

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18th DAY OF FEBRUARY 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: Robert Homan, Meg Wolgamood, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Administrator; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Lantz*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of January be approved with the following changes: On page 7 towards the middle of the page, “the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings,” should be removed, and on page 14, there was not a unanimous vote. It should have stated “A roll call vote was taken with the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – no; and Hesser – yes.” Lastly, on the first page, Kathy Wilson should be listed as the Office Administrator instead of the Zoning Administrator.

3. A motion was made and seconded (*Homan/Wolgamood*) that the legal advertisements, having been published on the 6th day of February 2010 in the Goshen News and on the 8th day of February 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 (*Wolgamood/Lantz*) 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 (*Wolgamood/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 **Thomas C. & Casilda C. Chenier** for a 3 ft. Variance to allow for the construction of an attached carport 2 ft. from the north side property line (Ordinance requires 5 ft.) on property located on the West side of CR 5, 132 ft. North of Westwood Drive, being Lot 22 of North Manor Subdivision, common address of 54357 CR 5 in Osolo Township, zoned R-2, came on to be heard.

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

At this time, Mrs. Prough submitted an e-mail received from Mr. Chenier on February 17, 2010 [attached to file as *Staff Exhibit #1*], requesting to withdraw his application for a variance. According

to Mrs. Prough, the petitioner is no longer going to build a carport, but will be adding a small addition to a stoop that will not require a variance.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that this request for a 3 ft. Variance to allow for the construction of an attached carport 2 ft. from the north side property line (Ordinance requires 5 ft.) be withdrawn as requested by the petitioner. After a unanimous roll call vote was taken, the motion was carried.

8. The application of *Larry Miller* for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of CR 33, 1,260 ft. North of East/West CR 33/CR 131, South of SR 4, common address of 62270 CR 33 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 #62270CR 33-100115-1.

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

Present on behalf of this request was Marlin Bontrager, the petitioner's contractor. He explained that Mr. Miller's personal storage is only a 30 ft. x 38 ft. area in the barn and there is no personal storage in the large woodworking shop. The items described as personal storage were four buggies, a couple of pony carts, bikes, lawnmowers, etc. Mr. Bontrager said there is just not enough room so the petitioner is asking for a 28 ft. x 38 ft. addition onto the existing building for personal storage. He then clarified that Mr. Miller does own a total of 17 acres and those parcels were pointed out on the aerial photo.

Mr. Hesser noted that the staff report indicates the building permit in 2002 was for a 48 ft. x 60 ft. shop building, but the site plan shows it as 48 ft. x 76 ft. He questioned the correct dimension of the building and Mr. Bontrager said it is 76 ft.

When Mr. Hesser asked the staff if that is not in compliance, Mrs. Prough said the staff report is correct; however, what is shown on the site plan is what was calculated as square footage when the application was taken in.

Mr. Hesser then asked what's being stored in the barn and Mr. Bontrager said just horses.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) 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 as per site plan submitted based on the following findings:

1. Will not be injurious to public health, safety, morals or general welfare.
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

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

9. The application of *Quality Excavating Corporation* for a Special Use renewal for extraction and sale of gravel (Specifications F - #10) on property located on the West side of CR 27, 1,185 ft. South of CR 42, common address of 67209 CR 27 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 #67209CR 27-100125-1*.

There were 27 neighboring property owners notified of this request.

Devon Miller, president of Quality Excavating, 67242 CR 33, Millersburg, was present on behalf of this request. He said he would like to continue doing what he is doing, and he submitted six (6) photos to the Board *[attached to file as Petitioner Exhibit #1]* to illustrate the mound, the grading of the slopes, and the fence installed around his property as required by the Board.

Mr. Hesser asked how long he plans to continue excavating there. Mr. Miller said it depends on the number of houses they are involved in and the amount of material they need. He explained that they dig the material out as they need it so they don't have large piles there for a long period of time, which could impact the area. They have excavated about 14 ft. down from the original grade to where it's now shown in the photo, which he said is right above water level. He doubts he will be completely done in three years, but he said he has bid a number of large jobs and it would be accelerated if those jobs happen this year.

Doug Miller asked if he will excavate to the south or just where it is currently shown on the aerial. Devon Miller pointed out the four-acre parcel where the Special Use is located for his storage. He also pointed out the location of the water's edge and the area they will excavate into. According to Devon Miller, there is a ravine that is about four feet lower and they are permitted to 3.63 acres of water. Once excavation is done, he said the idea is to have a buildable site for a house with a walk-out onto the pond and a driveway coming in. He said there is a mound of trees along the (west and north) property lines with a fence and gate.

Mrs. Wolgamood asked the petitioner to point out the main access to the pond and he clarified that all of the excavation business traffic comes in from the south. According to the petitioner, the access from the north is not friendly to truck traffic because there is a hill there. He also said there is no access from CR 142 because there's not enough road frontage to have a legal entrance.

Deb Troup, 17892 CR 42, Goshen, was present saying she lives right in front of the pond area. If the petitioner continues to dig in this location, she asked if this is going to affect her well and water and who will pay for that. Two years ago, she said they were told this would be a pond and a house would be built there. She has not seen that, although she did acknowledge that the pond won't be there until all of the gravel is taken out. She said her property value has already gone down due to the economy and now she has a gravel pit in her backyard. She also expressed a concern about the children who live on that road because there is water in the gravel pit.

In response, Devon Miller pointed out a pond that has been there since the early 70's and the Park Department's land in Baintertown. He said the water table he is now hitting is currently above CR 142 by one to two feet, and he has a well up by his building that is 60 ft. deep. If he opened three acres of water, he said he may affect the water table about one foot. There will be some evaporation, but he doesn't think he will dry up the water supply in this area.

Mr. Hesser asked how many loads he would be taking out on his busiest day. Mr. Miller said they have had five trucks running and he estimated a load every 45 minutes; however, he said that has only happened two days in three years.

When Mr. Lantz asked if he feels any concern about the kids in the area, Mr. Miller pointed out there is a four-foot mound and he said there is a five-strand high tensile fence. They graded the bank and he said it is a nice sledding hill, but they want to get it shaped off so it's not a drop-off as shown in the photo. When they saw tracks where someone had been sledding after it snowed, he said they addressed it with the owners of the two homes they followed the tracks to. He then offered to put up "no trespassing" signs.

Condition #1 from the February 15, 2007, hearing states, "there shall be buffers placed along the area", but Mr. Homan said it doesn't say what the buffers are. Mrs. Prough explained that the site plan approved by the Zoning Administrator was for a 20 ft. wide by 4 ft. high mound with a high tensile fence around the perimeter. She also said there are trees along the south side of the property, which was a condition of the first Special Use Permit granted for the excavation business, but they weren't specific as to planting trees along the north side.

The public hearing was closed at this time.

Mr. Hesser expressed a concern about the elimination of Condition #5, which provided for the initial three-year review. This is not a real high impact and he doesn't think there is any problem with the way it has been done, but he said the petitioner is unsure of when he will be done so he doesn't want to leave it open forever. He has lived near gravel pits and he knows they can sometimes get very intense so a usage can become very different from what it has been in the past. Therefore, he would like to put a time limit of either three or even five years on the permit for review.

Mrs. Wolgamood agreed and suggested three years so it doesn't go beyond what they originally granted the petitioner; however, Mr. Miller wondered if it would make more sense to extend the time to five years and then a renewal. He said the petitioner is probably not going to build out within that three year period so it would be another review or extension at that point in time.

Mr. Burrow then advised the Board that should the new ordinance not give them power to review this matter, it could either become non-conforming or they may have to cease operation. He said the question is whether or not the new ordinance empowers the Board of Zoning Appeals to be able to review Special Uses under mineral extraction.

Mrs. Wolgamood asked if that is currently in the new ordinance, but Mr. Burrow said he would have to review the ordinance in detail to figure out if it gave the Board of Zoning Appeals that power. He said that's one of the reasons the staff was dropping the timelines.

Mr. Hesser said it's his understanding they can't prohibit this even if they wanted to; however, Mr. Kolbus said this is in an urban area so there is an exception. Mr. Hesser does not feel there is any problem with the use based on what has been represented, but if it were to greatly intensify or the neighborhood were to change, he said they may want to change the conditions. Mr. Kolbus said he doesn't think it's an issue for the Board to regulate the Special Use under these circumstances.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special

Use renewal for extraction and sale of gravel (Specifications F - #10) be approved with the following conditions imposed:

1. There shall be buffers placed along the area where there are residences on site, as well as fencing, including a gate.
2. The banks must be maintained at a 3 to 1 slope when the extraction of gravel is finished.
3. Exit and entrance with loads of gravel shall be through the present site that now serves Quality Excavating.
4. Hours of operation limited to 7:00 a.m. to 5:00 p.m., Monday through Friday, and 7:00 a.m. to noon on Saturdays.
5. The duration of the Special Use limited to five (5) years with renewal by the Board of Zoning Appeals if necessary.
6. The dust to be controlled on the driveway, as well as at the site, at all times.

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

10. The application of ***Voice Ministries, Inc.*** for a renewal of an existing Special Use for a church ministry (Specifications F - #48) on property located on the North end of Crossview Drive, 475 ft. North of Refuge Drive, common address of 58300 Ash Road 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 #58300ASH RD.-100125-1*.

There were 34 neighboring property owners notified of this request.

Robert Deering, 58300 Ash Road, Osceola, was present on behalf of this request. He explained that they have moved to another facility where they do a lot of their ministry, but they still use this facility for counseling and prayer meetings. A pastoral couple who lives on the premises oversees the building, and with the exception of the traffic, which is considerably less than it used to be on Sundays, he said everything is still in effect.

When Mrs. Wolgamood asked how long ago they moved, Mr. Deering said about a year and a half ago.

When they were here two years ago, Mrs. Wolgamood recalled there was an issue about glare from the lighting. Apparently, she said there have been no complaints and they have complied with what was asked. Mr. Deering said they have turned the lights down and the traffic is now probably one-tenth of what it was before.

Karen Zeck, 58238 Ash Road, Osceola, addressed the Board and explained that Voice Ministries' property forms an L-shape around the parcel she owns. She said the church has downsized the amount of traffic and the glare is greatly reduced. When the original petition was filed, she said it was for a counseling service and that is what was approved. However, she said most people would agree that the activities far exceeded what counseling was and it actually became a church facility.

Subsequent to that, Mrs. Zeck said a petition was filed to have this property zoned as a church facility, which was approved by the zoning board. Since then, she believes they have outgrown that facility so they moved away and the impact is far less. Because the use was exceeded at the beginning, she said they're concerned for what happens in the future if Mr. Deering retires and you have an open-ended church ministry that will exceed the use they have

now. She clarified that they are not opposed to what is going on at the present time, but if there is no review in place, they are concerned it could again exceed the current use.

Also present was Claude Sluder, 30874 Creekwood, Osceola. When he questioned Condition #7 of the original conditions, Mrs. Wolgamood explained that the Special Use was to be renewed by the Board of Zoning Appeals in two years and that's why the petitioner is here today. She also explained that the staff is recommending that Condition #7 be removed from the conditions of the Special Use. Mr. Sluder said he has no problems with this and he feels this renewal would be fine.

In response, Mr. Deering said they're still using this as a counseling facility and they also have prayer meetings that gather there from time to time. They also had a couple of weddings from the congregation last year, and he said they would probably have picnics and other activities like that. Their congregation is now at 400 so he said they would never go back to this site to do church services.

Mr. Deering said the core leadership team understands the zoning, and if he retires, they would honor the request because they have all agreed to what the usage would be so they would move into another facility. He then said he has no objection if the Board wants to set another review of their conditions 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 (*Wolgamood/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 church ministry (Specifications F - #48) be approved with the following conditions imposed:

1. Office hours from 8:00 a.m. to 5:00 p.m., Monday through Saturday.
2. International House of Prayer meetings scheduled from 10:00 a.m. to 12:00 noon the 2nd Saturday of each month, and 6:00 p.m. to 8:00 p.m. the following Monday.
3. Prayer room open 24 hours, seven (7) days a week.
4. All lights should be directed on site in order to minimize fugitive light.
5. Continue compliance with letter dated June 19, 2007 submitted by Mr. Deering.
6. No more than one (1) family to occupy the property as caretaker at any one time.

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

11. The application of **Jeffrey M. & Allison S. Hilty** for a renewal of a Special Use for warehousing and storing of excavation equipment in an A-1 district (Specifications F - #44) on property located on the East side of SR 19, 1,000 ft. South of CR 36 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 #OSR 19-091223-1*. She then submitted to the Board a letter from Sandra Kreps *[attached to file as Staff Exhibit #2]*, a neighboring property owner who has concerns about noise, traffic, and the parking of equipment all around the building. She is opposed to the renewal of this Special Use because the petitioner has not complied with the original agreement for the past three years.

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

Present on behalf of this request was Jeff Hilty, 64200 SR 19, Goshen.

Mrs. Wolgamood noted that 17.312 acres is indicated on the application and she asked the petitioner if that is the entire acreage he owns. Mr. Hilty said that is everything with the exception of the original house, which was on two acres. She then pointed out that this Special Use is being requested on 4.52 of that 17 acres and Mr. Hilty explained that most of the field is going to remain in farm ground.

When he started out, Mr. Hilty said he didn't know what all was going to happen in the first three years. Now that it is time for renewal, he said there are some things he would possibly like to change in the near future such as adding more parking area and equipment.

Mr. Hesser asked if he's seen a copy of the letter the staff submitted and Mr. Hilty said he read it briefly. When asked to address some of the concerns that were expressed, Mr. Hilty said he thinks it's all legitimate; however, he pointed out that he's not the only one who makes noise on CR 26. There is a gravel pit three miles to the east, and he feels his truck traffic is very minor to all of the other trucks that go to that gravel pit. Mr. Hilty said he might be out in his shop working after business hours, but the only way anyone could tell he's back there is because the lights are on. He then indicated that working after business hours does not happen too often.

According to the 2006 approval, Mr. Homan said there was to be no stockpiling of topsoil, concrete or any type of building supplies outside the building. He then asked the petitioner to address the remonstrator's comment that there is some dumping behind the building. Mr. Hilty said that is mainly material leftover from job sites that he doesn't want to throw away so he saves it for the next job. He tries to order material as close as he can, but he doesn't want to run short so he sometimes orders extra. According to the petitioner, there has never been more than a truckload of stone sitting there at a time. At the time of the original hearing, he said he had a huge stockpile of topsoil on the property and that's probably why that was addressed.

In the revised request, Mrs. Wolgamood said he is now asking for a 100 ft. by 100 ft. area on the southeast corner of the property for stockpiling. Mr. Hilty said he knows that stockpile should not be there, but he is requesting it because he feels it would make his business go much smoother. He then admitted that he should have received approval for that before he started piling material there.

The petitioner was then asked to point out the location of Sandra Kreps' property on the aerial photo. The property is on CR 36 and Mr. Hilty said there is a neighbor between them. He said he has talked with his adjoining neighbors and none of them have had any problems with his business.

When asked if vehicles other than those used for excavating are repaired on site, Mr. Hilty said he repairs his personal vehicles and he did some work on a school van. He then added that he does anything he can for a job right now because excavating has been "dead" for a year. Excavating is his main priority, but he said he has to do something to stay busy and keep off welfare.

Mrs. Wolgamood asked if all of his equipment is stored on the north side of the building, but the petitioner said it's currently on the west and north sides. He explained that his equipment is basically all out on the jobsites in the summer, but he would still like to use that area for overflow in the winter when it all comes back to this site. He said he is running out of room so that's why he's requesting parking on the east side as well.

Mrs. Wolgamood asked if he is suggesting any buffering to take care of some of the unsightliness. Although it was not required by the Board, Mr. Hilty said he planted a row of

eight-foot pine trees before he began the business. He estimated that the trees are now 12 ft. in height, and he said they are planted on a mound so they should be spreading out in time.

For clarification, Mr. Hesser asked if the trees are along the entire northern border and Mr. Hilty said they are all the way from the road back to where the stones stop. He also pointed out another row of trees that block the view from his neighbor to the south. According to the petitioner, that neighbor has been cutting trees out so he said he must not care about the view. He then offered to plant more trees.

Mrs. Wolgamood asked how many pieces of equipment he stores outside and the petitioner said eight to ten. That equipment was then described as dump trucks, excavators, dozers, and a skid loader. The location of his home was also clarified to be the front house, which Mr. Hilty pointed out on the aerial photo.

There were no remonstrators present.

The public hearing was closed at this time.

During discussion regarding the areas for stockpiling, Mrs. Prough explained that the original Special Use allowed the petitioner to store on the west side only, but he has indicated he wants to store on the east side in this new application. The site plan shows proposed parking and stockpiling on the east side, but it did not show continued parking on the west side. In talking with Mr. Hilty, he explained that he actually wants to be able to park his equipment on both the west and east sides, and then have a 100 ft. x 100 ft. area for the stockpiling in the southeast corner. According to Mrs. Prough, the staff recommended that the equipment only be parked on the east side because he was expanding the area and it wasn't clear to the staff that he wanted to continue to store on the west side.

When Mr. Hesser asked if there is a change in the staff's recommendation, Mrs. Prough said she doesn't know that he could store all of the equipment he has on the east side. She then verified that there is no equipment there when he is busy in the summer. Mrs. Prough said the staff would be open to allowing the petitioner to store his equipment on both the east and west sides, but limit the number of pieces of equipment for total storage.

Mr. Kolbus advised that that would have to be covered in a revised site plan, and Mrs. Prough said the staff would also like a more defined area for the storage in a revised site plan.

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 amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a renewal of a Special Use for warehousing and storing of excavation equipment in an A-1 district (Specifications F - #44) be approved with the following conditions imposed:

1. The Special Use shall be confined to the area represented on the petitioner's site plan.
2. Stockpiling area must be defined and must be in compliance with Rule 5 standards.
3. Two (2) employees who live off-site.
4. One (1) sign permitted, four (4) sq. ft. per side and unlighted.
5. No exterior loud speakers.
6. Exterior lighting to be limited to security, dusk to dawn type lighting.
7. All equipment to be stored on the east side of the building in an orderly manner and as represented on the petitioner's site plan.
8. Hours of operation to be Monday through Friday, 6:00 a.m. to 6:00 p.m.; Saturday, 6:00 a.m. to noon.
9. No retail sales on site.

10. Must be in compliance with the Elkhart County Groundwater Ordinance (which requires containment for all fuel tanks).
 11. A revised site plan which shows in detail the location of the stockpile area to be submitted for review by the staff.
 12. The Special Use is approved for 4.52 acres of land.
 13. The 100 ft. x 100 ft. area in the southeast area of the 4.52 acres be visually and permanently staked or marked; and is to be approved by the staff prior to any stockpiling taking place.
 14. Parking of equipment is to be allowed on the east and west side of the building as indicated on the site plan submitted.
 15. The revised site plan as talked about in Condition #11 should show in detail the location of the stockpiling area, as well as the areas on the east and west side of the building being used for parking.
 16. The number of pieces of equipment is limited to no more than twelve (12).
- A roll call vote was taken unanimously and the motion was carried.

12. The application of **Stephen R. Hochstetler** for a renewal of an existing Special Use for a woodworking business (Specifications F - #45) on property located on the West side of CR 13, 2,550 ft. North of CR 46, common address of 68521 CR 13 in Union Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #68521Cr13-100125-1*.

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

Stephen Hochstetler, 68521 CR 13, Nappanee, was present on behalf of this request. When asked how the business is going, Mr. Hochstetler said he has one part-time employee and he's not asking for anything other than renewal of the permit.

Mr. Homan noted that some of the basic definitions of a home workshop/business are reiterated on the staff report, which he went on to review. Mr. Hochstetler said everything continues as it was originally presented. When asked if he sees anything changing with his business in the near future, the petitioner said no.

Mr. Hesser asked if there is adequate turnaround area on the property and Mr. Kolbus said there is an existing turnaround as shown on the site plan.

The use of the building shown in the staff photo that's covered with a blue tarp was questioned by Mrs. Wolgamood. Mr. Hochstetler said it's used for storage of wood, and the tarps are there because it's not finished yet. It was then clarified that the building is not affiliated with the business other than heating the shop.

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/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45) be approved with the following conditions imposed:

1. No more than two (2) employees outside those who live on site.

2. One (1) sign no larger than four (4) sq. ft. per side and unlighted.
3. No outside storage in compliance with the home workshop/business definition.
4. Production hours limited to 5:30 a.m. to 3:00 p.m. with retail hours of 8:00 a.m. to 5:00 p.m.
5. An adequate turn around for trucks to be provided to eliminate backing out onto the county road.

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

13. The application of **Andrew Martin** for a renewal of an existing Special Use for an agri-business in an A-1 zone to include fabrication of trusses for construction of structures for crops and animals husbandry farming operation (Specifications F - #56), and for a Developmental Variance to allow the total square footage in the accessory structures to exceed the total square footage in the primary structure on property located on the East side of CR 1, 1,800 ft. South of CR 30, common address of 62332 CR 1 in Olive Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #62332CR 1-100119-1*.

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

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing Andrew Martin on behalf of this request. He noted that the Staff Report includes a lot of history, which was not read, but he's sure the Board had an opportunity to review. He said a brochure he prepared was submitted with the application to be distributed to the Board, and the Board indicated they had received the brochure in their packets. Mr. Sloat had an extra copy of the brochure, which was then submitted for the file *[attached to file as Petitioner Exhibit #1]*.

For clarification, Mr. Hesser asked if the developmental variance is just for existing buildings, but Mr. Sloat said it's for an addition to the existing building.

Over the past number of years, Mr. Sloat said they established the construction of trusses for use in agricultural application in agricultural buildings was not truly an agricultural use and entitled to be characterized as an agricultural business. It has been three years since their approval and now they are here for the renewal of the Special Use. As part of that, he said they want to construct an addition to this building to the north. In the last year or so, Mr. Martin acquired some additional land and Mr. Sloat said he now has a total of 65 acres with no close neighbors. The petitioner originally wanted to build on the south end of the building, but now that he has acquired the additional land, he can construct the addition on the north end because the property line barrier is not a problem.

In addition, Mr. Sloat said the old driveway to the property came in by the house. According to county records, the elevation is 796 ft. so they moved the driveway to the north where it has an elevation of 804 ft. There is a crest in the road and he said the road goes uphill so it's a much safer entrance. That was done with the knowledge of the Elkhart County Highway Department and he said John Bowers has concurred that this was an appropriate change. He then clarified that the old driveway is no longer accessible so there is only one access to the property. He also pointed out a new gravel area for access to the building.

The footprint of the existing layout of the building was then reviewed with the Board. As the workflow progresses, Mr. Sloat said work is stacked on top of work and you're stumbling over yourself to get where you need to go so it's not a nice continuous flow production line. He

also reviewed the footprint of the new layout, which includes the 50 ft. x 70 ft. addition. The dotted line shows the separation of the existing and proposed addition. He pointed out that the lumber storage will not interfere with the workflow of the cutting and moving material around the building. He also said it would be a much safer environment to work in. Things will be brought in at one end of the building, and after processing, they will move out the other end.

At the time of the original permit, Mr. Sloat said the table length was limited to 50 ft. trusses. The current trend in free-style barns is 80 ft. wide trusses, which Mr. Martin can't do because there isn't enough room. Therefore, in order to maintain business with his customers who are building barns, he wants to move the table and make it longer so he can make the 80 ft. long trusses. Mr. Sloat said he's not expanding his business, he's just trying to maintain what he has. He only has one employee in addition to his children, and last year he said 90 percent of Mr. Martin's business was for agricultural barns. He said this would give the petitioner a chance to reorganize and retool while things are slow so he's in a better position to work more efficiently if business picks back up.

There were numerous photos of the inside of the building included in the brochure, which Mr. Sloat went on to describe. To get the material from one end of the building to the other, he said you somehow have to get across the finished trusses, which creates a real bottleneck. Another improvement will be the relocation of the saw. He said all of the short cut-offs will be collected in a dumpster so they are not on the floor, which is then burned for hot water heat in the petitioner's home and the shop. Moving the forklift around the building is impossible so he said you have to carry material around by hand, which is not efficient.

In conclusion, Mr. Sloat said they feel the renewal of the Special Use is appropriate. The developmental variance will allow the petitioner to make 80 ft. trusses and will create a much safer environment to work in. He then referred to a list of conditions he included in the back of the brochure he submitted.

Mr. Homan asked if the renewed Special Use would apply to the entire 65 acres or just the area being used by the business. Mr. Sloat said he included the entire 65 acres in the application as the site plan crosses the property lines. He pointed out that the buildings are probably still less concentrated than what there might be on a similar 65 acre dairy farm.

In the photos, Mr. Homan noted there are four units of plywood sitting on the ground and he asked where you would use plywood in the construction of trusses. He thinks one of the key issues is the intensity of this business and he's curious why those units of plywood are sitting out there. He said the business is for the construction of trusses, not for distribution of other building material or expansion beyond the construction of trusses.

After conferring with his client who was also present, Mr. Sloat said the plywood is used for floor trusses as well.

Andrew Martin, 62332 CR 1, Elkhart, was then asked to explain the use of that material to the Board. He said they do floor trusses and occasionally make custom-made trusses. According to Mr. Martin, the whole truss is covered with plywood, which the farmers want in their free-style barn to keep the birds out so they don't have a place to sit.

Mr. Homan then asked if he supplies roof decking, floor decking, or any other kind of material other than trusses to his customers. Mr. Martin said he occasionally sells lumber that he stocks to build the trusses such as 2 x 4's.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan recalled that this operation was originally approved as a home workshop/business and the Board tried to make it fit within the definition so the petitioner could continue his operation. This is a commercial operation, but he pointed out that it is limited in intensity. From the day it was approved, he felt the building was quite small for what he is doing so he's not surprised to see the petitioner come back for an addition to the business.

Mr. Homan thinks the Board would be concerned about the overall intensity of this commercial operation increasing, but from the evidence provided, it doesn't look like they are adding any additional employees or selling other products. Although the square footage of the operation is changing, he doesn't think the intensity is so it's his opinion this is probably more of sizing the facility to the operation the petitioner is endeavoring to do.

Mr. Homan did say, however, that he is concerned about applying this Special Use renewal to the entire 65 acres. He said he would feel better if they could geographically confine this commercial operation to a smaller site plan that really encompasses the area being used in the information submitted by the petitioner.

Mr. Hesser said one good thing about having the Special Use apply to the entire 65 acres is that the petitioner can't sell it off as a smaller stand-alone parcel because it's not approved for that. However, Mr. Kolbus said he thinks he could sell it off. The problem, he said, would be on the remaining tract because it would show up as having a Special Use on it. He said there would be nothing there but farm fields so they would have to get that corrected.

If the Special Use was tied to the entire 65 acres as represented in this application, Mrs. Prough said the petitioner would be required to come back to the Board for an amendment to the Special Use should he decide to sell a portion of that acreage off. Mr. Hesser felt that would be to the Board's benefit because part of their lack of concern is due to the fact there's such a large buffer and Mr. Homan agreed.

Mrs. Wolgamood doesn't think Mr. Martin would have to have a survey done and parceled off, but she said she feels more comfortable knowing the Board has not only granted something attached to this site plan, but also something delineating the acreage and dimensions of the property where the Special Use is being granted.

Mr. Homan felt that area would be somewhere around the boundary as delineated by the evidence. He too would feel better if the petitioner could superimpose lines on the site plan to tell the Board where his operation is actually going to be conducted. If conducted outside of that representation, he feels the Board should be aware of that.

It was then pointed out that the petitioner is already outside of what he was granted because the new driveway and closing off the old was not part of the original application. Mrs. Wolgamood said it also shows the off-loading area extending into the "65 acres" to the north. She then recalled that they have limited Special Uses to a certain amount of acreage in the past.

Mrs. Prough said they can ask the petitioner to bring in a revised site plan showing the dimensions and acreage and they can tie the Special Use into that site plan.

When asked if a driveway permit was granted by the Highway Department, Mrs. Prough said the petitioner's application represents that they talked with them, but she does not have a copy of it. However, she thinks that will be an issue when they apply for a building permit because the Highway Department has to approve a curb cut before a building permit can be issued. She said that could also be added as a condition to the Special Use.

Another change Mr. Hesser noted is semi deliveries. He also feels that it's important they have a representation that the trusses are for agricultural purposes. That was part of the

original record, and he recalled Mr. Sloat saying 90 percent of the petitioner's work is for agricultural barns. He then noted that the Rules of Procedure say that oral representations in the minutes are part of the conditions.

With regards to the conditions submitted by the petitioner, Mrs. Wolgamood said #11 asks for approval for an indefinite period and the staff apparently agrees with that as they did not suggest any renewal of the Special Use. However, she reiterated that the petitioner is already in violation of what was approved so she questions the indefinite period of time.

In addition to the business, Mr. Sloat said the new driveway also services the petitioner's house. It's a public safety factor for the petitioner and the people on the highway so he said it's in the best interest of everyone to move that driveway, which has nothing to do with the business. When Mrs. Wolgamood said he closed off the access to the business, Mr. Sloat said it's safer than it was so he's not sure the petitioner is in violation.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Special Use for an agri-business in an A-1 zone to include fabrication of trusses for construction of structures for crops and animals husbandry farming operation (Specifications F - #56), and for a Developmental Variance to allow the total square footage in the accessory structures to exceed the total square footage in the primary structure, be approved with the following conditions imposed, including those submitted by the petitioner (as amended by the Board):

1. Pick up truck with trailer used for primary delivery of trusses. Semi-tractor with trailer used as needed for longer trusses, no more than 1 (one) or 2 (two) times per month.
2. No more than two (2) deliveries or pick ups per day.
3. Truss business will not be expanded without BZA board approval.
4. Hours of operation are Monday through Friday from 7:00 a.m. through 6:00 p.m. No Saturday or Sunday hours.
5. Construction of roof trusses shall be secondary to the use of the property as a residence and as farmland.
6. Agri-business manufacturing assembly operations will be carried on wholly within accessory building per site plan
7. Agri-business will be operated by Andrew Martin as resident of the property, not more than two (2) persons who do not occupy the residence will be employed.
8. No signs.
9. No retail sales.
10. Agri-business shall not produce noise, vibration, smoke, dust, odors, heat or glare which can be detected beyond the premises.
11. Approved for a period of three (3) years with a renewal before the Board of Zoning Appeals at that time.
12. A detailed site plan is to be submitted to the staff indicating the dimensions of the work area designated for the agri-business by March 10, 2010 and is to be brought back before the Board of Zoning Appeals for approval as a staff item at the March 18, 2010 meeting.
13. All required permits and inspections to be obtained.

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

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

15. There were no audience items.

16. The staff item regarding the approval of the detailed site plan for **Myron Yoder (Case #14695cr 38-091210-1)** was presented to the Board by Mrs. Prough at this time. On January 21, 2010, she said the Board granted Mr. Yoder a permit for warehousing/storing for his concrete construction business. Condition #2 of that approval was that a detailed site plan showing the location of outside storage, quantity of outside storage, and screening was to be submitted to the staff by February 10, 2010, and then brought back to the Board of Zoning Appeals for approval. The staff has reviewed a copy of the site plan and she said they feel the petitioner is in compliance with what the Board wanted. The original site plan was then submitted to the Board [attached to file as Staff Exhibit #1] for approval.

Mr. Kolbus advised that the photos should be attached to the site plan because the Board requested quantity of storage. He said he would view the photos as representation of the anticipated quantity.

A motion was made and seconded (*Hesser/Miller*) that the Board accept the site plan as submitted with the photographs attached. A roll call vote was taken and the motion was carried unanimously.

17. At this time, the staff item regarding the request for an extension of the 3 to 1 depth to width ratio Variances for **Aaron & Natasha Sawatsky Kingsley (Case #61074CR 21-090917-1)** was presented. According to Mr. Nemeth, the variances were granted October 15, 2009, to create two lots, and the petitioners had ninety (90) days to start the subdivision process. They did file an application for the subdivision, but he said it was two weeks past the 90-day deadline. The subdivision is scheduled to go to the Plan Commission in March so they are asking for a 120-day extension from today. Mr. Nemeth said the extension will take the petitioners through the primary and secondary subdivision approval process, and it will also give him enough time to send it to the commissioners.

Mr. Hesser asked if he felt the filing was made in good faith and Mr. Nemeth replied yes.

A motion was made by Mr. Hesser and seconded by Mr. Homan to grant a 120-day extension of the 3 to 1 depth to width ratio Variances for Aaron & Natasha Sawatsky Kingsley (Case #61074CR 21-090917-1) as requested. With a unanimous roll call vote, the motion was carried.

18. The review of the **Elkhart County Board of Zoning Appeals Rules of Procedure** was discussed at this time. Mr. Hesser asked if there have been any changes since the last discussion they had other than the addition of the forms and Mrs. Prough said there have been some changes that were not in the board's packets. She then clarified that the draft included in their packets includes the changes that were made at the workshop. After reviewing the Rules again, she said the staff made notes for other potential changes, which she did not print out. She then indicated that she has a clean copy that includes the changes she is proposing today if the Board is willing to accept them. She then went on to review the additional changes at this time.

On Page 6, Section 3.06 Order of Business, Number 5 says, "Introduction of the zoning ordinance, subdivision control ordinance, and staff reports". The staff would like to change that to read, "Introduction of zoning ordinance and staff report materials into the record". Mrs. Prough explained the subdivision control ordinance has never been entered as part of the hearing process. Mr. Kolbus stated the board members now receive a whole packet of materials, which is why we want to say staff report materials instead of just a two or three page staff report.

On Page 7, Section 3.06 Order of Business, "Adjournment" should be listed as Number 9 instead of Number 8.

On page 18, Section 6.01 Action By The BZA, Letter E, the word "form" is being removed.

On page 20, Section 6.06 Conditions and Commitments, Number 1 is being deleted and Number 2 is being made Number 1. The staff had re-written section Number 1 and it was talking about exempting the three to one depth to width ratio Variances, lot width Variances, and lot area Variances from the 90 day rule, but that really isn't applicable. She explained that it has to do with the new Subdivision Control Ordinance. The way the new Subdivision Control Ordinance is written, it states that any parcel that is conforming now and doesn't need any type of Variances would be considered conforming. If there is a parcel now that is not conforming and needs Variances, it is not really conforming and would have to go through a subdivision process. At this time, Mr. Hesser suggested not using Number 1 to identify the paragraph, just have the text written out. He then indicated that in the last sentence which says, "Exceptions to the ninety (90) calendar day voiding are as follows:" the word "are" should be changed to "is". Mrs. Prough then indicated that the changes would be made.

On Page 21, Section 7.02 Schedule of Fees, Letter A, the last sentence currently states, "A copy of the Uniform Schedule of Fees is attached hereto as Exhibit "C" and incorporated herein by reference". Mrs. Prough explained they are changing that to read, "A copy of the Uniform Schedule of Fees is available at the Elkhart County Planning and Development Department". She said the reason for the change is that the Plan Commission adopts the Fee Schedule as part of their Rules of Procedure. If it were put in the Board of Zoning Appeals Rules of Procedure, every time the Plan Commission would change the Fee Schedule, the Board of Zoning Appeals would have to change it as well.

Mr. Kolbus then noted the following change on Page 4, Section 2.05 Hearing Officer, Number 4, Letter d. He explained when there is an Appeal from the Hearing officer that goes to the full Board, a sentence should be added that says "The BZA shall hear the matter de novo". This will make it clear that it is a new hearing, as to distinguish it from the other type of Appeals we have. Mr. Kolbus explained there is an Appeal from an administrative action where the Board either affirms, modifies, or rescinds the action. When there is an Appeal from the Hearing Officer, it goes to the Full Board and the petitioner is still the petitioner. Mr. Hesser asked if the Board has any publication obligations on the Rules of Procedure and Mr. Kolbus said no and indicated that the changes can be adopted by the BZA at this time.

Mrs. Prough said she knows that Mrs. Wolgamood has suggestions about some changes to the instruction sheets for the Mobile Home Special Use and the Developmental Variance. Those changes are as follows:

On Exhibit "A" - Page 1 and Exhibit "A" - Page 6, Letter A FILING PROCEDURE, Number 3, Mrs. Wolgamood has suggested adding Hearing Officer and/or Board of Zoning Appeals to the first sentence for purposes of consistency so it reads as follows: "The owner(s) of

property included in any petition before the Hearing Officer and/or Board of Zoning Appeals must consent to the filing of the application.”

Mrs. Wolgamood stated she had a question concerning Exhibit “A” - Page 26, Letter A FILING PROCEDURE, Number 3, where the very last sentence states, “This requirement shall not apply to an appeal filed by an “interested party”/neighboring property owner or their authorized representative”. She asked if that should refer to the Hearing Officer. She explained that a landowner pays for the application and then the public hearing is held. Then when an interested party, neighboring property owner, or whoever wants to Appeal that decision, she asked if that sentence should refer to the Hearing Officer.

Mr. Kolbus stated no, and indicated this Appeal application is for other than Appeals from the Hearing Officer. Mrs. Wolgamood wondered if it should say that, but Mr. Kolbus said they tried to clarify that in the Rules of Procedure. He explained if the Zoning Administrator issues a zoning clearance, then the neighbor could file an Appeal and wouldn't need consent from the landowner. He referred to the Rules of Procedure, Page 11, Section 4.01 Applications, Letter H, where it states, “An appeal of any order, requirement, decision or determination of the Hearing Officer shall be governed by Section 2.05 of these Rules and not by this Section 4.01”. If you read these two sections together, he said they should be consistent. If an interested party or neighboring property owner wants to appeal the Hearing Officer's decision and take it to the full Board, Mrs. Wolgamood asked if they don't have to pay a fee. Mr. Kolbus said that is correct as the original application stands on its own.

Mrs. Prough explained the staff had a lengthy discussion on that issue and they determined since they are using the same staff report, same materials, and same photos, a fee would not be charged. In the past, they have never required anyone to pay a fee for an Appeal from the Hearing Officer's decision and the staff felt the appellant should be exempt from paying a fee. If the Board feels a fee should be charged, she said the Rules of Procedure can be changed to reflect that. Mrs. Wolgamood stated her point was that it is a completely new public hearing.

Lastly, Mrs. Prough indicated the neighboring property owner list was removed from the application packets because the applicant does not use that form. That form was for staff use only, but the Rules of Procedure indicates that the staff has to document that notices were sent and the date they were mailed. She stated the staff has a form used to certify the notices were mailed, but the new form is not part of the Rules of Procedure.

A motion was then made and seconded (*Hesser/Homan*) that the revised Rules of Procedure for the Board of Zoning Appeals be adopted as presented including the changes suggested today. After a unanimous roll call vote was taken, the motion was carried.

19. The meeting was adjourned at 10:27 a.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary