

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>TH</sup> DAY OF JUNE 2010 AT 8:30 A.M.**  
**MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING**  
**4230 ELKHART ROAD, GOSHEN, INDIANA**

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

2. A motion was made and seconded (*Lantz/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20<sup>th</sup> day of May be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Lantz/Homan*) that the legal advertisements, having been published on the 5<sup>th</sup> day of June 2010 in the Goshen News and on the 7<sup>th</sup> day of June 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 (*Lantz/Homan*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.

5. A motion was made and seconded (*Homan/Lantz*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.

6. There were no postponements of business items.

7. See page 4, item #10 for the application of ***Richard & Cassandra Latowski Barrier***.

8. The application of ***Brett & Homerette Faulkner*** for a Special Use for a mobile home on property located on the North side of CR 50, 363 ft. West of US 33, common address of 12383 CR 50 in Benton 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 #12383CR50-100513-1*.

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

Homerette Faulkner, 12383 CR 50, Syracuse, was present on behalf of this request. Mrs. Faulkner stated that she was not aware of the 300 feet requirement. She explained that while they own nearly 12 acres, one of the reasons they chose the proposed location for the mobile home was because the location is somewhat secluded due to trees bordering that area. Mrs. Faulkner went on to explain that there is existing septic behind the proposed location of the

mobile home. Mrs. Faulkner pointed out the three acre corner lot and stated that that area had been part of her property until she sold it in 1991. Mrs. Falkner explained that the hardship her family was experiencing was financial. She elaborated that prior to losing his job her son worked in the RV industry. While her son has now secured a job in the manufacturing industry he is struggling to get back on his feet financially. Mrs. Faulkner stated that she would like to help her son and his family for a short period of time.

Mrs. Wolgamood asked if he has a mobile home that would be moved to this location and Mrs. Faulkner said yes.

Mrs. Wolgamood asked if there was a business located on the property that they sold. Mrs. Faulkner stated that there was not a business on the property. She explained that the current homeowner had accumulated a lot of junk since purchasing the property.

Mrs. Wolgamood asked about the residence to the west of the proposed mobile home location. Mrs. Faulkner stated that once they sold the 3 acre corner, they placed a modular home in the west field where they currently reside. Mrs. Faulkner clarified that the neighboring property to the east is situated 200 feet from the proposed location of the mobile home. Excluding the home to the east, Mrs. Faulkner's home is the only home within the 300 feet.

Mrs. Wolgamood asked if there was an existing driveway leading back to the mobile home and Mrs. Faulkner said no.

\* *(It is noted that board member Doug Miller arrived at this time.)*

Mr. Hesser questioned Mrs. Faulkner about the existing septic system. Pointing to the map, Mrs. Faulkner indicated that two campers are currently sitting where they had a trailer. It is their intent to use the fingers of the existing system, which is located slightly to the northwest, but she said they will put in a new septic tank.

If the proposed location is not acceptable to the Board, Mrs. Faulkner said she has an alternate location for the mobile home. A site plan showing that alternate location was then submitted to the Board *[attached to file as Petitioner Exhibit #1]*.

Mrs. Wolgamood asked Mrs. Faulkner if she had spoken to her neighbors about her plans. Mrs. Faulkner indicated that they do not communicate with one another.

Mr. Homan asked Mrs. Faulkner if she planned to deed off a separate parcel. Mrs. Faulkner indicated that they do not plan to deed off a separate parcel.

Mrs. Wolgamood sought confirmation that by moving the mobile home out of the 300 foot range the mobile home could not be serviced by the finger system of the existing septic system. Mrs. Faulkner indicated that she was correct.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for a Special Use for a mobile home be approved by the Board as it will be consistent with the spirit, purpose and intent of the Zoning Ordinance; it will not cause substantial and permanent injury to the appropriate use of neighboring property given the situation that is next door, which is shown by the aerial photo; and it will substantially serve the public convenience and welfare by allowing a residence for this family, with the following conditions imposed:

1. Approved for a period of three (3) years with a one (1) year review by the staff to verify compliance with Conditions "A", and an administrative renewal in three (3) years.
2. Conditions "A":

- a. The mobile home shall be adequately stabilized, skirted and have tie-downs installed.
  - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
  - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools and vehicles, except licensed motor vehicles.
  - d. At all times, the premises shall be kept free of abandoned junk vehicles or parts thereof as described by Indiana State Law.
3. Approved in accordance with the original site plan submitted with the application, 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 *Neil T. & Betsy Ann Kelly, Trustees of the Kelly Family Trust* for a Special Use to allow for a wind turbine (Specifications F - #31.50) on property located on the North side of CR 38, 1,209 ft. East of CR 13, common address of 23725 CR 38 in Harrison Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #23725CR 38-100519-1*.

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

Present on behalf of this request was Brian Burkholder, 87594 W 950 N, Nappanee. He then submitted a letter to the Board authorizing him to represent the petitioners, Betsy Ann and Neil T. Kelly *[attached to file as Petitioner Exhibit #1]*.

Mr. Burkholder explained that the petitioners would like to erect an 80 foot tower with a wind turbine on the top to provide energy for the house. The tower would be 80 feet in height, with a turbine mounted on top of the tower. The turbine has 17 foot blades and the turbine would extend 8.5 feet above the tower. Mr. Burkholder stated that the nearest property line is approximately 130 feet.

Mr. Hesser noted that the drawing submitted reflects a 128 foot distance to the property to the west. He asked about the distance to the property to the east. Mr. Burkholder stated that the next several properties to the east are owned by the same individual, as well as the property to the north.

Mrs. Wolgamood asked if the actual location of the wind turbine on a smaller piece of property would generate electricity for the house to the east, the Kelly's home. Mr. Burkholder replied that she was correct.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for a wind turbine (Specifications F - #31.50) be approved in accordance with the Staff Analysis and as represented in the petitioner's application. A roll call vote was taken, and with a unanimous vote, the motion was carried.

10. The application of **Richard & Cassandra Latowski Barrier** for a 5 ft. Variance for the construction of an existing addition to an attached garage 5 ft. from the East side property line (Ordinance requires 10 ft.) on property located on the North side of Liberty Drive, 380 ft. East of West County Line Road (Ash Road), being Lot 14 of Liberty Park, common address of 30925 Liberty Drive in Cleveland Township, zoned R-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #30925LibertyDr-100518-1*.

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

Richard Barrier, 30925 Liberty Dr., Osceola, was present on behalf of this request. Mr. Barrier explained that when he obtained the original permit he had a diagram which included measurements, however, that drawing is now gone. Mr. Barrier stated that it appears that he needed to have an addition. Mr. Barrier said that he remodeled a house which had burned down. He also built a garage and added eight additional feet to that structure since his main power runs through that area. He explained that he has overhead electric service which attaches to the gable end of the garage. Mr. Barrier indicated that he has re-wired, re-plumbed, re-framed, installed new doors, windows, siding, and shingles to the house. He said that in order to run the electricity it was necessary to add eight feet to the garage at the time the garage was constructed. Mr. Barrier stated that he wasn't aware that the variance was ten feet. He said that when he has done work in the past the variance has always been five feet.

Mrs. Wolgamood stated that in an R-1 zoning district the variance has been ten feet for many, many years. In an R-2 district it is five feet.

Mr. Hesser expressed confusion concerning the paperwork submitted. He sought clarification from Mr. Barrier concerning the state of construction. Mr. Barrier explained that there is no electric or drywall in the garage, however, it is framed, shingled and sided. He indicated that the electric panel is mounted to the east wall.

Mrs. Wolgamood asked if it was initially a single stall garage. Mr. Barrier stated that it was initially a single stall garage and it remains a single stall garage with some storage area. Mr. Barrier pointed out the location of a tree that he intends to remove which will allow him to extend the driveway up to the garage.

Mr. Homan asked if, at this time, the garage has a concrete floor. Mr. Barrier stated that the addition does not yet have a concrete floor. He stated that he was planning to re-bar and tie in to the existing floor.

Mrs. Wolgamood asked Mr. Barrier if he was aware if there were utility or drainage easements on the east side. Mr. Barrier stated that there are no easements; however, there is an overhead AEP line.

Mr. Barrier said that he was not trying to be deceptive. He stated that he pulled permits and tried to do everything by the book but that he was simply unaware of the ten foot variance. Mr. Barrier explained that he was building it by himself.

Mr. Homan questioned a note on the permit dated April 15. It appears that after receiving his original remodeling permit Mr. Barrier sought to add to the permit. Mr. Barrier explained that when he called for the structural inspection, he was notified that the additional eight feet was considered an addition and not a remodel. At that time, Mr. Barrier attempted to remedy the problem.

There were no remonstrators present.

Mrs. Wolgamood asked Mr. Barrier if he has had conversation with his neighbor to the east concerning the work he's done to the property. Mr. Barrier indicated that all of his neighbors like what the changes which are occurring. Mr. Barrier stated that the property sat vacant for a year after sustaining damage from a house fire. He said that he has hauled away over 100,000 lbs. of trash. Mr. Barrier feels that the house has undergone dramatic improvements. He would like to continue working on the property so that he and his family can reside in the home.

The public hearing was closed at this time.

After reviewing the notes at the bottom of the building permit, Mr. Homan asked if the original east wall of the garage has been removed. Mr. Barrier said that the east wall of the house is still standing, along with the west wall, and half of both the north and south walls. When Mr. Homan asked about the exterior walls of the existing garage, Mr. Barrier said there is a portion of the front wall existing, and a portion of the south wall is existing. He then clarified that the east side where the garage was extended is no longer there, and the south wall still exists on the garage.

Mr. Kolbus asked if the east wall of the garage was there at the time he started the remodel and Mr. Barrier said yes. He said he started with the house and then moved on to the garage. He also said he was trying to trench the electric underground, but it would have cost too much based on the location of the driveway and well.

Mr. Miller noted that as you go west on the aerial, it appears the two residences immediately west are pretty close to the minimum.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that this request for a 5 ft. Variance for the construction of an existing addition to an attached garage 5 ft. from the East side property line (Ordinance requires 10 ft.) be approved by the Board, provided all inspections are obtained, 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 as already indicated and shown by the photographs that the house has been greatly improved
3. Will result in an unnecessary hardship in the use of the property through the striction application of the zoning ordinance.

A roll call vote was taken and the motion was carried with Mr. Homan voting in opposition.

11. The application of **Michael P. & Debra K. Ellis** for the renewal of an existing Special Use for a kennel with outdoor pens and runs in an A-1 district (Specifications F - #15.10) on property located on the West side of CR 21, 2,100 ft. North of CR 26, common address of 59603 CR 21 in Jefferson 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 #59603CR 21-100503-1*.

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

With regards to condition #4 of the June 21, 2007, approval, Mr. Hesser asked if the number of animals was to be reduced to four. Mrs. Prough said that was the condition, but apparently that has not happened and the petitioner still has ten dogs. However, Mr. Ellis

clarified there were 12 dogs when the Special Use was granted and two have passed since then. When Mr. Hesser asked if he's acquired any new dogs, Mr. Ellis replied no.

Michael Ellis, 59603 CR 21, Goshen, was present on behalf of this request. Mr. Ellis explained that the yard is fenced in and that there are no kennels or runs. The yard is segregated because he owns dogs that do not get along with each other. Mr. Ellis stated that the dogs are never outside of the fence, nor are the dogs outside overnight. He said that his dogs are in the house no later than 6 p.m.

Mr. Ellis said that the dogs are his pets and there is no breeding. He explained that on rare occasions when the dogs are allowed outside of the fence they are on a leash. The dogs are only outside of the fence if they are going to the vet or exercising in the back of the property where trails have been mowed for their exercise. Mr. Ellis restated that the dogs are always on leashes and never run loose.

Mrs. Wolgamood asked Mr. Ellis if he still had the goats on his property. Mr. Ellis indicated that they have five goats, however, they are not kept in the fenced in area with the dogs. Mr. Ellis pointed out on the aerial photo the area on the far west side of the property where the goats are kept.

Mrs. Wolgamood had some questions about the site plan. She sought confirmation that the dogs were kept in the area indicated as the fenced area of the yard. Mr. Ellis stated that the dogs are kept in that fenced area. Mrs. Wolgamood asked Mr. Ellis if the dogs are ever outside of that area, other than the times previously mentioned when they are contained on a leash. Mr. Ellis answered that the dogs are only allowed outside of the fenced area on a leash. Mrs. Wolgamood asked Mr. Ellis if all of the small buildings are still on site. Mr. Ellis stated that the small buildings are actually platforms built for the dogs to play on. He said that there are dog houses but that the dogs don't really care for the doghouses.

Mrs. Wolgamood asked Mr. Ellis if he was seeking an expansion from the four dogs that were previously approved to the ten dogs that they currently own. Mr. Ellis explained that they had previously been approved for twelve dogs, to be reduced down to four through attrition. They have lost two of the original twelve dogs to attrition. Those dogs have not been replaced.

When the staff was asked for comments, Mrs. Prough said the staff chose not to keep the same condition as they have no objection to ten dogs.

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/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for the renewal of an existing Special Use for a kennel with outdoor pens and runs in an A-1 district (Specifications F - #15.10) be approved by the Board in accordance with the Staff Analysis with the following conditions imposed:

1. Dogs not to be kept outside overnight.
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
3. The number of dogs not to exceed ten (10).
4. Kennel to be operated by the owner occupant of the residence on site.

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

12. The application of ***Kenneth L. & Connie R. Morningstar*** for a Special Use for a home workshop/business for the making of RV chair frames and related furniture parts (Specifications F - #45) on property located on the East side of CR 1, 1,900 ft. South of CR 32, common address of 63362 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 #63362CR 1-100524-1*.

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

Attorney Loren Sloat, 102 Heritage Parkway, was present on behalf of this request. Mr. Slot explained that Mr. Morningstar has been in the woodworking business for a considerable period of time. Mr. Sloat noted that the Staff Report contains an account of Mr. Morningstar's history.

In a brief summary, Mr. Sloat stated that in 1993 the Board granted an appeal for a Developmental Variance and also granted a Special Use for a home workshop business to be operated in a building on site at that time. Mr. Sloat pointed out the location of that building on the aerial photo. He went on to say that the business continued to operate.

Mr. Hesser asked if that building location now appears to be a concrete slab. Mr. Sloat said that there has been some site remediation since the fire. Mr. Sloat explained that the concrete slab in question was the floor of a barn removed in the summer of 2009. He then pointed out where the other building had been and stated that the concrete was in such poor condition that it was removed.

Mr. Sloat explained that Mr. Morningstar continued to have his permit renewed for a number of years. However, once the business expanded he moved to an industrial area in Wakarusa. Mr. Morningstar remained at that location for a number of years. Mr. Sloat stated that last year when there was a decline in the industry, Mr. Morningstar sold the building and moved the operation back to the old shop located at his home. For a brief period of time Mr. Morningstar operated at that location without a permit. Mr. Sloat went on to say that there had been a fire within the past year that destroyed the building. Therefore, Mr. Morningstar needs to replace the building with the same size structure – 42x60. Mr. Sloat explained that Mr. Morningstar would like to continue the same type of operation he had before.

Mr. Sloat pointed out the proposed location of the new building on the current site plan. He indicated that they would like to use the concrete slab as parking area. Mr. Sloat explained that the new building would be the same size as the old building that was destroyed, while the barn is no longer there. He felt that it was a much better situation than existed in 1993.

Mr. Sloat said that Mr. Morningstar does not have any employees; however, he does have a few orders. The location is in a rural area of Elkhart County with no close neighbors.

In response to Mr. Lantz's question about room to turn around on the property, Mr. Sloat indicated that there is ample room.

When Mr. Lantz asked about the hours of operation, Mr. Sloat stated that deliveries will be made by straight truck and the hours of operation are when Mr. Morningstar is home. Mr. Morningstar could be working anytime. Mr. Sloat explained that they did not submit a list of conditions, due to the fact that there are no employees and therefore, no regular workday.

Mrs. Wolgamood questioned the size of the building that was destroyed. Mr. Sloat said the building was the same size, which is 42 x 60 ft. Mr. Sloat indicated that a site plan was filed with the staff.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser pointed out that the petitioner has represented this is a one-man operation and there are no close neighbors. If things improve and the business grows, he feels the petitioner should move back into town as he did before and Mr. Sloat said that is the idea.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for the making of RV chair frames and related furniture parts (Specifications F - #45) 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 home workshop/business to be operated by the owner occupant of the residence on site.

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

13. The application of ***Daniel J. Yoder (land contract purchaser) and Stanley Hochstetler (land contract holder)*** for a Special Use for a home workshop/business for auto glass repair and replacement (Specifications F - #45), and for a 15 ft. Developmental Variance to allow for a sign 40 ft. from centerline of the right-of-way (Ordinance requires 55 ft.), on property located on the East side of CR 17, 375 ft. North of Clinton Street, common address of 62420 CR 17 in Elkhart Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #62420CR 17RD-100521-1*. She then submitted a letter dated June 8, 2010, from Dale & Dorothy Berkey in opposition to this request *[attached to file as Staff Exhibit #2]*. She reported that this letter was included in the Board's packets and a copy was given to the petitioner.

There were 16 neighboring property owners notified of this request.

Present on behalf of this request was Daniel Yoder, 62420 CR 17, Goshen. He then submitted photos of his property to the Board *[attached to file as Petitioner Exhibit #1]*.

Mr. Yoder explained that he moved to this property about 16 months ago and started up a mobile glass business. Mr. Yoder states that he has done two or three windshields and chip repairs in his driveway during the past year. Except for those repairs, he states that the business is mobile. Mr. Yoder indicated that he intends to move the business to town when his business has grown somewhat.

In addressing the various concerns, Mr. Yoder explained that he initially used a glass company which made deliveries using trucks equipped with loud beepers. He stated that he has not used that supplier for the last several months. Mr. Yoder stated that his deliveries are made at night which should not have an impact on the traffic. He explained that due to the nature of his business, he is gone throughout the day. Mr. Yoder stated that while he initially had a dumpster on his property, he has made accommodations with a car dealer to dispose of his glass and he no longer has, nor needs, the dumpster. In reference to the box shown in the photos, Mr. Yoder stated that the box is a drop-off box for his deliveries and is kept closed and locked. storage for the glass in the garage as shown in the photos. Mr. Yoder said that he is before the

Board to ascertain what he needs to do. He is willing to get a portable building for the glass deliveries. Mr. Yoder also stated that he would be willing to move the drop-box to another location. He explained that anyone involved in the glass business must have a drop-box for deliveries.

Mr. Hesser asked if the delivery person has a key to the drop-box. Mr. Yoder replied that they do have a key to the box. Mr. Hesser asked about the possibility of the delivery person having a key to the garage. Mr. Yoder explained that glass stored in the garage is extra glass. He stated that 99% of the glass he receives from deliveries goes from the drop box into his vans the next morning. Mr. Yoder stated that he does not keep a lot of extra glass and only orders the glass he will need.

Mr. Hesser asked Mr. Yoder if he would be agreeable to moving the storage area into his garage. Mr. Yoder stated that he could do that, however, he would have to park his van outside. He stated that he is willing to do whatever is necessary.

Mr. Homan questioned the number of vans owned by Mr. Yoder. Mr. Yoder stated that he has two vans, although his employee takes one of the vans home with him everyday. Mr. Homan asked if the vans displayed information about his business, such as business name and phone number. Mr. Yoder indicated that information about his business was displayed on the vans and that he was willing to forgo signs on his property.

Mr. Homan asked if there is a lot of repair work completed at his house. Mr. Yoder stated that he has done very few repairs at his home. He estimated completing three chip repairs last year at his home. Mr. Yoder explained that chip repairs are done in the driveway and result in little, if any, noise. He stated that he has replaced one windshield in his garage when it was raining.

Mr. Homan asked about the size of the garage. Mr. Yoder indicated that it was a two car garage.

Mr. Miller questioned the size of the delivery truck. Mr. Yoder stated that deliveries are made by an extended van containing glass racks. He also said that he receives occasional deliveries from UPS.

Mr. Yoder stated that he would prefer to have his business in town, but he cannot afford that at this time.

Mr. Homan asked Mr. Yoder if he owns car sales lot. Mr. Yoder clarified that he does not own the lots, he just does glass work for the dealers. In turn, the dealers have allowed him to use their dumpsters to dispose of glass.

Mr. Hesser asked when the glass is being delivered to his home. Mr. Yoder stated that he receives deliveries at midnight. Mr. Yoder said that he was concerned about the truck beeper on the midnight deliveries as the beeper would wake him up. However, he stated that the deliveries are no longer made at midnight by that supplier. Mr. Yoder shared that his current suppliers use a pick up truck with glass racks or an Econoline van to make deliveries.

Mr. Yoder stated that the deliveries usually come in at midnight. He explained that the suppliers receive orders through 5pm and then they begin their delivery route.

Dale Berkey, 435 CR 17, was present in opposition to this request. He expressed concern that the size of this business will get out of hand. Mr. Berkey lives right across the road from Mr. Yoder. Board members are in receipt of the letter submitted by Mr. Berkey regarding this matter. Mr. Berkey feels that this business not fit for a quiet, residential neighborhood. He went on to state that there is an extreme amount of traffic on the road. Mr. Berkey relayed that there is

no parking on the petitioner's side of the road. Mr. Berkey expressed frustration at the glass deliveries which occurred at midnight. He went on to state that during the deliveries lights would shine in through their windows and was often accompanied by a loud beeping. Mr. Berkey relayed that there was an unsightly trash bin in the front yard which he feared would be permanent. Additionally, Mr. Berkey was concerned with the periodic loud sounds of glass breaking. Mr. Berkey stated clearly that he believes this type of business belongs in a commercial/industrial area. He indicated that a lot of noise and disturbance accompanies this business.

Mr. Hesser asked Mr. Berkey to address the statement made by Mr. Yoder that he no longer uses the glass supplier that was responsible for the loud backup beepers. Mr. Berkey stated that he has not noticed the beeping any longer but was concerned that this change was made just days prior to the Board meeting. Mr. Berkey speculated that the supplier may be used again if he can provide competitive prices.

Mr. Hesser also asked Mr. Berkey about the existence of the dumpster, as Mr. Yoder indicated that it was no longer on his property. Mr. Berkey confirmed that the dumpster was removed two days prior.

Mrs. Wolgamood asked Mr. Berkey if he had witnessed the glass delivery van backing onto the property. Mr. Berkey stated that a small box van stops on C.R. 17 and backs into Mr. Yoder's property.

Mrs. Wolgamood then asked Mr. Berkey to point out location of his residence on the aerial photo, which he did.

Mr. Berkey expressed concern that the business will get out of hand, as there will be people coming at all times of the day.

In rebuttal, Mr. Yoder said the dumpster is gone and will not come back. He does not foresee ever using the glass supplier with the back-up beepers on their delivery van that disturbed the neighbors. Mr. Yoder stated should he choose to use that supplier in the future, he would request that they deliver the glass using a vehicle without beepers. Mr. Yoder indicated that he does not want to work out of his garage any longer than necessary and stated that the location of his business is just temporary.

Mr. Hesser asked Mr. Yoder to address midnight deliveries. Mr. Yoder stated that he receives midnight deliveries due to the layout of the route. Mr. Yoder stated that he would be willing to check with his supplier to see if he could get deliveries at a different time.

Mr. Hesser then asked if there are other businesses along C.R. 17. Mr. Yoder stated that there are several homes in the area operating home businesses. He was then asked to point out the two properties on the aerial photo. Mr. Yoder pointed out the location of the properties where a daycare and a body shop are operated.

Mrs. Wolgamood stated that there was a note in the file from Stanley Hostetler, who indicated that he had no issue with the business being located on the property. Mrs. Wolgamood asked Mr. Yoder to point out the location of Mr. Hostetler's property. Mr. Yoder explained that they bought the property from Mr. Hostetler and that he no longer resides in the neighborhood.

Mr. Yoder stated that children are dropped off at the neighboring daycare at 2:00 or 3:00 a.m. He indicated that he wasn't bothered by this and had no interest in making a complaint.

Mr. Miller asked if the neighboring businesses have turnarounds or if they back out of the property. Mr. Yoder said that he does see some backing out. He then indicated that there is the

ability to turn around in one of the driveways, although backing out does occur in that driveway on occasion.

Mr. Homan noted a photo showing a wire realtor-type sign by the road. He asked Mr. Yoder if his sign is more permanent. Mr. Yoder stated that he just had that temporary sign. He explained that when he moved to the property he called many offices to make sure he had the permits and/or licenses required to operate a business at his location. However, he was unaware of any requirements pertaining to signage.

Mr. Hesser noted a sign on the building; however, Mr. Yoder stated that once he became aware that he couldn't have signage he removed the sign. He further stated that he no longer illuminates his "on" sign. Mr. Yoder stated that he no longer needs the sign due to the fact that he is mobile, and traveling to the customer.

Mr. Hesser noted the A-1 zoning and asked if the surrounding area is also A-1. Mrs. Prough indicated that the zoning to the west is A-1. The City of Goshen is to the east of Mr. Yoder's property. Mrs. Prough confirmed that to the north and south of Mr. Yoder's property the zoning is A-1.

The public hearing was closed at this time.

During discussion, Mr. Miller said he does have an issue with the late night deliveries and beepers going off. If the petitioner has to have a box there, he would like to see it inside the garage so there is no outside storage because this business is taking place in a residential neighborhood.

Mr. Lantz also suggested a timeframe of one or two years to make sure the petitioner is in compliance.

As part of their Rules of Procedure, Mr. Hesser said the representations a petitioner makes about their operation are just as binding on them as the written materials they submit and Mr. Kolbus verified that that is correct. If there is a concern about something that was specifically said at the public hearing that is not followed up on, Mr. Hesser stated that enforcement can be sought on those representations.

Another issue Mrs. Wolgamood was concerned about was the backing in off of CR 17, which she said the Board normally does not permit. If approved, she feels there needs to be some sort of turnaround on the property.

Mr. Homan noted there is intense residential development with short driveways on CR 17, which is bad for automobiles. If they put a business on this road that is backing delivery trucks in and out, he feels it will compound that and make the public safety issue even worse. However, Mr. Hesser said that deliveries only occur once per day and it's what everybody else on that road is doing with their cars.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that the Board finds that this request will be consistent with the spirit, purpose and intent of the Zoning Ordinance as the petitioner has represented the business can be operated there under the definition of a home workshop/business by agreeing to not have outside storage of either a dumpster or a glass storage box at the location; that it will not cause substantial and permanent injury to the appropriate use of neighboring property; and it will substantially serve the public convenience and welfare by providing a glass repair business; therefore, the Board approves this request for a Special Use for a home workshop/business for auto glass repair and replacement (Specifications F - #45) with the following conditions imposed:

1. A turnaround is to be provided on site so there is no backing of delivery trucks in or out onto CR 17.
2. No dumpster permitted on site with glass to be disposed of offsite.
3. All signage to be removed.
4. The petitioner is to make every effort to work with his suppliers to:
  - a. have an earlier delivery
  - b. minimize headlights into adjoining properties during the deliveries
  - c. have no beepers if possible
5. Approved for a period of two (2) years with renewal before the Board of Zoning Appeals.

A roll call vote was taken and the motion was carried with Mr. Homan voting in opposition.

For clarification, Mrs. Prough asked if the petitioner is permitted to do repairs on site if done inside the garage. Mr. Kolbus said that would fit the definition of a home workshop/business.

A motion was then made and seconded (*Miller/Wolgamood*) that the request for a 15 ft. Developmental Variance to allow for a sign 40 ft. from centerline of the right-of-way (Ordinance requires 55 ft.) be denied by the Board as the petitioner has indicated he does not need signage. With a unanimous roll call vote, the motion was carried.

14. The application of *Orla H. & Erma L. Yoder* for a Special Use for a home workshop/business for a woodworking shop (Specifications F - #45), a 27 ft. Developmental Variance to allow for an existing sign 28 ft. from centerline of the right-of-way (Ordinance requires 55 ft.), and a Developmental Variance to allow for the existing 12 sq. ft. sign (ordinance allows no more than 4 sq. ft. per side), on property located on the East side of SR 13, 450 ft. South of CR 38, common address of 65438 SR 13 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 #65438SR 13-100524-1*. She amended the Staff Analysis to include a recommendation of denial for a 27 ft. Developmental Variance to allow for an existing sign 28 ft. from centerline of the right-of-way.

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

Orla Yoder, 65438 SR 13, Millersburg, was present on behalf of this request. Mr. Yoder stated that when he was laid off from his job in the RV industry in November, 2008 he started building furniture. When he began building furniture, Mr. Yoder was uncertain if he would have enough work to keep the business going. He stated that there has been enough work to keep the business going and he is now requesting a Special Use for his business. Mr. Yoder stated that he was unaware that there were rules pertaining to signs. When acquiring a sign he sought a sign that was presentable. Mr. Yoder stated that safety was his first priority when he determined where to locate the sign. He did not want to obstruct any view of traffic when pulling out of his driveway. Therefore, he chose to locate the sign 15 to 18 feet south of his driveway.

Mr. Hesser thought the sign was located 28 feet, but Mr. Yoder said that the sign is located 28 feet from the center of the road. Mr. Yoder stated that if the sign was located 55 feet from the center of the road, the sign would be situated in his pine trees and would become basically invisible. If he is required to move the sign, he would probably move it further south to minimize the blocking the view when exiting the driveway.

Mr. Yoder stated that at this time he has no landscaping around the bottom of the sign. He was uncertain if the Board promoted or discouraged the landscaping. Mr. Yoder noted that he would like to add some landscaping to give the sign a more professional appearance for his business, in addition to being more presentable to the neighborhood.

Mrs. Wolgamood asked Mr. Yoder how long he has been building furniture. Mr. Yoder stated that he has been building furniture for five or six years. When he was laid off in November 2008 he decided to pursue furniture building as a way to keep his nose above the water.

When Mr. Miller asked Mr. Yoder how he generates his work, Mr. Yoder stated that he sometimes has a retail show in Shipshewana.

Mr. Yoder then explained that his lumber is delivered in a pick-up truck. He noted that he does not have a lot of car traffic on his property as he has customers approximately once per week. Mr. Yoder explained that the customers have plenty of room to turn around on the property.

Mr. Hesser asked if the customers pick up their finished product. Mr. Yoder explained that for the most part, the customers pick up their products. However, there are times the customers prefer to have their furniture delivered.

Mr. Hesser asked Mr. Yoder about the location of his sign in relation to his driveway. Mr. Yoder stated that the sign is south of the driveway, approximately 18 feet. He explained that he did not locate the sign behind his mailbox because he feared it would block his view. Mr. Yoder chose to keep it closer to the driveway so his view would not be obstructed when pulling out of his driveway.

When Mr. Miller asked if the sign could be located 55 feet from the center line, Mr. Yoder reiterated that the sign could be moved, but it would be situated inside the trees, rendering the sign invisible. Mr. Yoder stated that when he chose a location for the sign, he considered the natural gas line and he also wanted to make sure the sign wouldn't be in the way when work was being done on the power lines. Mr. Yoder stated that moving his sign to 55 feet from center line would significantly reduce the visibility of the sign. However, Mr. Yoder indicated that he could move the sign to 40 feet from the center line if he moved it south.

Mrs. Wolgamood asked if there is ample room for delivery vehicles to pull in, turn around and then pull out and Mr. Yoder said yes.

Mrs. Wolgamood asked about the 22 x 48 ft. building shown on the site plan. She asked if that building housed bedding for the ducks. Mr. Yoder stated that she was correct. He went on to say that while the building is not used for his furniture business, he does add the shavings from the furniture business to the purchased shavings housed in the building. Mr. Yoder confirmed that the building and shavings are used for his agricultural farming operation and is several hundred feet away from the location where he builds furniture.

There were no remonstrators present.

The public hearing was closed at this time.

Since this property is located on a state highway, Mr. Homan asked if the setbacks are dictated by the state or county. Mrs. Prough said the definition of a home workshop/business says you have to be back 55 ft. from the centerline of the road or 15 ft. from the property line, whichever is greater. Whether you have a home workshop/business or not, she said the zoning ordinance also states you have to be back 55 ft. from the centerline of any major street. She is not aware of any state regulations, but she did say they do not allow anything in the right-of-way.

Mr. Homan then suggested a timeframe of three years for this Special Use.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the amended Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a woodworking shop (Specifications F - #45) and a Developmental Variance to allow for the existing 12 sq. ft. sign (ordinance allows no more than 4 sq. ft. per side) be approved by the Board with the following conditions imposed:

1. Approved the Special Use in accordance with the site plan submitted and as represented in the petitioners' application.
2. Approved the Developmental Variance for the size of the sign to exceed four (4) sq. ft. per side provided the sign is relocated and placed 55 ft. from the centerline of SR 13 within thirty (30) days.
3. The business to be operated by the owner/occupant of the residence on site.
4. Approved for a period of three (3) years with renewal before the Board of Zoning Appeals.

The motion further reflects that the request for a 27 ft. Developmental Variance to allow for an existing sign 28 ft. from centerline of the right-of-way (Ordinance requires 55 ft.) be denied. A roll call vote was taken, and with a unanimous vote, the motion was carried.

15. The application of **Ronald E. Williams** for a Special Use to allow for a wind turbine (Specifications F - #31.50) on property located on the South side of CR 2, 602 ft. East of Cobus Ridge Lane, East of Ash Road, common address of 30400 CR 2 in Cleveland Township, zoned A-1, came on to be heard.

\* (*It is noted that Mr. Hesser stepped down from the Board at this time due to a potential conflict of interest.*)

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 #30400CR 2-100521-1.

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

Present on behalf of this request was Ron Williams, 30400 CR 2, Granger. Mr. Williams stated that he is requesting a residential wind turbine of 100 ft. He stated that the surrounding trees are 60 to 80 ft. He explained that wind technology indicates that turbines need to be 20 ft. higher than anything within a 500 ft. area. Mr. Williams said that the turbine will be located 360 feet from one property line and 315 feet from the other property line. He went on to state that to the best of his knowledge, the installation of the turbine does not interfere with the County's Comprehensive Use Plan.

Mr. Miller asked if the blades extend beyond the tower. Mr. Williams explained that the windswept area is 26 feet, which would result in an additional 13 feet above the tower.

Mr. Homan asked Mr. Williams if he would be contracting a professional installer to install the wind turbine. Mr. Williams indicated yes, he would hire a professional installer.

Mrs. Wolgamood asked if there were any newly constructed houses on Blackhawk Drive. Mr. Williams explained that there is a house going up a few lots south of CR 2 on Blackhawk Drive. Mrs. Wolgamood asked if it is south of the tennis courts shown on the aerial photo and Mr. Williams stated 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 (*Miller/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for a wind turbine (Specifications F - #31.50) be approved by the Board in accordance with the site plan submitted and as represented in the petitioner's application. With a unanimous roll call vote, the motion was carried.

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

16. The application of **Melvin J. & Ruth A. Lehman** for an amendment to a Special Use for a home workshop/business for metal fabricating (Specifications F - #45), and a Developmental Variance to allow the total square footage of accessory structures to be larger than the living area in the primary structure, on property located on the East side of CR 13, 2,400 ft. North of CR 52, common address of 71024 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 #71024CR 13-100520-1*.

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

Melvin Lehman, 71024 CR 13, Nappanee, was present on behalf of this request. Mr. Lehman explained that he is currently remodeling the house. During the remodel they detached the 22 x 22 foot garage, which resulted in a loss of one foot. Mr. Lehman stated that rather than demolishing the building, they decided to attach it to the existing home workshop/business, which is the 48 x 60 foot building. He stated that construction is underway for the new part and this addition would add to the square footage of the home business. It would also increase the accessory total square footage of the site plan.

Mr. Lehman asked that he be allowed to employ two individuals who are not occupants of the home. Additionally, he asked if it would be possible to obtain the permit today to attach the garage to the business as his contractor is available at this time. Mrs. Prough said that, if approved, they would start the process today; however, a sign-off would be required from the Health Department.

Mr. Homan said that he thought the representation submitted by Mr. Lehman was pretty clear. While he did have a question about the 21 x 22 ft. instead of the 22 x 22 ft. building, Mr. Homan indicated that Mr. Lehman was able to answer that question for him. Mr. Homan stated that the photograph shows a portion of the garage that was removed, and presumed to be moved over to the existing building.

Mrs. Wolgamood commented that the Developmental Variance also includes the proposed 34x60 accessory. Mrs. Prough indicated that everything was calculated.

Mr. Homan stated that frequently, when a developmental variance is done in this manner there is a number. The number is an indication of what will exceed the residential. Mr. Homan questioned how to proceed since the number is not indicated. He wondered if the representation of the site plan should be split.

Mrs. Prough indicated that the number is in the application. She shared that the staff determined a few months ago that they would not be advertising the number as there had been

several discrepancies in the past. In those instances once the petitioner came in they couldn't act on petitions. Mrs. Prough stated that it had been discussed with the attorney and it was decided that numbers will no longer be included in the legal request.

Mr. Homan questioned if he was able to make a motion to approve this developmental variance with the stipulation as presented on the site plan without future additions being allowed.

Mr. Hesser stated that he looked at it and interpreted it that there would be no expansion without approval.

Mrs. Wolgamood then pointed out that the square foot difference is located within the comments of the application. In this case, the number was at the very bottom, and the number is 1238 square feet.

Mr. Homan questioned the type of fabrication taking place. Mr. Lehman said they mostly build bird products such as purple martin housing. The housing is made from aluminum poles, which falls somewhat under the category of metal fabricating. Mr. Lehman said that he does not consider himself a professional metal fabricator.

Mr. Homan stated that Mr. Lehman is requesting two employees, which certainly falls within the realm of home workshop. Mr. Homan asked if things were going well. Mr. Lehman stated that things have been going well, although with the economic difficulties business did slow down somewhat. Mr. Lehman hopes the business will continue to grow.

There were no remonstrators present.

The public hearing was closed at this time.

When Mrs. Wolgamood asked about a timeframe for the permit, Mr. Homan said he sees no benefit in that. He suggested approving the permit for indefinite period of time unless there is a valid complaint filed. Mrs. Wolgamood also suggested they added that there be no additional construction without approval of the Board and Mr. Homan agreed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board (as amended by the Board), and based upon these Findings, this request for an amendment to a Special Use for a home workshop/business for metal fabricating (Specifications F - #45), and a Developmental Variance to allow the total square footage of accessory structures to be larger than the living area in the primary structure, 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.
2. The business to be operated by the owner/occupant of the residence on site.
3. Two (2) employees who are not occupants of the residence on site.
4. Days and hours of operation to be Monday through Friday from 5:00 a.m. to 3:00 p.m.
5. All required permits and inspections to be obtained for the 21 ft. x 22 ft. garage to be used for the home workshop/business.
6. Any changes in the site representation would require a site plan to be presented to the Board for review of the Developmental Variance.

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

17. 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 Street in Clinton Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #109EWashingtonSt-100524-1*.

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

Mr. Hesser asked staff what zoning is necessary for a car lot. Mrs. Prough indicated that the zoning requirement for a car lot is B-3.

Mrs. Wolgamood questioned the zoning for a liquor store. Mrs. Prough stated that she looked up the zoning requirement for a liquor store and the zoning is B-1. Mrs. Wolgamood then asked about the zoning for a gasoline station and convenience store. Mrs. Prough indicated that she while she believes the zoning is B-1; she would have to do some research to confirm the zoning. Mrs. Prough confirmed that the zoning for an outside display is B-3.

Jason Brooks, 107 E. Washington St., Millersburg. Mr. Brooks stated that he has had the building for rent for eight months. Lamar Chupp approached Mr. Brooks and indicated that he would like to situate a car lot on the property. Mr. Brooks relayed that while Mr. Chupp has a full time job, he also sells an occasional car from his home. Mr. Chupp has expressed a desire to get a dealer's license. Mr. Brooks relayed that one of the requirements of holding a dealer's license is to have a building, according to state law.

Mr. Brooks noted that a gas station and liquor store were situated on his property for 35 years. He stated that during the time those business were on that property, Millersburg was a more populated city, which resulted in more traffic in and out of that location than would be anticipated now. Mr. Brooks indicated that many of the business owners in Millersburg don't understand why there is a problem situating the car lot on the property. Mr. Brooks states that he is willing to do whatever it takes to receive approval for the business.

Mr. Brooks went on to explain that there are seven parking spaces across the street, with five additional spots in front of the liquor store. He considers twelve spaces to be a large number, as he doesn't recall ever having five cars in front of his liquor store. Mr. Brooks stated there are probably another three or four spots, with Mr. Chupp planning to put two or three cars in front. Mr. Brooks pointed out that there are four parking spots to the west. As far as he is concerned, parking is not an issue. Mr. Brooks stated that Millersburg is not a high-traffic area.

Mr. Hesser noted that the area for the car lot is not a big area. He questioned how many vehicles would be on site. Mr. Brooks explained that for Mr. Chupp to acquire a dealer's license he must have a building. Mr. Chupp sells cars mostly on E-Bay, Craigslist, or Indiana Auto. Mr. Brooks reiterated that by state law, Mr. Chupp is required to have a building, with a car in front, saying that he is a dealer. Mr. Brooks explained that the advantage of being a dealer is the ability to attend auctions and purchase vehicles at a lower rate than a non-dealer.

Mr. Homan asked Mr. Chupp if he also owns the lot to the west. Mr. Brooks stated that he does own the lot to the west as well as the property that extends to the corner. Mr. Chupp explained that they have determined there are at least four spots available on that property. Mr. Brooks indicated that on a few occasions throughout the year they do use those parking spots. Mr. Brooks noted that Millersburg is trying to get more people to come to town before it goes away. He stated that it is cost prohibitive for Mr. Chupp to set up a lot on State Road 13. Mr. Brooks stated that Mr. Chupp is just trying to get a start by situating his lot on his property. Mr.

Brooks expressed his sentiments that anything that will bring more people to Millersburg is a positive thing.

Mr. Hesser asked for clarification about what was located on the eastern third of the property. Mr. Brooks indicated that the building is a storage barn belonging to him. Mr. Hesser inquired as to whether that area was paved or grass. Mr. Brooks pointed out that some of the area is concrete while the rest is gravel.

Mr. Lantz asked how many cars Mr. Brooks anticipates having on the car lot. Mr. Brooks stated he doesn't want any more than two or three vehicles situated on the property, and Mr. Chupp is aware of that fact.

Mr. Homan noted that the site plan indicates that the designated area for the car lot is a 32 x 17 foot area, so he doesn't see getting any more than three vehicles on the property. Mr. Chupp explained that the area is directly on front of the building, and is the concrete pad he pointed out earlier. Mr. Brooks explained that there is an additional area, doubling the space.

Mr. Hesser noted that that area is not what is reflected on the site plan, and therefore, is not what is being requested.

In an effort to ascertain the accuracy of the site plan, Mr. Homan asked for clarification concerning the 32 x 17 area in relation to the site plan. Mr. Brooks indicated that according to the site plan there is still room to drive all the way around. Mr. Homan expressed concern about the accuracy of the site plan, due to the scale which doesn't clearly reflect the property.

Mr. Brooks noted that the previous owner of the property was there for 32 years. He explained that for 22 years it was a full service, two pump station. Mr. Brooks explained that traffic was in and out of that area during that period of time. He offered to put rocks in place or install fence to eliminate traffic going in and out. Mr. Brooks reiterated that he is willing to do whatever is necessary.

Mr. Hesser felt the site plan needs to be more specific and indicated he would not object to a revised site plan being reviewed by the staff.

Mr. Hesser asked Mr. Brooks if the plan was to have one car displayed. Mr. Brooks responded that it was his understanding there would be just one car displayed, but he didn't know that to be a fact. Mr. Brooks explained that he doesn't know if Mr. Chupp needs to have any cars displayed, although he is required to have a building.

Mr. Hesser stated that by the looks of the drawing there is no way to fit everything on the property.

There were no remonstrators present.

The public hearing was closed at this time.

For clarification, Mrs. Prough said a gas station is a permitted use in a B-2 zoning district, a convenience liquor store in a B-1 zone, and a sales lot in a B-3 zone. Based on the square footage, she said the petitioner would be required to have two parking spaces for the liquor store, which is shown.

One of the staff's biggest concerns is the site plan and the traffic in and out. Mrs. Prough explained that they measured 15 ft. from the edge of road and there is no defined curb cut. She said the wheel shown in the staff photos is where he would start selling the vehicles. They measured back the depth of 17 ft. and they were very close to the front door of the office. If someone wants to look at a car, she is concerned they would have to park along the road. Mrs. Prough said there is limited space for cars in a 32 x 17 ft. area.

Based on the petitioner's presentation, Mr. Hesser said the cars are just there to comply with a requirement as opposed to being sold. He agreed there is no parking room there so he felt customers would have to park farther east on the property.

In talking with the owner, Mrs. Prough said he had mentioned the fact that during the busy time for the convenience/liquor store, people park along the road to the west and cut across to go into the store. If there is already an issue with parking on site, she said the staff felt this would just compound the problem.

When Mr. Homan asked if the tanks are still in the ground from the previous gas station on the property, Mr. Brooks indicated that the tanks are still there. Since this was a gas station and there are tanks in the ground, Mr. Homan asked the staff if that would be a peculiarity to the property where construction could not be easily done. According to Mr. Burrow, some of the concepts they are looking at is if this property can be used for what it is properly zoned for, and if it is only suited for the use they are seeking. He said a used car lot could possibly be okay there, but he feels there are alternative uses that could go on this site. The tanks, he went on to say, is a remediation issue associated with state and federal law. Mr. Brooks then interjected that he already has that paperwork on file.

Mr. Burrow pointed out that this is a County Board of Zoning Appeals and the Board is actively inside a municipal boundary. Although the Board is appointed by the municipality, he said they are changing a land use inside the town and sometimes it is more suited for the town to make that decision.

Mr. Hesser said he saw no input from the Town of Millersburg and Mr. Burrow said there is nothing on file. According to Mr. Brooks, Lamar Chupp did meet with the town and they are supportive of this request; however, he doesn't know if Mr. Chupp has anything from them in writing.

Mr. Burrow then recalled that the Board of Zoning Appeals has asked applicants to seek input from the town in the past. As a property owner, Mr. Homan asked Mr. Brooks if he could obtain documentation of the Town of Millersburg's feelings on this request and Mr. Brooks said he's sure he could.

If they have applied for a rezoning and it is denied, Mr. Burrow said some people have used that as a hardship. He said a blanket zoning gives you multiple uses, but a Use Variance is very specific.

When it is determined that something is peculiar in nature, Mr. Kolbus said it means it cannot be used for the purposes for which it is zoned. Mr. Hesser asked if it can't be or if it's difficult to be used for the purposes for which it's zoned. Mr. Kolbus said it can be, but it's going to be an unnecessary hardship so it has to be a certain level of difficulty. It's already being used for a B-1 use and Mr. Homan said that's what he cannot get past. Mr. Kolbus then reminded the Board that property owners are not entitled to the highest and best use in zoning, which would be multiple businesses, they are entitled to a reasonable use.

When Mr. Miller asked if there are any B-3 zones within the Town of Millersburg, Mr. Brooks assumed the NAPA station on SR 13 probably is situated in a B-3 zone. In order to determine that, Mrs. Prough said the staff would have to look at the town map.

Mr. Lantz suggested they revisit this after the site plan is corrected and documentation is obtained from the Town of Millersburg. If tabled, Mr. Kolbus said the Board needs to give the petitioner some guidance in terms of the number of cars they want shown on the site plan. Mr. Lantz felt the maximum would be two or three cars, but Mr. Hesser said there would be no

parking if there were three cars based on the site plan. Both Mr. Hesser and Mr. Lantz agreed more cars could be situated on site if the parking was moved to the east, but Mr. Hesser said that is not shown on the current site plan.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for a used car lot to be located in a B-1 zone (Ordinance requires B-3) be denied by the Board. The motion did not carry based on the following results of a roll call vote: Wolgamood – yes; Lantz – no; Miller – no; Homan – yes; Hesser – no.

Mr. Hesser then moved to table this request until the July 15, 2010, Board of Zoning Appeals meeting with the petitioner to provide input from the Town of Millersburg and a revised detailed site plan. Mr. Miller seconded the motion and the motion was carried with the results of the following roll call vote: Wolgamood – no; Lantz – yes; Miller – yes; Homan - no; Hesser – yes.

18. The application of ***Devon R. & Raymonde S. Witmer*** for a Special Use for warehousing and storing of cut limestone (Specifications F - #44) to include outside storage, and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, on property located on the South side of CR 30, 2,000 ft. West of CR 13, common address of 24340 CR 30 in Harrison Township, zoned A-1, came on to be heard.

Mr. Kolbus explained that this request was tabled by the Board for a more specific site plan with no guarantee of the outcome. It was then noted that the public hearing was closed and he advised that it should be reopened to allow the staff to give their report.

Mr. Hesser moved to reopen the public hearing and Mr. Homan seconded the motion, which carried with a unanimous roll call vote.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #24340CR 30-100406-1*. She explained that a revised site plan was submitted by Mr. Witmer, which was included in the Board's packets. The revised site plan was then submitted to the Board [*attached to file as Staff Exhibit #1*]. She pointed out that the petitioner is eliminating the outside storage related to the business by placing in it what he identifies as accessory building "F".

Mr. Hesser sought clarification concerning the staff recommendation. Mrs. Prough explained that the staff recommends denial of the Special Use permit for the business and the outside storage related to the business. However, the staff recommends that Mr. Witmer be permitted to use the accessory buildings on site as they are identified here for either agriculture or accessory.

Mr. Homan indicated that he was not at last month's hearing and sought clarification about the request. Mr. Homan noted that the original approval was for one year without renewal. He asked Mr. Witmer about his intentions for the business at the time the original approval was granted. Mr. Witmer stated that the intention was to move the business to town when the economy picked up. He went on to say that while the business has grown, it still has not grown enough to allow them to move the business elsewhere. Mr. Witmer explained that the limestone business has grown and which resulted in the development of outside storage. When the business originally started they were using half of the shop and were able to keep everything inside. However, as the business grew there was a need for more inventory and that space did

not allow room to work. Mr. Witmer stated that Shop "F" contains 3,200 square feet to work in compared to the old shop which was 600 square feet. He said there is ample room to move outside storage and everything from Shop C and Shop B inside Shop F. Mr. Witmer explained that the floor of the shop will be hard concrete, enabling them to use a tiered stacking system.

Mr. Lantz commented that outside storage was the main issue and Mr. Witmer agreed. Mr. Witmer explained that he just didn't have room inside to contain everything. He stated that at times a full load would be brought in and would sit until they were able to bring it inside.

Mr. Hesser asked about the noise level, and questioned the location of the cutting operation. Mr. Witmer stated that the cutting originally took place in Shop "C". He went on to explain that a large swing saw is used to cut the masonry product. He explained that limestone is softer than brick or block, and results in minimal noise. Mr. Witmer likened cutting limestone to cutting oak on a table saw. Mr. Witmer stated that at the last hearing his neighbor to the east was present and indicated that he doesn't hear anything or see anything pertaining to the limestone business. He went on to say there has been no concern expressed by any of the neighbors.

Mrs. Wolgamood noted that the current site plan reflects moving the entire operation from the east side of the property to the west side. She asked Mr. Witmer to confirm that he is planning to completely remove the business from shop "C". Mr. Witmer stated that that is correct. He explained that Shop "F" has electrical, allowing him to run saws. All of his empty pallets, boxes, and banding equipment and would be stored inside.

Mr. Homan asked if the staff's concern is centered around the violation of outside storage conditions or commercial use in an A-1 zone. Mrs. Prough explained that when the permit was granted in 2009, it was granted for a one year period with no renewal. At that time, the intention was to relocate, as it is more of an industrial/commercial use in an A-1 zone. There was also the issue of outside storage not in compliance.

Mrs. Wolgamood noted that a copy of the old site plan was included in their packets.

Mr. Lantz recalled that there was a problem with outside storage with the petitioner not being allowed to use the buildings on site for storage. He noted that it appears that the outside storage issue has been resolved. Mr. Lantz wondered what made cutting stone more commercial/industrial than cutting bird houses.

Mrs. Wolgamood reviewed the May minutes, which indicate that the board had no objection with the Special Use provided the limestone is stored inside the building. She stated that Mr. Witmer was specifically asked to come back with a new revised plan that he can do everything inside of a building. Mrs. Wolgamood stated that it appears he has done that. She explained that the other issue was the one year approval. Mr. Witmer was given one year with no renewal. Therefore, if the one year is an issue then the request needs to be denied.

Mr. Hesser explained that the Board made it clear that they would not guarantee approval of the Special Use. He recalled that there was an issue about the storage, which bothered a few people because it was a specific condition that had been violated. Mr. Hesser went on to state that in terms of the one year approval, he would not want the business situated there permanently. He noted that the petitioner has indicated that he plans to move the business as soon as possible. Mr. Hesser said he does not believe that the one year approval meant that the Board would never consider renewing the request; the approval was only requested for one year, which is all Mr. Hesser would ask for again. Mr. Hesser suggests reviewing the situation again in another year, not implying that they will renew the Special Use. He stated that Mr. Witmer

has expressed a desire to grow the business large enough to move elsewhere, but has been hampered by the economy.

Mr. Witmer reiterated that his intent is to move the business to town and open a showroom. He explained that they can't do that at this time due to the economy.

Mr. Homan questioned the need to consider the fact that the original approval was for one year with no renewal. He stated that if this is a brand new petition the approval with no renewal from one year ago would not need to be part of the conversation. Mr. Hesser felt that this request is different. He stated that in normal circumstances, in terms of a home workshop, when a three year renewal is granted it is generally implied that as long as the workshop stays as it was represented, doesn't grow and neighbors have no objections it will be renewed indefinitely. Mr. Hesser stated that he does not want to take that approach in this situation. He said that there is a distinction in his mind. While it doesn't appear that Mr. Witmer is disrupting his neighbors or having any problems, Mr. Hesser noted that he is bothered by the fact that Mr. Witmer didn't comply with no outside storage. Mr. Hesser acknowledged that Mr. Witmer has addressed the outside storage problem now and he no longer has a problem renewing the request for a year. He states that if Mr. Witmer is trying and the business is growing, he is willing to renew it for another year, but with no promises that he'll renew it again.

Mr. Miller noted the validity of Mr. Lantz's question about the difference in intensity between making bird houses and cutting limestone. Mr. Miller pointed out that if Mr. Witmer complies and everything is contained within the building and the doors are closed it would not be apparent to anyone driving down the road that there is a business contained within the building. Mr. Miller noted that Mr. Witmer has been consistent in his position that as soon as the business grows he is going to move off of the property. Mr. Miller stated that he has no objection to renewing for another year. However, Mrs. Wolgamood pointed out that the request before the Board was for a Special Use for warehousing and storing of cut limestone to include outside storage. She stated that this is a different request than the one that lapsed, and should be considered a brand new request and not a renewal of the original request. Mrs. Wolgamood noted that the major area of concern in the staff analysis was no outside storage, which is what they had before. Mrs. Wolgamood stated that she is in agreement with Mr. Miller, that if everything is kept inside she too is agreeable to approving the request for one year. She does not have an issue with Mr. Witmer coming back in one year. Mrs. Wolgamood feels that the petitioner has done what he was asked to do and believes that the Board indicated that if he took care of the outside storage issue he would be granted Special Use.

Mrs. Prough said she listened to the recording from last month's hearing and noted that the Board said they would consider the request in 30 days. She stated that in 2009, Mr. Witmer requested a Special Use permit for warehousing and storing of cut limestone. At that time he indicated that he would have outside storage, which is one of the main reasons he did not request a home workshop/business. Mrs. Prough explained that the staff had recommended approval of the Special Use permit provided he had no outside storage. She stated that the board adopted the staff's analysis. Mrs. Prough noted that outside storage was initially requested, but was denied by the Board. She explained that information on Mr. Witmer's questionnaire from the 2009 request indicated that he only needed the permit for one year as he would be looking for a location in Goshen when the economic situation became a little stronger. At the time of approval, Mr. Homan indicated that he did not know when the situation would become stronger,

and that the petitioner needs to understand that if the request is approved it would be limited to one year and would not be dependent on when the economic situation improves.

Mr. Kolbus asked if the staff did an onsite investigation of the site prior to this hearing. Mrs. Prough indicated that an inspection was done at the time of the application, prior to the expiration date of the Special Use approved in 2009. She explained that she went to the site and found the business still in operation and found the outside storage. As a result of the inspection Mr. Witmer was told to cease and desist or re-apply. Mr. Kolbus asked if the outside storage was moved inside. Mrs. Prough stated that she visited the site a day prior to the hearing and items were still outside. Mr. Witmer responded that he was going to move material into the other building, but was told at the last meeting not to do anything until the current hearing, so that he wouldn't have to move things twice. Mrs. Prough acknowledged that she understood his reasoning.

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 finds that this request will be consistent with the spirit, purpose and intent of the Zoning Ordinance; it will not cause substantial and permanent injury to the appropriate use of neighboring property; and it will substantially serve the public convenience and welfare; therefore, the request for a Special Use for warehousing and storing of cut limestone (Specifications F - #44) to include outside storage be approved by the Board with the following conditions imposed:

1. Approved for a period of one (1) year.
2. The petitioner is given thirty (30) days to move all outside storage inside with an inspection by the staff at that time to verify there is no outside storage.

The motion further reflects that the request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved by the Board in accordance with the Staff Analysis with the existing accessory structures on site to be used for agricultural and/or personal domestic storage only. A roll call vote was taken, and with a unanimous vote, the motion was carried.

19. ***Steve Adams.***

Mrs. Prough gave Staff Report and stated a notice was sent to Mr. Adams, telling him a review of the Use Variance was taking place at 10:30 a.m., but he is not present nor has she heard from him.

Mrs. Prough noted that everything is in compliance with what was originally granted.

Mr. Kolbus advised that the Board needs to find that Steve Adams is in compliance and that his variance is allowed to continue.

Public hearing was closed.

Mr. Hesser moved to adopt the Staff Analysis and approve the continued Use Variance. Mr. Lantz seconded the motion, which carried with a unanimous roll call vote.

20. Mr. Watkins gave a brief update on the zoning ordinance draft. He stated that the draft has been considered at two workshops as well as the Plan Commission meeting. Mr. Watkins said that they continue to accept public comments. He stated that the only group that has not been heard from is the Farm Bureau group. Mr. Watkins believes there are some ongoing

conversations with Farm Bureau. However, Farm Bureau appears to be the only group that has not shared comments. Mr. Watkins stated that Ground Rules considers the comments.

Mr. Watkins went on to say that they had a really good review with the Builder's Association. He explained that there were five pages of items that covered questions, concerns and recommendations. Mr. Watkins expressed his belief that the Builder's Association did a really nice job and were a big help. He believes that a lot of their suggestions could be ultimately incorporated,

Mr. Kolbus added that the comments and criticism were very constructive.

Mr. Watkins explained that the builders had Leon Bontrager from Home Energy present. Mr. Watkins said that Mr. Bontrager added some very good comments with regards to wind turbines. Mr. Watkins stated that the information Mr. Bontrager shared was information that the BZA needs to know. For instance, a wind turbine must be located at least 100 feet in the air before it becomes an economically feasible alternative.

Mr. Watkins shared with the Board that during the June 22, 2010 meeting between the cities and the county, Mr. Bontrager will be presenting information on alternative energy. He encouraged board members to attend the meeting.

\* *(It is noted that Mr. Hesser was not present for the remainder of the meeting.)*

21. ***Ryan Andrew & Heather J. Kallimani***

Mrs. Prough presented the Staff Report. She reminded the board that last month they granted a permit for an agricultural use to keep chickens and cows in an R-1 zone. At that time the board asked that a revised site plan be submitted for approval at the June 17, 2010 meeting which would include the petitioner's representations. Mrs. Prough indicated that a site plan is included in the packet the Board received. She noted that three pastures were designated along the north side of the property line. Also shown is the portable chicken tractor, which will be moved periodically. Existing and proposed pine trees on the south and east property lines, as well as the existing tree line to the north are reflected on the site plan. Mrs. Prough asked the Board to accept the site plan.

Mrs. Wolgamood noted that a good job was done on the site plan. Mr. Miller moved to accept site plan as submitted. Mrs. Wolgamood seconded the motion. The motion was carried with a unanimous roll call vote.

22. The meeting was adjourned at 11:42 a.m.

Respectfully submitted,

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Teresa McLain, Transcriber

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Kathleen Wilson, Recording Secretary

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Randy Hesser, Chairman

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Tom Lantz, Secretary