

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19th DAY OF AUGUST 2010 AT 8:45 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, Tom Lantz, Doug Miller, and Robert Homan. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Administrator; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Wolgamood/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of July be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Miller/Wolgamood*) that the legal advertisements, having been published on the 6th day of August 2010 in the Goshen News and on the 9th day of August 2010 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.
4. A motion was made and seconded (*Homan/Wolgamood*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Homan/Wolgamood*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.
6. There were no postponements of business items.
7. The application of **Lavern & Kathryn Whetstone** for a Special Use for a kennel with indoor pens and outdoor runs in an A-1 district (Specifications F - #15.00 & #15.10) on property located on the South side of CR 22, 200 ft. West of CR 35 North, 900 ft. South of CR 18, common address of 14304 CR 22 in Middlebury 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 #14304CR 22-100706-1*.

Mr. Hesser corrected the date of July 17, 2010, under History in the Staff Report to July 17, 2008, for approval of the roadside stand, which Mrs. Prough then verified as the correct date.

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

Present on behalf of this request was Attorney Theora Ohaneson from Graber Law Firm, 114 S. Main Street, Middlebury. She submitted to the board a booklet of various documents pertaining to this request *[attached to file as Petitioner Exhibit #1]*. Included in these documents were signatures in support of this request, a letter from the Veterinarian Hilary Reinhold, USDA Certification, Board of Health Registration, various photos, and remedies for noise.

Ms. Ohaneson explained the petitioners moved to this property in May of 2010. Prior to that time, they did have a kennel at their previous property on CR 106 in Middlebury. When the petitioners moved, the dogs were unfamiliar with their new home and there was some barking going on. All of the neighbors have signed a petition indicating they have no issues with the petitioners having the dog kennel at this location. Veterinarian Hilary Reinhold has also written a letter stating that the petitioners do take care of their dogs and they do a good job.

If this request were denied, Ms. Ohaneson indicated it would greatly impact the petitioners' income. Mr. and Mrs. Whetstone have put two sound barriers up and they are in the process of putting a fence around the entire area where the dogs are. The petitioners feel the strict application of the Zoning Ordinance would result in difficulties for them because this operation is half of their income. They have two children, ages 10 and 8, who are very involved in helping with the kennel operation, and also a 4-year-old daughter who helps socialize the puppies.

The petitioners do not feel there will be an issue with noise once the sound barrier is in place. They want the kennel operation to stay quiet and they don't want to disrupt the neighborhood. The petitioner has a USDA Certification and also a Board of Health Registration. Some of the photographs show the temporary sound barriers that have been put up, but the petitioners plan to have the sound barrier placed around the entire area.

The petitioner has 14.75 acres and the kennel operation is located in the middle of the acreage. The closest neighbors have all signed a petition indicating they have no objections to the request. Ms. Ohaneson indicated the birthing of the dogs would be done inside a building. Mr. and Mrs. Whetstone moved to the property in May of this year and have not had a chance to install the metal fence with sound barriers. She noted the fence would be similar to the ones installed on highways. They plan to have the fence installed within the next 30 to 60 days and they would be willing to perform a sound check once it is in place.

Mr. Hesser asked where the petitioners had the kennel prior to this location and Ms. Ohaneson indicated it was at 11205 CR 16, Middlebury. When he asked if the kennel was approved at that location, the petitioners' representative indicated they were unaware they needed permission from the Board of Zoning Appeals.

Mr. Hesser also asked how long they have operated the kennel and Ms. Ohaneson said three years.

When the petitioners' representative was asked how many adult dogs there are total, she indicated 30 dogs and sometimes more. They plan to have 30 to 60 dogs once the new building has been constructed. She also noted that the pictures show the size of the dogs.

Mr. Hesser asked if the response for question #10 on the questionnaire was correct as it stated they would only be selling six puppies per year. Ms. Ohaneson said the petitioners don't sell more than six puppies retail because the majority of them are sold wholesale. They have stores outside of the State of Indiana where they sell dogs to.

Mrs. Wolgamood asked if there is a time frame for installing the noise barrier and Ms. Ohaneson indicated they could have it put up within 30 to 60 days. The more time they have, the larger they can make the sound barrier. There will also be trees placed all around the outside of the area. She also noted the property is taken care of very well.

Marvin Miller, 13812 CR 22, Middlebury, was present in favor of the request. Mr. Marvin Miller pointed out his property on the aerial photo. With the economy the way it is, he felt it was very important to get creative and do things to supplement income. He felt this was a

common sense approach to try and pull through the tough times. If this request were to be denied, he felt it would be a big problem. Mr. Marvin Miller indicated there was only one time several days ago where he heard a faint noise come from the property.

Kermit Troyer, 58565 CR 35, Middlebury, was present in opposition to this request. Mr. Troyer pointed out his property on the aerial photo at this time. He explained he owns 80 acres to the south of the property in question, and also 60 acres to the east. He bought the gravel pit on CR 35 approximately 20 years ago and built a house around 2,000 feet off the road. He purchased the 60 acres to protect himself further, but he has given a portion of that property to the First Mennonite Church who may possibly build a church there in the future. Mr. Troyer then submitted six photos of the subject property to the Board *[attached to file as Remonstrators Exhibit #1]*.

Mr. Troyer felt the dogs on the property could be very noisy at times. He can hear the dogs barking at very early hours of the morning and very late hours of the night. The petitioner had indicated a fence would be put up, but the side to the east is not enclosed and it is within five feet of his property line. He would prefer not to have the kennel operation at this location.

Also present was Linford Martin, Pastor of First Mennonite Church, 12401 CR 20, Middlebury, was also present in opposition to this request. Mr. Martin explained they own 11 acres to the northeast of the proposed property that was intended for building a church. He indicated the church is in opposition to this request.

In rebuttal, Ms. Ohaneson explained the sound can be taken care of using barriers. The three-sided sound barrier structure they have up now is only temporary. The petitioners plan to build a whelping building and they will be using sound barriers in their construction. The zoning of this area would allow for a pig farm or duck farm and Ms. Ohaneson noted the odor would be far worse in those operations in comparison to hearing a few barks. There is not enough acreage to make money off the farmland, so they have to do something else to help supplement their income. She also indicated the sound barriers would make the property look nicer aesthetically.

Mr. Homan asked the petitioners' representative if she has any evidence of how much the sound decibel would be decreased by using the sound barriers. Ms. Ohaneson indicated she doesn't have any evidence with her today, but she would be willing to provide that information for the board if the hearing was tabled.

Mr. Homan also asked if it was necessary for the petitioners to have 60 dogs. Ms. Ohaneson said 60 adult dogs would be needed to keep the income steady.

When Mrs. Wolgamood asked how many adult dogs the petitioner currently has, Ms. Ohaneson indicated 50.

She also asked if the petitioner would need to build anything else to house the dogs other than the sound barrier. Ms. Ohaneson said the petitioner would like to put in a playground area for the dogs and also a birthing room. Mrs. Wolgamood asked if that is the 20 ft. x 20 ft. proposed building shown on the site plan and the petitioners' representative indicated yes.

Mr. Homan asked if the puppies would always be in that building or if they would be outside as well. Ms. Ohaneson said the puppies are usually always inside.

The public hearing was closed at this time.

According to Mr. Homan, the issue with the neighbors is noise and he pointed out the Board does not have any evidence with regard to decibel levels.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that this request for a Special Use for a kennel with indoor pens and outdoor runs in an A-1 district (Specifications F - #15.00 & #15.10) be tabled by

the Board until the September 16, 2010, Board of Zoning Appeals meeting to allow the petitioners to submit documentation regarding noise transmission beyond the property with Kermit Troyer and Linford Martin to be re-notified. A roll call vote was taken and the motion was carried with a unanimous vote.

8. The application of **Robert D. & Dorothy A. Getz** for a Special Use for a roadside stand for the sale by the owner/producer of vegetables raised on the premises in an A-1 district (Specifications F - #45) on property located on the South side of Waterford Street (CR 40), West of CR 3, common address of 413 W. Waterford St. in Olive 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 #413 W. Waterford St.*

There were four (4) neighboring property owners notified of this request.

Mark Getz, 413 W. Waterford Street, Wakarusa, was present representing his parents, Robert and Dorothy Getz. Mr. Getz explained his parents are retired dairy farmers and they have lived at this property for 60 years. The petitioners are requesting a Special Use permit for a coffee can tomato stand. His parents are retired dairy farmers and have lived on the farm for 60 years. The goal of having the vegetable stand is to pay the annual real estate taxes.

A packet of pictures were submitted to the Board at this time *[attached to file as Petitioner Exhibit #1]*. There has been a family produce stand at this location for the past two years. They started the stand at an inopportune time due to Monaco closing and other lay-offs in the local economy. They continue to scratch out a little income at their location because most of the produce was grown there. The area is large enough to allow for parking and turning around. The petitioners have continued growing and producing the products, but they hoped things would turn around with the local economy. Mr. and Mrs. Getz try to accommodate anyone who could use low cost produce and vegetables. They have also grown pumpkins in the fall time for the kids in the area. With the amount of income they have been making, the petitioners have barely gotten by.

The past two years, the petitioners have had a tent where they have strived to keep things looking orderly and neat, but it kept blowing away. After two years of trial and error, Mr. Getz was determined to make something attractive to sell their produce in. He made an arbor out of wood made by a local sawmill and he wanted it to look sharp even to the most critical eye. In late July, they started building it on a high spot on the west lot without realizing he needed a permit for it. A packet of pictures were submitted to the Board at this time showing what the arbor looks like *[attached to file as Petitioner Exhibit #2]*.

Mr. Hesser asked if this is a portable structure and Mr. Getz indicated yes.

The arbor has been placed 63 feet from the centerline of the road until this matter is resolved. Mr. Getz asked the Board to make note of the large photo depicting the west lot size, which is 66 feet wide and 185 feet deep. The directional arrows show where the turnaround will be located. They are confident that this size of lot will accommodate the infrequent volume of traffic they have encountered the past two years. Most times, his parents' pick-up truck is the only vehicle on the property.

Mr. Getz explained that the issue with the arbor stand is very time sensitive in this situation. From 1925 until 1990, his grandparents had east and west lots full of vegetables. Both lots were full of production every year until 1989 when a neighbor passed away. His property is located directly east and south of the property in question and has been sold for development. In

the scope of this development, new building sites were plotted and approved. Many of these sites were raised in physical elevation to achieve desired effects. An undesirable effect of this development is rainwater run-off. He then submitted a packet of photos showing the water run-off *[attached to file as Petitioner Exhibit #3]*.

The petitioners' lots are becoming more and more difficult to cultivate, grow and harvest. The amount of time they are able to use the lots is approximately June 1st through November 1st. They are trying to create some income and attempt to pay a small part of their ever-increasing property taxes. With the rising fuel costs, hauling their produce to markets would become a lost proposition. Mr. Getz said he has never been apprised that Wakarusa has or would desire to support a plan that discourages the development of agricultural uses. He also noted the neighboring properties are cornfields or homes.

Mr. Hesser questioned whether the property to the south is in the town limits and Mr. Getz said yes.

Mr. Getz indicated the property in question creates a buffer zone between the vegetable stand and the neighbors. No harm has been incurred to the neighboring properties or their occupants. He then thanked the Board for their time and consideration.

Mr. Homan asked if they would only be selling produce that is grown on their own land and Mr. Getz said yes. If they were able to completely cultivate the west lot, they would be able to produce enough to pay their property taxes.

Mr. Hesser asked if the structure has been moved out of the right-of-way and Mr. Getz said yes, it is 63 feet back from the centerline of the road. He feels it is in a viable spot because the customers have sufficient room to turnaround.

When Mr. Homan questioned the driveway configuration, Mr. Getz explained the property used to be three separate lots. A number of years ago, the lots were combined and there was no curb on either side of the home. Approximately two years ago, the Town of Wakarusa had improvements done on CR 40, and they installed curbs at that time. Customers would be entering and leaving through the same drive and turning around in the west lot.

Mrs. Wolgamood asked how long they have been dealing with the drainage problem. Mr. Getz said Mr. Longfield died in 1989 and the property was bought by Dale Welty shortly after through distribution of his estate. Mr. Welty developed properties in the 300 and 400 block of W. Waterford Street and the extension of W. Harrison Street has also been developed.

Robert Getz, 65401 Cedar Road, Wakarusa, was present on behalf of this request. He explained they are not here for a government handout and they would like to take care of themselves.

There were no remonstrators present.

When asked if the staff had received any input from the town, Mrs. Prough said the initial complaint was registered by the town, but she had received nothing in writing from them. She explained that she did receive a call from a neighbor earlier in the week and their concern was about the parking situation. According to that neighbor, the petitioners have sold out of a tent table for the last three or four years and people often stop and park along the road or in the driveway over the sidewalk. When a building permit was obtained, she said the petitioner represented he was going to be moving the stand, but it appears the stand is in the right-of-way. She then explained that one of the photos the staff submitted shows a wheel in the area where they believe the right-of-way is located.

Mr. Hesser asked if that was based on the location and Mrs. Prough said yes, and also for building without a permit. She noted the neighbor also said the petitioners have not sold any produce this year. The produce they sold previously was not grown on site, but it was purchased at a produce auction and then sold on site. She indicated the petitioner does have a garden planted now.

Mr. Getz said for two years now, he has had an excess of 300 tomato plants on the proposed property. Due to the water run-off situation, they were unable to grow corn at this property. He has been growing corn at his fiancé's property, but if the water run-off problem was taken care of, then the corn could be grown at the petitioners' property.

He also explained he understands the parking situation because a lot of elderly people stop along the road. He has a sign directing them into the driveway and into the lot. The previous tent had been located too close to the road, but the new arbor which has been placed meets the setback regulations. If the request is denied, he plans to move the building to the back of the lot and use it for storage.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board finds that this request will be consistent with the spirit, purpose and intent of the Zoning Ordinance; it will not cause substantial and permanent injury to the appropriate use of neighboring property; and it will serve the public convenience and welfare in providing vegetables and produce; therefore, this request for a Special Use for a roadside stand for the sale by the owner/producer of vegetables raised on the premises in an A-1 district (Specifications F - #45) be approved by the Board as presented with the following conditions imposed:

1. The structure to be appropriately located outside of the right-of-way and in compliance with setback requirements.
2. The use limited to June 1 through November 1 of each year as requested,
3. A revised site plan done to scale to be submitted to the staff showing adequate parking and turnaround area on the premises so there is no backing in or onto the right-of-way, and no parking within right of way.
4. Sales limited to produce that is grown on site.
5. Special Use approved for a period of two (2) years with renewal before the Board of Zoning Appeals.

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

9. The application of *Edwin & Velda Yoder* for a Special Use for an agricultural business for fencing and hay feeders (Specifications F - #56) on property located on the East side of CR 37, 2,400 ft. North of CR 10, common address of 54014 CR 37 in York 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 #54014CR 37-100719-1*.

There were three (3) neighboring property owners notified of this request.

Edwin Yoder, 54014 CR 37, Middlebury, was present on behalf of this request. Mr. Yoder explained their main business is installing agricultural fencing, but they also install some residential and commercial fencing. The fencing is seasonal, because they are done for the year

when the ground freezes. He is trying to supplement the business with fiberglass hay feeders and cattle feeders. All of the feeders get transported to his uncle's property in LaGrange County and he sells them at his farm.

The original complaint was due to cutting/grinding noises and semi traffic. Mr. Yoder said he did talk with the neighbor who complained and he offered to plant arborvitaes or build a privacy fence along the property line. The neighbor indicated he didn't want that on the property line, so Mr. Yoder asked him what he could do to improve the situation. The neighbor suggested building a privacy fence around the storage lot to decrease noise and Mr. Yoder said that has been done. There are one or two semi's that come to the property each month, and three truck and trailer deliveries. UPS comes to the property about two to three times per month, and the truck and trailer with fencing materials and equipment comes to and from the property every day.

Mr. Hesser asked if there is room for the semi's to turn around and Mr. Yoder said yes, but it is tight. Some of them back into the driveway, but he has told them he prefers them to pull in and then turn around.

Mrs. Wolgamood said the privacy fence he has constructed was not shown on the site plan, so Mr. Yoder pointed it out on the aerial photo. The fence is located on the southeast side of the property. Mr. Yoder indicated the neighbor who complained lives to the south.

Melvin Delagrange, 53693 CR 37, Middlebury, was present in favor of this request. Mr. Delagrange pointed out his property on the aerial photo, which is just north of the property in question. He has lived in the area for 40 years and it has been a very nice area to live in. He hasn't noticed any change in traffic or noise levels. He appreciates what the petitioner is trying to do and supports his efforts to provide for his family.

Larry Cooper, 53969 CR 37, Middlebury, was present in favor of this request. Mr. Cooper said he owns the farm across the road from the proposed property and the field behind it. He explained he had a farming operation on his property for several years, and he feels what the petitioner is requesting is minimal compared to what he had. Mr. Cooper feels the property looks much better now since the petitioner moved in and made improvements. He indicated the petitioner cuts fiberglass with a cement saw, which is just like a chainsaw. Mr. Cooper doesn't feel the noises are out of the ordinary for the area and he has no complaints about what the petitioner is doing.

Also present in favor of the request was Dean Miller, 58020 CR 35, Middlebury. Mr. Dean Miller explained he is the petitioner's banker and he noted that the majority of the work is done off site. Mr. Yoder has been very cooperative in doing everything that has been requested of him, and he's sure the petitioner will be in this situation as well.

Robert Brouse, 54114 CR 37, Middlebury, was present in opposition to this request. Mr. Brouse indicated he lives just south of the petitioner and the only complaint he has is regarding noise.

Mr. Hesser asked if the fence which was installed has helped the noise issues and Mr. Brouse said no, it hasn't done any good. The fence hides his pick-up truck and fencing material, but the noise level is still the same.

Mr. Homan asked about the hours of operation and Mr. Brouse said the petitioner works five days a week and sometimes six. He hears noise as early as 6:00 a.m.

In rebuttal, Mr. Yoder said they don't make the hay feeders in the summertime because they are focusing on the fencing. Since March, he indicated he hasn't done more than four or

five hay feeders. His workers come to his property in the morning at 6:00 a.m. and they leave the premises.

Mrs. Wolgamood asked if the hay feeders are built inside or outside of the building. Mr. Yoder said they are cut outside of the building and then built inside of the building. Mrs. Wolgamood noted the noisy portion of the business is done outside.

When Mr. Lantz asked what they cut the fiberglass with, Mr. Yoder said it's a gas powered cement saw. It makes the same type of noise as a chainsaw. When Mr. Lantz asked if he could use a different type of saw, Mr. Yoder said he checked into getting an electric one, but the RPM's aren't nearly as fast as the gas powered ones.

Mr. Hesser asked if he could accommodate the hours in respect to cutting. The questionnaire indicates 6:00 a.m. to 4:00 p.m., but he asked if the hours of operation for sawing could be adjusted. Mr. Yoder said he would be willing to do the sawing later on in the day.

When engaged in sawing activity, Mr. Hesser questioned how long it takes. Mr. Yoder said they usually cut constantly for two to three hours, and then the feeders are put together.

Mr. Homan asked how many saws are operated at one time and the petitioner said one saw with two people, occasionally three.

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 agricultural business for fencing and hay feeders (Specifications F - #56) be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as presented in the petitioner's application (as amended by the Board):
 - a. The sawing activity limited to one (1) saw as represented by the petitioner.
 - b. The sawing activity limited from 8:00 a.m. to 2:00 p.m.
2. The business to be operated by the owner/occupant of the residence on site.
3. Approved for a period of three (3) years with renewal before the Board of Zoning Appeals.
4. A revised site plan drawn to scale to be submitted to the staff to show there is sufficient room on the property to allow for turnaround by semi's so there is no backing into or out of the property.

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

10. The application of **Allen W. & Kelly A. Stewart** for a Special Use for a museum for super heroes of comics in an R-1/M-1 zone (Specifications F - #28) on property located on the West side of CR 105, 200 ft. South of Nelson Avenue, common address of 58005 CR 105 in Concord Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #58005CR 105-100716-1*.

There were four (4) neighboring property owners notified of this request.

Allen Stewart, 58005 CR 105, Elkhart, was present on behalf of this request. Mr. Stewart explained he is the curator of a museum which is the only comic book and superhero museum in the world. He has a teaching degree and he shows other teachers how to use lesson plans and

include superheroes and comic books. He works with the Boys and Girls Club and all youth organizations. Mr. Stewart said the museum brings in a lot of tourists from out of town, which also helps the local economy.

They have an education program at the museum called "Comics in the Classroom." They get kids interested and work with the local libraries to encourage kids to read. Mr. Stewart explained they also teach history and they have a "Comics and World War II" section. The museum covers the whole 70 year history of superheroes on comics, toys, film and animation. They recently had someone come from Walt Disney, so he feels they are bringing in people to help the community.

The petitioner said they are the only organization dedicated to historical preservation of comic books. Currently in the museum, they have several comic books from the last 70 years. They currently have over 55,000 comics in the museum.

The complaint that Code Enforcement received was from a disgruntled neighbor they have had personal issues with for years. It has nothing to do with the business, but it does have something to do with a previous hearing before the Board. There was a hearing a while back with the gentleman he bought the property from ten years ago and was in regards to Moore Avenue being separated. The person who launched the complaint owns the two properties next door, but he does not live there. The police had to be called out last week because the person who made the complaint came out with stakes and tried to block the driveway to his property.

At this time, Mr. Stewart submitted a copy of the Elkhart County Plan Commission minutes dated September 13, 2001, with regard to an application for the Vacation of a county right-of-way known as Moore Avenue for William C. Williams *[attached to file as Petitioner Exhibit #1]*. Attached to the minutes was a Certificate of Survey.

Mr. Stewart explained that Moore Avenue was sectioned between the gentleman he bought the property from and Mr. Radabaugh. According to the transcript, this was supposed to be handled between Mr. Radabaugh and Mr. Williams. Mr. Stewart spoke to a couple Attorneys and they have indicated that the property has been grandfathered in. The property the petitioner owns has been there for 70 years and Mr. Radabaugh has only had his property for ten years.

When Moore Avenue was separated, a portion of that went over Mr. Stewart's driveway. Mr. Radabaugh has been making his life extremely difficult over the past few years. There was an incident a few months ago when the gentleman from Walt Disney was there. Usually, they have very minimal traffic, but there was an incident where some people parked along the one edge of the driveway. Mr. Radabaugh came over and started yelling at people on his property threatening to have their vehicles towed. Overall, he felt that the complaint received wasn't anything to do with the business and it was only a personal issue.

Mr. Hesser asked if he still operates the realtor business and the petitioner said yes. Both businesses are operated out of the same building.

Mr. Hesser asked if he has general hours of operation and the petitioner said no, because he is in and out for appointments a lot of the time. The museum phone line is run to his cell phone, so he sets up appointments.

The questionnaire states that this is an "official" museum and Mr. Hesser asked what that meant. Mr. Stewart said they are a recognized business with the IRS.

Jerry Radabaugh, owner of JD Investment Properties, LLC, 1933 W. Mishawaka Road, Elkhart, was present in opposition to this request. Mr. Radabaugh explained he owns 22 properties within 500 feet of the property in question. He has run into several problems with this

and they tried to resolve them when his mother was alive. The biggest issue he has with the museum is the way it started and there is no parking area. The petitioner has parking spaces for three vehicles and he owns two of them. He has talked about people coming to the museum nationwide, but there isn't anywhere for them to park. He is concerned that the building wasn't properly inspected because there should be restrooms and handicapped parking spaces.

Mr. Stewart said Mr. Radabaugh's comments are personal attacks. He has never been inside of the building and there is a parking area for five vehicles. They normally have families coming to visit one vehicle at a time

Mr. Hesser questioned where the garage is located and the petitioner said the garage is part of the building. There are restrooms in the building and everything has been approved. The building is up to code and has been inspected.

The public hearing was closed at this time.

Mrs. Prough explained that the petitioner does need to provide two more parking spaces to be in accordance with the ordinance. The petitioner represented that he has five parking spaces, but she said he needs to provide seven for the museum and the real estate office. In addition, she said two parking spaces need to be provided for the personal residence, and it appears from the site plan that parking is available on the north side of the residence.

Mr. Hesser noted that the site plan would have to be revised as that is not shown and Mrs. Prough said that is correct. It was then clarified that there should be a total of nine (9) parking spaces shown on the site plan, and in accordance with the ordinance, parking inside structures is not included.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a museum for super heroes of comics in an R-1/M-1 zone (Specifications F - #28) be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted (as amended by the Board) and as represented by the petitioners.
 - a. A revised site plan to be submitted to the staff showing a total of nine (9) parking spaces as required by the Zoning Ordinance.
2. Special Use to be operated by the owner/occupant of the residence on site.

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

11. The application of ***Bryan Yoder, Nathan Yoder, and Carlton & Janice Yoder (landowners) and Rieth-Riley Construction Co., Inc. (business operator)*** for a Special Use for the extraction and sale of gravel, sand or other raw materials in an A-1 district (Specifications F - #10.00) on property located on the West side of CR 17, 1,800 ft. South of CR 28 and South off of CR 28, 1,400 ft. West of CR 17, common address of in Harrison 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 #OCR 17-100719-1*.

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

Present on behalf of this request was Rob Konopinski, general counsel with Rieth Riley Construction, 3626 Elkhart Road, Goshen. He noted that Mike Giscara, their engineer for the INDOT project on the CR 17 extension, was also present.

Mr. Konopinski explained that they are petitioners along with Bryan, Nathan, Carlton and Janice Yoder. They are seeking a temporary Special Use permit to excavate a borrow pit for the excavation of sand and gravel to be used in the extension of CR 17 from CR 28 to CR 30. This extension will consist of four-lanes and a median barrier wall. He said the property where this is located is adjacent to the new CR 17, and this will allow them to access the borrow pit directly from the road construction so they will not be using public roads to access the materials from the borrow pit.

On July 13, 2010, Mr. Konopinski explained that the Elkhart County Drainage Board approved the construction of the borrow pit. It will actually be a reverse "L", which he went on to describe to the Board. He then noted that a portion of the Huber Powell Ditch will become a part of this borrow pit, and at the conclusion of the project, he said it will become a larger five-acre pond that is approximately 24 ft. in depth. The borrow excavation is projected to commence in late August, and he said it should conclude by December, subject to the weather or other delays with the project that are beyond Rieth Riley's control. At the request of the property owners, he said the pond will be stocked with fish.

Mr. Hesser asked if they are done until spring once winter sets in and Mr. Konopinski said the contract with INDOT states the actual extension of CR 17 is to be done by June of next year. The borrow pit is in the beginning phase of the project, so it will be one of the first things they work on. He indicated they would be completely done with this within one year at the longest.

Mr. Hesser said this is not within an urban area, so he asked whether they weren't able to deny it, and are only allowed to put conditions on it. Mr. Kolbus said he doesn't know whether it's been determined that it's not in an urban area. Mrs. Prough said she was unsure whether it was or not as it had not been researched.

Mr. Konopinski noted the closest neighbor is about 280 ft. away.

Mrs. Wolgamood asked if the paving had already taken place and a representative from Rieth Riley Construction explained there is a water main that runs to the west edge of the property. When they finished the intersection at CR 28 and the new CR 17, they ran a couple hundred feet into this job.

There were no remonstrators present.

The public hearing was closed at this time.

During discussion, Mr. Kolbus clarified that the rule is eight residences within a quarter mile. He pointed out there are mobile homes across the road (Old CR 17) so it is probably within the urban area, which they can't regulate.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for the extraction and sale of gravel, sand or other raw materials in an A-1 district (Specifications F - #10.00) be approved by the Board in accordance with the site plan submitted and as represented in the petitioners' application. A roll call vote was taken and the motion was carried unanimously.

12. The application of *Jeffery & Tamela L. Osborn* for a Special Use for a home workshop/business for a catering business (Specifications F - #45) on property located on the West side of CR 35, 1,245 ft. South of CR 12, common address of 55401 CR 35 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 #55401CR-35-100702-1*.

There were three (3) neighboring property owners notified of this request.

Tammy Osborne, 55401 CR 35, Middlebury, was present on behalf of this request. Mrs. Osborne explained she had a restaurant at 204 S. Main Street in Middlebury that suffered from a fire on May 31st. If given a choice, she would like to rebuild at that location, but she indicated the home was old.

Mrs. Osborne said the Elkhart County Health Department regulations don't allow her to operate in her own kitchen. Therefore, she would like to put up a small building to allow her to cater privately to about 20 to 25 people. She also does a personalized chef service that she operates locally. This would be for personal use only and she does not foresee a lot of traffic flow. The only people that would be coming to the premises are people that she would be preparing a plan for in regards to their private event.

Mr. Lantz asked what type of building she was in previously and the petitioner said it was called Culinary Treasures, which is right next to the post office in downtown Middlebury.

Mr. Lantz asked the staff if this would be considered commercial and Mrs. Prough said yes. She also noted the petitioner is planning to have cooking classes. Mrs. Osborne said she did cooking classes in her home for years for children. She ran one or two classes a month with only seven people at a time.

Mr. Hesser asked how long she has lived at this location and she indicated ten years. She noted that everything on the property is kept looking very nice.

Mrs. Wolgamood asked if all of the supplies are delivered by van. The petitioner said no, she has to pick it up from Cisco because they will only deliver if it's a certain amount of dollars. Her catering will be done by reservation only.

Mrs. Wolgamood questioned whether the 40 ft. x 60 ft. building will be used in its entirety for the catering business and the petitioner said yes.

Mr. Hesser asked if all of the food is delivered off-site and Mrs. Osborne said yes.

Mr. Miller questioned if the cooking classes would be done on-site and the petitioner said that is correct. She has started to work with a lot of groups who want to do parties from their homes. She likes doing the classes for children because it helps them make healthier eating choices.

Mr. Lantz said the neighbors seem to be happy with the operation and Mrs. Osborne said yes. She has spoken to a few of the neighbors and they have no issues with the request.

There were no remonstrators present.

The public hearing was closed at this time.

When Mr. Homan expressed a concern about retail sales, Ms. Osborn said she has decided not to sell coffee beans, but would like to sell cookbooks with her cooking classes. She then indicated the design of the building would match the design of the house.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that this request for a Special Use for a home

workshop/business for a catering business (Specifications F - #45) be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented by the petitioner.
2. Days and hours of operation to be 8:00 a.m. to 5:00 p.m. seven (7) days per week.

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

13. The application of **David M. & Marlene M. Zimmerman** for a Special Use for a home workshop/business to manufacture mini-storage barns and play houses (Specifications F - #45), for a Special Use for warehousing and storage for a construction business (Specifications F - #44), 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 7, 1,300 ft. North of CR 40, common address of 65700 CR 7 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 #65700CR 7-100719-1*. The Staff Analysis for the Special Use for warehousing and storing was amended by deleting "or display of finished products" from Condition #2.

There were 11 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. Mr. Sloat explained that back in 1985, Mr. Zimmerman bought some land from his father and built a new house and a dairy barn. Before that time, the entire property was bare land. The petitioner eventually got out of the dairy industry and started building homes, but that business has regressed over the last several years. The petitioner would like to supplement his income by building storage barns and playhouses.

Mr. Sloat briefly went through the pictures included in the Board's packet at this time. The petitioner would like to use one of the existing buildings on site for a combination of equipment storage and building the mini barns. He also needs to have a place to put his equipment outside, which is labeled as a 350 ft. x 500 ft. storage area. Mr. Sloat is proposing that they modify the site plan to show the outside storage items being located behind the barn. There will be no outside storage of anything pertaining to the mini barns and playhouses. Those will be assembled and then removed from the premises.

When Mr. Hesser asked what would be stored outside, Mr. Sloat said a boom truck, delivery trailers, and any equipment used in regards to the framing business.

Rather than the conditions recommended by the staff, Mr. Sloat submitted to the Board a revised list of conditions *[attached to file as Petitioner Exhibit #1]*. He said they are basically the same conditions he submitted with the application with just a clarification, and the only further clarification he said they need is a definition of a specific place outside for the warehousing and storing property like behind the barn.

If granted, Mr. Kolbus asked if he would provide a new site plan and Mr. Sloat replied yes.

In conclusion, Mr. Sloat said they concur with the Staff's Analysis with that distinction and he requested the applications be granted as submitted.

There were no remonstrators present.

Mrs. Wolgamood questioned how long the petitioners have been at this location and Mr. Sloat said since 1987. When asked how long the business has been there, Mr. Sloat explained that Mr. Zimmerman previously had a cow business and then he started framing houses, which he's been doing for six or seven years. The framing business has been up and down so he said the petitioner now wants to supplement that.

Mrs. Wolgamood asked how long he's been building the playhouses and Mr. Sloat said he only built one this summer and that's when he was contacted by Mr. Zimmerman to obtain a permit.

The staff was asked by Mr. Hesser if they agree with the conditions proposed by the petitioner that the only distinction is the storage of those vehicles outside and Mrs. Prough said yes. She noted that he did add the staff condition of no outside storage of finished products for the home workshop/business; however, not for the warehousing and storing. She said the staff would support the outside storage, but they want it in a designated area shown on a revised site plan as Mr. Sloat indicated south between the two buildings.

Mrs. Prough also said the Board could limit the equipment, which they represented as a boom truck and a trailer. Mr. Sloat explained that the equipment is typically at the job site, but if you don't have work, he said you need a place to put it. Upon visiting the site, Mrs. Prough said there was no equipment there. If the petitioner has been doing this for awhile, she said she's never noticed anything on the site nor has she received any complaints.

Mr. Kolbus pointed out that the equipment would somewhat be limited by the number of pieces in the area they define on the site plan and Mr. Sloat agreed.

Also pointed out by Mrs. Wolgamood was that the petitioner is requesting no term on the length of the permits. She indicated that she has no issue with what he would like to do, but she would prefer the Special Uses be reviewed as the Board would normally do with such permits. Mr. Sloat had no objection to submitting a revised site plan or renewal of the permits by the Board in three years.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business to manufacture mini-storage barns and play houses (Specifications F - #45), for a Special Use for warehousing and storage for a construction business (Specifications F - #44), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, be approved by the Board with the conditions submitted by the petitioner (as amended by the Board) imposed as follows:

Special Use for Home Workshop/business

1. No signs.
2. Two (2) employees.
3. No expansion of the facilities without Board of Zoning Appeals approval.
4. Hours of operation – no specified hours because of the part-time nature of the home workshop/business.
5. No Sunday sales or operations.
6. Approval for petitioner/occupant of the residence on site.
7. No outside storage or display of finished products.

8. Approved for a period of three (3) years with renewal before the Board of Zoning Appeals.

Special Use for Warehousing and Construction

1. The Special Use Permit shall be confined to the improved area of the farm, including structures, concrete and stone areas (350 ft. east/west, 500 ft. north/south).
2. Approval for petitioner/occupant of the residence on site.
3. No exterior loud speakers.
4. Exterior lighting to be limited to security, dusk-to-dawn type lighting.
5. No signs.
6. No retail sales on site.
7. A revised site plan to be submitted with a designated area for outside storage of equipment as represented by the petitioner.
8. Approved for a period of three (3) years with renewal before the Board of Zoning Appeals.

The motion was carried with a unanimous roll call vote.

14. The application of *Carlyle M. & Barbara K. Martin (lessors) and Andrew Martin (lessee)* for a Special Use for a home workshop/business for a woodworking shop and retail sales showroom (Specifications F - #45), a Special Use for a kennel with outside runs (Specifications F - #15), and a Developmental Variance to allow for the total square footage of accessory buildings to exceed the total square footage in the primary structure, on property located on the North side of CR 32, 2,640 ft. East of CR 7, common address of 26589 CR 32 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 #26589CR 7-100719-1*.

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

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. Mr. Sloat explained that this property is located on CR 32 between CR 7 and CR 9. When you look at the drawing, it shows the property line going through the middle of the barn. He noted that's the way it was split when the farm was sold. The Martin's bought this farm eight to nine years ago and they have really fixed up the property. Mr. Martin's son, Andy Martin, lives at this location with his wife and he has been working for his dad for a number of years at a custom furniture shop. In the last several months, he decided to start his own shop and go out on his own. He has converted the agricultural barn into a woodworking shop, which he displayed pictures of at this time. The petitioner works on his own and has no employees. The traffic to this location is nominal and Mr. Martin gets lumber delivered in every once in a while. He also has delivery of the products he makes and he hires a person to come in with a truck and trailer. Mr. Sloat indicated the property is very well kept and it doesn't even appear that there is a business at this location.

The petitioner also raises ten to twelve female dachshunds and pugs. He indicated they have one litter per year and three to four dogs per litter.

A Developmental Variance is also being requested because the building was originally constructed as an agricultural building, but it is now being used for his woodworking business.

Mr. Hesser asked when the dog kennel building was constructed and Mr. Sloat indicated it's on skids and is only temporary.

Mr. Hesser asked if all of the other buildings on the property have been grandfathered in and Mr. Sloat said yes.

Mrs. Wolgamood asked if Andrew is Carlyle and Barbara Martin's son, and Mr. Sloat said yes.

The public hearing was closed at this time.

There was concern expressed about retail sales, but it was clarified that the ordinance does allow for retail sales with Board of Zoning Appeals approval.

The staff was asked if they want a five year time period on the home workshop/business as suggested by the petitioner. Mrs. Prough said the staff agrees with the petitioner's conditions, but they would like renewal before the Board rather than by the staff. Mr. Kolbus agreed and said if there is a violation of conditions, the staff always has the right to bring the Special Use back.

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 for a home workshop/business for a woodworking shop and retail sales showroom (Specifications F - #45) be approved by the Board in accordance with the site plan submitted and as represented by the petitioners' application, including the conditions submitted by the petitioner as follows:

1. No more than two (2) outside employees.
2. No expansion of the facilities.
3. Hours of shop operation to be 7:00 AM to 5:00 PM Monday through Friday; Hours of store 10:00 AM to 5:00 PM Monday through Friday; 10:00 AM to 7:00 PM Saturday.
4. One (1) sign, unlit, per ordinance.
5. Permit to be renewed in a period of five (5) years before the Board of Zoning Appeals.
6. No expansion of business without Board of Zoning Appeals approval.
7. No outside storage of anything related to the business.
8. The Special Use shall be confined to the 40' x 60' building and the 20' x 40' area of the barn remodeled for showroom.
9. Approval petitioner/occupant of residence on site.

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

A motion was then 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 for a kennel with outside runs (Specifications F - #15) be approved by the Board in accordance with the site plan submitted and as represented in the petitioners' application, including the conditions submitted by the petitioner as follows:

1. No more than one (1) kennel (12' x 18').
2. The existing 12' x 18' kennel will house adult breeding dogs, the whelping dogs and litters.
3. The petitioner will not house more than 16 adult dogs.
4. Premises where dogs are present will be sanitary.
5. Equipment used for the care of dogs will be maintained in a manner that ensures the proper storage and disposal of waste.

6. Maintain control measures to prevent infestation of the dogs and premises from external pests and vermin.
7. Provide natural or artificial illumination in all areas where dogs are kept, which is healthy and suitable for the dogs.
8. Kennels will be sufficiently heated to protect dogs from the cold and to provide for their health and comfort at all times.
9. Provide sufficient ventilation to minimize drafts, odors, and moisture for the benefit of the health and comfort of the dogs.
10. Will ensure that each dog's enclosure is cleaned and sanitized.
11. All dogs will be provided with sufficient food and water at the interval appropriate for the dog.
12. Petitioner will not sell, exchange or offer to sell any dog with obvious signs of infection, disease or illness.
13. Any diseased or ill dogs will be cared for by a veterinarian and will be euthanized as directed by the treating veterinarian.
14. All dead animals will be disposed of in an appropriate manner, as directed by the treating veterinarian.
15. The petitioner will provide to a dog purchaser a copy of the dog's vaccination, medication and treatment record.
16. All purchasers will be provided a notice of the three (3) day warranty.
17. Approval for petitioner/occupant of the residence on site.
18. No expansion without approval of the Board of Zoning Appeals.
19. No sign.

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

A final 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, the request for a Developmental Variance to allow for the total square footage of accessory buildings to exceed the total square footage in the primary structure (*Wolgamood/Miller*) be approved by the Board in accordance with the site plan submitted and as represented in the petitioners' application. The motion was carried with a unanimous roll call vote.

15. The application of ***Hershell R. & Tammy D. Justice*** for a Use Variance to allow for the reconstruction of a detached accessory building in an M-2 zone on property located on the East side of CR 1, 110 ft. North of Tower Road, being Lot 1 of Jackson Park Sub., common address of 56908 CR 1 in Baugo 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 #56908CR 1-100719-1*.

There were six (6) neighboring property owners notified of this request.

Ken Martin with Kenco Construction, 68604 CR 15, New Paris, was present representing the petitioners. Mr. Martin explained the previous landowner had sold this property to VIM and this piece was split off. They had a detached garage on the property and it burned down in the winter of 2009. The petitioners would like to build a 28 ft. x 24 ft. detached garage on top of the existing concrete.

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 a Use Variance to allow for the reconstruction of a detached accessory building in an M-2 zone be approved by the Board in accordance with the site plan submitted and as represented in the petitioners' application. A roll call vote was taken and the motion was carried with a unanimous vote.

16. The application of **Gary W. & G. Ann Andre (land contract purchasers) and Horswell-Neidballa Realty, Inc. (land contract holder)** for a Use Variance to allow for the expansion of a non-conforming use as follows: to change from a professional office to retail sales in an R-1 district on property located on the North side of W. Vistula Street (SR 120), 1,000 ft. West of Division Street (SR 15), at the North end of Chestnut Street, common address of 400 W. Vistula Street (SR 120) 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 #400W. VistulaStreet (SR 120)-100716-1*.

There were three (3) neighboring property owners notified of this request.

Ann Andre, 112 S. Division Street, Bristol, was present on behalf of this request. Mrs. Andre explained she and her husband own Murphy Guest House Bed & Breakfast in Bristol. She submitted pictures of the house on site, which was built in 1875, and a brochure at this time *[attached to file as Petitioner Exhibit #1]*. In 2009 and 2010, they won "best in the Midwest bed and breakfast." They love to restore old buildings and they have a love for Bristol in trying to help rebuild the city. They just purchased property from Charlie Horswell, which was a doctor's office. The house was built in 1940 and Dr. Horswell died in 1999. The property has sat vacant for eleven years. There is a museum next door to the proposed property and there is a floral shop three doors down.

Mrs. Andre said they applied for a Use Variance because that's what the doctor's office was classified as. They were under the impression that a commercial re-zoning would take longer and they are hoping to get into the building by September. The reason they would like to have the Use Variance is to make Bristol a better place.

Mr. Hesser asked if this operation would be a permitted use in a B-1 zoning district and Mrs. Prough said yes.

Mr. Homan said on the site plan, it shows parking along the street and he asked how the petitioner plans to handle the parking issue. Mrs. Andre indicated there is a gravel parking area for about ten to fourteen vehicles.

Mr. Hesser asked if there is a sidewalk to the west and south of the north parking lot that goes up to the building and Mr. Andre said there is a paved road that follows around from the parking lot.

Mr. Homan asked what the advantage would be to rezone to a commercial zoning district. Mrs. Prough said the Comprehensive Plan encourages rezonings and the Plan Commission adopted it. When the staff reviewed this application, they weren't aware that this was a temporary solution and the petitioners did have plans to rezone it. The staff would be willing to go along with the temporary Use Variance provided they apply for a rezoning before the Plan Commission and go before the Town Council.

When Mr. Homan questioned the timeline of a rezoning, Mrs. Prough said it would take several months to go through the process. She felt six months would be adequate time to get everything together.

Cynthia Vania, 502 W. Vistula Street, Bristol, was present in favor of this request. Ms. Vania explained she is the owner of Camille's which is three doors down from the proposed property. She is very much in favor of this request and is anxious for the petitioners to get the business up and running.

Also present in favor of this request was Rebecca Astrike, Elkhart County Historical Museum, 304 W. Vistula Street, Bristol. Ms. Astrike indicated the museum is the direct neighbor to the east. The goal of the museum is to reach out to people and she feels the addition of this Bed & Breakfast will help with that.

There were no remonstrators present.

The public hearing was closed at this time.

During discussion of imposing a timeframe should this Use Variance be granted, it was clarified that if the property has not been rezoned at the end of that time period, the Use Variance would have to be renewed by the Board of Zoning Appeals.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board finds:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property would not be affected in a substantially adverse manner.
3. A need for the Variance does arise from a condition that is peculiar to the property involved because that particular property adjacent to the museum and next to the property has already been in transition to a commercial use, and also based on the promise of the petitioner to progress with a request to the Plan Commission (for rezoning).
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property because it would not be able to change the use of the property without approval of the Board, and also in perhaps pursuing rezoning effort.
5. The Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

Based upon these Findings, this request for a Use Variance to allow for the expansion of a non-conforming use as follows: to change from a professional office to retail sales in an R-1 district, be approved by the Board for a period of six (6) months with renewal before the Board of Zoning Appeals. With a unanimous roll call vote, the motion was carried.

17. The application of *Deloris Fry* for a Use Variance to allow for a commercial business for jam and jelly production and for a retail outlet in an R-2 zone on property located on the East side of Main Street (SR 13), 93 ft. North of Lawrence St., common address of 208 S. Main St. in Middlebury 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 #208SMainSt-100715-1*.

There were eight (8) neighboring property owners notified of this request.

Deloris Fry, 208 S. Main Street, Middlebury, was present on behalf of this request. Ms. Fry explained she opened up a jam and jelly business in Michigan in August of 2009. She wants to move it into a larger facility, which would be the garage she owns in Middlebury. She lived at this location for ten years and she is currently renting it out. She won't be doing retail sales from the home. She will continue to rent the house out and would like to use just the garage for a kitchen.

Mrs. Wolgamood asked if she's taking the retail part out of the request and Ms. Fry said yes.

Mr. Homan asked if the garage is attached to the house and the petitioner said no, it is detached. When she purchased the property ten years ago, she was informed that it was zoned for business. There is a hair salon to the north and a residential property to the south.

When Mr. Homan asked what type of equipment she would need to use, Ms. Fry said two stoves, a row of tables, and some freezers. She would also need basic kitchen equipment. The garage has electricity, but she would need to have more outlets installed. She would also need to hook into the city sewer system.

Mr. Hesser asked if there will be a bathroom in the garage and Ms. Fry said yes, they would be installing a small bathroom and a few extra windows for ventilation.

Mr. Hesser also asked if the building would stay the same size and Ms. Fry indicated yes.

Mrs. Wolgamood asked if a sign would be required and the petitioner said no. She would be doing wholesale only, so she wouldn't need any signage.

When Mrs. Wolgamood asked if the deliveries would be done herself, the petitioner said she would do most of them herself. There would be one or two pick-ups per week, but it would only be SUV's or a box truck at the biggest. As far as deliveries, sugar is delivered in a semi truck, but she does have the ability to go get it herself in a smaller unit if needed. She would like to have them deliver the sugar if possible. The semi truck would be parked in the back for about 15 minutes to unload the product.

Mr. Homan asked how many people are involved in this operation and Ms. Fry said just herself and her children. She would eventually like to have one employee work with her.

Nikki Zimmerman, 206 South Main Street, Middlebury, was present to voice a few concerns. At her property, she has a home which is used for rental purposes and also as a hair salon. She pointed out her property on the aerial photo at this time. The main issues she has with this request are parking issues and deliveries. There are only two small parking spaces and she's unsure how the petitioner would come up with anymore spaces. She is also concerned about the number of employees.

Diane Kauffman, 210 South Main Street, Middlebury, was present to voice her concern. Ms. Kauffman she's not sure this is the place to have this type of business. She feels that parking is a huge issue.

In rebuttal, Ms. Fry said she realizes parking is a big issue on this street. She wants to keep the business strictly wholesale. She thinks it might cause a problem having the sugar delivered in a semi truck because it might block off parking.

Mr. Hesser asked if she has had any discussion with the town and Ms. Fry indicated she has spoke with Mark Salee. Mark Salee indicated it wouldn't be a problem to have the water hooked up from the home to the garage, and he didn't have a problem with the request.

The public hearing was closed at this time.

Mrs. Wolgamood asked for staff comments about the revised petition eliminating the request for retail sales. Mrs. Prough said they have a concern regarding parking and she does not feel there is adequate parking now because the house requires two parking spaces and the business would require at least two. She said there might be room for three parking spaces, but she has not measured the area. She also reported that she received a call from the town manager, Mark Salee, who is concerned about the retail use on this property, even under a rezoning. She does not feel they would be supportive of the retail use, but she doesn't know how they would feel about the jelly and jam operation without the retail use.

Unless there is a PUD, Mr. Kolbus advised that rezoning the property would open it up to any type of commercial use so it would probably be even more difficult in this situation due to the parking concern.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for a commercial business for jam and jelly production and for a retail outlet in an R-2 zone, be denied by the Board. A roll call vote was taken, and with a unanimous vote, the motion was carried.

18. The application of *JJ Brooks, LLC (lessor) and Lamar Chupp (lessee)* for a Use Variance to allow for a used car lot to be located in a B-1 district (Ordinance requires B-3) on property located on the Northeast corner of Washington Street and Jefferson Street, being S ½ Lot 60 and S ½ Lot 53 of Millersburg (Original Town), common address of 109 E. Washington St. in Clinton 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 #109EWashingtonSt-100719-1*.

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

Jason Brooks, 109 E. Washington Street, Millersburg, was present on behalf of this request. Mr. Brooks explained they figured out what they needed to do to make the parking work. He has agreed to put gravel in between the buildings.

If this request is approved, Mr. Hesser asked if the next petition would be dismissed and Mrs. Prough said yes.

Mr. Brooks explained there has been some discussion regarding putting up a fence on the west side of the liquor store since there is a home there.

Mr. Hesser asked if he has any issues with the staff's recommendation and Mr. Brooks said no.

Mr. Homan asked how the parking area would be accessed and the petitioner indicated from Washington Street.

Mr. Hesser asked if they would be selling inventory on site and the petitioner said no.

Mrs. Wolgamood questioned if there is a time frame for installation of the new parking area and Mr. Brooks said as soon as they can do it.

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 (*Homan/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 to allow for a used car lot to be located in a B-1 district (Ordinance requires B-3), be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No mechanical work to be done on site.
3. All customer parking to be on site.

The motion was carried with a unanimous roll call vote.

19. The application of ***JJ Brooks, LLC (lessor) and Lamar Chupp (lessee)*** for a Use Variance to allow for a used car lot to be located in a B-1 zone (Ordinance requires B-3) on property located on the North side of Washington Street, 101 ft. East of Jefferson Street, being the South half of Lot 60 in Millersburg (Original Town), common address of 109 E. Washington St. in Clinton Township, came on to be heard.

This request was previously tabled and the public hearing had been closed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that this request for a Use Variance to allow for a used car lot to be located in a B-1 zone (Ordinance requires B-3) be dismissed by the Board. A roll call vote was taken, and with a unanimous vote, the motion was carried.

20. The application of ***Samuel D. Yoder (landowner) and James D. Yoder dba Country Forest Products, LLC (business owner/operator)*** for a Special Use for a saw mill (Specifications F - #37) on property located on the East side of CR 43, 2,800 ft. North of CR 10, common address of 54039 CR 43 in York Township, zoned A-1, came on to be heard.

This request was previously tabled and the public hearing had been closed.

Mr. Hesser asked Mr. Lantz if he had an opportunity to read the minutes and listen to the proceedings, or if he feels he needs more information to make a decision or have discussion. Mr. Lantz felt he had enough information to proceed.

Mr. Hesser explained no one had an objection to the use, but there were issues due to the neighborhood this is in. The petitioner is requesting to have five or six employees and the area is more agricultural/residential than it is rural.

Mr. Lantz felt a renewal would be necessary and there should be no expansion and no outside storage.

Mr. Lantz asked if this would be a circle mill and Mr. Yoder said yes. He also asked if he would be running it with diesel power and the petitioner said yes.

Mr. Hesser said he drove past the property and he can't imagine pulling a semi onto CR 10, but it must be able to be done based on some of the other operations on that road.

Mr. Lantz asked what other businesses are in that area and Mr. Hesser indicated a leather harness shop. Mrs. Wolgamood noted there is a saw mill on the southwest corner of CR 10 and CR 43.

Mrs. Wolgamood said she drove by the property and hardly noticed there was a saw mill there.

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

Findings of the Board, and based upon these Findings, this request for a Special Use for a saw mill (Specifications F - #37), be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioners' application (as amended by the Board).
2. Approved for a period of three (3) years with renewal before the Board of Zoning Appeals.
3. No expansion of the business operation without Board of Zoning Appeals approval.
4. No outside storage or stockpiling of wood chips or sawdust unless contained in an enclosed trailer or dust bin.
5. No new curb cuts created.
6. The north drive represented on the site plan to be closed within 120 days by removing the gravel and planting grass in that driveway area. All entrance and exits from the property to use the south drive curb cut.
7. The tree line of pine trees (north side of property) is to be restored out to the county right-of-way as indicated by the petitioner.
8. No semi backing in off of CR 43.
9. Days and hours of operation to be Monday through Friday, 6:30 a.m. to 5:00 p.m. with no Saturday or Sunday operations.
10. A revised site plan to be submitted to the staff within thirty (30) days to reflect the removal of the north curb cut and restoring the tree line.

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

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

22. In the past year, Mrs. Prough explained the staff has had the issue of emergency housing and placement of mobile homes due to fires. Currently, the Zoning Ordinance does not have any type of emergency provision for the staff to administratively grant a mobile home. The only options are for them to go through a Special Use permit process or a Use Variance process. The new proposed Zoning Ordinance doesn't have a provision for emergency housing. She asked the Board what their thoughts are on the topic and whether they would consider adding something to the Zoning Ordinance or whether they feel it should go through the Special Use process.

Mrs. Wolgamood questioned who asked about placing temporary mobile homes and Mrs. Prough said insurance companies.

Mr. Homan questioned if the staff could issue a temporary 60 day permit in emergency situations and then have the owner go before the Board for finalized action. Mrs. Prough said if the staff could administratively do it, then the Board should still have a say in it, but that puts the Board in a difficult position.

In a rebuild situation like this, Mr. Hesser said they usually grant those types of requests considering they are pulling permits and proceeding with it.

Mr. Miller said he has built several homes that have burnt down and the insurance companies have provided mobile homes for the landowners. He indicated it is an easy tie in whether you are on city sewer or septic. The removal of the mobile home could be controlled by making the Certificate of Occupancy temporary until the mobile home is gone. Mr. Miller

indicated he would be in favor of seeing a change in the Ordinance that would allow the staff to make an administrative decision.

Mrs. Prough said if the Board has any inclination to add a provision in the new Zoning Ordinance, then she could bring this up in a Steering Committee meeting. She said the new Ordinance will be more restrictive when it comes to mobile homes.

Mr. Hesser said he doesn't see an issue with adding a provision in the Zoning Ordinance regarding this issue.

Mr. Homan indicated he doesn't have any problem having a little compassion on the residents of Elkhart County to allow them to have temporary housing in a situation of a fire, tornado, etc.

The Board indicated they would be in support of having this discussed at the Steering Committee meeting.

23. The meeting was adjourned at 12:48 p.m.

Respectfully submitted.

Kate Keil, Transcriber

Teresa McLain, Recording Secretary

Jane Yoder, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary