

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF NOVEMBER 2010 AT 8:30 A.M.
MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Doug Miller, and Robert Homan. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Wolgamood/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of October 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 6th day of November 2010 in the Goshen News and on the 5th day of November 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 (*Homan/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. There were no postponements of business items.
7. The application of **Bessie G. Goodison** for a 3 ft. Developmental Variance to allow for construction of an addition to the residence 7 ft. from the East side property line (Ordinance requires 10 ft.) on property located on the South side of CR 10, 460 ft. West of CR 17, common address of 22090 CR 10 in Osolo 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*].

There were 5 neighboring property owners notified of this request.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #22090CR 10-101021-1*.

Bessie Goodison, 22909 CR 10, Elkhart, was present on behalf of this request.

Mr. Miller asked if she is asking for the Variance for the space underneath the garage and Ms. Goodison said yes. They would like to enclose the area and turn it into a three season room.

Mr. Miller asked if they knew this was going to transpire when they went before the Board for a Variance request earlier in the year. Ms. Goodison said after they got the permit in July, they didn't start building until September. They started talking after construction was started and the deck turned into a covered room, but she didn't realize they needed a permit for it.

Mrs. Wolgamood indicated they won't be any closer than the distance granted on the original Variance request and the petitioner said that is correct.

Mr. Homan felt that the square footage was more of an issue than the setback. Mrs. Prough stated when the original Variance was granted, it was approved as per site plan submitted which did not show this addition. She also indicated a complaint had been received.

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 the Findings of the Board, and based upon these Findings, this request for a 3 ft. Developmental variance to allow for construction of an addition to the residence 7 ft. from the East side property line (Ordinance requires 10 ft.) 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.

8. The application of **William & Penny Feeney** for a 45 ft. Developmental Variance to allow for the construction of a manufacturing business 30 ft. from the centerline of the right-of-way of Railroad Street (Ordinance requires 75 ft.) and for a 15 ft. Developmental Variance to allow for the construction of a manufacturing building 35 ft. from a residential zoning district (Ordinance requires 50 ft.) on property located on the South end of Railroad Street, 265 ft. East of SR 15, common address of 68640 Railroad Street in Jackson Township, zoned M-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 #68640Railroad Street-101025-1*.

There were 6 neighboring property owners notified of this request.

Karl Graber, Pacemaker Buildings, 101 Acorn Street, Syracuse, was present representing the petitioners. Mr. Graber indicated he has had some conversation with the staff regarding the request for an updated survey. Blake Doriot has been working with the owners on getting a legal survey done and they will also verify that they won't be encroaching on any easements. He submitted a site plan at this time showing the easements *[attached to file as Petitioner Exhibit #1]*.

Mrs. Wolgamood asked if the easement is to the east and Mr. Graber indicated yes. It comes back from the east and then it follows to the south to the three lots without frontage, which will need some type of access. He indicated they would have a survey done before any construction was started, as well as a title search. The site plan shows the building being 25 ft. from the property line, but the easement is 15 ft. on that side. Therefore, the building structure would be 10 ft. beyond where the easement is located.

The owner has had this property for several years and he has a business in Goshen. He rents the facility at the moment, but he would like to build his own building. They feel this would be an improvement to the area as the current building is very outdated. When the new building is constructed, they will provide some landscape buffering along the residential area. Everything will be done inside and there won't be any outside storage.

Mrs. Wolgamood asked if Mr. Feeney owns the property adjacent to the south and Mr. Graber said no. The petitioner only owns Edd's Supply, which is a property to the south that has no road frontage. He also indicated there are two houses south of Edd's Supply that do not have

road frontage. The legal easement comes in from the east off of old SR 15 and then follows all the way down the east side of Edd's Supply and abuts into those two properties. He pulled the deeds of the homes to the south and they reference back to the recorded easement. Mr. Graber indicated he had Blake Doriot plot the easement.

Mr. Hesser then asked Mr. Graber to show which property it is on the site plan and he did so.

Mrs. Wolgamood questioned whether the people who own the property to the south access Mr. Feeney's property off of Railroad Street. Mr. Graber said they do, but it is not a legal easement as Railroad Street is a dead end street.

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 45 ft. Developmental Variance to allow for the construction of a manufacturing business 30 ft. from the centerline of the right-of-way of Railroad Street (Ordinance requires 75 ft.) and for a 15 ft. Developmental Variance to allow for the construction of a manufacturing building 35 ft. from a residential zoning district (Ordinance requires 50 ft.) be tabled to allow for an updated survey to be submitted showing all recorded easements, as well as Railroad Street to the north. A roll call vote was taken and the motion was carried unanimously.

When a timeframe was questioned by the Board, Mr. Graber said he will need to check with Mr. Doriot and he hopes it will take less than two weeks. He was hoping he could get approval from the Board contingent upon providing that information to the staff. They are required to take this project to the state and it could take six to eight weeks, so they would like to get the process going. Mr. Graber explained the staff recommended that he offer that as a provision rather than having the request tabling for another whole month. They are under a time restraint due to the weather, so they are trying to proceed as quickly as possible without overstepping their boundaries.

A motion was then made and seconded (*Miller/Wolgamood*) that the motion be amended to include that the tabling is for thirty (30) days. After a unanimous roll call vote was taken, the motion was carried.

9. The application of **Betty M. Powell** for a Special Use for an agricultural use for the keeping of five horses on a tract of land containing less than three acres (Specifications F- #1) on property located on the Southwest side of CR 8, 2,000 ft. Northwest of CR 35, common address of 13974 CR 8 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 #13974CR 8-101014-1*.

There were 9 neighboring property owners notified of this request.

Betty Powell, 5216 Mount Washington Road, Louisville, Kentucky, was present on behalf of this request. Ms. Powell explained she has renters at this property and they are thinking about buying the property. She asked if this request were approved today, then would it

go along with the land when it were sold. She submitted three letters from adjoining property owners indicating they are in support of the request *[attached to file as Petitioner Exhibit #1]*.

Mr. Miller asked what the Zoning Ordinance allows for and Mrs. Prough said you are required to have three acres in an "A" zoning district and there is no limitation.

Mr. Hesser said it appears that the proposed fenced in area is less than one acre and he asked if that is accurate. The petitioner said it is probably about that, but in the future they would like to make it a larger area.

Mr. Miller asked if the fencing is in place as of now and Ms. Powell said no.

He also asked if there are currently two horses on site and the petitioner stated they come back and forth from the neighbor's property.

Mr. Hesser asked who's property the horses were on that are shown in the staff photos. Mrs. Prough noted those horses were on the petitioner's property.

Mr. Homan asked if the signatures in support of the request are from the neighbors on both sides of the property. Ms. Powell then indicated they are all close neighbors.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said if it was a bigger piece of property, he would feel more comfortable having four horses there. If they approved two horses at this time, they may consider having four in the future. He explained that disposal of manure is an issue and there are some nice residential homes in the area.

Mrs. Wolgamood said she doesn't have an issue with them having two horses for transportation purposes, but if it goes beyond that on two acres, then it would be too intense.

Mrs. Wolgamood asked if this would run with the land if the property were sold. Mr. Kolbus said yes, unless the Board put some type of limitation on it.

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 an agricultural use for the keeping of five horses on a tract of land containing less than three acres (Specifications F- #1) be approved with the following conditions imposed:

1. Approved for the keeping of two (2) horses only.
2. Approved as per site plan submitted.

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

10. The application of *Jamie & Esperanza Navarro* for a Special Use renewal for warehousing and storing in an A-1 district for a semi tractor and trailer (Specifications F - #44) on property located on the North side of US 20, 1,470 ft. West of CR 19, common address of 21031 US 20 in Jefferson Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #21031US 20-100920-1*.

There were 3 neighboring property owners notified of this request.

Jamie Navarro, 21031 US 20, Goshen, was present on behalf of this request.

Mr. Hesser asked if he is here for the renewal of what was approved two years ago and the petitioner said yes.

When Mr. Hesser asked if there have been any complaints, Mrs. Prough said no.

There were no remonstrators present.

Mrs. Wolgamood indicated anytime she has gone by the property and seen the semi tractor and trailer on site, it is always parked in the same place.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/ Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use renewal for warehousing and storing in an A-1 district for a semi tractor and trailer (Specifications F - #44) be approved with the following conditions imposed:

1. Parking of one (1) semi tractor and trailer on site.
2. The tractor and trailer shall not be parked on the access road.
3. No backing onto or off of the access road.
4. Approved for the owner/occupant of the residence on site.

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

11. The application of ***Owen L. & Marietta C. Yoder*** for a Special Use for a saw mill in an A-1 district (Specifications F - #37) on property located on the Southeast corner of CR 34 & SR 13, common address of 11950 CR 34 in Clinton Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #11950CR 34-101025-1*.

There were 6 neighboring property owners notified of this request.

Owen Yoder, 11950 CR 34, Goshen, was present on behalf of this request. Mr. Yoder explained he would like to have a Special Use permit for a sawmill granted for one year to see how it goes.

Mr. Hesser asked if the sawmill will be in what is currently the hog barn and the petitioner said yes. When asked if it is being used right now, Mr. Yoder said he is presently using it for storage. He submitted a petition signed by some of the neighbors in favor of the request *[attached to file as Petitioner Exhibit #1]*.

Mr. Yoder said he has had the sawmill for about eleven and a half years, but he has only operated it part-time as a hobby. About eight to ten years ago, someone from the county came out to the site to find out what was going on. The person that came out indicated his operation was fine as long as it didn't get any bigger.

Mr. Hesser asked the petitioner to point out the properties of the people who signed the petition. Mr. Yoder pointed them out on the aerial photo at this time. When Mr. Hesser asked who owns the property immediately to the west, Mr. Yoder said Enos Mullet, Jr.

Mr. Miller asked how many hours per week he uses the sawmill and the petitioner said 40 to 45 hours. Some weeks he might work 20 hours, but then it might be a month before he does anything again. He does this as a hobby when he gets home from work. He indicated the sawmill is portable and he can go out to customers' properties and do the work there.

Mrs. Wolgamood asked if they currently have any employees and the petitioner said no. He is asking for six employees, but he doubts he will ever have that many. He just wanted to make sure he was covered in case something came up that he needed that many employees.

When Mr. Miller asked how many logs they go through, the petitioner said 400 ft. per hour. The average log is between 100 ft. and 200 ft.

Mr. Hesser asked what the normal hours of operation would be and Mr. Yoder said he works some Saturdays, approximately 2:00 or 3:00 in the afternoon until about 6:00 p.m.

The questionnaire indicates that the sawdust will be contained inside the building. Mrs. Wolgamood asked if he's doing that now and the petitioner said yes. The sawdust is removed periodically. Mr. Yoder verified he has enough room inside the building for the sawmill, six employees and to contain all of the sawdust. He indicated his neighbor has a duck barn and he takes all of the sawdust for bedding. Mr. Yoder said he transports it using a bobcat. He noted he would like to put in a dust collector in the future.

Mr. Hesser asked if the log storage area is open and the petitioner said yes. Mr. Yoder feels it is hard to get the logs under a roof due to their size. Everything is stored outside after it is cut. The petitioner indicated it is all green lumber, so it doesn't matter if it gets wet.

Mrs. Wolgamood asked how the logs are brought in and the petitioner said most of them are brought in on fifth wheel trailers. The trucks can turn around on site without having to back out onto the county road.

Mr. Miller asked how many times a week finished product will be shipped out and the petitioner said three times a week at the most.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser feels there is a big difference between operating by yourself on Saturday afternoons and having an operation that will be five to six days a week at 14 hours per day. He indicated he would like to look at a scaled down request with staff comments on the modification.

Mrs. Wolgamood agreed and said she feels what the petitioner is requesting is far too intense. She indicated the site plan doesn't address several of the Board's questions.

Mr. Kolbus said as long as the petitioner modifies the request to be less than what is currently being asked for, then the neighboring property owners do not have to be re-notified.

Mr. Miller indicated he feels this request is too intense as proposed.

Mr. Homan said there are a lot of people who have portable sawmills and he would hate to tell the petitioner he can't run his. With the number of employees being requested, he feels it may grow pretty fast.

Mrs. Prough indicated the staff would like the petitioner to have something back to them by the 29th or 30th because that is when they have their staff meeting and it would give them adequate time for review. She understands the Board's major concerns are the number of employees, the days and hours of operation, and modifying the site plan to eliminate some of the outside storage.

Mrs. Wolgamood noted she would also like to make sure the turn-around is large enough for the vehicles that will be coming and going to the site.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that this request for a Special Use for a sawmill in an A-1 district (Specifications F - #37) be tabled indefinitely to allow the petitioner to work with the staff on modified conditions and a modified site plan. After a unanimous roll call vote was taken, the motion was carried.

12. The application of **Robert & Jennifer Shaw** for a Special Use to allow for an agricultural use (keeping of two goats) on property containing three acres or less (Specifications F - #1) on property located on the West side of Tecumseh Drive, 375 ft. North of CR 150, 1,150 ft. West of CR 7, common address of 70931 Tecumseh Drive in Union Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #70931TecumsehDr-101022-1*. A letter in remonstrance from Michelle Metzler, who resides at 70862 Tecumseh Drive, was submitted to the Board by Mrs. Prough at this time *[attached to file as Staff Exhibit #2]*. She also gave a copy of the letter to the petitioners.

There were 19 neighboring property owners notified of this request.

Present on behalf of this request was Robert Shaw, 70931 Tecumseh Drive, Nappanee. Mr. Shaw explained they got the goats in April of this year and the complaint was filed in August. The goats are miniature Tennessee fainting goats and they don't take up a lot of space. The goats don't make a lot of mess and they are able to clean up after them. He doesn't feel they are causing permanent damage to neighboring properties.

Before they got the goats, they communicated with all of their direct neighbors and nobody had a problem with it. The house directly to the north of them takes care of the goats when they are out of town. He didn't anticipate someone down the street having a problem with the goats.

Mr. Shaw explained they are anticipating not having the goats on the property during the winter because of the climate. His daughters take care of them and it may be harder for them to do that in the winter if they were on site. He indicated they would like to be able to bring them back onto the property in the springtime.

Mr. Homan asked where they would be housed in the wintertime and the petitioner said they know someone who lives five miles away that has a hobby farm. Part of having them on the premises is so his daughters can learn responsibility of taking care of the animals.

When Mrs. Wolgamood asked how much the goats weigh, Mr. Shaw indicated about 20 pounds.

Mr. Hesser questioned how big their parcel is and the petitioner indicated about half an acre. He also asked where the person lives who wrote the letter in remonstrance and Mr. Shaw pointed it out on the aerial photo. He noted that the residents who live across the street from the remonstrator have dogs who bark all day.

Mr. Hesser asked if there are covenant restrictions for the subdivision and Mr. Shaw said he was unsure. They moved into the neighborhood six years ago and they will abide by any subdivision covenants.

There were no remonstrators present.

The public hearing was closed at this time.

In the past, the Board has decided that when a property is in a residential development, they go by rules, especially if there is remonstrance. He feels they should stay consistent with what has been done in the past. He was happy to hear that there may be a way for the petitioners to board the animals off-site.

Mr. Hesser indicated the prior request similar to this one was approved. There were also a lot of neighbors who came to speak in remonstrance to that request. When he asked the staff if there are restrictive covenants for the subdivision, they were unsure. He said he is leaning

towards approval considering how small the goats are, the setting they are in, and the fact that no one is present today in objection.

Mr. Miller said part of the reason the prior request similar to this one was approved was because there were no restrictive covenants, the property was bigger in size, and it was buffered by woods on one side and pine trees on the other. He feels these goats are smaller than a lot of dogs and he suspects they make a lot less noise, so he isn't opposed to the request.

Mr. Homan asked if they could move the goats to the backyard and Mr. Shaw said yes, they have thought about that. They haven't done anything in the last month because they weren't sure what would happen at today's hearing. One of the reasons they are on the side of the house is because the wind comes very strongly across the back field. They have thought about putting some fence panels up in the backyard to keep the wind down.

Mr. Homan said if they decide they are going to approve the Special Use for the goats, he feels the petitioner should find out about the neighborhood covenants, but that is not anything the Board can enforce. He feels the animals should be moved behind the house and out of site from the street. The goats should be housed in substantially the same size of enclosure that they are currently in. He also feels these two goats should not be replaced.

Mr. Hesser felt the petitioners should submit a revised site plan to the staff as well as documentation indicating that there are not restrictive covenants prohibiting the goats. He understands the Board can't supersede restrictive covenants, but if there are covenants in place as of now stating that this would be prohibited, he wouldn't feel comfortable approving it. Mr. Homan feels that issue should be handled otherwise as the Board cannot enforce the covenants.

Mr. Hesser asked what the life expectancy of the goats is and the petitioner said 15 years.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that this request for a Special Use to allow for an agricultural use (keeping of two goats) on property containing three acres or less (Specifications F - #1) be approved with the following conditions imposed:

1. Approved for the two (2) goats that are currently on site.
2. The confinement area for the goats is to be moved behind the house within thirty (30) days.
3. A revised site plan is to be submitted to the staff within thirty (30) days showing the location of the confinement area.
4. The petitioner is not to breed or add to the population of goats.
5. When the goats are no longer on site, the Special Use will be expired.

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

13. The application of *Ceja Consuelo* for a Special Use for an existing church (Specifications F - #48) on property located on the South side of Modrell Avenue, 400 ft. West of Independence Street, being Lot 57 of Rose Lawn Subdivision, common address of 25404 Modrell Avenue 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 #25404ModrellAve-101025-1*.

There were 19 neighboring property owners notified of this request.

Present representing the prospective purchaser was Bernie Feeney, 715 S. Michigan Street, South Bend. The petition is necessary to separate the church from the residence and to

allow the continued existence of the church on its own parcel of land following the platting of the property. There is no change in the uses and the western property will continue to be a residence. The church will continue to operate on the eastern piece.

As the staff noted in the staff report, there was an approved Special Use in 1996 that allowed for the church at this location. There is no proposed change in use at this time and they are only changing ownership.

When Mr. Hesser asked how big the congregation is, Mr. Feeney said it is a relatively small congregation which is primarily Latino.

Mr. Hesser said he has some concerns about parking. Mr. Feeney explained that with the property line going between the two parcels, part of the area and the driveway will be used exclusively for the residence. The remaining area will be used exclusively for church parking. When Mr. Hesser asked if a fence will be added in the middle of the driveway, Mr. Feeney said it is not anticipated at this time.

Mr. Homan asked if the person wanting to buy the residence is associated with the church and Mr. Feeney said no.

From the aerial photo, Mrs. Wolgamood said it looks like the sign will remain on the property where the house is. She asked if they will be moving it to the adjacent property and Mr. Feeney said yes.

Mr. Homan asked if each of the buildings had separate septic systems. Mr. Feeney said they have not had an opportunity to get a soil scientist out to the site. At this time, they are unsure whether they will need to supply an easement for a common septic system for both structures.

Mr. Hesser asked if there is any harm to the owner in tabling the request to satisfy the staff's concerns. Mr. Feeney said the owner and purchaser would like to consummate this purchase agreement. Mr. Hesser indicated that could be done contingent upon the approval. Mr. Feeney said it appears that this may be a cash deal with a relative helping out, so he believes they are anxious to get this completed.

Mrs. Wolgamood asked if the subdivision has been filed and Mr. Feeney said yes. They were unaware that the Subdivision Control Ordinance had changed and they are currently in the process of upgrading the original submittal to the current standards. They expect the revised information to be submitted sometime later this month so it can be heard at the December Plan Commission meeting. Mrs. Wolgamood noted that hearing can proceed without approval from the Board of Zoning Appeals. She also felt a lot of the staff's concerns would be answered once the updated information was submitted for the subdivision filing.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said if the petitioner is going to revise his existing filing for Plan Commission, then she felt the staff could review that and it may answer some of the concerns with this request.

Mrs. Prough indicated he has already missed the filing deadline for the December Plan Commission meeting, so it would have to go to the January meeting.

Mr. Hesser said he feels the staff and Plan Commission can see that the issues listed in the staff recommendation are addressed.

Mr. Feeney indicated he wouldn't have any issues with the tabling of this request to allow the Board to have more information.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an existing church (Specifications F - #48) be tabled to allow the petitioner to submit a new site plan which addresses the septic system, parking, access to and from the property, drainage, and/or signage for proposed Lot 57B of proposed Ceja Modrell Avenue Minor. A roll call vote was taken and the motion was unanimously carried.

14. The application of *Ugine & Jessica Titov* for a Special Use for a beauty salon in an A-1 zoning district (Specifications F - #46) on property located on the East side of SR 15, 2,053 ft. North of CR 18, common address of 57622 SR 15 in Jefferson Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #57622SR 15-101025-1*. She amended condition #3 under the Staff Analysis to read "One (1) double-faced sign not to exceed four (four) sq. ft. per side and not to be any closer than 55 ft. from centerline of SR 15."

There were 5 neighboring property owners notified of this request.

Jessica Titov, 57622 SR 15, Goshen, was present on behalf of this request. She has been a hairstylist for eight years and she would like to start a salon in her own home. She feels the salon will be beneficial to the community because it will provide a close and convenient place for the surrounding neighborhoods to have their hair done. She doesn't believe this will cause harm to the septic system because there will only be one sink and only herself as the operator. She noted the Board's approval of this Special Use permit would be greatly appreciated.

Mr. Hesser asked if this is north of US 20 and the petitioner said it is to the south.

Mr. Homan asked if she will be the only employee and Mrs. Titov said yes.

Mr. Hesser asked if she feels the hours of operation indicated by the staff are acceptable and Mrs. Titov said yes.

When Mr. Homan asked if she has had any conversation with the neighbors, Mrs. Titov said yes and they were fine with the 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 (*Homan/Miller*) that the Board adopt the orally amended Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a beauty salon in an A-1 zoning district (Specifications F - #46) be approved with the following conditions imposed:

1. Beauty shop to be operated by the owner/occupant of the residence on site.
2. Days and hours of operation to be Monday through Friday, 10:00 a.m. to 8:00 p.m.
3. One (1) double-faced sign not to exceed four (4) sq. ft. per side and to be no closer than 55 ft. from centerline of SR 15.
4. Approved in accordance with the site plan submitted and as represented in the petitioners' application with the exception of the hours of operation.

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

15. The application of *Nelson & Esther Lehman* for a Special Use for a home workshop/business for a bakery and coffee shop (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structures on property located on the West side of CR 31, 550 ft. South of CR 36, common address of 64091 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 31-101013-1*.

There were 6 neighboring property owners notified of this request.

David Bontrager, Jr., 59723 CR 33, Middlebury, was present representing the petitioners.

Mrs. Wolgamood questioned the red building in the staff photos and Mr. Bontrager said that is an agricultural barn.

Mr. Bontrager said they are ahead of schedule and there is already a residence on site. They would like to have a bakery to serve the public and to allow them to work at home.

When Wolgamood asked if this project will require state approval, Mr. Bontrager replied yes. He noted the septic has already been approved and is in place.

Mrs. Wolgamood asked when they anticipate on starting to operate the business and Mr. Bontrager said it depends on the weather.

When she asked if they have state approval for the building, the petitioner's representative said no. Most likely, this won't happen until the springtime because there are some documents that still need to be submitted to the state.

Mr. Hesser questioned whether the number of employees included family members and Mr. Bontrager said it will be family only. The employees will be the petitioners and their daughter.

Mrs. Wolgamood indicated the driveway has already been approved for the residence, but she asked if they have approval for the commercial driveway. Mr. Bontrager said they have obtained the commercial driveway permit, but it is not completed as a commercial driveway yet. The driveway still needs some finishing touches before they get their final inspections

In discussing the signage, Mr. Bontrager indicated they would like to have a four sq. ft. per side sign that will be unlighted.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said his only concern is that it may impact the adjacent vacant lot if someone were to build a house there in the future.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a bakery and coffee shop (Specifications F - #45) be approved as per site plan submitted and as represented in the petitioner's application with the following conditions imposed:

1. Business to be operated by the owner/occupant of the residence on site.
2. All required permits and inspections are to be obtained (Health Department, Highway Department, Building Department, etc.)

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

A motion was then made and seconded (*Wolgamood/Homan*) that the request for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structures be approved as per site plan submitted. A unanimous roll call vote was taken and the motion was carried.

16. The application of ***Rex Albert & Christy L. Shriner*** for a Special Use for a home workshop/business for an art studio (Specifications F - #45); for a 25 ft. Developmental Variance to allow for the construction of an attached personal garage/workshop 50 ft. from centerline of the right-of-way of CR 142 (Ordinance requires 75 ft.); for a 5 ft. Developmental Variance to allow for the placement of a wall mounted sign for said workshop 50 ft. from centerline of the right-of-way of CR 142 (Ordinance requires 55 ft.); 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 Southeast corner of CR 21 & CR 142, common address of 67488 CR 21 in Jackson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #67488CR 21-101022-1*.

There were 8 neighboring property owners notified of this request.

Present on behalf of this request was Christy Shriner, 67499 CR 21, New Paris. Mrs. Shriner explained she is an artist and custom hand paints furniture. She would like to have more space to do her work. She will be using some of the area for retail, but this will also be for doing her personal crafts as well.

When Wolgamood asked if the furniture is hand brushed or spray painted and the petitioner said hand brushed.

She then asked what she does when recycling old furniture. Mrs. Shriner said she will repair it, strip it down, sand it and prime it.

Mrs. Wolgamood asked the petitioner how she will designate to her customers that they are to use the CR 21 access. Mrs. Shriner said the sign will be placed at that location and there will be a sidewalk with a porch. Mrs. Wolgamood suggested posting a small "private drive" sign on CR 142.

When the Board asked if there will be a turnaround on-site for the customers, Mrs. Shriner said she can probably designate an area for customers to do that. She isn't expecting a lot of customers and estimated one per week.

Mr. Hesser asked if the access to the workshop area would be through the garage, but Mrs. Shriner explained there would be a sidewalk on the side of the garage where there will be a separate entrance.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated her major concern is having a turnaround so the customers don't have to back out onto the county road.

Mr. Hesser asked if it would be feasible to have a revised site plan showing the turnaround area and sidewalk. Randy Hershberger, contractor from Coach House Garages, indicated he has a revised site plan with him showing the sidewalk. It does not show the turnaround because it was not part of the original plan.

Mrs. Prough said the staff can work with the petitioner because there will be a setback requirement to comply with the parking. They would be required to be 35 ft. back from the centerline of both roads and 10 ft. from the property line, but she felt there would be adequate room for a turnaround.

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 amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for an art studio (Specifications F - #45) be approved with the following conditions imposed:

1. Approved as represented in the petitioner's application and in accordance with the site plan submitted (to be revised).
2. Business to be operated by the owner/occupant of the residence on site.
3. A revised site plan is to be submitted to the staff prior to issuance of any building permit showing the sidewalk and a turnaround of some sort so that customers will not have to back out onto the county road.

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

A motion was then made and seconded (*Wolgamood/Miller*) that the request for a 25 ft. Developmental Variance to allow for the construction of an attached personal garage/workshop 50 ft. from centerline of the right-of-way of CR 142 (Ordinance requires 75 ft.); for a 5 ft. Developmental Variance to allow for the placement of a wall mounted sign for said workshop 50 ft. from centerline of the right-of-way of CR 142 (Ordinance requires 55 ft.); 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 approved as requested and in accordance with the site plan submitted. A roll call vote was taken and the motion was carried unanimously.

17. The application of ***Mervin & Mary E. Bontrager*** for an amendment to an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45) to allow for the construction of an addition to the existing workshop and 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 East side of West County Line Road, 1,500 ft. South of CR 46, common address of 69266 West County Line Road in Locke 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 #69266WCounty Line Rd-101025-1*.

There were 2 neighboring property owners notified of this request.

Mervin Bontrager, 69266 W. County Line Road, Nappanee, was present on behalf of this request. Mr. Bontrager explained they are trying to expand to give them more room for accessory storage in their current shop. He has a small dust problem, so he wants to upgrade to take care of that issue. The proposed addition will be finished product storage of toys. He wants to make it a safer and better place for the family to work in.

Mr. Hesser asked if they will be expanding the number of employees and the petitioner said no. Mr. Hesser feels this is still within the boundaries of the home workshop/business definition. Mr. Homan agreed.

When Mrs. Wolgamood questioned the safety issues, Mr. Bontrager said he would like to control the dust better. He needs a few more pieces of small machinery and he needs more room for them.

Mrs. Wolgamood asked what he currently does with the dust and the petitioner indicated he has a small dust collector that he uses for shavings. He noted everything would be contained inside the building.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45) to allow for the construction of an addition to the existing workshop be approved as presented in the petitioners' application and in accordance with the site plan submitted, with the business to be operated by the owner/occupant of the residence on site. After a unanimous roll call vote was taken, the motion was carried.

A motion was then made and seconded (*Hesser/Homan*) that the request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved in accordance with the site plan submitted. A unanimous roll call vote was taken and the motion was carried.

** * The agenda was amended at this time to hear the petition for Jonas L. & Lizzie R. Miller prior to hearing the petition for Michael Stoll (lessor) and Bonnie Barrett (lessee).*

18. See page 15, item #20 for the *Michael Stoll (lessor) and Bonnie Barrett (lessee)* petition.

19. The application of *Jonas L. & Lizzie R. Miller* for a Use Variance to allow for the construction of a second dwelling on a single zoning parcel on property located on the Southwest corner of SR 13 & CR 20, common address of 59011 SR 13 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #59011SR 13-101022-1*.

There were 10 neighboring property owners notified of this request.

Liz Miller, 59011 SR 13, Middlebury, was present on behalf of this request. Mrs. Miller explained the existing shop was used for church services.

Mr. Hesser explained the Board is normally very reluctant to grant two houses on one parcel. He asked the petitioner why the Board should make an exception in this case. Mrs. Miller said they had previously gotten a permit to have an attached second dwelling. Her husband and son decided they would like to have the house detached. She indicated the house could be attached, but they wanted to see if this request would pass.

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 Use Variance to allow for the construction of a second dwelling on a single zoning parcel be denied with no additional conditions imposed. A roll call vote was taken and the motion was unanimously carried.

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

20. The application of **Michael Stoll (lessor) and Bonnie Barrett (lessee)** for a Use Variance for a tattoo parlor in a B-3 zoning district which is not more than 1,000 ft. from any "R" district, church, school, day care, public park, or any residential use on property located on the North side of Vistula Street (SR 120), 175 ft. East of Division Street (SR 15), common address of 110 Vistula Street 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #110VISTULA STREET-101004-1*. She submitted a letter from the Town of Bristol in support of this request *[attached to file as Staff Exhibit #2]*.

There were 21 neighboring property owners notified of this request.

Ted McFarland, 110 W. Vistula, Bristol, was present representing the petitioners. Mr. McFarland explained there is already a tattoo business located about 300 ft. from this property. Ms. Barrett has outgrown that facility and she would like the new shop to include other artisans. They hope to open up for business the day after Thanksgiving. They have gone to the Town Board meetings and some of the concerns have been addressed. The primary concern was having people stand out on the street, which would not represent the town very well. Therefore, they plan to put up a privacy fence so the customers will have an area where they can be outside.

Mr. Homan questioned how they will accommodate parking. Mr. McFarland said that has been an issue for several years. He pointed out the public parking area to the east of the subject property. There is a possibility that part of one of the buildings down the road will be torn down and a parking lot will be put in. The only current parking they have is along the street and in the public parking area.

Mrs. Prough explained the staff did talk about the parking and they determined that most of the businesses in downtown Bristol do not have on-site parking. There is some parking in front of the building and to the east in the public parking lot. There is also another parking lot across the street behind the bank.

Mrs. Wolgamood asked the petitioner's representative to illustrate where the privacy fence will be located. On the aerial map, Mr. McFarland pointed out a row of trees that he said have already been removed. The privacy fence will be installed along the south property line and will come out about 15 ft. west of the building, and then it will go north.

Mrs. Wolgamood pointed out they are moving this business from one location to another. She asked what happens to the Use Variance that was granted on Charles Street. Mr. Kolbus indicated it depends on the terms of the approval. If this request were approved, the petitioner could offer a condition to have the previous Use Variance rescinded. Mrs. Wolgamood indicated that is a big concern of her's because she would not want to see two tattoo parlors in Bristol.

In discussing the ownership of the tattoo parlor on Charles Street, Mr. McFarland said that Bonnie Barrett leases that building. He explained that tattoo business will be closing if this request is approved.

Mr. Kolbus indicated there were no conditions on the approval of the Use Variance on Charles Street.

Bonnie Barrett, 321 W. Central Avenue, LaGrange, was present on behalf of this request. When Mrs. Wolgamood asked if she is willing to rescind the Use Variance on Charles Street, Ms. Barrett said yes.

Mrs. Prough suggested having a time limit imposed if the Board wants a document submitted in writing and she felt it should be notarized. Ms. Barrett indicated Jonathan Stahr is in Florida, so it may take a little longer.

Present in support of this request was Patricia Yoder, 321 W. Central Avenue, LaGrange. Ms. Yoder said she doesn't feel parking will be an issue because the business will be open when others are closed, so the street parking will be available.

At this time, Ms. Barrett submitted a letter from Dan Watson, business owner and citizen of Bristol, in favor of this request *[attached to file as Petitioner Exhibit #1]*. She also submitted a petition in support of the request *[attached to file as Petitioner Exhibit #2]*. Mrs. Wolgamood noted that a lot of those who signed the petition do not reside in Bristol.

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 the Findings of the Board, and based upon these Findings, this request for a Use Variance for a tattoo parlor in a B-3 district which is not more than 1,000 ft. from any "R" district, church, school, day care, public park, or any residential use be approved with the following conditions imposed:

1. A privacy fence is to be installed.
2. A notarized document is to be signed by Jonathan Stahr and Bonnie Barrett rescinding the original Use Variance (#102CharlesSt-100224-1) on Charles Street, and should be submitted to the staff within thirty (30) days.

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

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

21. The application of ***Amerco Real Estate Company C/o U-Haul of Northern Indiana*** for a Use Variance to allow for the placement of truck beds to be used for storage on property located on the North side of US 33, 500 ft. West of CR 3, Lots 7-12 of Highway Gardens, common address of 29057 US 33 in Baugo Township, zoned M-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 #29057US 33-101025-1*.

There were 10 neighboring property owners notified of this request.

Craig Wilson, 1861 US Route 41, Schererville, Indiana, was present on behalf of this request. Mr. Wilson explained they have a sustainability program in place where they remove the van box from the chassis for household storage. This allows them to keep their truck boxes out of landfills and enables them to put storage in areas like Elkhart so they can stay in business in that particular location.

They remove the van boxes from the chassis, set them in rows, and then surround the boxes with siding so it no longer looks like a box when completed. They re-image the doors and

put gutters on top of the boxes so they become self-storage units. Mr. Wilson then submitted photos of before and after pictures to illustrate what the finished product will look like *[attached to file as Petitioner Exhibit #1 & #2]*. Mr. Wilson explained he started a project a couple months where they completely re-imaged a location and beautified it, which made the area look a lot nicer.

Mr. Hesser asked if the units are secured to the ground and the petitioner said they lay on the ground and are bolted to each other. Nothing fastens the units to the ground, but they are locked together, so they can't move. The project they are proposing is 60 units that will sit on a gravel base. Mr. Wilson explained not all of the boxes will be old as they use a lot of boxes from trucks that have been in accidents.

Mrs. Wolgamood asked where the structure shown in the after photo is located and Mr. Wilson said Phoenix, Arizona. He indicated they have done these all over the place.

The impact to the traffic flow was questioned by Mr. Miller. Mr. Wilson estimated one or two customers coming to the site per day. He said self storage is a good business all over the country at this time. Having 60 units at this location would definitely help with income and create more jobs.

Mr. Hesser said in order to approve a Use Variance, they have to find that it is needed because of some condition that is peculiar to this property and he asked the petitioner to address that. Mr. Wilson said the reason they would like to have it at this location is because there is a lot of unused land. Primarily, the front line of where they park their rental trucks are more towards Lincolnway, so they have a whole back lot they aren't using.

Mrs. Wolgamood asked if they can park their normal truck fleet there now and Mr. Wilson said yes. When she questioned how many trucks are normally there on any given day, the petitioner estimated six.

If approved for 60 units, Mrs. Wolgamood asked if that would leave room for the rest of the business and Mr. Wilson said yes.

Mr. Homan asked the staff if they have seen photos of the type of unit they are proposing to have on site and Mrs. Prough said yes, they saw black and white photos prior to today's meeting.

Mr. Wilson then submitted a Facility Imaging Booklet to the Board *[attached to file as Petitioner Exhibit #3]* to show the property as it existed and how it appears now.

Mrs. Wolgamood asked how long it takes to attach all of the units. The petitioner said they would do this in phases and at the current time, he could get 20 units. They would have to get the van boxes to the location, lift them off of the trailer, put them in place, and then they would have a crew from their assembly plant build the units. After the first 20 units are done, he said the project would be completed with all 60 units in place within one year.

If approved, Mrs. Prough said they would be required to obtain approval from the Building Department and meet all building codes. The Building Commissioner has also indicated these structures would require a permanent foundation if the project exceeds 200 sq. ft. When the Board asked Mr. Wilson if that would be feasible, he indicated he would have to check on that because it has not been part of their project.

Also present on behalf of this request was Leon Welch, Field Representative for Northern Indiana U-Haul, 1909 Beech Street, Valparaiso. Mr. Welch explained the project is a two-fold deal as there are a lot of families downsizing due to hardships and they don't really want to get rid of their own personal products. Storage on this side of town is almost non-existent, so people

need affordable ways to store their personal property. Due to the demise of manufacturing in Elkhart County, they are trying to make sure there is something for people to come back.

Mr. Welch also explained they have ample parking on site and there are dealerships in the area who take on their fleet as well. They share the trucks between their facilities. They do their own manufacturing and they have been doing it since the 1950's. He indicated their first and foremost concern is safety. The frames are in good shape and are built out of aluminum, which doesn't disintegrate.

Mr. Hesser questioned the weight of one unit and Mr. Welch said a 26 ft. box is approximately 2,000 pounds. They will also be using some 14 ft. boxes.

There were no remonstrators present.

The public hearing was closed at this time.

If granted, Mr. Kolbus said they could condition it on meeting state and local building codes. Mr. Wilson explained he is a Marketing Company President for U-Haul and he is over northwestern Indiana and Illinois. They have proposed this plan in Illinois at a couple different locations and it has been approved with no resistance. They are big on sustainability and they have a lot of grants for sustainable ground covering, lighting, air conditioning, etc.

Mr. Hesser feels this is a great idea and these units are similar to storage units built on site, but the Zoning Ordinance does not allow these types of units. Mrs. Wolgamood agreed and said if these were conventionally constructed, they would not have to come before the Board.

Mrs. Wolgamood asked if they have looked at the placement of truck beds in agricultural zones. Mrs. Prough said the Zoning Ordinance was amended to prohibit that type of use in residential zones and agricultural zones because people were bringing in box beds and using them for storage. Under Staff Analysis condition #3, it reads that this is peculiar to the property, but she feels it is peculiar to the use of a box bed for storage. The property is zoned M-2 and something that might be peculiar is that it will no longer be used for transportation since the chassis will be removed.

Mr. Homan indicated it may not be economically feasible for the petitioner to put a foundation underneath the units. He feels that putting a foundation underneath them would classify them as buildings. Mrs. Prough said that would be a building code question. Mr. Wilson explained the trucks are designed for household moving only.

If it was determined that these units are a building, Mr. Hesser asked if there would no longer be a need for the Use Variance. Mrs. Prough asked if the Building Commissioner makes that determination, then will that affect all these types of uses regardless of the zone. Mr. Kolbus suggested that the Board handle the zoning and the Building Commissioner handle the building.

Mr. Hesser suggested tabling the request to allow the petitioner to pursue whether this is considered a building and whether he wants to pursue the Use Variance.

Mr. Burrow explained that the previous Zoning Administrator determined that there was an issue with people declaring and using these types of structures for storage. The Building Department at that time indicated that those met the building code. In order for the staff to be able to regulate them, they modified the definition and removed those from the definition of a structure. He indicated this is clearly a Zoning Ordinance issue and it has nothing to do with the building code. The Building Commissioner at that time indicated those were not appropriate structures for storage in industrial, commercial, agricultural or residential zones. He also noted that the Zoning Ordinance does not address foundations except in terms of residential.

Mrs. Wolgamood asked if the Zoning Administrator and the Building Commissioner were the same person at the time when this was changed in the Zoning Ordinance and Mr. Burrow replied yes.

Mr. Kolbus' opinion was that they were envisioning one or two semi trailers sitting out in a lot, but not a situation like this. Mrs. Wolgamood said having been involved in that discussion as a staff member, she guaranteed this was not something that was envisioned.

Mrs. Prough indicated the Building Commissioner was present if the Board had any questions for him; however, Mr. Kolbus said it appears to be a zoning issue.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that this request for a Use Variance to allow for the placement of truck beds to be used for storage be approved with the following conditions imposed:

1. Approved as presented in the petitioner's testimony.
2. Approved in accordance with the site plan and exhibits submitted.
3. All state and local building codes are to be met.

A roll call vote was taken and the motion did not pass due to the following roll call vote results: Homan – no; Wolgamood no; Miller – yes, and Hesser – no.

After further discussion, a motion was made and seconded (*Miller/Wolgamood*) that this request be approved with the following conditions imposed:

1. Approved as presented in the petitioner's testimony.
2. Approved in accordance with the site plan and exhibits submitted.

A roll call vote was taken with the following results: Homan – no; Wolgamood – yes; Miller – yes; and Hesser – no.

Mr. Kolbus then recommended tabling this to the next meeting to allow for all five Board members to be present. Mr. Lantz can review the minutes, listen to the recording and view the exhibits.

A motion was then made and seconded (*Miller/Hesser*) that this request be tabled until the December 16, 2010 Board of Zoning Appeals meeting. After a unanimous roll call vote was taken, the motion was carried.

*** The agenda was amended at this time to reverse the two tabled items that follow.*

22. The application of **Mark Osler** for a Special Use for the extraction and sale of gravel, sand or other raw materials (Specifications F - #10.00) on property located on the East side of CR 101, 2,300 ft. North of CR 28, common address of 60550 CR 101 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 #60550CR 101-100823-1*.

There were 8 neighboring property owners notified of this request.

Matt Schmitt, Associate of Attorney John Lloyd, 4101 Edison Lakes Parkway, Suite 100, Mishawaka, was present representing the petitioner. Mr. Schmitt indicated they are following through with obtaining the information that the Board previously asked for, but it is taking some additional time. They have hired a surveyor and there have been some miscommunications, so it is taking longer than anticipated. Mr. Schmitt indicated they also contacted all of the neighbors

to inform them they would be asking for the petition to be tabled for another month. Mrs. Prough noted the neighboring property owners would be re-notified for the next hearing.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Hesser*) that this request for a Special Use for the extraction and sale of gravel, sand or other raw materials (Specifications F - #10.00) be tabled until December 16, 2010 Board of Zoning Appeals meeting. After a unanimous roll call vote was taken, the motion was carried.

23. The application of ***Robertson Chomphanuvong (owner) and Soukahn Keovilayvong (co-owner)*** for a Special Use for a church (Specifications F - #48) on property located on the North side of US 20, 500 ft. West of CR 27, common address of 17341 US Highway 20 in Jefferson Township, zoned A-1, came on to be heard. It is noted that the public hearing had been closed.

Mrs. Prough indicated the staff would like to amend their recommendation based on new information submitted by the petitioner on November 15, 2010 [*attached to the file as Staff Exhibit #1*]. In the information submitted, it addresses the concerns of the staff regarding the existing curb cut, septic system and the structure itself. There is a letter from Bill Hartsuff, On-site Septic Program Supervisor from the Health Department, which states that the existing septic system is adequate for the church. There is also a letter from the Elkhart County Highway and Engineering Department stating that they do not need to review the driveway and they are leaving that up to INDOT. The petitioner has submitted a revised site plan to the staff showing the proposed location for the parking area and the sign. A list of eleven conditions were also submitted with the packet of information. The staff is recommending approval of the Special Use permit in accordance with the new information and site plan submitted by the petitioner on November 15, 2010. The staff also recommends the Board adopt the eleven conditions as submitted. A copy of the presentation given by Mrs. Prough was also submitted to the Board [*attached to the file as Staff Exhibit #2*].

There were 7 neighboring property owners notified of this request.

Mr. Hesser said there was previously a reference to a tent being on site and he asked how often that type of event occurs. Jeffrey Kimmel, Attorney, 218 W. Washington Street, Suite 600, South Bend, was present representing the petitioners. Mr. Kimmel explained it only happened once and usually only happens annually at the most. The most recent event was for a fundraiser.

Mrs. Wolgamood asked if the tent was on site all summer and Mr. Kimmel said it was up for several weeks, but it is gone now. The tent was donated to the church and it's not something that will be up very frequently. When she asked how big the tent was, Mr. Kimmel indicated he was unsure of the dimensions.

Mr. Miller asked if the tent will come back and Mr. Kimmel said the church might need to put it up if they are having an event. He explained it is beneficial for them to have in case it rains. He assured the Board that it would not be put up and left up. Mrs. Wolgamood indicated she doesn't have an issue with them putting it up once or twice in the summer for a weekend and then taking it back down. She doesn't feel it should be left up all summer long since this is a residential area.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the orally amended Staff Analysis

as the Findings of the Board, and based upon these Findings, this request for a Special Use for a church (Specifications F - #48) be approved with the following conditions imposed:

1. The hours of operation shall not be more than 8:00 a.m. to 6:00 p.m. (prevailing local time), seven days per week.
2. Exterior signage shall be limited to one double-faced, non-illuminated sign fronting on US 20 to be constructed in accordance with signage regulations contained in the County Zoning Ordinance.
3. Ingress and egress to and from said business shall be from a curb cut constructed at the location of the current curb cut serving the property, with said curb cut to be approved the Indiana Department of Transportation. Petitioners shall complete all necessary drive modifications and be in compliance with all requirements imposed by the Indiana Department of Transportation within one year from the date of Special Use approval.
4. Off-street parking for the operation of the business shall be provided on petitioner's property in a gravel surface in size to serve at least 12 cars or trucks. The dimensions of each parking space will be 9 ft. x 20 ft.
5. No offensive noise is to be emitted from said place of worship which would constitute a private nuisance to any neighbor.
6. There shall be no outside loud speakers used in connection with said place of worship.
7. The structures shown on the site plan may be modified without further approval from the Board of Zoning Appeals or Plan Commission staff in order to achieve compliance with County and State building code requirements, provided that petitioners complete any such modifications in accordance with plans and specifications approved by the appropriate governmental authority.
8. The real estate shall be served by a private sanitary sewer system or systems as may be approved by the Elkhart County Health Department.
9. No new structure shall be constructed closer than 120 feet from the centerline of US 20.
10. There may be only one residence located on the real estate.
11. No backing out permitted on the highway.
12. The tent is to be utilized twice during the summer for a maximum of one (1) week duration at a time.

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

24. The staff item regarding Use Variance #20044212 for **Paul Royer** was presented by Mrs. Prough at this time. She explained a letter is included in the packet from Paul Royer regarding condition #8 of the Use Variance that was granted for a salvage grocery store located on his property at 25743 SR 19, which was approved on November 18, 2004. A copy of the minutes from that meeting were also included in the Board's packet. Mr. Royer submitted a letter on November 4, 2010 requesting that he would like to sell ready to slice deli meats and cheeses from a refrigerated display case. Mrs. Prough said the minutes state that the petitioner wanted to install coolers to sell frozen food and cheese. This minor change would entail putting in two display cases so the petitioner can sell sliced meat and cheese. She submitted a copy of the letter from Mr. Royer at this time *[attached to file as Staff Exhibit #1]*.

Mr. Homan said he feels the change is minor.

A motion was then made and seconded (*Wolgamoood/Homan*) that this be considered a minor change. After a unanimous roll call vote was taken, the motion was carried.

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

26. Mr. Watkins reported that public meetings were held on Draft 'D' of the Zoning Ordinance on Monday, November 15, 2010. They took in a lot of public comment and they hope to have another draft by the end of the year. He explained the staff is trying to apply conditions of the new Zoning Ordinance to the petitions as they review them.

When Mrs. Wolgamood asked how the maps are progressing, Mr. Watkins explained they are coming along slowly. He explained the basic conversion is done, but there are still some areas that need to be discussed. They are working with some of the developers who have PUD's to see what their intent is.

Mrs. Wolgamood asked if a lot of people looked at the four maps that were displayed at the meetings. Mr. Watkins said he didn't hear many comments about them, but a lot of people were curious and looked at them. The maps should be done before the public hearings are held.

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

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary