

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18th DAY OF MARCH 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 Vice Chairperson, Doug Miller, with the following board members present: Meg Wolgamood, Robert Homan, and Tom Lantz. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Administrator; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Lantz/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of February 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 5th day of March 2010 in the Goshen News and on the 6th day of March 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.

* * *Mr. Hesser arrived to the meeting at this time. It is also noted that Mr. Homan stepped down from the Board at this time due to a potential conflict of interest.* * *

7. The application of **Gregory A. & Jodi I. Ferro** for a 10 ft. Variance to allow for the construction of a residence 40 ft. from the centerline of the right-of-way of Sail Bay Court (Ordinance requires 50 ft.) on property located on the East side of Sail Bay Court, 840 ft. South of North Shore Drive, being Lot 7 of Sunset Bay Subdivision, common address of 51078 Sail Bay Court in Osolo Township, zoned R-2, 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 #51078Sail Bay Court-100215-1*.

There were 7 neighboring property owners notified of this request.

Mrs. Wolgamood asked if the 40 ft. setback shown on the site plan is a requirement and whether it is shown on the recorded plat. Mrs. Prough explained it looks like the channel is part of the recorded plat. She indicated it doesn't say there is a required rear yard setback. The plat

only shows the recorded front yard setback, so she is assuming there is not. The minimum distance the petitioner would have to be with the current Zoning Ordinance is 25 ft.

Mrs. Wolgamood asked what the setback indicated on the building permit that was issued in January of this year. Mrs. Prough indicated it was issued with the minimum setback. After the foundation was constructed, a survey was done and that is when the petitioner realized they were too close to the property line. She thinks there was a misunderstanding where the property line is located and the curb. She indicated the building permit was issued correctly.

Greg Ferro, 1726 Columbia Avenue, Elkhart, was present on behalf of this request. Mr. Ferro explained the dimension to the rear indicated on the site plan was the setback to the waterline. They were trying to stay away from the water as much as they could, but he is not aware of a setback requirement for the rear. The site plan is correct, but when they went out to the property, the setback was measured incorrectly from the curb. The house should have been 50 feet back from the centerline of the road.

Mrs. Wolgamood asked if this is in the conservancy district and Mr. Ferro indicated yes.

When the petitioner was asked if he staked out where the house was going to be located, he said yes. The property had not been surveyed prior to it being staked out.

Mr. Miller questioned if there is any way they can modify the foundation in order for it to fit the site. Mr. Ferro said they looked at that, but it would be very difficult to do at this point. If it only affected the garage, then it would be possible, but it affects the main part of the house as well. If he were to do that, he would basically have to tear out everything and start over again.

Based on the layout of the land, Mr. Miller pointed out the garage is on the long side of the property and they have a 40 ft. setback in the backyard. If he doesn't have a rear yard setback to maintain, the house could be moved back ten feet. Mr. Ferro indicated it could be done.

Mrs. Wolgamood asked if there are any other houses in the area that encroach on this setback and the petitioner said no, not that he's aware of.

Mr. Ferro explained he spoke to all of the neighbors to let them know what was going on and they were all very positive about the situation. He then submitted a letter from the neighbor in favor of this request *[attached to file as Petitioner Exhibit #1]*. Mr. Ferro pointed out that neighbor's property on the aerial photo. Mrs. Prough then submitted letters from other neighbors in the area that were in the file *[attached to file as Staff Exhibit #2]*.

Mrs. Wolgamood noted that all of the letters except for one were from landowners on Sail Bay Court.

There were no remonstrators present.

The public hearing was closed at this time.

In the staff photos, Mrs. Wolgamood indicated there was still snow on the ground. She asked if he has done any construction other than the foundation and the petitioner said no.

Mrs. Wolgamood feels that the petitioner made an honest mistake. He submitted letters from the neighboring property owners indicating they have no problem with it and the septic system is not an issue because it is on the conservancy district.

When she reads the three findings in the Staff Analysis, the one she is struggling with is number three, which states "Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance. A house could not be constructed on this parcel without a Variance being granted." She indicated it couldn't be

constructed at this particular location, but a house could be constructed at the proper setbacks at this location.

Mr. Miller said he has some experience with this and he is empathetic because he feels it is an honest mistake. With respect to the builder, Mr. Miller thinks he has some responsibility in regards to locating all of the property stakes and setbacks. He is also struggling with staff finding number three because the house could be constructed there without a Variance being granted. He doesn't know if it's in the best interest of the community to leave it there.

Mr. Lantz said if the homeowners don't have a problem with the request, then it puts the Board in a tough place. He indicated it is a hard decision to make, but he would be in favor of the request considering the neighbors don't have any issues with it.

Mr. Hesser asked the staff to address finding number three. Mrs. Prough said it should have said that the petitioner could not continue construction as is without a Variance being granted. The staff felt it was a hardship that the petitioner would have to remove the existing foundation.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a 10 ft. Variance to allow for the construction of a residence 40 ft. from the centerline of the right-of-way of Sail Bay Court (Ordinance requires 50 ft.) be approved in accordance with the site plan submitted based on the following findings:

1. Will not be injurious to public health, safety, morals or general welfare. The construction of the residence 40 ft. from the centerline of Sail Bay Court will not create a visual impact on traffic in the area.
2. Will not cause substantial adverse affect on the neighboring property. The parcel is located near the end of a cul-de-sac street and the lot shape is irregular.
3. Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance.

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

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

8. The application of ***Carl L. & Mary H. Jones Trustees of Jones Rev Trust*** for a 3 ft. Variance to allow for the construction of an attached carport 2 ft. from the east side property line (Ordinance requires 5 ft.) on property located on the South side of 1st Street and North side of 2nd Street, 85 ft. West of Heaton Vista, being Lot 87 of Heaton Park, common address of 23214 1st Street in Osolo Township, zoned R-2, came on to be heard.

One photo of the property was submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #232141stSt-100218-1*.

There were 6 neighboring property owners notified of this request.

Dallas Fireline, 16168 CR 14, Goshen, was present on behalf of this request. At this time, Mr. Fireline submitted a drawing of construction specifications for the carport *[attached to file as Petitioner Exhibit #1]*. He explained that the resident of this home is 91 years old and the reason for the

carport is to eliminate her from having to shovel the snow and to get her car out of the weather. Shoveling the snow and cleaning the snow off of her car has created a problem. Mrs. Jones can drive, but she has a little trouble walking. The carport they are proposing will be designed so that it can be dismantled once Mrs. Jones is no longer residing at this property.

There is currently a seven foot setback from the property next door and the staff feels the carport will cause access issues. Mr. Fireline indicated there is a fence between the two properties, so you are presently unable to fit a vehicle through there. He pointed out the petitioner has access to her property from two streets.

Lastly, Mr. Fireline explained the petitioner doesn't have a problem issuing a letter stating they will never put sides on the carport. Mrs. Jones does have a garage to store things in, but she would like the carport to keep out of the weather and make it easier for her to get to and from her front door.

Mr. Miller asked if the carport is going to be removed at some point and Mr. Fireline indicated yes. Mrs. Jones doesn't use the garage because it's hard for her to make the maneuver to get in there and it's hard for her to walk to the house. If she were able to have the carport, she could pull alongside the house and the sidewalk goes right along where her car door opens.

Mrs. Wolgamood questioned if the porch is going to be the same type of structure. Mr. Fireline said he will be putting concrete at the bottom of the holes for the posts, but not putting concrete around them so they are able to be pulled out. The porch will not be attached to the house.

Mr. Hesser asked if the Board can approve a temporary or provisional Variance. Mr. Kolbus said the Board could grant the request and require a recorded commitment stating that it be removed when Mrs. Jones no longer resides in the house. The Board could also add a condition that no walls are to be constructed and that it is to remain a carport.

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 this request for a 3 ft. Variance to allow for the construction of an attached carport 2 ft. from the east side property line (Ordinance requires 5 ft.) be approved based on the following findings:

1. Will not be injurious to the public health, safety, morals or general welfare provided a recorded commitment form is submitted stating the following:
 - a. The structure is to remain a carport and not be enclosed in any way.
 - b. The carport is to be removed from the property when Mary H. Jones no longer resides at this site.
 - c. The carport is to be constructed as represented by Mr. Fireline.
2. Will not cause substantial adverse affect on the neighboring properties provided the structure remains open.
3. Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance.

The following condition was imposed:

1. A recorded commitment form is to be submitted stating the following:
 - a. The structure is to remain a carport and not be enclosed in any way.
 - b. The carport is to be removed from the property when Mary H. Jones no longer resides at this site.

c. The carport is to be constructed as represented by Mr. Fireline.

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

9. The application of **Mark R. & Susan L. Cosby** for a Special Use for a home workshop/business to design, assemble and sell wind turbines (Specifications F - #45), and a Special Use for a wind turbine (Specifications F - #31.50) on property located on the North side of CR 40, 1,029 ft. East of CR 33, common address of 14801 CR 40 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 #14801CR 40-100218-1*.

There were 7 neighboring property owners notified of this request.

Mark Cosby, 14801 CR 40, Goshen, was present on behalf of this request. Mr. Cosby explained they are trying to establish more of an internet based business. He indicated he is an engineer and he designs wind turbines for a living. He has done some vertical axis's and horizontal axis's, which are slightly different. He has an office in his house where he does the design work and then he contracts out the fabrication of the components. He then brings them together and assembles them, and finally sells them as a unit. Mr. Cosby indicated he is asking to be able to do the assembly of the parts in the garage.

Mr. Miller asked if he will be packaging them together to be shipped and the petitioner said yes. He will use UPS as the standard way to ship the packages. Mr. Cosby indicated these wind turbines are small and are able to fit in a cardboard box.

When asked about the poles, Mr. Cosby said those would have to be managed off-site.

Mr. Miller asked if there is any need for outside storage and the petitioner said no.

Mrs. Wolgamood questioned where work will be done and the petitioner said the work will be done in the attached garage.

She then asked how much of the garage he will be utilizing for the business and Mr. Cosby said about half of the garage because the other half of the garage has all of his tools. The entire square footage of the garage is 2,585 sq. ft.

Mr. Homan asked if he would have a need for a larger vehicle and the petitioner indicated he currently has a truck and a trailer. He would not need anything larger than that because he has a Ford F-250 truck.

The petitioner then submitted a letter from a neighboring property owner in favor of this request *[attached to file as Petitioner Exhibit #1]*.

When the petitioner questioned the height restriction, Mr. Hesser said if the request is approved, it is approved pursuant to the site plan submitted. He explained the setback has to be enough so that if the tower were to fall, it would fall within the property lines.

If the petitioner wanted the height different other than what is indicated on the questionnaire, Mrs. Prough explained he would need to have the Board's approval. It would require a minor change unless it was modified at today's hearing.

Mrs. Wolgamood pointed out the questionnaire indicates a tower height of 80 feet or less with a setback of 80 feet.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan indicated he has a little concern about the intensity of the business. As long as the petitioner can stay within the definition of a home workshop/business, then he would be in favor of the request.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business to design, assemble and sell wind turbines (Specifications F - #45) and a Special Use for a wind turbine (Specifications F - #31.50) be approved in accordance with the site plan submitted and as represented in the petitioner's application. After a unanimous roll call vote was taken, the motion was carried.

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

10. The application of **Loveway, Inc.** for an amendment to an existing Special Use for an indoor horse riding arena for the handicapped to include fall fundraising events on property located on the West side of CR 33, 630 ft. South of CR 108, 4,200 ft. North of CR 12, common address of 54151 CR 33 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 #54151CR 33-100222-1*.

There were 9 neighboring property owners notified of this request.

Nancy Smith, 54151 CR 33, Middlebury, was present on behalf of this request. Ms. Smith explained Loveway is doing a fall fundraiser on three weekends in October. They are planning on having a haunted house for the fundraiser. She explained there is plenty of parking in the pastures, the whole area is buffered with trees, and they will meet all fire code requirements. They will also be having a haunted trail where they will have a pick-up truck with a large trailer attached. They will have a small maze for the little kids with bails of hay and pumpkins. She is hoping this will be their premiere fundraiser, which will be held October 15th and 16th, 22nd and 23rd, and the 29th and 30th. The haunted house will only operate on Friday and Saturday nights.

Mr. Miller asked if this will continue in the future and Ms. Smith said they hope so.

The portable signs were questioned by Mrs. Wolgamood and Ms. Smith said they will have yard signs. She indicated they currently have a portable sign there for volunteers and they will probably put some lettering on it when the time comes for the fundraiser. She indicated the sign is unlit.

Mark Staples, 1218 Michigan Avenue, Mishawaka, was also present on behalf of this request. Mr. Staples explained they did rent a portable sign on wheels for this event that will be lit.

When Mrs. Wolgamood questioned where the existing portable sign is located, Ms. Smith said it will be on CR 33, south of the entryway.

When asked if that will only be from October 1st to October 31st, Ms. Smith said yes.

Mr. Smith explained they are thinking about possibly doing a rehearsal weekend the first week in October to make sure everything is working right.

Mrs. Prough pointed out the questionnaire was revised, as well as the site plan, and it did indicate that they want to have two portable signs on site. The questionnaire noted they would be on site for the month of October.

She said the sign currently on site asking for volunteers is not a permitted sign. They would like to use that sign and add another one for the event. If this request is approved, Mrs. Prough indicated those signs are only to be used for that particular event.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said this request is for the entire 29 acres as stated in the staff report under history and on the building permit that was issued.

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 an amendment to an existing Special Use for an indoor horse riding arena for the handicapped to include fall fundraising events be approved with the following conditions imposed:

1. Approved as represented on the petitioner's application and in accordance with the site plan submitted.
2. All required state and local permits to be obtained.
3. The two (2) portable signs indicated in the petitioner's questionnaire are approved for the month of October only.
4. Approved for the entire 29.149 acre parcel.

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

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

11. The application of ***Thomas L. & Mary Ann Surface*** for a 5 ft. lot width Variance (Ordinance requires 80 ft.) and a 6,691 sq. ft. lot area Variance (Ordinance requires 15,000 sq. ft.) to allow for an existing residence on proposed Lot 1; and for a 5 ft. lot width Variance (Ordinance requires 80 ft.) and a 6,691 sq. ft. lot area Variance (Ordinance requires 15,000 sq. ft.) to allow for the construction of a residence on proposed Lot 2

on property located on the Southeast corner of Wilson Street and California Court, being Lots 222, 223 & 224 of Hasting's Park (Unrecorded), common address of 54078 Wilson Street in Osolo Township, zoned R-2, 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 #54078WilsonSt-100222-1*.

There were 6 neighboring property owners notified of this request.

Craig Pauling, Builder from Silver Creek Homes, 2260 Cassopolis Street, Elkhart, was present representing the petitioners. Mr. Pauling explained there is a home on lot 224 and there used to be a lot on lot 223. He was told that he could get a permit to build on lots 222 and 223, but they decided to do a minor subdivision and split three lots into two lots. Doing so would bring the current home on lot 224 into compliance with the current Zoning Ordinance. If this request doesn't get approved, Mr. Pauling explained they will get a building permit for lots 222 and 223.

The petitioner's intention is to remove the home on lot 224, but there is the possibility of their plans changing in the future. If the house does end up staying there in the future, the property would be brought into compliance with the current Zoning Ordinance if this request is approved. The next step for the minor subdivision will be to approach the Health Department to make sure there is ample room for a septic system and reserve area. He noted this property is surrounded by city and if it does get annexed in the future, it will be served by city utilities.

Mrs. Wolgamood asked how long ago the second residence was removed from the site and Mr. Pauling indicated February 26, 2010.

When talking about the minor subdivision, Mrs. Wolgamood pointed out he would need lot area Variances. She also indicated it will require a septic system and Mr. Pauling said he has been working with Meade Septic Design. They have done some preliminary work on the septic system. Based on the surrounding wells and septic systems, they should be able to put a reserve area in and a septic tank.

There were no remonstrators present.

The public hearing was closed at this time.

The sixty percent rule was questioned by the Board and Mrs. Prough explained she did some calculations, and because this was a lot of record prior to the Zoning ordinance, the sixty percent rule can be used. The petitioner can meet the minimum requirements for lot frontage and lot area. Whether or not they can meet all of the setback requirements is another issue. By subdividing the lots, they would lose the non-conforming status.

Mr. Watkins then explained a lot of record prior to the date that the Sewage Ordinance was adopted would not require a reserve area. In a new subdivision, it would require a septic area and a reserve area.

She asked if they could conceivably have two more residences and two more septic systems on two of these three lots. Mrs. Prough explained each lot would be 50 ft. x 110 ft., which only comes up to about 6,000 sq. ft. The petitioner would need 9,000 sq. ft., so he meets the lot width, but not the lot area.

Mrs. Wolgamood feels when they have small lots like this, if they can take three lots and make two lots, it will make for a better situation. The petitioner will be required to go through the minor subdivision process to make sure he can meet all of the setbacks.

Mr. Hesser agreed and indicated he doesn't feel this will be injurious to public health, safety, morals or general welfare.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for a 5 ft. lot width Variance (Ordinance requires 80 ft.) and a 6,691 sq. ft. lot area Variance (Ordinance requires 15,000 sq. ft.) to allow for an existing residence on proposed Lot 1; and for a 5 ft. lot width Variance (Ordinance requires 80 ft.) and a 6,691 sq. ft. lot area Variance (Ordinance requires 15,000 sq. ft.) to allow for the construction of a residence on proposed Lot 2 be approved based on the following findings:

1. Will not be injurious to public health, safety, morals or general welfare as the petitioner's representative has indicated they will go through the minor subdivision process, which will require them to go through the technical review process as well as a review from the Elkhart County Plat Committee.

2. Will not cause substantial adverse affect on the neighboring properties. There are a number of properties in the area that have residences on 50 ft. lot widths and the increase in lot area will be a positive change.
3. Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance.

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

12. The application of **Billie K. Bunch** for a Special Use for a kennel with indoor/outdoor pens/runs (Specifications F - #15.00 and #15.10) on property located on the Northeast side of CR 22, 725 ft. Southeast of CR 100, common address of 30629 CR 22 in Baugo Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #30629CR 22-100129-1*.

There were 12 neighboring property owners notified of this request.

Billie K. Bunch, 30629 CR 22, Elkhart, was present on behalf of this request. Ms. Bunch explained she has raised Boston Terriers and French Bulldogs as show dogs for quite some time. She is a member of the Michiana Kennel Club and the Boston Terrier Club of America. A number of years ago, she and her husband had applied for a boarding kennel, but that request was withdrawn. At that time, she was told as long as the dogs were her personal pets, then they were fine since the zoning is agricultural.

The petitioner indicated she would like to continue to show her dogs. She asked the Board to consider allowing her to have more than 18 dogs. Her purpose of breeding the dogs isn't to sell the puppies and make money, but to show the dogs. If she's only allowed to keep the dogs that she currently has, then she has nowhere to expand her line. She explained her oldest dog is currently ten years old and she lost three 13 year olds and a 12 year old this winter.

When asked how many dogs she currently has, Ms. Bunch indicated 18. She has ten Boston Terriers and eight French Bulldogs. He asked how many more dogs she would like and the petitioner said she is unsure. She has had as many as 33 dogs, but she doesn't feel she wants that many anymore.

If she has a litter of puppies, Mr. Homan asked if she plans to keep all of them. Ms. Bunch said she would only keep the puppies she could use as show dogs. One of her dogs was number eight in the nation and has produced quite a few champions.

Mrs. Wolgamood said she is familiar with what a Boston Terrier is, but she's not familiar with the French Bulldog. When asked low large the French Bulldogs get, Ms. Bunch indicated most of her dogs are around 15 pounds. She then submitted a photo of a French Bulldog to the Board *[attached to file as Petitioner Exhibit #1]*.

When it was questioned by the Board where the 21 cages are kept, Ms. Bunch indicated she keeps them in her living room. She previously had a kennel set up in a separate accessory building, but the gas and electric bills got too high.

Mrs. Wolgamood also asked the petitioner if she lets them out on a rotating basis and Ms. Bunch said yes, she lets them out three at a time.

The Board asked how she takes care of animal waste and the petitioner explained she buries it in the backyard.

Gail Rogers, 25609 CR 24, Elkhart, was present in favor of this request. Mrs. Rogers said she and her husband go to church with the petitioner and they have been to her house many times. She never hears or sees the dogs and she feels Ms. Bunch takes very good care of her dogs.

Todd Howard, Elkhart County Humane Society, 21539 Kern Road, South Bend, was present in opposition to this request. Over the past six years, they have responded to numerous complaints at the petitioner's residence. When Mr. Howard was last there on January 22, he was told by the petitioner that she has 23 dogs. All of the dogs live in individual crates and small pens in the living room area to the kitchen area. Most of the cages hardly have enough room for the dogs to turn around in. He is also curious as to how the waste is disposed of because when you walk in the house, there is a very strong smell of ammonia. He noted that most of the water bowls were also empty.

Mr. Homan questioned what precipitated the visit and Mr. Howard indicated the Humane Society received a complaint. They have been dealing with this situation since 2004 and when one of the previous officers was out on site, he felt that the house was uninhabitable for humans and animals.

In rebuttal, the petitioner all of her pens are kept clean. Most of the cages are Doberman size or Great Dane size. She explained that when Mr. Howard was out to the residence he smelt urine, but she did not smell it. There were only two water bowls that were empty when he came. She explained that she fills the water bowls when she takes the dogs outside to exercise. Ms. Bunch feels her dogs are healthy and the pens are kept clean. At the time of Mr. Howard's visit, her house was messy because she was recovering from a knee injury.

Ms. Bunch explained that the only problems Mr. Howard marked on the complaint form that he found were that two of the dogs were out of water and that a few of the dogs were out of date for their rabies shots. He has not come back since the visit in January.

The days and hours of operation were questioned by Mr. Hesser. The petitioner indicated she wasn't sure how to answer that because this is not an open kennel and she doesn't board dogs. She very seldom has puppies and there are her personal dogs. If she does sell a puppy, she normally has them come over in the afternoon. She does not sell any puppies on Sundays.

Mr. Homan asked how big a 200 crate is and Ms. Bunch gave the Board a visual estimate using her hands as to how big it is. When asked the dimensions of the cage, Ms. Bunch was unsure of the exact dimensions. She explained she has one French Bulldog in a 200 crate because she likes to bite the cages and she pushes the tops open to crawl out.

Mr. Homan asked if the other cages are different sizes or if they are all 200 crates. Ms. Bunch said she has five 200 crates and the rest are Doberman size.

The public hearing was closed at this time.

Mr. Homan is concerned considering that the Humane Society doesn't feel this home is habitable for people or animals. He feels this is a peculiar request because usually when the Board has a request for a kennel; it's to allow animals to be boarded temporarily or for breeding/sales.

Also, he doesn't feel Ms. Bunch wants a limit on the number of dogs she can have. Mr. Homan has a concern with that as he doesn't want there to be an excessive amount of dogs.

Mr. Hesser feels this is highly unusual and the issue is whether or not the Board will allow for an extreme number of pets. He would not be interested in expanding it as he feels this

is a lot of dogs to have in one house. He indicated he would be reluctant to do so, but he would be willing to support the Staff's Analysis.

Mrs. Wolgamood said she has great concerns about having 18 dogs inside cages in a residence. The petitioner buries the waste and she's not sure that is a good situation. The cages Ms. Bunch has described are pretty good sized cages, but she doesn't feel she could support this many dogs.

When the Board questioned how many dogs the petitioner would be allowed without a Special Use, Mrs. Prough said four adult dogs.

Mr. Homan feels there is an unknown and unresolved issue regarding the concerns of the Humane Society because the Board doesn't have any evidence. In regards to the criteria on the Staff Analysis, the usual complaints of barking and nuisance have not come into play.

Mr. Hesser said the concerns he has are not issues this Board can address.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a kennel with indoor/outdoor pens/runs (Specifications F - #15.00 and #15.10) be approved in accordance with the site plan submitted and as represented on the petitioner's application with the total number of adult dogs being limited to 18. The motion was carried with the following roll call vote results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – no; and Hesser – yes.

13. The application of **23987 US 33 LLC c/o James L. Hartman (lessor) and Mark A. Miller (lessee)** for a Use Variance for a tattoo parlor in an R-4 zone on property located on the Northeast side of US 33, 821 ft. Southeast of Sunnyside Avenue, being Lots 2 and 3 of Edgar Hess Subdivision, common address of 23987 US Highway 33 in Concord Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #23987US Highway 33-100222-1*.

There were 20 neighboring property owners notified of this request.

Ben Pfaff, Attorney, 220 W. High Street, Elkhart, was present representing the petitioner. Mr. Pfaff explained the petitioner is asking for a Use Variance to allow for a tattoo parlor at the proposed location. The building on the property is a ranch-style residence that has essentially been turned into a duplex. There are two business entrances and Mr. Mark Miller's tattoo parlor would be on the north side of the building. On the south side of the building is a law office maintained by Blackburn & Green. Mr. Pfaff then noted the petitioner has some hearing impairment, so he is speaking a little louder than normal.

Mr. Mark Miller has been a tattoo artist for 12 years and he has operated businesses in Florida and he had previously operated a business with the Board's permission on CR 6 in Elkhart. The petitioner decided to leave that area due to the transit nature of the Greyhound bus stop in the area. The transit created a concern for him as there were some security issues with the business and he left that location. In the 12 years that Mr. Mark Miller has been a tattoo artist, he has not had any complaints filed against him, any action taken by any health agency, or any zoning administrative agency.

The petitioner is quite serious about the business as this is his only source of income. Mr. Pfaff has talked to him over the years about other opportunities. Due to the petitioner's hearing

impairment, he has been unable to get a job. He probably qualifies for disability by definition within social security administration policies, but he is not interested in pursuing that. He feels he can make a living doing what he enjoys doing. Mr. Pfaff also noted that the petitioner is the father of two children from his previous wife and he is currently engaged and expecting a third child. In pursuit of the tattoo industry, the petitioner has completed a basic first aid class, he is trained in CPR, and he has taken classes to understand blood borne pathogens and illnesses.

Mr. Pfaff explained that tattoos are no longer the desire of motorcycle gangs or drug dealers. The petitioner has tattooed doctors, lawyers, policeman, firemen, members of the military branch, nurses, and health care professionals. The people who are here to support the petitioner are body artists and take great pride in their work. A letter was then submitted from the EMT/Paramedic/Assistant Fire Chief from the Bristol Fire Department in favor of this request *[attached to file as Petitioner Exhibit #1]*. He read the letter to the Board at this time.

The petitioner has taken steps to protect his business interested by obtaining a quote for insurance. Subject to the Board's approval, he will be maintaining insurance on the property. He then submitted a copy of the insurance quote to the Board *[attached to file as Petitioner Exhibit #2]*.

Mr. Pfaff explained that Mr. Hartman, owner of the proposed property, had some concerns about the tattoo parlor. After spending some time with the petitioner, Mr. Hartman feels somewhat comfortable that Mr. Mark Miller is going to maintain his operation in a manner that is appropriate and consistent. When looking at Mr. Hartman's letter which was submitted with the packet, he had ideas about what this might about and he was concerned about loud music, drugs, smoking, and large group activities. None of that will happen in this tattoo parlor as the employees want to make money by performing their art on people. In the petitioner's history, none of that has happened and he doesn't expect it will happen with him in this instance. The last time the petitioner was here and the Board went against the staff recommendation, there was no one present to remonstrate against the request.

The petitioner went to the surrounding businesses as well as the homes located on South Main Street, Cole Street, some homes on CR 45, and some homes on Sunnyside Avenue with a petition in favor of this request. The petition states they have no issues or objections to the request, which he submitted to the Board at this time *[attached to file as Petitioner Exhibit #3]*. Mr. Pfaff also noted there is a buffer from the residential area and there is significant railroad activity. The Board's concern at the previously requested location was that the business would be too close to a school. That problem doesn't exist in this location as it is located far enough away. Mr. Pfaff explained the sign on site will be consistent with what is on the property.

The petitioner also does tattoo parties where they go to people's homes. They do that for the general public including firefighters and police officers. Mr. Pfaff noted a tattoo cannot be administered if someone has been drinking as it impacts the blood flow. The tattoos will be done in a sterile and clean environment.

Nick Lavore, Bristol Fire Department, 405 E. Elkhart Street, Bristol, was present in favor of this request. Mr. Lavore explained he received his last tattoo from the petitioner. He doesn't feel you would've known it was a tattoo parlor if there wouldn't have been a sign out front. There is a cigarette disposal spot in the front, so there are not cigarettes lying all over the place.

When you walk into the business, it is very clean and the floors are swept. The needles are disposed of properly and the petitioner has the same setup that they have in ambulances.

Mr. Lavore feels there are few shops where you want to get a tattoo and Mr. Mark Miller's tattoo parlor is one of those places. He recommends his friends and family to go to the petitioner's shop to get a tattoo. He feels everyone is very happy with his work.

Mr. Hesser asked if all of the people in the audience are present in favor of the request and Mr. Pfaff said yes. When there was no one in the audience in opposition of the request, Mr. Hesser explained the concern at the previously requested location was related to the location and not the work the petitioner is doing. He feels the Board is comfortable with the business and what the petitioner does, but the issue is regarding the location.

When Mr. Hesser asked the Board if there are any concerns about the nature of the business, the Board members indicated no. Mr. Pfaff then said there are two gentlemen in the second row who are also tattoo artists. One of them help set up the first legal tattoo parlor in Elkhart. Upon questioning, those two gentlemen would indicate they have never had any issues or complaints about the petitioner.

Mrs. Wolgamood questioned if they are in full agreement with the Staff Analysis and Mr. Pfaff said yes.

When Mr. Homan asked the nature of the businesses on each side of the proposed location, Mr. Pfaff said the building to the north is a financial services building and a chiropractor, and to the south is the United Cancer Services building.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she has no issues with this request.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for a tattoo parlor in an R-4 zone be approved in accordance with the site plan submitted and as represented in the petitioner's application. After a unanimous roll call vote was taken, the motion was carried.

14. The staff item regarding the approval of site plan for **Andrew Martin (Case #62332CR1-100119-1)** was presented by Mrs. Prough at this time. The request was heard last month and the Board placed a condition indicating that a site plan was to be submitted to the staff indicating the overall dimensions of the property used for the business. The petitioner's representative submitted the site plan on February 19, 2010, and the overall dimensions are 479 ft. by 453 ft. Mrs. Prough indicated that includes the buildings and the proposed acreage that was added to the permit which the new driveway is located on. She asked that the Board approve the site plan.

A motion was then made and seconded (*Hesser/Homan*) that the site plan for Andrew Martin (Case #62332CR1-100119-1) be approved. After a unanimous roll call vote, the motion was carried. The schoolhouse

15. At this time, Mr. Watkins explained they are doing their best to have Draft "C" of the new Zoning Ordinance online tomorrow. On the website, the Draft "C" will be located under the "What's New" heading. He also indicated that April 12th will be a day of public meetings to discuss the Zoning Ordinance.

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

17. There were no audience items.

18. The meeting was adjourned at 10:50 a.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary