

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF MAY 2010 AT 8:15 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, Doug Miller, and Tom Lantz. Staff members present were: Robert Watkins, Plan Director; Duane Burrow, Senior Planner; Robert Nemeth, Planner; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Wolgamood/Lantz*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of April 2010 be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Miller/Wolgamood*) that the legal advertisements, having been published on the 7th day of May 2010 in the Goshen News and on the 10th day of May 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 (*Miller/Wolgamood*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Wolgamood/Miller*) 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. The application of **John P. Wirt** for a Developmental Variance to allow for the construction of an attached deck 12 ft. from the rear (west) property line (Ordinance requires 25 ft.) on property located on the West side of N. Division Street (CR 23) at the intersection of CR 25, 585 ft. South of CR 8, common address of 503 N. Division Street in Washington 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #503NDivisionSt-100409-1*.

There were 6 neighboring property owners notified of this request.

Present representing the petitioner on behalf of this request was Chris Martin, 53224 Beach Grove Dr., Bristol.

While reviewing the photos, Mr. Hesser asked if the deck is already built, but Mr. Martin said no. He explained there is an existing 8 ft. deck they would like to remove and replace with a larger deck.

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/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Developmental Variance to allow for the construction of an attached deck 12 ft. from the rear (west) property line (Ordinance requires 25 ft.) be approved by the Board provided all physical improvements for the deck are at an elevation above 754 MSL in compliance with the National Flood Program. A roll call vote was taken and the motion was carried unanimously.

7. The application of **Jeremiah W. King** for a 3 to 1 depth to width ratio Variance to allow for an existing residence, and a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, on property located on the North side of CR 44, 2,000 ft. West of CR 17, common address of 22397 CR 44 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #22397County Road 44-100415-1*.

There were 5 neighboring property owners notified of this request.

Jeremiah King, 22397 CR 44, New Paris, was present on behalf of this request. He does a lot of motor-cross and would like to construct a 40 x 60 ft. pole barn to store his motorcycles and related items.

It was not clear as to why the petitioner needs the Developmental Variance and Mr. King clarified that he also has a pool house. With the pool house, Mrs. Wolgamood said she calculated that the accessory structures are 450 sq. ft. over the square footage of the residence.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 3 to 1 depth to width ratio Variance to allow for an existing residence, and a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for personal domestic storage only.
3. The petitioner is required to proceed with the subdivision process prior to the issuance of any building permits.

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

8. The application of **Glenn & Amy Yoder** for a Special Use for an existing mobile home on property located on the West side of CR 33, 550 ft. South of CR 20, common address of 59169 CR 33 in Middlebury Township, zoned A-1, came on to be heard.

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

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #59169CR 33-100419-1*. He amended the Staff Analysis to include that the one year review would be done by the staff and would not come back before the Board

There were 7 neighboring property owners notified of this request.

Glen Yoder, 69115 CR 33, Middlebury, was present on behalf of this request. He explained that the mobile home was occupied by his mother-in-law until she passed away two years ago. Then they received permission for their son, Tim, to occupy the mobile. He would like to continue using the mobile home so his son is close by to help care for his wife who has health issues. Mr. Yoder works at home three days a week, but he is out of town the other two of days of the week.

When asked how long the son has lived there, the petitioner said he moved in shortly after his mother-in-law's death.

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/Miller*) 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 an existing mobile home be approved by the Board for a period of three (3) years with a one (1) year review by the Staff to verify compliance with Conditions "A". A roll call vote was taken, and with a unanimous vote, the motion was carried.

9. The application of ***Greg & Diann West*** for a Special Use for an existing mobile home and for a 3 to 1 depth to width ratio Variance to allow for an existing mobile home on property located on the South side of State Line Road, 1 ¼ miles East of CR 11, common address of 23337 State Line Road in Osolo 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #23337State LineRd-100415-1*.

There were 5 neighboring property owners notified of this request.

Present on behalf of this request was Greg West, 25183 CR 6 East, Elkhart. He purchased this property a year and a half ago, which had an existing mobile home on site. He would like his son to live there to keep the property mowed and maintained in addition to providing housing for him as he lost his home.

When asked if anyone is living there now, Mr. West said no. He said he has cleaned the property up, but he has made no improvements to the mobile home.

Mr. Hesser questioned the previous owner of the property and why they need a 3 to 1 Variance. Mr. West said the previous owner purchased the property from the neighbor to the east. The landowner's mother owned the property her entire life, and for some reason, she sold off 50 ft. so she could keep her garden. However, Mrs. Wolgamood clarified that a 3 to 1 Variance would still be required because the original frontage was less than 250 ft.

There were no remonstrators present.

The public hearing was closed at this time.

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

represented by the petitioner, this request for a Special Use for an existing mobile home, and for a 3 to 1 depth to width ratio Variance to allow for an existing mobile home, be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted.
2. Approved for a period of three (3) years with a one (1) year review by the Staff to verify compliance with conditions "A".

The motion was carried with a unanimous roll call vote.

10. The application of **Big M, Inc. (owner of Parcel 'C') and Jeffrey Runels (owner of Parcel 'D')** for a 3 to 1 depth to width ratio Variance and a 60 ft. lot width Variance (Ordinance requires 100 ft.) for construction of a residence on Parcel 'C', and for a 3 to 1 depth to width ratio Variance and a 60 ft. lot width Variance (Ordinance requires 100 ft.) for construction of a residence on Parcel 'D', on property located on Parcel 'C' – East side of Fishers Pond, 475 ft. South of Shadow Hill, Parcel 'D' – East end of Shadow Hill, 112 ft. East of Timber Wind 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #-100407-1*.

There were 10 neighboring property owners notified of this request.

Chris Marbach of Marbach, Brady & Weaver, 3220 Southview Dr., Elkhart, was present on behalf of this request representing Big M, Inc. and Jeff Runels. He submitted a copy of the Preliminary Subdivision Plat for The Farm *[attached to file as Petitioner Exhibit #1]*, which he explained was done in two sections. Both sections are completed, and he said all roads have been accepted and built to Elkhart County Highway standards.

Due to a financial hardship, Mr. Marbach said the property was sold at auction, and this left-over piece of property was court ordered to be sold in addition to some vacant ground that was also sold at auction. Big M purchased all of those lots in the subdivision with the exception of those highlighted in yellow on the plat, which he said were previously sold. Therefore, Big M is now the developer and he is well aware of the impact of what they're asking to do in the back of the development. Mr. Marbach then clarified that the lots circled in red is where homes have been built, and stated that there are not a lot of homes out there right now. He acknowledged that the area is still in the early stages of growth and development.

Big M has found some buyers for both sections as one development and Jeff Runels is one of the buyers. There is not enough road frontage for Parcels C & D. The proposal would take Parcel D from eleven lots down to one lot. Additionally, they would like to reduce twelve lots down to one lot. This would result in a reduction of 23 lots from the original subdivision. There would be decreased impact on the wetland area on the southern border of the area. There would be less of an impact on the wetland area to the north of the parcel. This would result in a reduction of density and would result in a favorable impact on the environment as there would be less impact on the wetlands.

Mr. Marbach explained that it was his understanding that they still needed to go through the subdivision process to create these two lots in the subdivision, if the variance is granted. Furthermore, it was his belief that the drainage issue would be addressed in the subdivision process, rather than the variance process. He stated that they will be doing a major subdivision

for these two lots and two lots up front to create four more buildable parcels under the subdivision ordinance.

At this time, Mr. Marbach submitted an email from Deb Johnson of the Highway Department *[attached to file as Staff Exhibit #2]*, which indicates they have no issues of allowing people to come in off the ends of the roads for two single homes, and that they would address the drainage with the driveway permit. Mr. Marbach acknowledged that the Staff Report resulted in a recommendation of denial. However, he feels that there would be a minimal impact on the area.

When asked whether parcels C & D were originally part of the subdivision, Mr. Marbach stated that parcels C & D were part of preliminary approval, but never received secondary approval.

It was then clarified by the staff that drainage and turnaround would be addressed during the subdivision process, which would result in a change in the staff's recommendation, as long they know they have to address the drainage. Mr. Marbach responded in the affirmative to Mr. Burrow's question as to whether existing covenants will be extended onto the property, in terms of maintenance of retention areas.

There were no remonstrators present.

The public hearing was closed at this time.

If approved, Mr. Kolbus suggested a condition that they go through the major subdivision process. As part of that process, he said they will address the drainage and the other issues raised by the staff.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that this request for a 3 to 1 depth to width ratio Variance and a 60 ft. lot width Variance (Ordinance requires 100 ft.) for construction of a residence on Parcel 'C', and for a 3 to 1 depth to width ratio Variance and a 60 ft. lot width Variance (Ordinance requires 100 ft.) for construction of a residence on Parcel 'D', be approved by the Board with the condition that the drainage issues will be addressed through the major subdivision process as represented by the petitioner at the public hearing. A roll call vote was taken, and with a unanimous vote, the motion was carried.

11. The application of ***Earl R., Jr. & Kathy Smothers*** for a 1 ft. Developmental Variance to allow for the construction of a detached personal storage building 4 ft. from the north side property line (Ordinance requires 5 ft.) on property located on the West side of CR 31, 850 ft. South of CR 138, being Lot 13 of James Place Section 1, common address of 65695 CR 31 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #65695CR 31-100416-1*.

There were 6 neighboring property owners notified of this request.

Earl Smothers, 65695 CR 31, Goshen was present concerning his request to build a garage on his property. Initially he desired to construct a 30 x 40 ft. garage on his property. He was informed by the Health Department that if we were to construct a 30 x 40 garage, it would be placed on his septic system. Even with a reduction in size to 24 feet, four inches of the structure would sit on his septic system. He was advised to build the structure on the north side of his property. To do this, he is requesting a one foot variance so that he can build at least a 24 ft. garage. Mr. Smothers reports that the neighbors to the north, south and east have no objections

to his plans. He explained that he has an easement on the back of his property and he needs to be ten feet from the rear property line.

Mr. Hesser asked if he had considered a smaller building. However, the petitioner explained that he has a 21 ft. truck and a car that is 16 ft. long. If he constructed a long garage to house his vehicles he would be unable to remove things from the back of the building without removing the two vehicles. If he had a 24 foot garage, it would allow him to move around the two vehicles.

Mr. Hesser asked Mr. Smothers about his plans for the area leading back to the garage. Mr. Smothers stated that he plans to put a gravel driveway back to the garage.

Mr. Miller noted that the proposed garage will be situated east and west. He asked Mr. Smothers if the garage could be rotated so that the 40 foot length is parallel with the back property line. Mr. Smothers explained that he would have to ask for a variance on the easement, due to the fact that he has to be ten feet off the easement. If he were able to build five feet from the back of his property he could build a 26 foot garage. Mr. Smothers inquired about the possibility of going west five feet if he can't go to the north one foot. He stated that his neighbor to the south received a variance to build his garage within five feet of his property line.

Mrs. Wolgamood asked if it is a utility or drainage easement, but Mr. Smothers did not know. Mr. Burrow said the easement is for both utilities and drainage. Mr. Kolbus stated that the petitioner needs some relief to build what he wants, either relief from this board on the side or relief from the Plan Commission concerning the rear on the utility easement, due to the septic. If relief is not given, Mr. Smothers will have to reduce the size of the building.

There were no remonstrators present.

Mr. Miller wanted to know if the petitioner has a dimension from the west property line to the end of the septic trench. If he could be five feet off the west property line, Mr. Smothers said the south side of a 24 ft. garage would be a foot and a half off of the field system, which is required to be five feet. If he's not granted the variance, he said he could only build a 20 ft. garage so his 21 ft. truck would not fit inside.

In discussing access to the garage, Mr. Smothers clarified that the doors would be on the 24 ft. (east) side of the structure and he would drive straight in through the doors. According to the Health Department, he said he cannot have any gravel on the field system. If the building was switched going north to south, it was clarified that the building would need to be 26 ft. deep to go straight in.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board approve this request for a 1 ft. Developmental Variance to allow for the construction of a detached personal storage building 4 ft. from the north side property line (Ordinance requires 5 ft.) as presented by the petitioner. With a unanimous roll call vote, the motion was carried.

12. The application of ***Devon & Wanda Bontrager*** for a Special Use for a home workshop/business for bike repair (Specifications F - #45) on property located on the Southeast corner of CR 37 & CR 26, common address of 60152 CR 37 in Middlebury Township, zoned A-1, came on to be heard.

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

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #60152CR 37-100414-1*.

There were 17 neighboring property owners notified of this request.

Present on behalf of this request was Devon Bontrager, 60152 CR 37, Middlebury. He wants to purchase an existing bike shop from a neighbor for repairs and some sales. This business would be family operated and located in an existing building on his property.

Mrs. Wolgamood asked if he plans to put bicycles outside for sale and the petitioner said no. When asked if they would be new or used bicycles, Mr. Bontrager stated that they would be new. She also asked if the entirety of the business would be contained in a 24 x 40 ft. area of the 120 x 40 ft. building, to which Mr. Bontrager responded in the affirmative.

Mrs. Wolgamood sought confirmation that new bicycles and parts would be delivered to the business by UPS and Fed Ex. The petitioner stated that Fed Ex and UPS will be the couriers for bikes and parts to his proposed business.

David Bontrager, 10054 CR 18, Middlebury, was present in support of this request. He is working with the petitioner and he said this is a nice, clean property. He indicated that parking is in the rear.

Mrs. Wolgamood asked if there is ample room for a UPS truck to turn around on the property and he said yes. He stated there would be no backing out on to the road.

Concerning a possible sign for the bicycle business, it was noted that the sign Mr. Bontrager is planning to erect is in compliance with the requirements of a home workshop/business.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that 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 bike repair (Specifications F - #45) be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The business to be operated by the owner/occupant of the residence on site.

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

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

13. The application of *Concord Community Schools (Intermediate School)* for an amendment to a site plan for an existing Special Use for a school (Specifications F - #38) to allow for an electronic message board sign on property located on the Southwest corner of CR 20 & US 33, common address of 24050 CR 20 in Concord 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*].

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #24050CR 20-100416-1*. For clarification, he said message boards are required to be at least 300 ft. from a house and the light level is to be reduced at night.

There were 41 neighboring property owners notified of this request.

Chad Bailey with Vanadco Signs, 10625 SR 10, Argos, was present on behalf of this request. He explained that the proposed sign is almost identical to the sign they recently did at the middle school. The school has full access of programming the sign so it will not flash and it dims at night. It has an automatic dimmer so he said it dims gradually as it gets darker throughout the night and then brightens back up when the sun comes up. The sign will also be more than 300 ft. from any residential house, and he said they meet all required setbacks.

Mrs. Wolgamood referred to #18 in the questionnaire, which indicates there is an existing 4 x 10 ft. wall mount sign. She asked where the sign is located and what it says. Mr. Bailey said it's just letters on the building that says "Concord Schools" and the letters do not light. He then pointed out the location of that sign on the aerial photo.

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 an amendment to a site plan for an existing Special Use for a school (Specifications F - #38) to allow for an electronic message board sign be approved by the Board in accordance with the site plan submitted and as represented in the petitioner's application. A roll call vote was taken, and with a unanimous vote, the motion was carried.

* (*Mr. Hesser returned to the Board at this time.*)

14. The application of ***Donal & Taceile Rumfelt*** for a Special Use for a beauty shop in an A-1 district (Specifications F - #46) on property located on the South side of CR 56, 1 mile East of CR 127, common address of 16020 CR 56 in Jackson Township, came on to be heard.

The staff submitted one (1) photo of the property to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #16020CR 56-100415-1*.

There were 6 neighboring property owners notified of this request.

Mrs. Wolgamood asked if the reason for Special Use is because the 7.8 acre parcel was split in April 1995, but Mr. Nemeth thought the reason was because the permit was inactive.

Present on behalf of this request was Taceile Rumfelt, 16020 CR 56, Syracuse. Ms. Rumfelt explained that originally they began at 16050 CR 56. However, they had the acreage divided. They built a new house on the property and were able to keep the original address of 16050 CR 56. The original, smaller home received a new address, which is 16020 CR 56.

Mrs. Wolgamood sought clarification concerning the parcel with the new house. The petitioner explained that the area with the pond is the new house (west side of property).

Ms. Rumfelt explained that originally the beauty shop was in the small house, prior to dividing the property. After the property was divided they moved the beauty shop to the new house. The Rumfelt's son rented the smaller home, but due to the fact that their son now has three children her son needs the larger house. Therefore, they are moving back to the small house where the beauty shop will be relocated. The beauty shop has been at this location for 25 years.

Mrs. Rumpfelt explained that the State Board of Cosmetology requires a sign by the entrance to her beauty shop. While she's never had a sign by the road, she would like to have one now. In response to Mrs. Wolgamood's inquiry concerning the adequacy of a 2 x 2 foot sign, Mrs. Rumpfelt stated that she had asked for a larger sign (4 x 4 ft.) than she intended to acquire.

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 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 beauty shop in an A-1 district (Specifications F - #46) be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The business is to be operated by the owner/occupant of the residence on site.
3. A sign by the roadway limited to 2 ft. x 2 ft., double-faced and unlighted.

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

15. The application of **David L. Bontrager** for a Special Use for a home workshop/business for cabinetry (Specifications F - #45) on property located on the South side of CR 18, 410 ft. West of East County Line Road, common address of 10054 CR 18 in Middlebury Township, zoned A-1, came on to be heard.

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

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #10054County Road 18-100414-1*.

There were 3 neighboring property owners notified of this request.

Present on behalf of this request was David Bontrager, 10054 CR 18, Middlebury. He explained that he has a portion of the existing building insulated so he can build cabinets for his family. Three of his sons are in construction so they keep him busy. There are no signs and he clarified this to be more of a hobby shop than a business.

When asked if there are any deliveries to the site, Mr. Bontrager stated that deliveries are made via a pick-up and trailer or a straight truck. Materials are ordered as he needs them. Cabinet parts arrive via UPS or Fed Ex.

Mr. Bontrager clarified that what appears in a photo to be a trailer is actually a boat shed. He stated that the shed has to go due to the fact that he is remodeling the house. He stated that he is adding onto the building for agricultural storage and he hopes to put the boat in there.

Mr. Miller asked if the driveway is horseshoe shaped. The petitioner stated that it is over by the house and there is a separate drive in to the shop building. He has indicated that he plans to connect the driveways upon completion of the remodeling of his home. At this time the driveways are not connected.

Mr. Hesser expressed a concern about delivery trucks backing out onto the road. Mr. Bontrager said they usually back in off the road. Mr. Hesser explained that they try to avoid any backing out onto the county highways and that part of the conditions would be that Mr. Bontrager is open to tying those two driveways together so that there is no backing in or backing out. Mr. Bontrager indicated that he would not object to connecting the drives so there would be no backing out.

Mrs. Wolgamood sought clarification concerning the storage in the remainder of the building. The petitioner stated that lawnmowers, trash blowers, and portable generators are stored in the building. Mrs. Wolgamood asked Mr. Bontrager if access to the shop is by a service door. He stated that there is a service door at the south end of the building in addition to the overhead door. Additionally, there's another door off to the side, half-hidden.

Mrs. Wolgamood questioned Mr. Bontrager's response to question #24 on the questionnaire. On the questionnaire he stated that it was a handy shop for small repairs. Mr. Bontrager stated that he was uncertain why he answered the question that way, as he doesn't really do repairs. He indicated that he may have repaired a chair, but that he does not plan to do much repair work.

Mrs. Wolgamood asked if cabinets are delivered in a pick-up truck. The petitioner stated yes, and possibly a trailer. Customers would come to his home if they wanted a cabinet. Mrs. Wolgamood sought clarification concerning the petitioner's response of "none" in response to the question "estimated number of daily customers and/or clients." Mr. Bontrager explained that customers would come to the house to meet with him.

Mr. Bontrager stated that he would have no outside employees, but one of his children may help him occasionally.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller feels this is a low impact home workshop/business more for the petitioner's use than for direct marketing. His only concern is that they would not have any type of vehicles backing out onto the county road.

The Board examined said request, and after due consideration and deliberation, a motion was made (*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 cabinetry (Specifications F - #45) be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The business to be operated by the owner/occupant of the residence on site.
3. No signs.
4. No backing into the business or out onto the county road.

Mrs. Wolgamood suggested the drives either be connected as indicated by the petitioner or that he provides a turnaround. She feels they need to know which one he chooses, and that the petitioner be given a limited amount of time to construct that turnaround. Whichever way the petitioner chooses, Mr. Hesser said a revised site plan should be submitted that shows the driveways being connected or a turnaround provided so it is in the record.

The motion was then amended by Mr. Miller to include the following conditions:

5. The petitioner would have the option of either providing a turnaround for the business driveway, or connecting the driveways between the house and the business (in a horseshoe shape).
6. Either choice requires a revised site plan to be submitted to the staff with the petitioner given sixty (60) days to comply with that provision.

Mrs. Wolgamood seconded the motion, which then carried with a unanimous roll call vote.

16. The application of ***Eric T. & Joyce A. Menchinger*** for a Special Use for a church (Specifications F - #48.00) on property located on the North side of CR 24 at the intersection with CR 1, common address of 29985 CR 24 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #29985County Road 24-100419-1*.

There were 11 neighboring property owners notified of this request.

Eric Menchinger, 29867 CR 24, owner of the property, was present on behalf of this request. He purchased this property two and half years ago, which is adjacent to the 12.5 acres they currently own. It was purchased with the intention to have control over what happens on this property. They originally planned to create a community center in cooperation with the church. However, they were not aware of everything that was entailed in that endeavor. The petitioner has rented the property to a congregation for the last two years. The congregation is considering purchasing the property. On an aerial photo, Mr. Menchinger pointed out the location of additional parking for the church, directly behind the church on his 12.5 acres.

Currently, there is an asphalt drive going up a hill into the property. There is gravel coming off the drive. Everything else is grass and Mr. Menchinger states that there has never been a problem with dust. Prior to Mr. Menchinger purchasing the property it was used as a church.

Mrs. Wolgamood sought clarification concerning the church's desire to purchase the property with the option of purchasing an additional acre, north, for parking. Mr. Menchinger confirmed that the church has the option of purchasing the property, if needed.

When asked if he owns the property to the west with the driveway, Mr. Menchinger relayed that the property is cemetery property. There is a "U"-shaped road that comes in off CR 1 and ends at CR 24, which would allow access to the church.

While the land was purchased in 1968, the church was not built until 1974. The church has restroom facilities and has both well and septic service.

Mr. Lantz asked if there is room to expand to the east in the future. Petitioner stated that there is some room to the east and they could expand to the north. Mr. Menchinger relayed that there is a large area in the front.

Mr. Hesser inquired about the number of cars that would be able to park in two designated areas. The petitioner believes that 20 vehicles could park on the west side of the building, with an additional 60 to 100 vehicles in the acreage to the north which he is allowing them to use.

Mr. Miller questioned the soil conditions, especially during the winter. The petitioner pointed out the gravel areas that he believes will remedy potential problems with moisture.

Mr. Nemeth explained that the information presented by the petitioner today is not shown on the site plan. He questioned whether the possible additional parking to the north should be added to the boundary of the site plan. Some of the traffic flow patterns that were addressed could be added to the site plan as well.

Mike Wolf, trustee at the church, 14138 Kimberly Lane, Middlebury, appeared at the hearing to show his support. Mr. Wolf stated that the church has occupied this building for the past two years. He confirmed that the church hopes to purchase the acre to the north along with

the land and building. They want to make sure they could expand in the future if they have that additional acre with gravel parking.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted that adequate parking is not shown on the site plan and he questioned if that would have to be re-advertised. What they are implying they are going to use for this activity exceeds the advertised boundary so Mr. Kolbus advised that it would need to be re-advertised incorporating everything into a new site plan. He said you cannot tie in a site plan to a parcel that is not before the Board, but he feels everything else can be addressed if it's done correctly.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that this request for a Special Use for a church (Specifications F - #48.00) be tabled by the Board in accordance with the Staff Analysis (as amended by the Board) to allow the petitioners to amend the application to include the proposed off-site parking area to the north of the current property and any proposed additions to the building, and to submit a detailed site plan showing the following:

1. Existing and proposed parking areas
2. Storm water calculations
3. Septic system location
4. The existing and proposed traffic patterns

The motion further reflects that the Board permits the amendment to this application without an additional filing fee with the amended application to be re-advertised. A roll call vote was taken and the motion was carried with a unanimous vote.

* (*It is noted that Mr. Hesser stepped down from the Board for the next two public hearings [Kelley and Kallimani] due to potential conflicts of interest.*)

17. The application of **Michael Kelley** for a Special Use for a child care home in an A-1 district (Specifications F - #23.10) on property located on the North side of CR 12, 1,500 ft. East of CR 37 North (at North end of CR 37 South), common address of 12500 CR 12 in York 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #12500CR 12-100416-1*.

There were 4 neighboring property owners notified of this request.

Mike Kelly, who lives at 12500 CR 12, Middlebury, was present on behalf of this request. The petitioner is seeking a Special Use for a licensed child day care in his home. The petitioner moved to this home in April 2004 and has had a child care facility since the beginning of 2005 when they started working with the State to become licensed.

The number of children serviced was questioned and the petitioner said they are licensed for 12. Mr. Kelley stated that they could be licensed for 24 under two different licenses. There is a firewall that separates the business and the home, which would allow for licensure of 12 children on each side. The number of children cared for would be 12 to 15. Mr. Kelley explained the variation in numbers by stating that he has five children of his own, three of whom may be cared for in the facility.

Mr. Kelly said that there is no backing out onto the road, as the horseshoe shaped driveway allows for convenient drop-off and pick-up.

Mrs. Wolgamood asked if the play area is entirely fenced in. The petitioner stated that the perimeter of the property is fenced with locked gates on the north and south sides. There is an additional fence around the pool, with two locked gates. The play area, located on the east side of the pool, is separate and fenced in with a locked gate and a sliding type gate. Mrs. Wolgamood confirmed that there would not be full access to the entire acreage.

In response to Mrs. Wolgamood's question concerning days of operation, the petitioner indicated that the days of operation are Monday through Friday. When asked if he is the only employee, Mr. Kelley stated that he and his wife have operated the business together since 1999.

Mrs. Wolgamood noted the petitioner has had daycare facilities in other locations of the county so he should have been aware that he was required to apply for a Special Use. Mr. Kelley stated that he did not believe there would be an issue as there are no neighbors within 300 feet of their current location. Mrs. Wolgamood indicated that a complaint had been filed.

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/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a child care home in an A-1 district (Specifications F - #23.10) be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The site plan to be revised within thirty (30) days to include the fenced play area as specified by the petitioner's verbal comments.
3. Days of operation to be Monday through Friday.
4. Business to be operated by the owner/occupant of the residence only.

The motion was carried with a unanimous roll call vote.

18. The application of ***Ryan Andrew & Heather J. Kallimani*** for a Special Use to allow for an agricultural use for the keeping of chickens and cows in an R-1 district (Specifications F - #1) on property located on the North side of Newman Street, 600 ft. Northeast of CR 45, 2,400 ft. South of Hively Avenue (CR 18), common address of 57755 Newman Street 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #57755NewmanSt-100413-1*.

There were 25 neighboring property owners notified of this request.

Present on behalf of this request was Ryan Kallimani, 57755 Newman St., Elkhart. He explained that they would like to have up to six cows and 24 chickens so they would have access to fresh chickens and organic grass-fed beef. This would be more cost effective because the price for that type of meat not raised on your own property is very expensive. It would also let them know exactly what they are eating as they do not agree with the way a lot of the animals are kept and pumped with hormones.

On the aerial photo, Mr. Kallimani showed the back area (along the north and east property lines) that he plans to fence in. This would be in three parcels so they could rotate grazing and evenly distribute manure throughout the entire area. The cattle would be kept healthier, and he said they would eat grass rather than corn. The property is also too much for him to mow so he feels the proposed use would be perfect for this area of the property.

The location of the proposed barn was also outlined on the aerial photo. Mr. Kallamani said there would be a lane going out to the pasture. He also pointed out the location where pine trees will be planted so the area in the back will not be visible by the neighbors. He then assured the Board that they would not create an eyesore for their neighbors.

According to Mr. Kallimani, the house was built in 1914 and they have added on and completely remodeled the inside. He has talked with the surrounding neighbors and informed them of what he plans to do, which he considers very small scale and tasteful. He then read and submitted a petition in support of this request *[attached to file as Petitioner Exhibit #1]*. Also submitted was a map with the properties of the neighbors who signed the petition highlighted in yellow and vacant properties highlighted in pink *[attached to file as Petitioner Exhibit #2]*. With the exception of one neighbor who was not comfortable in signing the petition, he said the neighbors are all very supportive.

The petitioner was then asked to clarify the location of the pine trees he is planting. Mr. Kallimani said there is an existing area of pine trees along the north property line. He talked with Brett Trout, his neighbor to the north, and there is only a small area where he can see through. He offered to plant more pine trees in that area, but he said Mr. Trout indicated that would not be necessary.

He then explained that it would four to five years before they would have animals because they have to wait until they afford to build a barn and fence off the area. He also pointed out an area along the east property line where he started putting pine trees in, and an area of existing pine trees, which has a small area that needs to be filled in. He will also plant pine trees along the street (south) side of the property to block the view of those neighbors, and he said there is an acre of woods (west side) that basically blocks off the view from that side.

When Mr. Lantz questioned the total number of cows, the petitioner said they originally wanted two cows a year to feed their family; however, he changed that to six so their children could raise some for 4-H.

Also questioned was the size of the chicken house and Mr. Kallimani said 8 x 8 ft. He explained that the chicken tractor would be 2 ft. tall, and a 4 x 8 ft. section is covered so the chickens have shelter. The remaining 4 x 8 ft. has chicken wire over the top and sides so predators cannot get inside. This allows the chickens to get sunlight so they can graze that open area.

There were no remonstrators present.

The public hearing was closed at this time.

During discussion, it was noted that the chicken house was not shown on the site plan. The petitioner explained that it is a moveable structure so it will not be in one location. He said he referred to it as a "chicken tractor" in the questionnaire he submitted with the application.

Mrs. Wolgamood said there are a number things the petitioner indicated in his presentation that are not shown on the site plan. Two things she specified were the location of the pine trees he is going to plant and the area where the chicken tractor will be located; therefore, she feels those things need to be shown on a revised site plan.

Mr. Kolbus asked if the Board is willing to grant this request on a condition that a revised site plan be submitted within 30 days and approved by staff, or if they would prefer that it be tabled. It was the consensus of the Board that the revised site plan be approved by the Board as a staff item at the June meeting.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that this request for a Special Use to allow for an agricultural use for the keeping of chickens and cows in an R-1 district (Specifications F - #1) be approved by the Board with the following conditions imposed:

1. A revised site plan to be submitted to the Board for approval as a staff item at the June 17, 2010, Board of Zoning Appeals meeting.
2. The representations made by the petitioner in the public hearing to be reflected on the revised site plan.

The motion was carried with a unanimous roll call vote.

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

19. The application of ***Donovan & Jacqueline Leidelmeyer (property owners & business owners/operators) and Brittany Muir (business owner/operator)*** for a Special Use for a home workshop/business for a boutique (Specifications F - #45) on property located on the South side of Warren Street (CR 16), 500 ft. East of Main Street (SR 13), common address of 411 E. Warren Street in Middlebury 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #411EWarrenSt-100412-1*.

There were 16 neighboring property owners notified of this request.

Mr. Nemeth reported that he received an email from the Middlebury town manager, which indicates that he has no objection to this request. This email is dated May 18, 2010, and a copy is in the file for review.

Brittany Muir, 18453 Montgomery Lane, Goshen, was present on behalf of this request. The petitioners wish to operate a retail boutique. The property is currently used for residential living. The previous owners of the property applied for a Special Use permit for an antique store and the application was approved. The petitioners are asking for the same consideration for their request, as they believe both applications are similar. The petitioners currently have a jewelry business with retail sales on-line. Additionally, they have sales through arts and crafts festivals throughout the country. They wish to operate a retail boutique which would specialize in local and regional arts and crafts.

The petitioner explained that they would like to create a home business in the form of a retail boutique and workshop. By using an existing building on the property there will be no need for any new construction. The petitioners have already installed privacy fencing to eliminate any possible disturbance to neighboring properties.

The petitioners believe that their store will bring awareness to Middlebury and Elkhart County and bring new people to the community and its businesses. It will also create a venue in Middlebury for local and regional artisans.

Mr. Hesser pointed out that the parents own the property and are partial owners of the business. Mr. Hesser asked Mr. Kolbus if the partial-ownership would create any issues with the

home workshop. Mr. Kolbus stated that as long as one of the co-owners resides in the residence it will not create a problem.

In regards to the completed questionnaire, Mrs. Wolgamood asked if general merchandise included clothing, shoes, and food. Ms. Muir stated that they intend to limit items for sale to hand-crafted items in the store.

Ms. Muir confirmed for Mrs. Wolgamood that the photo showing the stone front was the retail area of the store.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Nemeth then reported that this application was advertised as being 500 ft. East of Main St., but it was actually 500 ft. East of Mill St. The law for advertising, Mr. Kolbus explained, is that you generally describe the location; however, after reviewing the legal ad, he feels there is no issue because it gives the actual street address in addition to a general description.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a boutique (Specifications F - #45) be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The business to be operated by the owner/occupant of the residence on site.

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

20. The application of **Frank G. & Elizabeth A. Burns** for a Special Use for warehousing and storing of inflatable moonwalks (bounce houses) in an A-1 district (Specifications F - #44) on property located on the North side of CR 108, 537 ft. East of CR 27, common address of 16905 CR 108 in Washington Township, came on to be heard.

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

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #16905CR 108-100419-1*.

There were 7 neighboring property owners notified of this request.

Frank Burns, 16905 CR 108, Bristol, was present on behalf of this request. The petitioner has owned the property for 17 years and has resided there for 15 years. The petition is for a Special Use for a warehouse for storing inflatable moonwalks. The petitioner's son owns a backyard entertainment business and they warehouse the inflatables in the detached garage. On occasion, if something gets wet, they blow it up to dry, which usually takes less than a day. The business operates primarily during summer months, with little to no activity from November to April.

It was noted that in the complaint action report there was a reference to outside cleaning of the blow-up equipment. The petitioner was asked to explain outside cleaning. Mr. Burns stated that while it isn't a regular occurrence, there are occasions when it is necessary to do something of a maintenance perspective. This usually involves a rental on Saturday or Sunday that became wet due to rain. When that occurs, it is necessary to blow up and dry out the

equipment. There are no tools involved. The only equipment involved is the inflatable itself. Once the inflatable is dry it is rolled up. A small blower is used to blow up the inflatable.

Mr. Lantz asked Mr. Burns about the number of units owned by the petitioner. Mr. Burns stated that they have eleven inflatables that they use for backyard party themes. The petitioner explained that they try to pick up the equipment before dew or rain hits it. They clean the inflatables on site, fold them up, and bring them back to the warehouse.

Mr. Miller asked if they would have six sitting up in back yard and the petitioner said no. Occasionally, they may have one inflatable set up. On a special occasion they may have had three set up. Normally the inflatables are put up and taken down the same day.

Mrs. Wolgamood asked about the need for a 60 x 120 ft. and 140 x 120 ft. maintenance area. Petitioner explained that they would never use all of that area at one time. It was just the area he has reserved. Mr. Burns stated that he doesn't have electricity to those areas. When asked if maintenance could all be done in the backyard instead of the area indicated in front of the residence, the petitioner said he could do it in half the area in the back. Mr. Burns said that whenever possible they try to do maintenance on the inflatables before bringing them back to the warehouse.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked the petitioner if his son lives in the residence on site and he replied yes.

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 warehousing and storing of inflatable moonwalks (bounce houses) in an A-1 district (Specifications F - #44) be approved by the Board with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. Outside storage/maintenance area to be limited to the rear yard (north side of property) as shown on the petitioner's site plan with no maintenance area permitted in the front yard.
3. Outside storage to be limited for maintenance purposes only and not for sales and/or display.
4. No signs.

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

21. The application of *Stacey Yoder* for a Special Use for a home workshop/business for a massage therapy business (Specifications F - #45) on property located on the West side of CR 15, 2,600 ft. South of CR 50, being Lot 4 of Union Grove Minor Subdivision, common address of 71025 CR 15 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #71025CR 156-100419-1*.

There were 9 neighboring property owners notified of this request.

Present on behalf of this request was Stacey Yoder, 71025 CR 15, New Paris. The petitioner would like to have a massage therapy home business. She plans to operate the business two days a week with approximately five clients per day. Ms. Yoder was laid off in November and would like to supplement the family income while being a stay-at-home mom.

Mrs. Wolgamood asked the petitioner if she knew what two days of the week the business would be in operation. Ms. Yoder stated that she had not decided on specific days yet but it would likely be Monday, Friday and/or Saturday. At this time Ms. Yoder is also investigating the possibility of working at a salon, so she may not operate the home business.

It was noted that the size of the sign (21" x 19") is in compliance with the ordinance.

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

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The business to be operated by the owner/occupant of the residence on site.
3. Days of operation will be Monday, Friday, and Saturday.

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

22. The application of *Little Pine Church of the Brethren, Inc.* for a Special Use for an existing church (Specifications F - #48) on property located on the West side of CR 19, 420 ft. South of US 20, common address of 57061 CR 19 in Jefferson 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #57061County Road 19-100416-1*. He clarified that the church would like to construct a gazebo.

There were 9 neighboring property owners notified of this request.

Representing the petitioner on behalf of this request was Tim Ryman, 20033 CR 16, Bristol. Petitioner would like to request a Special Use be granted for the existing church as well as permission to build a picnic structure/shelter. Members of Little Pine Church would like to have a pavilion that would provide an outdoor gathering area for meals and meetings. The shelter is to be an open-air structure with basic water and electrical services. Access to and from the shelter would be through the existing entrance where parking is located. No new entrance is planned or necessary for this structure.

The shelter with a Special Use would bring the church up to date with current zoning codes. Mr. Ryman stated that the church is a well maintained brick structure with a steeple and has the appearance of a 19th century rural church. Adding the pavilion should not detract from that appearance as it will be located quite a distance away from the church. Once the structure is built, there should be no excessive noise, clutter, refuse or odors. The church members believe the Special Use and shelter would serve the welfare of the public. A picnic shelter would promote healthy use of outdoor space while preserving the natural feature of the setting.

When questioned about water usage, the petitioner explained that there would be a frost-proof hydrant. There may be a small, locked enclosure for storage. This storage area would not be available to the public, and would be used for the storage of folding picnic tables and trash cans. With the expansion of US 20, the petitioner believes that drivers frequently pull into their

parking lot to turn around resulting in some concern with having picnic tables at the site. There is an existing garden shed close to the proposed structure where there is some room for storage.

The staff was asked if it mattered if the site drawing reflected the structure as enclosed or not enclosed. Mr. Burrow stated that once it is declared a structure it becomes a building code issue and does not affect this request.

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 for an existing church (Specifications F - #48) be approved by the Board in accordance with the site plan submitted and as represented in the petitioner's application. A roll call vote was taken and the motion was carried unanimously.

23. The application of ***Glen & Erma Yoder and Lynn & Joan Whetstone*** for a Use Variance to allow for a second residence on a single zoning lot located on the East side of CR 43, 2,000 ft. South of CR 38, common address of 65360 CR 43 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #65360County 43Rd-100419-1*.

There were 7 neighboring property owners notified of this request.

Glen Yoder, who lives at 65360 CR 43, Millersburg, was present on behalf of this request. The petitioner explained that there are two families living in one dwelling. Therefore, they would like to construct a second dwelling on the property. While they initially considered a duplex, they decided that for fire safety and privacy reasons they would prefer to construct a new home.

Mrs. Wolgamood asked the petitioner if they have abandoned their plans for the addition they previously planned, and for which they possess a building permit. Mr. Yoder indicated that they had temporarily abandoned those plans, pending the outcome of this hearing.

Mrs. Wolgamood sought clarification concerning the reason they can't build a new house on a different property at this time. Mr. Yoder said that they are unable to build a new home on the desired property for financial reasons. Additionally, the property is not for sale at this time.

Mrs. Wolgamood commented that the petitioner has indicated this request is more for a convenience, which the petitioner did not deny.

The size of the property was questioned by Mr. Hesser. Petitioner stated that the parcel is 21.5 acres, including a pasture area in the back that is entirely fenced.

Mrs. Wolgamood noted that the site plan indicates a shop house on the site plan. It appears there are two stories and a coal furnace with an estimated cost of \$50,000. Mrs. Wolgamood sought confirmation that the shop house is what they were planning to build. Mr. Yoder explained that the first level would be the living area of approximately 1,600 square feet.

In response to the inquiry as to the owner of the parcel to the south, Mr. Yoder indicated that Isaac Kulp owned that property.

Mr. Miller asked if the proposed structure would be on a slab or have a basement. Mr. Yoder indicated that the structure would be built on a slab. After questioning by Mr. Miller, Mr. Yoder stated that they were planning to use the existing septic system for the home.

James Hochstetler, 7165 W 650 N, Shipshewana, came before the board to provide additional information concerning the proposed structure. Mr. Hochstetler clarified that the second story is not a full second story and will only be 16 ft. wide down the center.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for a second residence on a single zoning lot be denied by the Board. With a unanimous roll call vote, the motion was carried.

24. The application of **Tim Kidder (buyer) and Steve C. Cupery (seller)** for a Use Variance to allow a residential use in an M-2 district on property located on the Southwest corner of North Park Avenue and Adams Street, 1,000 ft. East of CR 9, common address of 25786 North Park Avenue in Osolo Township, came on to be heard.

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

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #25786North ParkAve-100416-1*.

There were 15 neighboring property owners notified of this request.

Present on behalf of this request was Tim Kidder, 1901 Osolo Rd., Lot 232, Elkhart. He is purchasing the subject property from Steve Cupery where he plans to move his double-wide home to be in a better location. This will be twice as much room that he currently has in a trailer park.

Mr. Kidder has photos of similar trailers that are all around the neighborhood, and he said the corner of the area that was previously rezoned still has a singlewide trailer on it. He then submitted photos of his house *[attached to file as Petitioner Exhibit #1]* to the Board for review.

He explained that he has already obtained a demolition permit for the three existing houses on the property, and when those homes are gone he will move his house there.

When asked if he is purchasing this property on land contract, the petitioner said no. He explained that Mr. Cupery had a lien on the property and he should be receiving a deed in the near future.

Mr. Kidder then submitted additional photos of similar homes in the area *[attached to file as Petitioner Exhibit #2]*.

Mr. Kolbus was asked if individuals would be permitted to live in the existing buildings if they were habitable and he replied yes.

The staff was then asked if their recommendation was based on a strict interpretation of the zoning ordinance. Mr. Burrow said they feel it would be more appropriate to rezone the property.

Mr. Kidder stated that the property behind and beside him was pretty much vacant. There was a junk yard on one side of the property, which has not been used for two or three years and is now fenced in. The area on the other side of the property was rezoned. There are also homes behind the property.

Mr. Kolbus asked if the recently rezoned property is shown in a photo with a fence around it and petitioner said yes. The location of that property was pointed out on the aerial photo, which is catty-corner from the property being purchased by Mr. Kidder. Petitioner also pointed out additional properties in the M-2 zone where people are residing. Petitioner explained that the fencing was just installed and it was his understanding that Adams Street was to be finished, as it is currently all dirt. Mrs. Wolgamood clarified that this is a mixed use area, and has been for quite some time.

There were no remonstrators present.

Mr. Hesser questioned the history on this type of change. Mr. Burrow explained this area is moving to industrial and the objective of the ordinance is to reduce conflicts in zoning. If rezoned to B-2, a house could be placed there, which would reduce the negative impact on adjacent properties. However, that would be a decision by the Plan Commission and County Commissioners. Use Variances are designed to be hard to meet the criteria.

Mr. Hesser believes that the current situation of having two living quarters on the property already is reason enough to address the issue. Mr. Burrow said that is the information they could use to adjudicate their decision. The ordinance will allow for the issuance of permits to repair the structures and bring them up to present code, but it will not allow them to increase the non-conforming status.

The question is if this property can be used for what it was originally intended to be used for. When zoning came into effect in 1960, Mr. Burrow said they established the intent to develop this property industrially. While the area is still not developed industrially, there are individuals trying to develop it industrially. If they continue to grant relief, he said it would continue to reduce the ability of this area to convert to industrial. It is the role of the Board to determine if this request is justified. It is Mr. Burrow's position that the petitioners should at least exhaust other administrative remedies, such as a potential for a rezoning.

The public hearing was closed at this time.

Mr. Kidder explained that the properties to the east and south of the subject property are currently for sale, which he plans to purchase next year.

Although he understands and agrees with the staff's comments that there is a better way to do this, Mr. Hesser said he is supportive of what the petitioner wants to do because it is an improvement of the property.

Mrs. Wolgamood said she would agree with the staff under normal circumstances, but she too has no issue due to the number of properties zoned M-2 that in part are still utilized for residences and have never had M-2 uses on them.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board approve this request for a Use Variance to allow a residential use in an M-2 district based on the following findings:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community as a residence has no impact on a property in an M-2 zone, in particular, this M-2 zone.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner, and in fact, would mostly likely enhance it by removing the existing house, mobile home, and accessory building off of the property and placing a new home on site.

3. A need for the Variance does arise from a condition that is peculiar to the property involved. There has been a residential use in existence on the property for years, most likely even outdating the Zoning Ordinance.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property because it would not allow for the continued use of a residential structure for a dwelling.
5. The Variance would not interfere substantially with the Elkhart County Comprehensive Plan.

The motion was carried with a unanimous roll call vote.

25. The application of **Omer Dean Schlabach** for a Use Variance to allow for a second residence on a single zoning lot located on the West side of CR 116, 3,150 ft. South of CR 16, 800 ft. North of CR 116 curve, common address of 57035 CR 116 in Middlebury Township, zoned A-1, came on to be heard.

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

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #57035CR 116-100407-1*. He reported that he received an email from the Middlebury town manager and he has no objections with this request. A copy of this email dated May 18, 2010, is in the file for review.

There were 7 neighboring property owners notified of this request.

David Bontrager, 10054 CR 18, Middlebury, was present on behalf of this request. The petitioner wants to construct a new home away from the existing residence. The petitioner plans to live in the new home upon completion and will demolish the old residence when the new home is completed.

Mrs. Wolgamood asked if the location of the house is in a floodway or a flood fringe. Mr. Burrow said that the petitioner would be required to comply with the flood insurance program so he would have to submit elevation information to prove he is out of the floodway/flood fringe. He indicated that the pond area is probably the area classified as the floodplain, and the petitioner will be required to comply no matter where the house is constructed. The petitioner was aware of this requirement.

There were no remonstrators present.

The public hearing was closed at this time.

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

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The new residence is to be completed and the existing residence demolished by May 31, 2011.

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

26. The application of **Richard & Katherine Jessup** for a Use Variance to allow for the construction of an accessory building on a parcel without a residence, for a 10 ft. Variance to

allow said structure 40 ft. from centerline of the right-of-way of E. Indiana Lake Road, and a 19 ft. Variance to allow said structure 31 ft. from centerline of the right-of-way of Church Street (Ordinance requires 50 ft.), on property located on the Southeast corner of E. Indiana Lake Road & Church Street, 1,100 ft. North of CR 2, 425 ft. West of CR 23, being East part of Lot 1 of Fern Ridge 3rd Subdivision in Washington 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]*.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #OE. INDIANA LAKE ROAD-100414-1*.

There were 17 neighboring property owners notified of this request.

Clarification was sought about the location of the nearby lake, which is just to the west of the property.

Mr. Hesser asked if there are a number of the lakefront lots that own the lots across the street. Mr. Nemeth said yes and reported that one was recently granted just north of this area.

When asked if the existing buildings shown in the photos are grandfathered or legal lots, Mr. Nemeth relayed that they are requesting the buildings be demolished.

Mr. Hesser asked if the lot immediately north is a storage building or a house. The staff determined that the building in question appears to be a wooden garage.

Jeff Hoogenboom, 25786 Kiser Ct, Elkhart, owns property to the north of the petitioner. Mr. Hoogenboom stated that he has no objections with the existing buildings on site. It is his understanding that when the new building is completed, it will obscure the view of the existing buildings.

Present on behalf of this request was Richard Jessup, 50697 E. Indiana Lake Road, Bristol, which is directly across the street from the subject property. Petitioner would like to keep his shed and Quonset hut. He stated that the Quonset hut is used to store firewood to heat his home in the winter. He moved the 10 x 12 ft. shed to accommodate the construction of the new building. The shed is now ten feet from the rear property line and six feet from the south property line. The shed is used for storage of the petitioner's lawn equipment.

Mrs. Wolgamood questioned the petitioner about the size of the Quonset hut. The petitioner relayed that the hut is an approximately 14 x 20 ft. metal framed structure, enclosed with a tarp covering.

Mr. Hesser noted that the Quonset hut is not reflected on the site plan and the proposed building will encompass a large portion of the lot. Mr. Jessup was given a copy of the site plan and was asked to show the location of the Quonset hut. On the aerial photo, he pointed out the northeast corner, which is where he intends to keep the Quonset hut. The site plan was then revised and submitted to the Board *[attached to file as Petitioner Exhibit #1]*.

Mrs. Wolgamood noted some outside storage and asked if those items would be placed inside the new building. Mr. Jessup indicated those items would be inside the new building. He will place tractors, pick-up trucks and a fishing boat that he desires to place inside the new building. Additionally, it is possible he may store his RV in the building. Mr. Jessup stated that the Quonset hut sits inside of a tree line, which runs down the side of Church Street, obstructing the view of the hut for those driving down the street.

Mrs. Wolgamood noted that the location of the shed and Quonset hut is shown inside the proposed building. Mr. Jessup again revised the site plan to show the correct location of the Quonset hut.

There were no remonstrators present.

Mr. Hesser pointed out that the petitioner requested a Use Variance to add an accessory building. It appears that the petitioner is now requesting three buildings. Mr. Burrow said the Board can assume the two existing buildings are non-conforming and the petitioner is requesting permits for the new structure exclusively. Because he was asking for a new building, the staff wanted everything to be enclosed in the new building to clean the site up.

Since the request now seems to involve three buildings, Mr. Hesser asked if there might be advertising issues. Mr. Kolbus advised that he did not feel it is an issue, as this often happens. When it comes to the accessory buildings, sometimes they are allowed and sometimes they are not. That is the Board's decision, and as part of granting the Use Variance, they impose what conditions they feel are reasonable under the circumstances.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for the construction of an accessory building on a parcel without a residence, for a 10 ft. Variance to allow said structure 40 ft. from centerline of the right-of-way of E. Indiana Lake Road, and a 19 ft. Variance to allow said structure 31 ft. from centerline of the right-of-way of Church Street (Ordinance requires 50 ft.), be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The existing 10 x 12 ft. shed and portable Quonset hut structure to be removed from the property prior to the issuance of a building permit for the proposed accessory structure.

The motion was carried with a unanimous roll call vote.

27. 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.

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

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #24340CR 30-100406-1*.

There were 3 neighboring property owners notified of this request.

Present on behalf of this request was Devon Witmer, 24364 CR 30, Goshen. He explained that he obtained a Special Use permit approximately one year ago. He requested the one-year permit so he could cut and warehouse limestone. Initially, the petitioner sought a one-year permit because the economy did not allow him to acquire a facility at that time. During the first year the petitioner stated that they did exceed their expectations, which resulted in the need for some inventory to be placed outside. Mr. Witmer stated that it could be easily concealed by installing a fence.

The petitioner stated that there is just one person cutting the limestone and there are very few vehicles on the site daily. Mr. Witmer states that they are trying to furnish a service for the area by supplying limestone for builders and masons. If they are unable to do that in Elkhart

County they will probably have to move back to South Bend. This would result in a commodity leaving the area. There is no farming or raising animals on this farmstead so there are a lot of empty buildings. This provides a use for the buildings and he pays taxes on that.

The reason for the developmental variance was questioned. Mr. Nemeth stated that they want to allow the petitioner to maintain existing structures for domestic or agricultural purposes, which is why the second recommendation was for approval. However, in regards to the Special Use, denial is recommended.

Mr. Hesser asked if limestone could be maintained in the existing buildings and Mr. Nemeth stated that no. They would like to maintain those buildings as domestic or agricultural, which is how they are currently zoned.

Mr. Hesser asked the petitioner if he would still have a need for outside storage if he were permitted to warehouse and store in the existing buildings. The petitioner stated that if he could re-work it so he could store everything inside, there were definitely buildings he could utilize to store limestone inside. However, Mr. Kolbus explained that the staff recommendation is for denial of storing the limestone on site due to the prior violations.

Mr. Witmer said there are people who want them to shut down due to their success and the subsequent impact on their competition. He stated that this is a low keyed operation and that neighbors hardly know anything is going on his property.

The staff was asked for clarification about why the petitioner was not able to use some of the buildings for storage. Mr. Nemeth explained that domestic/personal storage is not supposed to exceed the primary structure of the house, and he noted there are a lot of sheds and garages on the property. If used for agricultural purposes, he said he would not need developmental variances because the property is zoned for agriculture.

Mrs. Wolgamood pointed out that when he received approval in March 2009, the approval was for one year with no renewal. That is why he has returned with a full new application for a Special Use. Due to the existing violation, Mrs. Wolgamood believes they need to consider this request as an entirely new application and Mr. Kolbus verified this is a new application.

Present in support of this request was Lowell Loucks, 24262 CR 30, Goshen, the petitioner's neighbor to the east. Mr. Loucks has no objections with the work being done on the subject property. He said he cannot hear anything from this operation as it is too far away.

There were no remonstrators present.

The public hearing was closed at this time.

During discussion, the Board indicated they had no objection with the Special Use provided the limestone is stored inside a building.

If approved, Mrs. Wolgamood said she would like to see a building designated for the business with the limestone, pallets, and all other outside storage to be moved inside within a certain length of time.

When the staff was asked if they want to see what's going to be stored where, Mr. Nemeth said they are going from a 29 x 30 ft. limestone storage area and each building is specifically designated for their use. He asked the Board how much storage they are comfortable allowing inside and it was pointed out that it would be approved in accordance with the site plan.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that based on the petitioner's representation that everything can be stored inside, this request 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, be tabled until the June 17, 2010, Board of Zoning Appeals meeting to allow the petitioners to submit a revised site plan eliminating the outside storage, with the revised site plan to be submitted to the staff by June 7, 2010. A roll call vote was taken and the motion was carried unanimously.

28. There were no postponements of business items.

29. There were no Staff/Board items.

30. The meeting was adjourned at 12:21 p.m.

Respectfully submitted,

Teresa McLain, Transcriber

Kathleen L. Wilson, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary