each session. The maps were on display throughout the day, and because the issue of village communities was discussed with Middlebury, he said a map of Middlebury was also drawn up for their input. He's considered doing maps of Wakarusa, Millersburg, Bristol, and the other communities we do the zoning for so in the interim we can get their input as to where they feel village communities and those types of uses might be appropriate to help us with the maps. He feels there were a lot of good comments made throughout the day and he said those comments are being considered.

22. The meeting was adjourned at 12:39 p.m.

Respectfully submitted,

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary