

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15TH DAY OF JULY 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 and Meg Wolgamood. Staff members present were: Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Homan/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of June be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Wolgamood*) that the legal advertisements, having been published on the 3rd day of July 2010 in the Goshen News and on the 5th day of July 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. Ann Prough noted that in regards to JJ Brooks and Lamar Chupp, the Staff has met with the operator of the car lot and it has been determined that he is going to be filing a new application for the car lot to include the lot to the west. She stated that he was having difficulties meeting parking requirements and setbacks. Mrs. Prough noted that Lamar Chupp previously submitted a letter stating that he is going to apply for a new variance. Therefore, she recommends keeping this item on the table so that it can be acted on next month after hearing his new petition. (*See page 13, item #12 for further action on this request.*)

* (*It is noted that Doug Miller arrived for the meeting at this time.*)

7. The application of **Saul & Cathy Hall** for a Use Variance to allow for the construction of a second dwelling on a parcel located on the West side of CR 29, 375 ft. North of SR 120, common address of 52915 CR 29 in Washington Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #52915CR 29-100621-1*.

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

Cathy Hall, 52915 C.R. 29, Bristol, was present on behalf of this request. Mrs. Hall stated that they were requesting the variance which would allow construction of a second home on the property. She explained that they planned to have the first home, which is a mobile home, removed upon completion of the new home.

Mr. Homan asked about the proposed timeline for the construction of the new home. Mrs. Hall indicated that she anticipated a four month time period.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked how the staff monitors that the mobile home is removed from the property within 45 days of completion of the residence. Mrs. Prough explained that Code Enforcement will get a copy of the building permit and they monitor the progress through the inspection records. She stated that once Code Enforcement gets a temporary final inspection allowing the residents to move in they target removal of the mobile home for 45 days.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved by the Board in accordance with the Staff Analysis with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioners' application.
2. The mobile home to be removed from the property within forty-five (45) days of completion of the new residence.

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

8. The application of ***Maynard E. & Rosetta L. Yoder Trustees of The Yoder Family Revocable Living Trust*** for a Special Use for a home workshop/business for manufacturing of hardwood furniture (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, on property located on the North side of SR 4, 1,330 ft. West of CR 133, common address of 14737 SR 4 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 #14737SR 4-100601-1*. She amended the Staff Report by explaining there are two small sheds on the property rather than three as indicated under the Physical Improvements.

There were nine (9) neighboring property owners notified of this request.

Maynard Yoder, 14737 S.R. 4, Goshen, was present on behalf of this request. Mr. Yoder stated that he is seeking a Special Use permit for a home workshop/business to manufacture hardwood furniture. Additionally, he would like to add on to the existing building.

Mrs. Wolgamood referred to the aerial photo, and asked Mr. Yoder if there was a building on the south side of the property.

Mr. Yoder stated that the area in question is a garden, and there is a 6'x8' garden shed.

Mr. Homan inquired about what precautions would be taken in terms of preventing fire due to the finishing process.

Mr. Yoder explained that while some finishing takes place at the location, the majority of furniture, as much as 80%, is taken to the finish shop. He stated that there is a 14' x 28' portable building which is used as the spray booth.

Mr. Hesser questioned the hours of operation Mr. Yoder had indicated on the questionnaire. He stated that the questionnaire reflects the hours of operation as 5:30 a.m. until 3:30 or 4:30 p.m., Monday through Friday. Mr. Hesser asked Mr. Yoder if he planned to operate the business during those hours.

Mr. Yoder explained that his business is a family operation, with just himself and his son. He stated that they begin work at 5a.m. or 5:30a.m and end the work day at approximately 4:00 p.m. Mr. Yoder noted that his daughters help part-time, but they do not have scheduled hours.

Mrs. Wolgamood asked Mr. Yoder if all of his employees are family members. Mr. Yoder responded yes.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for manufacturing of hardwood furniture (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, be approved 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.

9. The application of **Bessie G. Goodison** for a Special Use for a subordinate dwelling in a R-1 district (Specifications F - #55), and for a 3 ft. Developmental Variance to allow for the construction of an addition to a garage 7 ft. from the East side property line (Ordinance requires 10 ft.), on property located on the South side of CR 10, 460 ft. West of CR 17, being Lot 7 of St. Joe Vista, common address of 22090 CR 10 in Osolo 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 #22090 CR 10-100622-1*.

There were five (5) neighboring property owners notified of this request.

Bessie Goodison, 22090 C.R. 10 East, Elkhart, and Donna McBrier, 22076 C.R. 10 East, Elkhart, were present on behalf of this request.

Mrs. McBrier stated that she was seeking the variance which would allow the addition of living quarters for herself and her husband so that they could care for her mother, Bessie Goodison. Mrs. McBrier explained that if they were able to live in that residence, her mother would not have to go to assisted living and could remain in her home for the remainder of her life.

Mr. Hesser asked Mrs. Goodison if she resided in the home currently. Mrs. Goodison responded yes. He then asked Mrs. McBrier if it was her intent to move to that location. Mrs. McBrier indicated yes.

Mrs. Wolgamood asked if the plan was to build above the existing garage and extend out an additional two story. Mrs. McBrier indicated that she was correct. Mrs. Wolgamood then asked if the lower portion of the two-story addition would be used for garage space while the

upper level would provide additional living area. Mrs. McBrier responded that that was the plan. Mrs. Wolgamood noted that the total area would be 700 square feet.

Mrs. Wolgamood clarified that the entire lower level would be garage area, and inquired about entry into the garage area. Mrs. McBrier stated that there would be a single stall garage door at the end of the structure, with a side door to allow entry inside the garage.

Mrs. Wolgamood asked if the door shown on the site plan was proposed or existing. Mrs. McBrier explained that while there is an existing door into the garage, the main entry door, which is proposed, would be a 36" wheelchair accessible door, located just around the corner from the existing garage entry door. Mrs. McBrier stated that the new door would be the main entrance for everyone, while entry to the new living area would occur through a secondary door.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a subordinate dwelling in a R-1 district (Specifications F - #55), and for a 3 ft. Developmental Variance to allow for the construction of addition to a garage 7 ft. from the East side property line (Ordinance requires 10 ft.), 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. The residence must be owner occupied and the subordinate dwelling be used by family members only, in accordance with the zoning ordinance definition of a subordinate dwelling.

The motion was carried with a unanimous roll call vote.

* (*It is noted that Mr. Hesser stepped down from the board for the following staff item due to a potential conflict of interest.*)

10. Mrs. Prough noted that in June, the Board approved a wind turbine for **Ronald E. Williams** on property located at 30400 C.R. 2, Granger. She stated that at that time Mr. Williams planned to place the turbine 130 feet from his south property line. Mrs. Prough explained that after the installer visited and reviewed the construction on the site, it was determined that it would be more productive if the tower were located 30 feet from the south property line. She pointed out that Mr. Williams also owns the property to the south. Mrs. Prough submitted a letter from Mr. Williams [*attached to file as Staff Exhibit #1*] who is requesting that the Board approve the move as a minor change, which would allow the turbine to be situated 30 feet from the property line as noted on the new site plan. Attached to the letter is the revised site plan. She explained that this change would allow Mr. Williams to proceed with construction. Mrs. Prough commented that she was aware the current tower policy states 100 feet from the property line, but noted, that if Mr. Williams would have included the south property with his original application it would not have been an issue.

Mrs. Wolgamood asked how much property Mr. Williams owns in that area. Mrs. Prough stated that he owns eight acres. Mrs. Wolgamood asked if his motor cross track was located within that area. Mrs. Prough stated that his motor cross track is located in that area and that Mr. Williams has a Special Use permit for his motor cross track.

Mr. Miller asked if Mr. Williams was able to subdivide that parcel. Mrs. Prough explained that he didn't have any road frontage, and therefore, could not subdivide the property without creating a major subdivision.

Mrs. Wolgamood moved that it was a minor change. Mr. Homan seconded. The motion was carried with a unanimous roll call vote.

* *(It is noted that Mr. Hesser returned to the board at this time.)*

11. 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.

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 #54039CR 43-100621-1*.

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

Samuel D. Yoder, 54565 C.R. 43, Middlebury was present on behalf of this request. Samuel Yoder stated that he owns the property at this time. His brother, James Yoder, has an existing operation in LaGrange County at this time. Samuel Yoder indicated that he and his brother work together with a mill $\frac{3}{4}$ mile south. The brothers have one facility which handles low grade stock, while the other facility deals with furniture stock, which are higher grades. Samuel Yoder stated that each operation requires a different equipment set-up. He went on to say that the combination of the two operations allows them to process all the timber that comes out of any given tract of timber. In other words, it allows them to process the spectrum of trees that grow there. Samuel Yoder stated that he and his brother propose to move into the existing shop where they will produce the low grade stock. He explained that the higher grade operation will continue at the existing location on C.R. 43 and C.R. 10. While referring to his site plan, Mr. Yoder further explained that he would like to remove a portion of the north lean and extend the existing east lean by eight or ten feet to the north, which would enable their equipment to fit inside.

Samuel Yoder stated that the other proposed construction involves creating a loading dock on the south side of the building by the door leading into the main shop. He said that most of their product is shipped in van trailers and a loading dock would allow the trailers ample room to back up and load efficiently. Samuel Yoder went on to explain that the planned outside storage would primarily be logs with an overhead crane system on the northeast side of the property. He foresees log trucks pulling in and backing underneath the crane system, where they would get unloaded. Samuel Yoder indicated that log storage would occur on the east side of the property. While lumber may also be stored in that area, the bulk of what would be visible would be logs and most lumber would be stored behind the building.

Samuel Yoder went on to say that he is proposing a chip loading system with a trailer parked on the north side of the building. He explained that this type of system blows the chips into the back of a semi-trailer in a sealed fashion. He stated that he envisions placing a dust trailer to the north of the facility, which would allow him to blow dust into the trailer in the same sealed fashion. He acknowledged that occasional spills are inevitable, but stressed that spills will be cleaned up. Samuel Yoder stated that this operation would result in no dust leaving the

property. Because most of the operation would be inside, he does not anticipate a significant level of noise being emitted from the property. Samuel Yoder likened the level of noise emitted to the equivalent of two running lawn mowers.

According to Samuel Yoder, his brother, James, would be living in the house on the south edge of the property. James would be the owner operator of the business and may buy the property from Samuel Yoder in the future. If that were to occur, James Yoder would then become owner of the property as well as the business.

Samuel Yoder stated that he thinks a saw mill operation would utilize the agricultural timber resources available in Elkhart County and surrounding areas. He believes that due to the need to process timber resources, his request fits in with an agriculturally zoned area. Samuel Yoder emphasized that he and his brother are committed to ensuring that the noise is kept to a minimum and that dust would not ever leave the property. He noted that the operation would employ up to five people, besides James. Samuel Yoder added that he believes that creating local jobs for local people would be beneficial to the community.

In response to Mr. Hesser's question as to whether these would be new employees or employees from existing facilities, Samuel Yoder answered that there would be a combination of both.

Mr. Homan asked if Lakeside Lumber located at C.R. 43 and C.R. 10 was part of Mr. Yoder's operation. Samuel Yoder responded that they are not under the same ownership. He said that his father, David Yoder, owns Lakeside Lumber. Samuel Yoder noted that he is a partner there also. Samuel Yoder stated that his brother, James Yoder, owns Country Forest Business, which is a totally separate business.

Samuel Yoder indicated that the proposed plans are somewhat flexible, but stated that he does not have an unlimited amount of resources to drastically change the proposed plan. He said that he will try to make it into as clean an operation as possible.

Mr. Homan inquired about the likelihood of a diesel generator on the property. Samuel Yoder indicated that there would be generators located in the old lean on the north side of the building. He stated that these generators would produce power for the entire facility. Samuel Yoder noted that fuel tanks would be used, although they have not decided on a definite location for those tanks. He said that they are planning on using concrete secondary containers for the tanks.

Mr. Homan asked Mr. Yoder to explain the overhead crane system. Samuel Yoder explained that it would likely be a block-and-tackle arrangement. He went on to say that there would be two I-beams that are approximately 18 feet above the ground. Additionally, there would be an I-beam that crosses over and travels along the top of the I-beam. Samuel Yoder said that there would be a diesel engine on top that powers it and a block and tackle system that lifts the lumber.

Mrs. Wolgamood asked where the crane system would be stored. Samuel Yoder responded that the crane would be stored on the east side of the property. He explained that the I-beam frame would be situated at that location permanently while the cross I-beam would travel back and forth. Samuel Yoder noted that this design would allow part of the crane system to be situated behind the building, while part of the system would protrude beyond the building. He stated that log and lumber storage would occur in that area.

In response to Mrs. Wolgamood's question about the location of the storage area, Samuel Yoder stated that the storage area would be to the west of the pasture fence.

Mrs. Wolgamood then sought clarification about the proposed new loading dock. She noted that the site plan seemed to indicate a six foot distance from the fence to the building, at which point it drops off due to a flower bed. Mrs. Wolgamood asked how they were going to situate a loading dock in that location. Samuel Yoder explained that directly next to the wall of the building they propose placing a cement retaining wall. He noted that there would be a flat spot where the flowers are currently situated. He went on to explain that there would be a level spot with another short retaining wall just on the north side of the existing driveway. Samuel Yoder stated that on his site plan he has indicated that the area would be truck width, or 12 feet.

James Yoder stated that the idea of the loading dock is to be able to utilize the existing landscape because a five foot drop is needed to match the semi height. He explained that the proposed site plan would result in the least amount of change to the site.

Samuel Yoder noted that they load lumber themselves with hand pallet trucks that they push. He explained that it is much easier to do so if they have a level loading dock.

Mrs. Wolgamood expressed concern about the space needed for semis to drop off material, as well as for employee parking. She questioned if there was adequate room to allow for those things to happen.

Samuel Yoder indicated that there is adequate room. He pointed out an area on the west side of the property that is all gravel. Samuel Yoder stated that they plan to cut some of the grass, but they do not want to increase the curb cut on the road. He said that they propose to cut and gravel some of the grass area which would allow more room for semis. Samuel Yoder stated that it could be a little bit on the tight side, but relayed that they work with loading trucks in a similar fashion at the other facility.

Samuel Yoder noted that log trucks can enter through the drive to the north and back in, or they could enter through the other drive and back in to the dock.

Mrs. Wolgamood asked James and Samuel Yoder if everyone knew that there was no backing in to the property off of the county road. She explained that the road is steep and it is not a good situation for vehicles backing in.

Samuel Yoder said that they originally proposed an open loading dock, but they are seeking permission, as their finances permit, to enclose that dock within a year. Samuel Yoder explained that they are putting in a three foot foundation underneath the dock now. This would allow them to keep snow and ice off of the lumber and would allow them to load more efficiently. He noted that he doesn't anticipate any immediate building changes, other than the proposed lean extension which includes enclosing the south and north sides of the lean.

Mrs. Wolgamood asked if the proposed sawdust loading trailer, which is an 8' x 53' semi, would remain on site at all times. Samuel Yoder indicated that it would remain on the property and would be exchanged for another unit when it becomes full. He stated that if they don't have a contract with a company to provide that semi, they would need to construct a separate dust bin at some other location on the property.

Mrs. Wolgamood asked Mr. Yoder if they had dust collection semis at the Lakeside Lumber location. Samuel Yoder explained that they don't have the direct loading system as they produce material. He stated that there is a dust bin at the current location. He noted that when it becomes full, they hire someone to come load it out. Samuel Yoder explained that direct loading with the blower system will be more efficient.

James Yoder pointed out that by using the direct loading with the blower system; sawdust does not have to be handled twice. He explained that one of the benefits of using this system is

that the semi has a return pipe that goes back into the building where it collects the dust and air that will be blown by the blower. James Yoder stated that at the current site at Lakeside Lumber, spills sometimes occur. He believes this method would be more efficient in containing the dust by keeping it inside the container as opposed to blowing around.

Mrs. Wolgamood said that she recalled that there was a past situation at Lakeside Lumber involving problems with blowing dust. Both James and Samuel Yoder acknowledged that there were past problems, but stated that they have learned from those problems. James Yoder went on to explain that the problem at Lakeside Lumber was that they had no containment system and the dust was being blown out into a pile.

Mr. Miller wondered what he might see if he pulled into the establishment on any given day. He questioned the average number of logs, including the height and width of the stored logs.

Samuel Yoder responded that, on average, there would probably be logs stacked in a pile approximately ten to twelve feet high and approximately 40 feet in length. He explained that the logs may be stacked in tiers, two or three piles deep.

Mrs. Wolgamood asked for more information concerning proposed outside storage. She relayed that Mr. Yoder had stated that the outside storage would involve mostly logs. Mrs. Wolgamood asked for clarification on what other items might be stored outside, in addition to the logs.

Samuel Yoder explained that the area underneath the overhead crane system encompasses their outside storage capacity. He stated that they cannot handle anything that is not in that area. Samuel Yoder said that there might be some long lumber packages arriving for further processing, but if that were to occur, that material would come in on a truck or wagon and would be stacked to the east of the building, on top of the terrace. Samuel Yoder stated that there might be some occasional lumber stacks which would be placed on a chain conveyor system to the east side of the building. He explained that the conveyor would take the material into the building for processing. Samuel Yoder noted that anyone visiting the site may see three to five stacks of lumber; however, the bulk of what is stored is logs.

Mr. Miller asked Mr. Yoder if that reflected five percent of the processing capability. Samuel Yoder stated that the figure was more likely ten percent of what they would process.

Mr. Homan asked if the lumber would be coming up from Lakeside or from another mill. Samuel Yoder responded that it would likely come from Lakeside. He explained that the best boards are on the outside of a log, while the center of the log is not as high-quality and gets used as pallet stock. Samuel Yoder stated that once the outside boards are cut, the pallet stock is roughly sawed up into what is called "cants". It is then brought to the facility and cut into small boards for pallets for further process at their facility. Samuel Yoder indicated that the primary focus of their operation involves turning logs into lumber. He relayed that most of the finished product would be stored inside the main shop building until shipped, at which point it would be loaded from the dock.

Mrs. Wolgamood inquired about any lumber currently stored in their facility. She wondered if the lumber was high grade lumber from Lakeside. Samuel Yoder explained that they do have some high grade material from Lakeside that they were warehousing. He went on to say that they would no longer warehouse high grade material from Lakeside as they would need all of the room for their operation.

Mr. Homan asked about information contained on the first page of the petition where it was noted that the property owner is aware that the property address is incorrect. He asked about the status of that situation, and wondered if the property address was being corrected.

Mrs. Prough explained that the address issue has existed for a number of years. She stated that the property owners were aware of the situation but had no plans to take corrective action, as they were not troubled by this matter.

Mrs. Wolgamood expressed concern that the house on the west side of the road has a house number that should be assigned to a home on the east side of the road, and vice versa. She stated that there could be issues with not correcting the error. Mrs. Wolgamood pointed out that should their operation require emergency services, there could be a delay in getting those services as the responders would attempt to locate the property on the wrong side of the road. Mrs. Wolgamood encouraged Samuel and James Yoder to take corrective action regarding the address issue. She suggested that Samuel and James Yoder work with Planning & Development to remedy the situation.

Mr. Homan commented about the retaining walls and loading dock. He noted that Samuel Yoder had indicated that he wished to cover those walls at some point which would make them more of a structure. Mr. Homan pointed out that when that occurs, the walls become a structure and a permit and inspection become necessary.

Al Heims, 105 Greenfield Drive, Middlebury, spoke in opposition to the saw mill. Mr. Heims stated that fourteen years ago he purchased the adjoining property to the north and to the east with the idea of some day building a house on the property. Mr. Heims said that he and his family spend a lot of time on the property as it is a quiet, peaceful area. He stated that he objects to the saw mill in that location for several reasons. Mr. Heims went on to state those reasons, including the fact that he thinks allowing a saw mill on the neighboring property would severely devalue his property. He encouraged the Board to look at the road from State Road 120 down to C.R. 10, which has become a residential area. He said that the only farmer that lives in the area is Eldon Thomas.

Mr. Heims stated that there is considerable residential traffic with the development of Cottage Grove, Veech, and LaPlace. He thinks that a saw mill would devalue his property for a number of reasons. Mr. Heims shared that when he bought the property his idea was to build a home on a larger home site, in addition to selling off a couple of larger home sites. He felt that others would enjoy the landscaping and wildlife. Mr. Heims stated that while James and Samuel Yoder appear sincere in their desire to contain noise, he does not believe that will happen. He thinks that once the operation starts it will expand and grow. Mr. Heims relayed that his property is one of his major retirement assets. He expressed concern that between the recession and decreasing land value, a saw mill would only further devalue his property as well as neighboring properties. Mr. Heims said that he and his family spend time on their property enjoying campfires and wildlife. He expressed concern that a saw mill, with accompanying diesel engines, truck traffic, log traffic and semis would change the atmosphere.

Mr. Heims pointed out that the area north of C.R. 10 on C.R. 43 has become more residential with small acreages. He noted that south of C.R. 10 on C.R. 43 there are two other saw mills. Mr. Heims stated that both of those saw mills are situated in a bit of valley, which results in the noise not being so readily heard. He reiterated that he does not feel that the property is conducive to a saw mill and feels that the property is too small. Mr. Heims stated that logistically, the proposed location would preclude the operation from containing noise and

dust. He relayed that dust usually comes from the south going north. Mr. Heims was concerned that any diesel fumes, dust or debris would blow into his property.

Mr. Heims went on to address his concerns with traffic in the area. He stated that a great deal of the traffic from State Road 120 comes down to C.R. 10, which results in C.R. 43 becoming a heavily traveled road. Mr. Heims acknowledged that currently there is some truck traffic, although not a great deal. He felt that a saw mill would bring a lot of truck traffic, creating a potentially dangerous situation for bicycles, buggies, cars and small pick-ups.

Mr. Heims stated that one of his major concerns is that the property is situated at the bottom of the hill, creating visibility issues. He believes that drivers coming down that hill frequently travel too quickly when headed south on C.R. 43. Mr. Heims stated that trucks would slowly exit the drive and expressed concern about drivers not having time to react to slow-moving vehicles, especially during the winter months. He stated that while there are two drives on the property, he is most concerned with the drive on the north edge of the property.

Mr. Heims submitted a Petition Objecting to Special Use *[attached to file as Remonstrators Exhibit #1]*. He relayed a narrative of this petition to the Board for their consideration.

Mr. Homan asked Mr. Heims to point out his parcel on the aerial photo, which he reiterated adjoins on the north and east sides.

Mr. Heims expressed his belief that his property is one of the best home sites. He again expressed concern about the noise, fumes and dust. Mr. Heims commented that over the last fourteen years he and his family have made many improvements to the property. He feels that a saw mill would defeat everything he has done during that time period to improve his property. Mr. Heims believes there are better locations for a saw mill. He believes a better location to be south of County Road 10. Mr. Heims pointed out on the aerial map the individual homes that were built after they purchased their property. He stated that the Cottage Grove development has added many new homes since he and his wife purchased the property on C.R. 43. Mr. Heims pointed out a campsite that they frequently use, which is located to the north of the property. He expressed concern that a saw mill would have a significant detrimental impact to their property. Mr. Heims said that with any saw mill there is always unsightliness. He pointed out that the complexion of the neighborhood has changed over the last few years. Mr. Heims believes that locating a saw mill in the area is contrary to what the neighborhood has done.

Mr. Heims indicated that he first heard about the request when he received the notice in the mail. He stated that the questionnaire indicated that Samuel and James Yoder had contacted most of the neighbors; however, Mr. Heims stated that they were never contacted. He again relayed that he lacks confidence that the noise will be contained. Mr. Heims questioned the cleanliness that was promised to accompany the site, based on past experience.

Mr. Heims said that Samuel and James Yoder have indicated that the pine trees on the north side will contain some of the noise. He pointed out on the map that the trees are not very thick in that area and there is a gap in the tree line. Mr. Heims stated that the trees will not create a significant barrier. He went on to say that another issue that concerns him is the fact that the saw mill will sit on the top of a hill. Mr. Heims believes that by situating the saw mill high, there will not be a natural buffer.

Mr. Heims reiterated that safety is an overriding concern with the flow of traffic and logging trucks. He stated that this area is not an industrial area, and other than the one farm, it is no longer really an agricultural area.

Mr. Heims said that he thinks it is great that Samuel and James Yoder are starting a company and building on it. However, he believes the proposed site is the wrong location. Mr. Heims stated that he has been in that area for a long time and he believes the impact will be too severe for him. He referred to the staff analysis that indicated there would not be any permanent injury. Mr. Heims challenged that statement, stating that the property value will go down once the saw mill goes up and he fears it will never recover.

James Yoder responded to Mr. Heim's concerns about the pine trees and accompanying gap on the west side of the property. He explained that they propose to plant that area full of trees, resulting in a consistent barrier. James Yoder went on to say that in contacting the neighbors, they contacted everyone living in that area. He stated that, as was mentioned, there are a number of residences in close proximity to the property; however, the general zoning remains A-1. James Yoder said that he feels that the processing of logs would be in continuance with that zoning. He stated that the local forestry is agricultural for use for the industry. James Yoder explained that they plan to proceed as they were taught by their father and he feels they would improve values of woodlands, rather than tear down land values.

Mr. Homan asked Samuel Yoder how long he has owned the property. Samuel Yoder responded that he purchased the property approximately two years ago.

Mr. Homan asked Samuel Yoder if the building existed at the time he purchased the property or if Samuel Yoder built the structure. Samuel Yoder explained that the building was existing at the time he bought the property.

Samuel Yoder addressed Mr. Heims' concerns about the expansion of the operation. He stated that it was not their desire or plan to significantly increase the size of the business. Samuel Yoder said that he thinks the current size of the operation is the size that would work and expressed no desire to make a drastic increase to the size of the business. Samuel Yoder went on to say that they could extend the row of pine trees, as his brother James had previously stated.

Samuel Yoder noted that Mr. and Mrs. Heims often spend time at their property during evenings and weekends. He explained that while the petition reflected an occasional Saturday operation, he would consider dropping the proposed Saturday operation if it is an issue. Samuel Yoder stated that there is very little, if any, saw mill activity on evenings and weekends.

Samuel Yoder stated that from what he has seen of the road, he believes the road could handle the traffic. He explained that he has considered putting a "no exit" sign at the northwest drive. Samuel Yoder thinks that this would force traffic to exit through the southwest drive, thus increasing the visibility. He acknowledged that, as Mr. Heims stated, there is a knoll and visibility is better at the bottom of the hill.

Samuel Yoder said that he would like to be able to use the property because it is something they have now. He explained that they can't afford to purchase a piece of property, and this location is in close proximity to their other operation. Samuel Yoder stated that the close proximity would allow them to do maintenance, such as if one facility doesn't have a part, perhaps the other one will. He stated that currently, the operations are farther apart than that and it is somewhat of a hassle for them.

The public hearing was closed at this time.

Members of the Board discussed several issues, including the fact that although there are a growing number of residential homes in the area, the property is still zoned A-1. The Board also discussed concerns about noise, traffic and outside storage, including the proposed semi

which would be part of the dust collection system. The overriding concern expressed by the Board was the safety issue involving the north drive.

The Board examined said request, and after due consideration and deliberation, a motion was made (*Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a 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 exist 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.

Mrs. Prough noted that the petitioners represented that they would like to enclose the loading dock and lean-to within the next year. For clarification, she asked the Board if they are in agreement that the petitioners would not have to bring that back before the Board. Mr. Homan felt that was not a material change to the actual operation so as long as they obtain proper permits they would not have to come back.

Mrs. Wolgamood then suggested that a new site plan be submitted reflecting the planting of the trees and Mr. Homan agreed that should be included in the file. Therefore, the following condition was added:

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.

Mrs. Wolgamood then seconded the motion, which did not carry with the following results of a roll call vote: Miller – no; Homan – yes; Wolgamood – yes; Hesser – no.

A motion was then made by Mr. Homan to table this request for a Special Use for a saw mill until the August 19, 2010, Board of Zoning Appeals meeting.

Mr. Kolbus advised the staff to provide the absent board member with a copy of the minutes, and give him the opportunity to listen to the recording of the proceedings and review all evidence submitted so he can entertain discussion with the Board at the next meeting.

Mr. Hesser asked if it would be helpful if they did have the petitioners proceed with the revised site plan and perhaps reopen the public hearing next month, but the indication was no.

Mr. Hesser then seconded the motion, and with a unanimous roll call vote, the motion was carried.

12. 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. (*See page 1, item #6 for previous discussion on this request.*)

Mrs. Prough again explained that the petitioners are going to submit a new application so the staff would like for this request to remain on the table until the August 19, 2010, Board of Zoning Appeals meeting.

A motion was made and seconded (*Homan/Hesser*) 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) remain on the table until the August 19, 2010, Board of Zoning Appeals meeting. A roll call vote was taken, and with a unanimous vote, the motion was carried.

13. See page 4, item #10 for the staff item for *Ronald E. Williams*.

14. The meeting was adjourned at 10:03 a.m.

Respectfully submitted,

Teresa McLain, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary