

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF AUGUST 2011 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: Doug Miller, Bob Homan, and Meg Wolgamood. Staff members present were: Chris Godlewski, Plan Director; Ann Prough, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of July 2011 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 August 2011 in the Goshen News and on the 7th day of August 2011 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 (*Wolgamood/Homan*) that the Board accepts the Zoning Ordinance, Subdivision Control Ordinance and Staff Reports as evidence into the record and the motion was carried with a unanimous roll call vote.

5. There were no postponements of business items.

6. See page 5, item # 9 for the application of *Square 1 Builders*.

7. The application of *Kenneth & Amanda Miller (owners of proposed Lot 2) and Michael R. & Corrina Troyer (owners of proposed Lot 1)* for 3 to 1 depth to width ratio Developmental Variances to allow for existing residences on Lots 1 and 2 of proposed Troyer-Miller Minor Subdivision on property located on the North side of CR 38, 2,150 ft. East of CR 43, common address of 10575 CR 38 in Clinton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #10575CR 38-110725-1*.

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

Barry Pharis of Brads-Ko Engineering and Surveying, Inc. located at 1009 S. 9th St., Goshen, was present on behalf of this request representing all petitioners. He displayed a site plan and pointed out the location of the original owner's tract. A parent-to-child split created a one-acre parcel where he built a home for his daughter. His clients live in the area and were looking for homes with acreage so they could have pasture for horses. This would work as each would split the acreage and each would have a little less than six acres. This comes to the Board

with a favorable staff recommendation and with Board approval; they will apply for Primary approval of the plat.

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 Staff Analysis as the Findings of the Board, and based upon these Findings, this request for 3 to 1 depth to width ratio Developmental Variances to allow for existing residences on Lots 1 and 2 of proposed Troyer-Miller Minor Subdivision be approved in accordance with the site plan submitted and as represented in the petitioners' application. A roll call vote was taken, and with a unanimous vote, the motion was carried.

8. The application of **Ruth M. Dilley** for a Special Use for an agricultural use (keeping of horses) on a tract of land containing three acres or less (Specifications F - #1) on property located on the Northwest corner of CR 10 and CR 1, in Cleveland 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 #29666CR 10-1107255-1*. Mrs. Prough also submitted a letter from Rebecca Hinman *[attached to file as Staff Exhibit #2]*. Mrs. Hinman is opposed to this request as she would see and hear the horses as well as smell the horse manure from her deck. She is very concerned for the safety of her grandchildren who visit her and also the potential decrease in the value of the property if horses are kept next to her. Mrs. Prough also submitted a letter from Christina Bralick who owns property across the street at 53290 CR 3 *[attached to file as Staff Exhibit #3]*. Ms. Bralick has agreed to lease a portion of her property to Ms. Dilley for the purpose of a horse pasture and an outdoor riding area.

There were twenty (20) neighboring property owners notified of this request.

Ruth Dilley, 29666 CR 10, Elkhart, was present on behalf of this request. She read to the Board a letter that she sent to her neighbors which read as follows:

"Hello this is Ruth Dilley and I live on the corner of CR 10 and 1 in the old farmhouse (showed the Board an old horseshoe she found while digging a flower bed which tells her that this is the original farm for this neighborhood). Perhaps you got something in the mail from the county as I have applied for a permit to keep two horses on my two acres and county zoning is to have three acres and I would like to explain what I plan to do if my proposal is accepted and reassure you that I try to be a considerate person in general and a very responsible horse owner. Most important for you to know is that I will have very good fencing and dispose of manure regularly so there will be no negative impact to nearby properties. My business (I have a Special Use permit to operate my massage therapy and yoga business here in the studio and I have had that for nine years without any complaints) will continue to operate here and my standards require a clean and pleasant environment for my clients. I am fanatical about horses and have always done everything I can to make sure my horses have the best life possible which includes keeping the pasture and barn areas picked up and clean. I have had horses for more than 25 years and the particular horse that I want to bring home is now 28 years old and has been requiring more tender loving care and I currently keep him in Bristol. I am also a Graduate student at Indiana University, South Bend, in the Master of Social Work program and in the last

year, I have needed to make numerous trips to the barn, sometimes 2-3 times per day, to care for him, take blankets on and off, hose him off in the cold weather, treat various things as he is getting older. So, I would just want to bring him home basically to retire and to have a companion horse”.

She submitted a large aerial photo with the proposed fencing of her property outlined with rope [attached to file as *Petitioner Exhibit #1*]. She told the Board that the horse was pony size, an Arabian which tends to be a smaller horse.

She hopes to build a barn and did ask for 25 ft. x 25 ft. but a builder recommended to her that she build something using even number footage and now requests a 26 ft. x 26 ft. or larger if possible. She pointed out the fence line as the property is very well buffered and this aerial photo is nine years old. Since that aerial photo was taken, she has put a mound with evergreen trees on it and other trees in the area are much larger. The fence line does not go to the property line and she pointed out the closest house to the line is currently for sale and is far away from the barn. The next closest house is 154 feet from the barn and the barn would be 50 feet from the property edge on side she pointed to. There is a section of thick woods on both sides of the fence line. She then pointed to the neighboring houses and is unsure where the remonstrator lives who submitted a letter in opposition. It is 125 feet from the barn to the property line and then another 90 feet to the nearby houses.

Ms. Dilley said she does hear dogs and children in the neighborhood and also noise from the Cleveland Elementary School. There are also neighbors at corner of CR 6 and CR 10 that have nine horses on five acres. Mrs. Bralick who is the neighbor across the road from Ms. Dilley's property owns 12 acres and has agreed to lease her two acres for additional pasture and she would be able to rotate the pasture usage. As she is a fanatical horse owner, she would like to have the horses in her backyard at night and in inclement weather. She had asked that neighbors talk with her if they had concerns/questions and she did not hear back from them. She did talk to a neighbor that she pointed out on the aerial photo and he did not have a problem as she has been a good neighbor. She talked to another neighbor who raised concerns about manure and the fact that it attracts bugs and she showed the Board where she plans to spread manure.

She needs to do some clearing on Mrs. Bralick's property and she pointed out that area to the Board on the aerial. She also plans to spread manure to enrich the soil and eventually plans to have a dumpster on site to dispose of manure. She does not see how the remonstrator's concerns would apply: 1) She does not plan to take the fence to the property line and there is a strong buffer there. The Petitioner feels that she will hear remonstrator's grandkids before remonstrator hears her horses and 2) This is an agricultural area and people chose to put a subdivision here. She informs Board that she has someone to speak on behalf of project.

Mr. Homan asked if the fencing on photograph was currently in place? Ms. Dilley responded that it is chain link and she plans to finish it with privacy fencing in different areas that she pointed out to Board. In the other areas, she will either do chain link or privacy fencing to keep dogs, neighborhood children, and raccoons out of the barn area.

Mrs. Wolgamood asks for larger aerial and wants Ms. Dilley to show her where the neighbor will be letting her rent the two acres. She then asks Ms. Dilley if the two (2) acres she is planning on renting is the property that abuts CR 10 and Petitioner clarified that it is not.

Trudy Halsey was present speaking on behalf of she and her husband Herb. They reside at 53052 Tulane St., Elkhart and have lived there approximately 22 years. It is a quiet residential neighborhood and they are concerned about smell, noise, safety of kids in the neighborhood, as

well as residents. She uses her notes to tell the Board that she grew up on a farm and knows what animals smell like. Horses are just as unpredictable as humans and unless Ms. Dilley spends 24/7 with her horses, it will be impossible to eliminate any odors especially in times of high humidity and other weather elements.

She is also concerned with the noise as she can hear the horses that are currently kept at the corner of CR 10 and CR 6 which is considerably farther than Ms. Dilley's. Horses are spooked easily and are not quiet animals and do not belong in a residential area. She does not want her sleep interrupted at night if she chooses to leave her windows open.

She believes that safety is also an issue. The area where Ms. Dilley wants to keep the two horses is a busy road linking travelers from CR 10 to Nappanee Street and is a main road out of Elkhart. County Road 1 is very busy as it passes along the entrance to a subdivision. It is the main road leading to Cleveland Elementary School and is located approximately 750 feet from CR 10. She is in agreement with Ms. Dilley that you do hear the typical sounds of school children and dogs in this residential neighborhood. The placing of a yoga studio in "our backyard" is one thing but allowing ponies/horses and children to ride them will only add extra traffic and confusion to the neighborhood and she would not want to see any child get hurt if this was allowed.

The fact that Ms. Dilley put her house up for sale and it did not sell in the two months that it was on the market is not the problem of the neighbors. If Ms. Dilley is allowed to have two horses on this piece of property that is less than the standard three acres required by county zoning, Mrs. Halsey asked the Board, what will happen next? She is concerned that Ms. Dilley would sell the house and the next owner could bring in pigs or chickens. She totally disagrees with this request and is asking that the Board deny it.

Barbara Noratchi, of 54256 CR 5, Elkhart, appeared in support of this request. She has been a student of the Petitioner's for about seven years. The property is always clean and appropriate and the animals she currently has are well cared for. She is very considerate of her neighbors and her dog is well trained. Mrs. Noratchi is very impressed with the way she manages her property. She assures the Board that Ms. Dilley is a responsible individual and her concern for her business would necessitate that the property be well maintained. She asks that the Board consider and support this request.

In response, Ms. Dilley reminded the Board that this property is zoned agricultural and there are many working farms in the area. She is a very considerate person and would not want to cause any harm to her neighbors. She goes to the barn several times per day to pick up manure. She also mentions that three acres is rather arbitrary, and in other parts of Indiana and throughout the country, it is not a requirement that someone have a special permit when under three acres. Also, this is not a zoning change and would only apply to her as long as it is her primary residence. She understands that if there are complaints, she would be investigated and the permit could be revoked.

The horse is 28 years old and she does not know how much longer he will live. She is trying to sell her house but has not had one showing or an offer. This is her temporary scenario while she finishes school and she will graduate in 2013. She hopes that she can sell the property when the housing market rebounds because she would like to be on larger acreage.

Mr. Homan asked about the kiddy rides mentioned? She responded that she does not plan on giving lessons, holding rodeos, or promoting pony rides but would give free pony rides

to neighbors if their children and grandchildren desired it. She said that she carries full insurance on her business.

The public hearing was closed at this time.

If approved, Mrs. Wolgamood suggested they consider only two horses and when the older horse is gone, it not be replaced. When asked how that would be monitored, Mrs. Wolgamood indicated that the neighbors would know.

The Board was satisfied that Petitioner knows how to care for horses and that she has demonstrated proper fencing and trees and obscuring line of sight issues. The accommodation of the rental property across the street helps the overall picture of the proposal. Mr. Homan also said that if approved, he would be in favor of the 26 ft. x 26 ft. request as builder had recommended that size.

Mrs. Prough said she's heard the Petitioner mention that you cannot have just one horse, that it needs a companion. She knows that the neighbors are concerned about the number of animals on the property. Mrs. Wolgamood suggested if the Board is looking to grant, the neighbors will keep them apprised of the number of horses on property. Mr. Homan asked if this Special Use is for current landowner or is this in perpetuity? Mr. Hesser states that it is the land that gets the Special Use and not the person. The Board can make it for a specific time period and the lifetime of the horse can be considered a time period per Attorney Kolbus.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) 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 agricultural use (keeping of two horses) on a tract of land containing three acres or less be approved in accordance with the site plan submitted (as amended by the Board) and as represented in the Petitioner's application with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. The number of horses limited to two (2).
3. The proposed accessory building for a horse barn limited to 26 ft. x 26 ft.

For clarification, Mrs. Wolgamood asked if she can have two horses if Ms. Dilley sells the property and Mr. Homan replied yes. A roll call vote was taken and the motion was carried with Mr. Miller voting in opposition.

9. The application of *Square 1 Builders* for a 5 ft. Developmental Variance to allow for the construction of a residence 25 ft. from the front property line (Plat requires 30 ft.) on property located on the Southeast end of Moonstone Lane cul-de-sac, 349 ft. East of Garnet Lane, East side of CR 21, being Lot 36 of Emerald Chase Section Three, common address of 20024 Moonstone Lane in Jefferson township, zoned A-1, came on to be heard.

Robert Nemeth called Petitioner and he was informed that Petitioner had written down the wrong date of the hearing and he will call Petitioner with the Board's decision on how to proceed.

Mr. Homan was concerned that people are in attendance to speak in opposition.

There was no one present for this public hearing.

A motion was made and seconded (*Homan/Miller*) that due to the absence of the Petitioner, this request for a 5 ft. Developmental Variance to allow for the construction of a residence 25 ft. from the front property line (Plat requires 30 ft) be tabled until the September 15, 2011, Board of Zoning Appeals meeting with neighboring property owners to be renotified at the

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

10. The application of **Steven S. Kauffman (lessor) and Verizon Wireless (lessee)** for a Special Use of a wireless communications facility (Specifications F - #13.50) on property located on the South side of US 20, 1,745 ft. West of 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #US 20-110715-1*.

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

Present on behalf of this request was Ray Shinkle, 1089 Onwentsia Court in Naperville, IL representing Verizon Wireless. The Petitioner previously provided propagation maps to Staff in order to demonstrate their need for additional coverage used to expand their existing 3G and 4G LTE coverage. They always look for areas to co-locate but there was nothing in the area where they could so they worked to find an area suitable with County Staff and met all required setbacks. The tower will not only meet Verizon needs but will provide co-location opportunities for other carriers in the future.

The coverage maps were then submitted to the Board for review *[attached to file as Staff Exhibit #2]*. Mrs. Wolgamood asked if copies of those maps were submitted at the time the application was filed and he answered yes. She also asked if the hole that Verizon was trying to fill was a sizable one. He answered that the propagation maps would show existing coverage and the sizable hole that the engineers definitely want to fill. They work with the sales and marketing team to see where customer complaints/demands are coming from and also look for dropped calls in the network and then evaluate the need for a new tower. Mrs. Wolgamood then asked about it being a 150 ft. monopole tower and what color the monopole normally was? Mr. Shinkle answered that they are typically a galvanized steel color. She next asked where the closest Verizon tower was located. Mr. Shinkle indicated where the closest cell phone tower was on the aerial map.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use of a wireless communications facility (Specifications F - #13.50) be approved by the Board in accordance with the site plan submitted and as represented in the Petitioners' application. A roll call vote was taken and the motion was approved unanimously.

11. The application of **Phillip T. & Dara L. Shank (buyers) and James I. & Erika Miller (sellers)** for a Special Use for a home workshop/business for a vending business (Specifications F - #45) on property located on the South side of CR 26, 2,200 ft. East of CR 11, common address of 24596 CR 26 in Concord Township, zoned A-1 PUD, 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 #24596CR 10-110725-1*.

There were fifteen (15) neighboring property owners notified of this request.

Present were Phillip and Dara Shank of 23900 Mira Court, in Elkhart. They may purchase the property but would like approval of this Special Use so that their business would be closer to their home and more convenient. It would also save them money to have the building and house together in the same location.

Mrs. Wolgamood asked if the Petitioners had objections to any of the seven (7) conditions listed in the staff report? Mrs. Shank answered by telling the Board that they currently have one semi delivery a week, but the rest are smaller trucks with roll-up sides. Mrs. Wolgamood asks if the business is up and running? Mr. Shank explained that he is a firefighter for the city of Elkhart and this has been established as a part-time business for six (6) years.

Mrs. Wolgamood asked if this is a catering business, but Mr. Shank said it is all vending machines. This building that would be used for this business has three (3) 10 ft. overhead doors, one section for food, one section for the truck and trailer, and the other section for extra machines that are stored. When asked what the semi delivers, he said it is all food items and it comes from Chicago. It is called Concession Services Incorporated.

Employees were questioned and he said they have one part-time and one full-time employee. Both employees do come to the site everyday and their vehicles are parked outside as shown on the site plan.

The Petitioners were asked if the Homeowner's Association knew how about the semi deliveries and Mr. Shank said yes.

Mr. Homan wondered how the semi would turn around and asked if there is room in the cul-de-sac? Mr. Shank said he's sure the semi would be able to back up to the building.

Mrs. Wolgamood explained this is an Agricultural DPUD subdivision with a private drive so the County does not have jurisdiction over that drive. She does not want that semi to back in off CR 26 for the safety of neighbors; the semi should turn around on the property. She says that it is a tough situation for the Board to consider.

Mr. Hesser commented that they could require a turnaround and Mrs. Shank said there is a turnaround further up the road but it is not on the proposed property.

Jim and Barbara Montague, 24638 CR 26, Elkhart, came forward first to speak in opposition to this request. Mr. Montague questioned the homeowner's association approving the request as this is the first they had heard of this decision. Mrs. Wolgamood clarified that the Board had received a letter from Timothy Miller, President of the Concord Homeowner's Association which read as follows: *"This e-mail should be your approval from the Concord Homeowner's Association to operate a vending machine business out of your home and full building located at 24596 CR 26. Your approval is limited to no outside storage and up to six (6) deliveries a week from your suppliers. Signed, Timothy Miller, President"*. Mr. Montague then informed the Board that he had spoken to Mr. Miller earlier in the week regarding his concerns and was told to appear at today's hearing.

Mr. Montague feels the first cul-de-sac will become the turnaround and it will be very difficult for the semi to do that without going out onto the edge of the road which results in accelerated damage over a period of time. This neighborhood is not conducive for a semi to turn around and their Association has to pay for repairs. It is an executive neighborhood with homes

worth over \$500,000.00 and a truck coming in once a week will be a disturbance to the neighborhood.

The Montagues were asked to show on the aerial photo the location of their property and the property in question. Mrs. Montague clarified that they are the closest neighbor and they own half of the cul-de-sac (West side).

Mrs. Montague also informed the Board that the restrictive covenants of the Association forbid a manufacturing and/or commercial business in the area. No other homeowners have businesses at this time. She then submitted photos of the road for the Board to review *[attached to file as Remonstrator Exhibit #1]*. These photos show the road leading to the Millers home and the accessory building, the proposed driveway turnaround area and a view of the road from the Montagues home. Mr. Montague also added that there are small children in the area and there will be a time when these children will be riding bikes or walking dogs in the back due to little traffic.

Mr. Hesser asked how many properties are in this Homeowners Association? Mrs. Montague responded that there are five (5) in the back portion of the neighborhood and three others in the front that are actually on CR 26. There are twelve lots for the subdivision with the eight (8) being in the back.

Also present in opposition was Nick McCloughan, 24626 CR 26, Elkhart. He owns the house in the back and the property next to it. He pays \$800.00 a year to the Homeowner's Association to live in this private neighborhood. One of his main concerns is that of safety. The road is very narrow and when you come over the crest to come in to the subdivision, there are areas where you can hit someone head on as you cannot see the other side of the crest. The road is not big enough for two trucks to run side by side. There is also a crest going eastbound on CR 26 and it is difficult to pull out on the road and accelerate fast enough to avoid being rear-ended. He works for the Goshen Police Department and observes people driving 55-60 mph on this road. If a slow moving vehicle such as a semi pulls out, it could be a fatal situation. He then referenced neighbors, Al and Amy Reinsenhauer who could not be at the hearing today and they have invested over \$900,000.00 in their house and plan to move south in a few years. He questioned who would buy their property if semis were coming in and out all the time?

Mr. McCloughan just recently built a barn and he had two semis make deliveries. The semis made ruts in his and the Reinsenhauer's lawn and he had to pay for repairs for both.

Nancy Hayes, 24608 CR 26, Elkhart, added that if the Shanks would sell, she is concerned that there would be an opportunity for a car repair or another type of business to come into the area.

James Miller, 24596 CR 26, Elkhart, is the current homeowner of the property. He understands everyone's concerns with the children and contours of the roads, but he indicated it may be possible to have deliveries made from smaller trucks such as 53 footers. He also said that there might be enough room for the semis to turn around on this property itself.

In rebuttal, Mr. Shank said he understands all of the neighbors' concerns. He indicated that he could ask the company he does business with to bring a smaller truck so it doesn't have to be a semi. He said he will only make this development and property better than what it is. His current residence located at 23900 Myra Court is very well maintained and he welcomes anyone to view it. He offers to pick up the goods at another location and assures everyone that his operation is extremely clean.

Mrs. Shank said they can meet the semi driver in another location and pick up their load as she too understands the neighbors' concerns. Mr. Shank said his current business location is

2423 Lowell Street and he rents from Hoosier Crane and also welcomes anyone to visit the location and check his background if they would like.

Mrs. Wolgamood asked if the Shanks were aware of the restrictive covenants and they were. They can only tell the Board what they plan to do if they purchase the property and that would be to improve it and make it better.

When Mrs. Wolgamood asked them to address the larger vehicles turning in from CR 26, Mr. Shank said they can deal with that as a smaller box truck can turn on a dime.

Mr. Homan asked who maintains the private road and the Petitioners said that is in the covenants and they would contribute to that. If he damages something, Mr. Shank said he would replace it.

Mr. Montague said he had not seen a balance sheet on the Association but the dues are \$400.00. He is concerned that the funds will not be there to pave or repair the road in the future. There is still a safety issue with the smaller box trucks. The lane was made for cars and the increased weight of the trucks over time will also damage the road.

The public hearing was closed at this time.

Mr. Hesser is concerned whether this fits in the spirit of a home workshop/business. Although the Board cannot supersede the covenants, he said they can consider them and Attorney Kolbus agreed that he was correct. Mr. Hesser has no doubt that they will operate cleanly and with little disruption, but he has a hard time approving this request with all of these concerns.

The staff was asked what the building is currently being used for and Mrs. Prough referred to the current owners. Mr. Miller informed the Board that they were first builders on the road and he has operated a lawn care business out of this building for five years. Mr. Miller pointed out on the aerial the two three-acre parcels that he bought together. After he bought these properties, the private road and the cul-de-sac were put in. He went on to tell the Board that the three parcels in the back were commercial authorized properties under the old covenants and Tim Miller had given him permission to operate this business at that time.

Mr. Homan believes that there is potential for a civil suit over the covenants and he is concerned that this will cause substantial permanent injury to the neighboring property owners since they own half the road. He also has concerns about any trucks using this road, regardless of their size.

Mr. Hesser has always thought that this intersection could be dangerous but he also tempers that against this being the first property.

Mrs. Wolgamood is having difficulties based on what the neighboring property owners have to say but she says that there is one current business there and all of the neighboring property owners are aware of this. However, Mr. Hesser feels that the objections carry more weight here.

The Board examined said request, and after due consideration and deliberation, a motion was made (*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 vending business (Specifications F - #45) be approved in accordance with the site plan submitted and as represented by the Petitioners with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. No signs.
3. No semi deliveries.

4. Days and hours of operation to be Monday through Friday, 8:30 a.m. to 5:00 p.m.
5. No more than two (2) employees who live outside of the residence on site.
6. No outside storage of merchandise or equipment related to the business.
7. All trailer and truck parking for the business to be inside the building.
8. Approved for a period of two (2) years with renewal before the Board of Zoning Appeals at that time.

The motion died for the lack of a second.

Mr. Homan then moved to deny this request based on the criteria that the request will cause substantial permanent injury to the appropriate use of neighboring property and the motion was seconded by Mr. Miller. A roll call vote was taken and the motion carried with Mrs. Wolgamood voting in opposition.

12. The application of *Jonathan W. & Elsie Miller* for a Special Use for a saw mill in an A-1 district (Specifications F - #37) on property located on the North side of CR 10, 1,900 ft. East of CR 43, common address of 10135 CR 10 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #10135CR 10-110725-1*. She reported that she received an e-mail yesterday from the County Highway Dept. indicating the Petitioner is in process of securing a commercial curb cut permit for the sawmill, which is in the file for review.

There were ten (10) neighboring property owners notified of this request.

Present on behalf of this request was Jonathan Miller, 10135 CR 10, Middlebury. Referring to the aerial photo, he points out that the back half of the property has a lot of woods and he has problems with trees blowing over. He set-up the saw mill on the east side of the property and he said the creek along it makes a good buffer. He uses a hill to roll the logs onto the saw mill and a close neighbor buys the pallets. He uses a team and wagon to stack the runners and then uses the horses to take these to a neighbor. He has also sold some lumber from his own trees. He and the neighbors use the sawdust and he does not have to truck the logs. He can cut his own logs so he doesn't have to pay for lumber. He also does some farming so this gives him a way to farm the woodlands.

When Mr. Hesser asked the Petitioner to address the staff's conditions of days and hours of operation and a revised site plan, Mr. Miller said he has not specified days and hours because he is currently putting up hay. However, he said it should be no earlier than 7 a.m. and no later than 6 p.m. The hours may vary as it is just he and son operating the business.

Mr. Miller pointed out that the logs are stacked behind of the proposed building. Mr. Homan clarified that the logs will be to the west side of the building.

Mrs. Wolgamood asked if the proposed storage building is entirely enclosed or if it is a lean-to? The Petitioner said he intends to enclose all sides with a curtain, but not at this time.

Mrs. Wolgamood questioned the use of the area to the east and Mr. Miller said he uses it for stacking of scrap and some firewood. He indicated that he uses the scrap to cook maple syrup for personal use.

Mr. Homan asked if the actual sawing operation is inside the building and the Petitioner said yes. He clarified that it is a portable saw.

Mrs. Wolgamood asked what he will do when all of the trees are down. He is also buying logs with his brother-in-law and has the logs hauled to the site. He has been selective

logging his woods for approximately eight years. He loves the woodland and wants to take care of it so he handles everything himself.

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/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a saw mill in an A-1 district (Specifications F - #37) be approved by the Board (as amended by the Board) with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site and son.
2. A revised site plan to be submitted to the staff showing the location of the outside storage area for logs and processed materials.
3. Approved as represented in the Petitioner's application with days and hours of operation to include Monday through Friday from 7:00 a.m. to 6:00 p.m.
4. No manufacturing or assembly of pallets.
5. No semi truck deliveries.

The motion was carried with a unanimous roll call vote.

13. The application of ***Peter J. O'Neil (buyer) and Judy Pruski (seller)*** for a Special Use for an agricultural use (keeping of horses, cows, pigs, sheep, goats, chicken and turkeys) in an R-1 district (Specifications F - #1) on property located on the East side of CR 13, 2,500 ft. South of CR 18, common address of 58016 CR 13 in Concord Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #58016CR 13-110722-1*. She submitted three letters in opposition from Burl and Rhoda Troyer, Alonzo and Carnetis Jackson, and Vlado Vranjes *[attached to file as Staff Exhibit # 2, 3, and 4]*. The Jacksons letter informs the Board that they are against this Petition. The other two remonstrator letters inform the Board that they are opposed to this Special Use being granted as their two properties are the most affected. They feel that if granted, they would have to tolerate loose animals and the noise and smells generated by these farm animals.

There were fifty-seven (57) neighboring property owners notified of this request.

Present on behalf of this request was Harrison Haynes, 23743 River Lane Blvd., Elkhart, who is a realtor and also a certified FHA appraiser. He pointed out to the Board where he has lived for 42 years, which was the 56th house to be built in Millers River started in 1966. In giving a brief history to the Board, Mr. Haynes said that the previous owner, Jim Holsinger, was a teacher at Penn High School in the woodworking shop. He had horses there and also boarded horses (approximately 15 to 20) in 1969 and Mr. Haynes would observe the owners coming to this property to ride these horses. Mr. Holsinger then sold the property to Cathy Eakens and her husband and they had horses, goats, sheep, and chickens on this property. Mr. Haynes was not aware of any complaints at that time. Cathy and her husband ran this property in the same fashion for about ten years and then divorced. That is when this property began to become overgrown and go to waste. Mr. Haynes submitted a picture of what the property looked like fifteen years ago *[attached to file as Petitioner Exhibit #1]*. Since his property is adjacent to this overgrown property, he has snakes and skunks crossing his property.

Mr. Haynes said the potential buyer of this property is an anesthesiologist and will not be farming this land. Mr. Haynes has a vested interest here and would like to see this request granted for three horses, three cows, three goats, and three sheep so that his family (grandchildren) will be able to intermingle with these animals when they are back for holiday visits. The buyer's intent is to have these animals for 4-H so Mr. Haynes said he knows they will be well cared for. As an appraiser, he said he would appraise the property at a lower value due to the condition it currently is in. If approved, he is sure the new owner will improve the property which will increase the value of the entire neighborhood.

Mr. Haynes said they are here today to make sure they are legal.

Also present was Peter O'Neil, 23633 Wilshire Blvd. East, Elkhart. He would like to purchase this property for a 4-H farm, educational and personal usage. He states that the letters that were sent out did not reflect it. He would be happy with five large farm animals and is willing to withdraw their request for three pigs if it is offensive. Examples might be two (2) sheep, two (2) cows and a horse; or one (1) calf, two (2) sheep and a horse. He intends to demolish the house and garage due to their condition and construct a brand new fence before he proceeds. The current owner does not live in the neighborhood and has no vested interest in the future of the property. The property was assessed by a logging company as it is covered with 100 year old oak trees and the value of timber is about \$5000.00. If you want to make money above the tax sale, you cut the trees which will affect the privacy of all of the surrounding neighbors. There is also some talk about subdividing the property which would also affect the neighbors. This would provide an educational environment for his and neighborhood children, if interested, without having to travel to be able to participate in the County Fair.

Mr. O'Neil then submitted numerous photos to the Board illustrating the current condition of the property *[attached to file as Petitioner Exhibit # 2]*. He informed the Board that the pictures do not do justice to the smell, and he plans to tear down the barn and clean up the area.

Mr. Homan asked if he plans to operate out of an existing building or a new structure? Mr. O'Neil pointed out the existing barn on the property and said he eventually plans on building a new structure and new fencing in order to contain animals.

Mr. O'Neil submitted two (2) additional photos of the inside of the house for the Board to review *[attached to file as Petitioner Exhibit # 3]*.

Mrs. Wolgamood asked if he would be eliminating the small animals such as chickens and turkeys from his petition? Mr. O'Neil said he is flexible and would remove the chickens, but at this time, he is not sure what interest his two year old son will have in animals and/or 4-H.

Harrison Haynes then pointed out to the Board the fact that the property owner directly across the street and three doors down from his property on the corner has had roosters and chickens for the last five (5) years. Mr. O'Neil added that if they did have chickens, they would order fifty, keep them for eight weeks until they are ready to be processed and not purchase any more for three (3) years.

Dave Shenk of 23669 Wilshire Blvd. East, Elkhart, said he originally came to protest but has changed his mind. If the pigs and chickens can be removed, he feels that Petitioner cleaning up this property would be a wonderful addition to the neighborhood.

Also present was Brian Crabb of 23616 Wilshire Blvd, Elkhart, who lives adjacent to the back of the subject property. He has lived there 22 years and he said that there were three (3) horses in the beginning. There was no odor until Mrs. Eakens moved out and her children moved in. The odor came from the home and there was no smell from the horses. He's been

cleaning up twenty to thirty yards into her property (the wooded area) as she had given him permission, but to no avail as the current owners continue to dump trash there. The prospective buyer owns two (2) lots on Wilshire Blvd. and they are immaculate. Mr. Crabb has no doubt that Petitioner will improve the condition of the subject property and this will increase the value of everyone's property.

He says this is a small subdivision of 16 homes and Mr. O'Neil has indicated that the children of the neighborhood will be welcome on the property and participate in 4-H as it is a major part of our economy. Land could be subdivided, but it is landlocked and there is no other use than to be vacant.

Jerry Deturk, 294 E 350 N., Warsaw, was present on behalf of his sister, Judy Pruski. She purchased the property in the condition it is and they too would like to get it cleaned up. His sister is currently involved in livestock/animals in Texas where they close school to allow children to participate in 4-H type programs. He reminded the Board that the Elkhart County Fair is the top fair in the State of Indiana and this could enhance kids' opportunity to show livestock and be involved with the fair on a yearly basis.

First to speak in opposition to this request was Elaine Nand of 23582 River Lane in Elkhart, and this is the street which is adjacent to the CR 13 property. She's lived in this subdivision for 41 years and many of her neighbors are concerned about the impact this rezoning will have on their well being, health, and property values. This property is surrounded by the Miller's River Manor neighborhood on the south and east, River Shores neighborhood to the north where Peter O'Neil lives, and a large residential area to the west. This property needs to remain zoned as residential to make the surrounding area livable for hundreds of residents who make their homes there. She appreciates Peter O'Neil's interest in 4-H and his children who will someday experience that culture. She was raised on a farm by parents who were school teachers and they saw the value of their children having the responsibility of caring for animals. She feels that Mr. O'Neil has good intentions and values that are similar to those of her parents.

Mrs. Nand goes on to state that Mr. O'Neil plans to have any combination of the following animals living on the CR 13 property at any time. This has been revised since she received the first notice which listed three horses, three cows, three goats, and three pigs that will remain in the covenant if stated that way today.

If approved, Mrs. Nand is concerned that future owners may want to change that covenant or they may want to keep that in the statement so we are open to many possibilities in terms of number of animals that will reside on this property. To continue, 50 chickens, three sheep and a limited number of turkeys are mentioned in the Petition. While growing up, her family raised cows, horses, sheep, chicken and pigs. These animals create an enormous amount of animal waste, particularly the larger animals. This waste creates smells/odors which will make it difficult for hundreds of neighbors to live with. Even if managed, the odor will accumulate and it is difficult to clean this up in the pasture and can be done in the barn. She is also concerned about the health of herself and neighbors. Animal waste attracts flies, dogs and cats, and these creatures carry disease.

The last issue they are concerned about is safety. Cows and horses are known for pushing through fencing and this is a potential hazard. Another concern is when anyone decides to sell their house, will a potential buyer see the disadvantages of living next to this smell from animal waste. With property values at an all time low, and numerous residents unable to sell their homes, she feels that it is extremely important that the Board of Zoning Appeals deny this

rezoning from residential to agricultural. The crowing of roosters at 4 a.m. is beautiful if living on a farm, but when they are next to your backyard, it is challenge to tolerate that every morning.

Mrs. Nand went on to say that she is also concerned about the number of animals that could be on the property at one time. If this owner sells the property, the next owner could have the choice of putting as many as twelve animals on the property, along with hundreds of chickens and turkeys and the neighbors would not have a legal right to do anything about it. She prefers that this area be cleaned up, sold into a residential area for one or more homes. She sees strong financial incentives for that and it would enhance the neighborhood, encourage people to come into the area, and start businesses and have families.

Next addressing the Board was Kim Yoder who resides at 57952 CR 13 in Elkhart and he and his wife have lived on the property to the north of the subject property for about 22 years. They have a 550 foot shared fence line to this property and he agrees with everything that Mrs. Nand previously stated. When they moved to their property, there were two horses on the subject property and there was no smell until the spring thaw. It was not a big issue and although Mr. Crabb had mentioned that there was no smell, he pointed out that he is 300 or 400 feet away from the two horses and would not be able to smell it like Mr. Yoder could.

Next to speak was Vlado Vranjes who resides at 23672 Wilshire Blvd. East, Elkhart, and he owns the adjoining property to the north. He was the most impacted property owner when animals were in the barn as his property line is about 100 feet from the barn. His patio is about 175 feet from the existing barn and the prior owner maintained goats and chickens which ended up in his yard at times, but he admitted some of that was due to the issue with the fence. He has had conversations about this with the O'Neil's and is good friends with them, but he must disagree with this Special Use being granted as this property is surrounded by residential properties and is inconsistent with the current R1 zoning. He is concerned about subsequent owners, and he feels that Mr. Haynes would be the least impacted since he lives on the corner and the barn is closer to Mr. Vranjes' property.

Next to speak was Marcia Schrock who resides at 23607 Allen Drive in Elkhart and her property is located behind the Nands' property. Her four (4) older children were in 4-H, but her fifth had no interest in 4-H and the O'Neil's son may not be interested either. When her children were younger, they lived in the country in an agricultural area and no matter what is used in the field, you can smell manure for miles and it attracts flies. She does not feel this residential area is appropriate for a small farmette. If the Petitioner wants a farmette, he should move to the country.

Betty McKimmey who lives at 23618 River Lane Blvd. in Elkhart, was next to address the Board. She has her property for sale and she agrees with all of Mrs. Nand's comments. She also feels that having this farmette in the neighborhood would affect the value of her home and her attempts to sell it.

Also present was Beverly Simmerman who resides at 23621 River Lane, Elkhart, who is also opposed to this request. She lives directly behind the existing home on the subject property and if a barn is erected back there, the smell would be terrible. She does not feel she would be able to sell her property if this was granted. She agrees that the area should remain residential.

The last remonstrator to speak was Leon Askew who appeared on behalf of his mother, Lola Askew, who resides at 23719 River Lane Blvd, Elkhart. He lives in the country where there are animals and he knows that cows bring a lot of flies. He has also heard when 4-H calves are taken from their moms, they cry all night long and it is a pitiful sound.

In rebuttal, Mr. O'Neil said they are not requesting the area to be rezoned to agriculture, but are instead asking for a Special Use for five (5) farm animals. He reiterated that they will install a new fence to alleviate the animals getting loose. The manure from the barn will be disposed of at his sister's farm in Middlebury. He is only asking for a limited number of animals and will give up the pigs and poultry. He admits there is some confusion on the actual numbers. It will not be a "for profit" operation. He then pointed out that waste from all of the dogs in the area attract flies as well.

He went on to say that liquid manure is spread in the field in confinement operations and his operation will be nothing like that. He continues to reassure everyone that he will clean up the property and maintain a small number of farm animals. He feels that supporting the children of the community is the best use for this particular property.

Mr. Haynes speaks again to tell everyone that he is a licensed appraiser and he does not feel there is any validity that this Special Use will affect the value of the homes in the area.

The public hearing was closed at this time.

Mr. Homan questioned when this property was changed to R-1? Mrs. Prough is not aware of the zoning history and guesses that it is the original zoning. Mrs. Wolgamood points out the entire area that is zoned R-1 and there is just a small portion of A-1 zoning across the river.

Mr. Hesser clarified for the audience that this request is not for rezoning, but to permit an agricultural use on the property. If it were rezoned agricultural, he said any agricultural use would be allowed there. By the Board allowing an agricultural use, they can limit it to the specific uses that are approved. Mr. Hesser feels that this application is too broad and Mr. Miller and Mrs. Wolgamood both agree. They have concerns since the Petitioner does not live next to the property in question.

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 Special Use for an agricultural use (keeping of horses, cows, pigs, sheep, goats, chicken and turkeys) in an R-1 district (Specifications F - #1) be denied. A roll call vote was taken and the motion was carried with a unanimous vote.

14. The application of ***Michiana Korean Church Inc., An In Corp.*** for a amendment to an existing Special Use for a church and to amend the existing site plan (Specifications F - #48) on property located on the Southwest side of CR 10, 900 ft. Southeast of CR 1, common address of 29400 CR 10 in Cleveland 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 #29400CR 10-110721-1*.

There were sixteen (16) neighboring property owners notified of this request.

Charles Holdeman was present representing Michiana Korean Church on CR 10, in Elkhart. They are requesting approval for the existing sign and lighting. Mrs. Wolgamood asks how long the sign has been there and Mr. Holdeman responded at least ten years. They want to put two spotlights on the sign so people can see the sign at night.

The staff indicated the sign is at proper setbacks and Mrs. Prough informed the Board that she measured the distance of the pole and it is not in the county right-of-way.

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 amendment to an existing Special Use for a church and to amend the existing site plan (Specifications F - #48) be approved 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 unanimously carried.

15. The application of **Mark A. & Sueanna Stoltzfus** for a Special Use for a privately owned recreational building/facility (Specifications F - #20) on property located on the North side of CR 14, 3,300 ft. East of SR 13 (Main Street), 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 #CR 14-110712-1*.

There were twelve (12) neighboring property owners notified of this request.

Mark Stoltzfus, 12165 CR 20, Middlebury, was present on behalf of this request. He currently has a pond on this 43.68 acre parcel and he would like to construct a 26 x 36 ft. pavilion for family gatherings. He clarified that this is for private use and there will be no commercial rental.

He used the large aerial map to point out his 100 foot access that goes back to the parcel on this application. He shows where the M-2 zoning is found on two sides of his property and Meijer property abuts his property also. He would like to put a pavilion next to the pond and he pointed out that location. Mr. Stoltzfus tells the Board that it is approximately 1800 feet from CR 14 into the north to the start of the building and 700+ feet from the west to the start of the building. There is agricultural in front of the property and the land is rolling so he does not feel that this will be a hindrance to neighbors.

Mrs. Wolgamood asked if the property configuration was strange and also asked if the Meijer property abutted his property and he answered yes to both.

Mrs. Wolgamood pointed out that he had indicated they would have company picnics. Mr. Stoltzfus explained that he and his wife own Crystal Valley Hardwoods and he would like to have a summer outing once a year for their employees. He confirmed that he would not open up the use of this building to his employees. His company property is located about 4 ½ miles from this property.

Present in support of this request was John Bontrager, 4525 S. 1125 W., Millersburg, and he owns the adjacent property to the south. He has no problem with the location of the proposed building as he feels he will not even be able to see it from his property. He helped the Petitioner plant trees around the perimeter of the property and he feels this would be a good use for the Petitioner's family.

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 Special Use for a privately owned

recreational building/facility (Specifications F - #20) be approved with the following conditions imposed:

1. Approved for the owner of the property.
2. Approved 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.

16. The application of **David A. Stewart (landowner) and Danielle Stewart/Pro Choice Powersports (business operator)** for a Special Use for a home workshop/business for motorcycle, ATV, and marine service, and sales of parts, accessories, and clothing (Specifications F - #45), Developmental Variance for one wall sign 4 ft. x 12 ft. and one free standing sign 3 ft. x 2 ft. 8 in. (Definition home workshop maximum one sign with 4 sq. ft.), Special Use for a private off road track (Specifications F - #59), and Developmental Variance for said track to be within 1,000 ft. from any residential use (Specifications F - #59) on property located on the South side of CR 4, 1,150 ft. East of CR 15, common address of 22274 CR 4 in Osolo Township, zoned GPUD-E-3, 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 #22274CR 4-110707-1*.

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

Present to speak was Greg Stewart, 22274 CR 4 East in Elkhart. They decided not to open the business so he requested to withdraw the Special Use for a Home Workshop/Business and the Developmental Variance for the signs.

He has had this track since 2004 and would like to continue to have the track for his son to practice racing dirtbike. He uses a 300 gallon trailer/tank to keep the track watered and well maintained so there is no dust created. He said they have never had any complaints.

Mr. Stewart indicated that days and hours of operation would be Monday through Friday, noon to 6:00 p.m. They would most likely only ride on it one day per week and the rest is physical training.

Mrs. Wolgamood reminds the Board members that they have not accepted the withdrawal of the other two requests and they need to address the sign issue.

Mrs. Prough asked if the business is being operated on the property now and the Petitioner said no. The proper paperwork has been filed with the IRS and State, but they have not proceeded any farther with the business. He and his wife have decided that they would not operate the business and he plans to remove the sign tomorrow.

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 accept the withdrawal of the request for a Special Use for a home workshop/business for motorcycle, ATV, and marine service, and sales of parts, accessories, and clothing (Specifications F-#45), and the request for a Developmental Variance for one wall sign 4 ft. x 12 ft. and one free standing sign 3 ft. x 2 ft. 8 in. (Definition home workshop maximum one sign with 4 sq. ft.). A roll call vote was taken and the motion carried unanimously.

Mrs. Wolgamood suggests that the Staff would probably like a specific directive as the sign the Petitioner has there portrays that a business is operating on site. Attorney Kolbus says that the Board can give direction to the Staff as they are the enforcement authority to make sure that the business and sign have been removed in thirty days. You can make it a condition of the other approval because it is part of the overall land use. The Staff had originally recommended six months to remove the business and Petitioner has offered thirty (30) days for the sign. Mrs. Prough clarified that he just put the sign up and never proceeded with the business from there.

A motion was then 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, the request for a Special Use for a private off road track (Specifications F - #59) and the request for a Developmental Variance for said track to be within 1000 ft. from any residential use be approved with the following conditions imposed:

1. Approved for the owner/occupants of the residence on site.
2. The track to be maintained dust-free.
3. Days and hours for riding to be Monday through Friday from 12:00 p.m. to 6:00 p.m.
4. The existing sign must be removed within sixty (60) days.
5. Approved in accordance with the site plan submitted and as represented in the Petitioners' application.

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

17. The application of *Yoder Holding Company, LLC* for renewal of a Use Variance for a woodworking shop and an amendment to the site plan on property located on the East side of CR 100, 650 ft. South of CR 52, common address of 71596 CR 100 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 #71596CR 100-110725-2*. She then amended the Staff Analysis to indicate there are 14 conditions, rather than 13.

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

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the Petitioner on behalf of this request. This is for renewal of a Use Variance originally granted in 1998. The Petitioner is requesting the same conditions as the last time it was renewed with the exception of #14 which the Staff has added. The Petitioner has also revised the hours of operation to 5:30 a.m. to 4:00 p.m., which they feel is insignificant. The Staff had no objection to that change.

Mr. Sloat confirmed that they now have three (3) employees which is down from the 15 that they originally had. There have been no complaints in the 13 years this business has been in operation. It was originally converted from an unused chicken building into a woodworking business. They now make custom furniture such as headboards for beds, for contractors, and homeowners and dealers rather than RV component parts. The reason they have changed their parking is that the employees live within walking or bicycling distance from the property. The vehicle or two that you see there on a day-to-day basis is that of their customers. There is room for six parking spaces but they don't need them.

The site plan shows this was originally on 3.36 acres, but that area has been reduced for the Use Variance. The only sign they have is on the front of the building and is consistent with the comprehensive plan. He sees of no reason to not renew this Use Variance.

For clarification purposes, Mr. Homan asked if the two changes to the site plan were a reduction in the acreage and the decrease in parking spots. Attorney Sloat's answer was that is correct. Mrs. Wolgamood also noted that the Petitioner is asking for an indefinite period of time versus the 10 years granted before.

Mrs. Prough added that there is one (1) more minor change and the Petitioner is asking for the storage of cargo trailers. Attorney Sloat clarified that to be one (1) box trailer and one (1) flatbed trailer.

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 Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for renewal of a Use Variance for a woodworking shop and an amendment to the site plan be approved as represented in the Petitioner's application with the following conditions imposed:

1. The woodworking and cabinet shop business shall be permitted to be conducted as a Use Variance on the premises. In the event the real estate is sold outside the family, the Use Variance shall automatically be of no further force or affect.
2. The woodworking and cabinet shop business shall be conducted wholly within the buildings identified on the site plan as the "woodworking shop". Work in process and finished goods inventories used in connection with said business shall be stored inside said buildings.
3. Burning scrap lumber shall not be permitted on the premise except in incinerators or furnaces.
4. Operation of the business shall be limited to Monday through Saturday, inclusive. Closed all day Sunday. Nothing herein contained shall be construed as requiring said business to remain open during any or all of those said days.
5. There shall be no exterior loud speakers used in connection with the operation of said business. Rural night-guard dusk-to-dawn exterior lighting shall be the only exterior lighting permitted in connection with said business. Said exterior lighting, if any, shall be directed to the interior portion of the real estate.
6. Permit granted for an indefinite period.
7. There shall be no outside storage other than cargo trailers used to deliver products.
8. No signs other than the existing 4 ft. x 12 ft. non-illuminated sign on the building.
9. No additional buildings to be constructed without Board of Zoning Appeals approval.
10. Hours of operation shall be 5:30 a.m. to 4:00 p.m.
11. Adequate parking for three (3) vehicles.
12. No more than fifteen (15) full-time employees.
13. No further expansion of the business without Board of Zoning Appeals approval.
14. A revised site plan to be submitted to the staff within thirty (30) days. Site plan to show the location of the on-site retention area as well as the septic system.

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

18. The application of **John & Tammy Moore** for a Special Use for warehousing and storing of trucks, trailers and machinery for a snow plowing, property maintenance and light excavating service business in an A-1 district (Specifications F - #44) on property located on the East side of Ash Road, 530 ft. North of CR 28, common address of 60904 Ash Road in Baugo Township, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #60904AshRd-110621-1*. She submitted materials that she received from Petitioners' representative, Mr. Blake Doriot, which include copies of photos and two (2) site plans that include self imposed conditions [attached to file as *Staff Exhibit #1*]. Mr. Doriot will go over these with Board and she also told the remonstrators that she had a copy for them.

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

Blake Doriot of B. Doriot & Associates, P. O. Box 465, New Paris is representing John Moore. He noted that John Moore and Mark Dawson are present, along with the neighbor to east, Jack Grove. Mr. Moore has been in business for 22 years and did not realize that he needed a Special Use. He then submitted letters [attached to file as *Petitioner Exhibit #1*] in support of this request from Vera Berger, 60942 Ash Road, Martin and Sue Raab, 60901 Ash Road, Darla and Charles Crane, 60976 Ash Road, Adin Martin, 60556 Ash Road and Ken Powell 30709 CR 28. Mr. Doriot referred to the (8) photos previously submitted [see *Staff Exhibit #1*] of the site. These were taken last week, and yes, Mr. Moore has done some cleaning up. A wooden fence has been installed around Mr. Moore's property and down the east property line. Evergreen and deciduous trees were planted to provide screening quite some time ago. The site plan is showing where the trucks, trailers, and equipment will be parked and they also offer the following conditions: (1) Summer hours will be 7:00 a.m. to 7:00 p.m. (Mr. Moore said he could go 7:00 a.m. to 5:00 p.m. if he needs to) and winter hours will vary as most of the plow trucks go home with the people that he subcontracts to (2) One or two backup plows will be stored east of the building and (3) There will be no loading or unloading before 7:30 a.m. and by trucks, he means single axle flat rack or single axle one ton dump truck. If possible, the Petitioner will try to have the trucks loaded at the close of day. (4) The stockpiles will be no larger than two tri axle loads of material each and will be limited to two piles. He pointed out that they will remain south of the stockade fence.

The materials stockpiled was questioned by Mrs. Wolgamood and Mr. Doriot explained that it was gravel and limestone as Petitioner is a small excavator. She asked if the stockpile will go above the privacy fence and Mr. Doriot said no. He indicated it is an area of approximately 15 ft. x 15 ft. and the fencing will be 6.5 ft. high. They would only be seen from the empty field to the north. Last year, he had a total of four (4) loads delivered to the site.

At this time, a second page of photos of this property was submitted to the Board by the Staff [attached to file as *Staff Exhibit #2*]. Mr. Doriot pointed out the wood pile which is used to heat the shop and he said anything that is not suitable to do that is hauled off. He may cut wood outside of work hours such as on a Sunday afternoon. This site is the Petitioner's home and Mr. Doriot points out to the Board the view from the back of the house with the small swimming pool, the playground, and the pond. He then pointed out to the Board where the trailers will be parked in Picture # 8 and Picture #7.

Petitioner has been in business for over 20 years, and although the property has been cluttered at times, this site plan will allow for that to be regulated.

John Moore, 60904 Ash Rd., then addressed the Board saying it is hard to stay in business as a small business owner. He indicated that he would not be able to continue to operate if he had to establish another location and could not operate out of his house. He admits that there was clutter behind the barn recently but he has always tried to be a good neighbor and solve problems. He has been to the neighbors' homes more than once with his equipment to help out.

Mr. Homan noted a lot of equipment on the site and he asked if that is what it looks like all year long. Mr. Moore responded that he brings in subcontract drivers who take trucks home at night. They usually run about eight (8) trucks. There is very rarely ever anyone working in the shop at night.

Mr. Hesser questioned the number of motor vehicles on the property today? His answer was three small one-ton trucks and three trailers. Mr. Hesser counted 30 vehicles in the aerial that he was looking at. Mr. Doriot explained that these were plow trucks that had been removed from the site. The vehicles in Picture #6 *[attached to file as Staff Exhibit #2]* belong to family and friends.

Mr. Moore explained that he would occasionally buy a truck to fix up and sell, but he said everything is now gone and he has no problem keeping the property clean.

Mr. Doriot said this is the first complaint in 22 years and Mrs. Prough verified this is the first complaint that Code Enforcement has a record of.

The acreage was clarified to be 3.85 acres.

Present in support of this request was Jack Grove, 30847 CR 28, Elkhart, which adjoins the subject property to the east. This property is owned by his sister and brother-in-law and he is currently the tenant and caretaker. He said that the Petitioner has been a good neighbor to his family and his sister had prepared a letter but he did not have it with him at this time. As the tenant, he has been happy with the petitioner as a neighbor. The property is now cleaned up and things are going well.

George Bake, 60872 Ash Road, Osceola, owns the "L-shaped" property adjoining the Petitioner's property at the northwest corner. He said he registered a complaint due to all of the noise from the shop and gravel driveway. He indicated that the Petitioner is always working in his shop and driving vehicles in and out 24/7. He mentioned that employees were throwing things in their yard and his wife observed one employee urinating in their back yard. Mr. Bake did acknowledge that Mr. Moore had plowed snow once or twice for him as he had previously testified to. He also testified that the Petitioner's snowplows were lined up by the fence and they do not have mufflers on them and the noise is atrocious.

Mr. Moore also informed the Board that the Raabs, who wrote a letter in support of the request, do not live at this address, but live in St. Joseph County. Jack Grove who just spoke in support of this request does not live close to the Petitioner's property and Vera Berger who wrote a letter in support of the request would not hear the noise coming from the property either as there is a house blocking it.

Mr. Homan asked how many people work on this site and Mr. Bake could not say. He said there are different vehicles in and out all of the time. He does not feel that the traffic is increased at any particular time of the year.

Mr. Bake said during the winter, their clothes often smell like the smoke from the wood burning that the Moore's use for heating purposes.

Also present was Karen Bake, 60872 Ash Rd., Osceola. The Moore's bought this property next to them about twenty-two years ago and put the business directly behind their

house. The gravel drive is along the side where their bedroom windows are located. She is opposed to the business as he is inconsiderate of them as residential neighbors and also has verbally abused her husband. Mr. Moore installed a privacy fence along the gravel road after they first moved there, but the other privacy fence was installed after Code Enforcement was called and it does not stop the noise of trucks pulling in with trailers, which they can hear along with the dumping of sand and gravel. She said debris from other projects is brought on to the property such as limbs, building materials and vehicle tires. When this pile reaches a certain height, she said he then sets it on fire. The hours do vary and at times the trucks were so loud that the windows and pictures on the wall would shake.

She is confused about where the vehicles will be stored and at one time she and her husband counted 20 vehicles outside, 14 were along the fence with snowplows. She was told by Mrs. Moore that they had so many vehicles on the premises because they were doing scrapping. The Bakes live in a bi-level house and when the trees that they have planted lose their leaves this fall, she will be able to see the debris above the privacy fence on the Moore's property. She feels that his housekeeping skills have improved recently, but she said the Petitioner has no consideration of the residences in the neighborhood. Mr. Moore is out there at all hours of the night to get the trucks ready to plow. She has heard the sawing of metal at 10:30 at night and it is very difficult to sleep. According to Mrs. Bake, the Mr. & Mrs. Moore were out of town one time and they parked a truck near the Bakes bedroom window. The radio played all night long, and she said that the petitioners referred to this as the "haunted truck". If there are problems with the truck, Mrs. Bake feels that they should have parked it elsewhere so they did not have to listen to it.

They also found a foreign substance underneath one of their trees and after checking with Mrs. Moore, she indicated it was melted rubber with a stirring stick. Mrs. Bake said the grass has not grown back and she is concerned that other chemicals have been disposed of on their property at other times. She went on to clarify that her husband was mistaken about the employee urinating on their property. He was on the Moore's property and as she took leaves back to a mulch pile, she observed the employee along side of the truck with a door open.

They called Code Enforcement as they have tolerated this business for over 20 years because they thought they had to. Tammy Moore has left message(s) on their answering machine regarding the Bakes "stirring up trouble". She thanks the Board for giving her the opportunity to tell them why she is opposed to this business.

In response, Mr. Doriot said he's not sure what happened on this property in the past as he only recently became involved with the Petitioner. The Petitioner would like his business to remain on the property, and in addition to the other conditions he offered, he said they would come back in six months for a review to see how the Moores are maintaining the property. They will not park vehicles along the Bakes property, and if there is a violation, Code Enforcement can be called. If the Petitioner is found in violation, the Special Use Permit will be revoked. Any plows parked on the property in the summer will be back behind the shop building. According to Mr. Doriot, Mr. Moore now knows that if he revs engines all night long, he may find himself out of business.

Mr. Homan asked how many of his trucks are operable. Mr. Moore said he has 10 to 12 trucks and the drivers have them all winter off site. The only time there would be 14 trucks there would be after winter is over and the drivers bring them back. Mr. Homan questioned whether there were 10, 12, or 14 trucks stored on the premises? His answer was that he currently has 10.

He usually brings a couple of trucks to this site to do maintenance on them so if the Bakes counted 14, it was only due to drivers bringing them back for service.

Mr. Homan asked Mr. Moore to address the burning issues and the scrapping of old vehicles. He said they have scrapped an old truck for parts, but it was then hauled to the junkyard. The only thing he burns on site is brush or wood and it does not happen that often.

Mr. Moore said his truck is parked inside the barn, and if he leaves in the middle of the night, he tries to idle it outside along the driveway.

Mr. Homan asked about the request for operating hours of 7:00 a.m. to 7:00 p.m. during the summer and as needed in weather conditions in the winter. It is his understanding that he uses contract labor (drivers and mechanics) so he presumes the Petitioner's request is for the contract labor to be restricted to those times also. Mr. Doriot added that they will operate from 7:00 a.m. to 5:00 p.m. if they need to. Mr. Homan is concerned that there would be a mechanic working on vehicles at night, but Mr. Moore said they sleep during the day because they plow during the night and a mechanic would be working during the day. Mr. Homan felt that all work should be done by 5:00 p.m. and Mr. Moore had no objection to that.

Mrs. Wolgamood asked about the chemicals that were mentioned in the testimony of Mrs. Bake. Mr. Moore addressed the issue by explaining that it was dried adhesive wrapped around a stick and he thinks that the wind blew it onto the Bakes property as he had carpenters working on his house at that time. He went on to say that he had containers for his used motor oil, which is eventually taken to recycling. Mrs. Wolgamood then asked if there was any dumping of gasoline, oil, or anything else. Mr. Moore denied any dumping on his property.

Mr. Doriot noted that the Petitioner's fuel barrel is shown in Picture #8 (Staff Exhibit #2).

With regard to the excavating business, Mr. Homan asked if the materials stored on site were for landscaping or driveway repair. Mr. Moore said he basically stores landscaping material on the property. He sometimes loads gravel in the evening and delivers it and is home by dark. He is willing to adhere to any conditions the Board imposes.

Mr. Doriot respectfully asked the Board to give Mr. Moore at least a six month chance to prove that he can be a good neighbor.

The public hearing was closed at this time.

Mr. Hesser asked Mr. Moore if he is the only snow plow going in and out and Mr. Moore verified that he is. Mr. Homan asked for clarification on the number of trucks on site. His employees keep their trucks at their properties, and the only times they come to the property is to switch trucks if their truck is broke down as he keeps two spare trucks at his property. However, he indicated that does not happen often. Mr. Homan asked if Mr. Moore is representing that if someone took a plow home in the winter and it broke down, any time day or night, they would come back to his business and pick up a truck that happened to be there and there would no operations beyond that. He then asked Mr. Moore if a broken down plow would be brought back to his business to be repaired at night and Mr. Moore said the mechanic didn't come in to work on the truck until the morning. There would normally be no one on the premises during the day except the mechanic and the trucks would only be there if it is raining or if there was no work.

Mr. Homan pointed out that the worst impact of this business would be during the snowplowing season so approving for only six (6) months would not be an adequate period of time. He is concerned with the contract labor issue and how that affects the use of the property.

Mr. Miller says that communication has definitely broken down here. They have a situation where a business has been in operation for more than 20 years making every effort to

clean up and he is torn down the middle. Mr. Homan feels that there is currently a landscaping and snowplowing business here and it is worthy of consideration. He is hesitant to pull the plug on the business. He likes the site plan and his feelings are to approve it with hours of operation being 7:00 a.m. to 5:00 p.m. year round. If a snowplow breaks down at night, they return at 7:00 a.m. He suggested entertaining the idea for one (1) year, with review by the Board at that time.

Mrs. Wolgamood suggested there be no parking of any vehicles (family or employees) along the south property line of George Bake's property. She also added, absolutely no parking of any vehicles along the north side of the gravel driveway to the fence. She also suggested that there be no stockpiling or burning of tires.

Mr. Hesser clarified that if a truck pulls out in the evening and it is Mr. Moore, he would not be in violation of the hours of operation; but if a truck breaks down and someone brings the truck back outside of those hours, that would be a violation. He added that there would be no disposal of chemicals and Mr. Doriot verified that they would follow all EPA guidelines.

Mrs. Wolgamood visited the site last month and the two properties that concerned her the most were the Bakes and the property to the east as these properties could visually see the property in question. She added that because of the privacy fence to the north, you cannot see anything back there on the property. She found it rather amusing that there is a sign posted on this road by the Highway Dept. that says "no trucks".

In the future, Mr. Hesser feels that Mr. Moore needs to address questions with operations. There are two problems; one is the site itself and the second is operation of the business and control of employees and whoever happens to be working there. He said he would like to see all of the conditions they had discussed laid out on a list with the staff given a chance to comment on them.

Mrs. Wolgamood asked if Mr. Hesser is suggesting tabling this request to allow the staff to listen to the Board comments, Petitioner and Representative comments and come up with list and present it back to the Board.

Mrs. Prough recommended that the Petitioner and Mr. Doriot be given time to submit a list of conditions for the staff to review. Items to be addressed would be hours of operation, number of vehicles, the plowing business and the burning. Mr. Homan said that whatever they review, it must be sensitive to the neighbors. The hours would limit the impact on neighbors. Mrs. Prough feels that Mr. Moore can work around the schedule established even if a truck breaks down at 3:00 a.m. She feels that he or one of the other nine drivers can complete the job and the truck can come in for repairs the following day.

Mr. Doriot asked for clarification that when the Petitioner sees snow falling at 1:00 a.m. that he would be permitted to leave his property in his pick-up or one ton truck to go plow and not have to wait until 7:00 a.m. the following morning to leave. Mr. Homan suggested that this be tabled for one month for legitimate complaints or questions such as this one.

When Mr. Hesser asks if this can be done by next month, Mrs. Prough said that the Staff needs it within one week in order to be in the packets for the September meeting. Mrs. Wolgamood suggested tabling it for two months, but Mr. Doriot felt that was too far away.

Mr. Homan would like to hear what the neighbor has to say and Mr. Bake questioned the wording of the Petition as it had indicated that the request was for a warehouse. He was concerned that it will now become a place for vehicles to be repaired.

The Board will make sure that the Bakes are notified of the September hearing date and time and Mr. Bake informed the Board that he and his wife have to take time off work every time

they appear to come to a meeting. Mr. Hesser informed remonstrator that the Board is trying to give them an opportunity to see what the staff analysis and recommendation is prior to the hearing and told the Bakes that they can submit their input in writing without having to come back. Mrs. Wolgamood said that it is her understanding that the Board was not asking Staff to do anything other than give them the list. They have already made recommendations but they can make comments if they desire.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) that this request for a Special Use for warehousing and storing of trucks, trailers and machinery for a snow plowing, property maintenance and light excavating service business in an A-1 district (Specifications F - #44) be tabled by the Board until the September 15, 2011 Board of Zoning Appeals meeting to allow the petitioner to present additional information pertaining to the restrictions/conditions of their request. A roll call vote was taken and the motion was carried unanimously.

19. The application of *R & Y Farms* for a Special Use for warehousing and storage of commercial trucks and trailers in an A district (Specifications F - #44) on property located on the West side of CR 31, 2,600 ft. South of CR 36, common address of 64475 CR 31 in Elkhart 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 #64475CR 31-110616-1*.

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

Present on behalf of this request was Richard Miller, 1710 Amberwood Drive, Goshen. He obtained a permit for his youngest daughter in 2010 so that she could open a salon next to this property. He sold his business four (4) years ago and tried to retire and it did not work. He bought three (3) houses right beside his shop that were in foreclosure which he remodeled and sold. He indicated there is another one in foreclosure. At this time, this lot was grown up and people were dumping trash there so he called the county and was told there was nothing they could do about it. He bought into a company out of Fort Wayne called Northern Indiana Trucking and they brought three trucks up to this property to be parked there when not in use as there is no safe place to park them in Elkhart County. This property is not suitable for a house, and he noted there are four (4) storage yards in the same area. The neighbors have no objection to him parking trucks there; although he knows there is one (1) neighbor who has complained.

After cleaning up the property, last year the assessment of the land went from \$5300.00 for the lot and the building was worth \$66,000.00. Today this same building and piece of property are assessed at \$153,000.00. He informed the Board that he owns quite a few companies and employs a lot of people in this county and he doesn't understand why he has to go through with this Special Use request. He has twenty-seven trucks working out there today and pays Elkhart County taxes on this. He then indicated he would like to rezone the property to commercial.

Mr. Hesser asked about the Special Use that was granted in September of 2010 and wonders if this is the existing building. Mrs. Wolgamood asked if he originally built the structure on this property and Mr. Miller replied yes. He explained that his father cared for handicap children and their original intent was to put in a horse arena. The train runs by this area about twenty-seven times per day as it is a busy track so that did not work. Then his youngest

daughter wanted to start a salon here and only works a couple days per week. He feels his request is the best use of this property because it is not a good place to construct a building. He is not operating a business out of the building, he only parks three of his trucks there and the remainder go back to Fort Wayne. The Petitioner refers to the Staff Analysis in which #3 mentions the vacant property south of the railroad property, zoned M-2 and would be better suited for this use. He confirms that he does own it and cannot do anything with it due to the flooding issues.

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

Another photo of a building that was recently approved and constructed in the area that is zoned agricultural was also submitted *[attached to file as Petitioner Exhibit #2]*.

Mr. Homan asks if he parks all of his trucks at this building and when the type of trucks was questioned, the Petitioner answered that all three (3) of them were dump trucks. His grandkids play ball in the building and there is currently a special use for the salon. One of his neighbors wants to park a school bus there and he does not want to give her permission unless he has permission to do so.

There were no remonstrators present.

Mrs. Wolgamood questioned the type of personal trailers that are kept there and he explained they are trailers used to store personal items such as lawnmowers etc.

The public hearing was closed at this time.

Mr. Homan says that property north of the tracks appears to be A-1 and is a peculiar piece of property and neighboring property owners were notified and no one appears in remonstrance. Mrs. Wolgamood says that when she looks at the photos all she sees is outside storage of RV's but there is the ordinance that allows for warehousing and storing of commercial trucks. There is not a residence on this site. If the Board okays for the storage of three vehicles and the son stores his boat and there also trailers on site, they will be in violation. Mr. Hesser asks what other things Mr. Miller would be looking to store at this location. Mr. Miller's response was a trailer, dump truck, and hopper bottoms that might be stored there. He wants to cover all bases and asks if he should consider re-zoning?

If approved, Mrs. Prough suggested it be for the storage of no more than a total of three commercial trucks or trailers at any one time. Mrs. Wolgamood says that Mr. Miller wants his grandkids to play there, his daughter to keep the salon, the neighbor to be able to park a schoolbus, and also be able to park truck and trailers there. The size of the property was verified to be 4.33 acres.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board finds that this request will be consistent with the spirit, purpose and intent of the Zoning Ordinance because it is an approved use approved by the Board with a Special Use; it will not cause substantial and permanent injury to the appropriate use of neighboring property; and it will serve the public convenience and welfare by allowing a place for these storage of these service vehicles adjacent to an already established storage area. Based on these findings, the Board approves this request for a Special Use for warehousing and storing of commercial trucks and trailer in an "A" district (Specifications F - #44) with the following conditions imposed:

1. No more than a combination of four (4) commercial or agricultural trucks and/or trailers to be on the property at any one time.

2. Approved for a period of three (3) years with renewal before the Board of Zoning Appeals.

A roll call vote was taken and the motion was carried with Mrs. Wolgamood voting in opposition.

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

21. There were no audience items.

22. The review of an Appeal (20063247) for **Andrew D. & Bridgette Stump** was present by Mrs. Prough at this time. She presented a Staff Report to the Board, which is attached for review as *Case #20063247I*.

Andrew & Bridgette Stump, 26358 CR 50, were present. When they appealed for a second residence in 2006 on a single zone property, he explained that they needed more space as they were sharing three bedrooms with five people. They take care of their grandfather who will be 98 on October 29th and they still want to allow him to stay in the residence until his passing.

Mr. Hesser asked if the five (5) year review was to confirm this plan and Mrs. Prough said it was a way for Staff to review if the residence is still occupied by the grandfather. The petitioners indicated that they still plan to remove the residence when it is no longer occupied by their grandfather.

A motion was made and seconded (Hesser/Wolgamood) that the Board renew this Appeal to allow for the construction of a second residence on a single zoning lot with the following conditions imposed:

1. Approved for a period of five (5) years with review by the Board of Zoning Appeals at the end of that time.
2. The existing residence to be demolished within ninety (90) days of the time it is no longer occupied by the Petitioner's grandfather.
3. The existing residence is not to be used as a rental in the future.

A roll call vote was taken with the motion carrying unanimously.

23. At this time, Mrs. Prough read and submitted a letter she received from Brett and Norine Troeger *[attached to file as Staff Exhibit #1]*, neighboring property owners to Timothy Michael, thanking the Board for denying his request for a transfer business on property located at 12046 CR 44 in Benton Township. According to Mr. Prough, Mr. Michael has relocated his business.

24. Discussion on ***Use Variance Requests for a second residence on a single zoning parcel*** followed at this time.

Mrs. Wolgamood began by commending the staff for all of the work they put into this. She especially wanted to thank Mark Kanney as she knows he and the rest of the staff put a lot of thought into this.

It is her understanding that the staff has come to a conclusion that the BZA may want to consider the unintended consequences of a loss of this exemption from the subdivision control ordinance as a tool and they want to leave this as status quo. She was hoping for something other than that; however, she understands why they have done that and said they pointed out a lot of good things in their document. When she originally brought this up, she said she was thinking

about the provision being proposed in the draft zoning ordinance for dawdy houses or what she prefers to call in-law suites, which are usually attached to the house. She had hoped for the possibility of a good definition of a dawdy house or in-law suites, and the possibility of a set of standards being attached to that, such as a minimum number of acres, the location of the second residence so it could be subdivided in the future, a minimum amount of square footage, or that it be required to be in an accessory structure like we have previously said yes to.

When she reviewed Article 1- Definitions in the zoning ordinance with regard to subordinate dwellings and a guest house, she found a definition for servants quarters, which reads as follows: *"If part of an accessory garage and solely for the occupancy of a servant or household employee of the occupants of the principal dwelling and the family of the servant or employees."* She feels it is strange that they can accommodate servants and their families if it is attached to the house, but they cannot accommodate in-laws. She feels this is antiquated. She then described a home in her subdivision that has what they call a mother-in-law suite. She said no mother-in-law lives there and she does not think that one has ever lived there. They have an outside entrance, a small kitchen area, bathroom facilities, living area, two (2) exits to the outside with a door attached to the house, but you see nothing from the outside.

Mrs. Wolgamood is not in conflict with what the staff is suggesting, but she is in conflict with what this Board struggles with. With the proposed ordinance, she said they at least had an out where they did not have to come before the Board.

Mr. Homan said the Board gets a lot of requests, in particular from the Amish community, who want to build a second residence on one (1) lot and he's heard the Board ask if they've considered adding on to their house. He does not consider two (2) residences in the same building the same as two (2) residences, which are two (2) separate houses. He thinks of it as a request to build another structure or place a mobile home on the property. In looking at the criteria of what is unique to the property, he said the answer is usually "because I want it", which is a roadblock for him.

If these were Special Uses, Mrs. Wolgamood feels there are ways they could say yes to something similar, but not with the Use Variance.

She wonders how other states and counties allow in-law suites and dawdy houses, but we don't. If the Board is comfortable with what the staff is recommending, she said they will just move forward with continuing with it as a Use Variance.

Mr. Miller looks at this differently with respect to the construction. When he thinks of an in-law suite, he thinks of the ability for the family taking care of the in-laws to have access directly into that specific piece of property. When he thinks of a duplex done correctly, he said there should be a fire wall, attached with a zero lot line. He said you cannot get from one side to another without knocking on a front or back door. When he thinks of a dawdy house, he considers that very similar to a duplex, but most likely it can be attached with a porch. He feels it would better if they could adopt a county ordinance to address it in the building code as opposed to trying to handle that in zoning. He views those two (2) types of residences as being completely different in how they are used and Mr. Hesser agreed.

Both Mr. Miller and Mrs. Wolgamood said they could easily have an in-law suite in their current homes. From a building standpoint, Mr. Miller said he thinks that is very common in the last ten years. He then explained that he has full access to that specific space in his house without going to the outside. If he builds a duplex, he would have to go to the outside to get to the other side.

Mrs. Prough agrees that a suite is totally different than a separate residential dwelling. She said a suite is permitted as you can have an addition to a residence for a bedroom, bath, living room and kitchen. Another option is to build a duplex or a subordinate dwelling, which is permitted in an "A" zone, or with a Special Use in an "R" zone. She then explained that in the proposed zoning ordinance, a second primary dwelling was going to be permitted in certain zones, but it still had to be a Special Use.

Mr. Miller pointed out that the phrase "dowdy house" is pretty much unique to the conservative community wherever you go in the United States. Mrs. Wolgamood pointed out that it is a separate residence on a single parcel, and her point was that it is permitted in a lot of places, but she questioned how it is permitted.

Mr. Hesser says that there a lot of ways it can be limited, but until they see it, he doesn't know you regulate a second residence. Even though you say it is just for this purpose, eight months or a year later it becomes a hardship because they have built a house they now want to sell to someone else. He said it is a uniqueness that the Board has allowed them to create, which makes no sense.

Mr. Kolbus commented that it is similar to the exemption in the subdivision ordinance with regard to the parent-to-child split. A lot of times it is used appropriately, but a lot of times it is used to circumvent the subdivision so he doesn't think that is the answer either.

Mrs. Wolgamood commented that the only way to look at this is to take it to a workshop or refer it to the Plan Commission. If the Board is not comfortable in doing that, then they will just continue to struggle with the Use Variance, which is okay. She feels that the Staff has given them really good reasons not to change how they handle this.

It was the consensus of the Board that requests for a second residence on a single zoning parcel continue to be Use Variances.

25. The final staff item was discussion on *raising fish in M-2 zoning districts*. Mrs. Wolgamood said she thinks the staff has concluded this would be a permitted use in either "M" zoning classification, but they want the Board to make that determination. She said she would accept as a formal request of the Staff that this Board says they are interpreting the existing County Zoning Ordinance that these uses would be permitted in either an M-1 or M-2 zoning classification.

Mr. Kolbus advised that it is the Zoning Administrator's interpretation and the Board is confirming that interpretation. He felt it would be appropriate for the Board to take some type of formal action. If the Board wants this to go as a Special Use in an "A" zone, he said it would have to be referred to the staff and Plan Commission to change the ordinance by adding that as a Special Use, otherwise it has to come in as a Use Variance.

Mr. Homan said a Special Use is fine, but he does not understand why you couldn't have an aquaculture in an "A" zone. Mrs. Wolgamood said the definition of agriculture does not specifically say "fish". If they determine that aquaculture is to be in an M-1 or M-2, she said that is a lot of truck traffic and a lot of water that almost all manufacturing zones accommodate, but not all agricultural zones would accommodate that.

Mr. Homan is if the information about ponds and production methods is anything to be applied to Elkhart County or if it is just general background information. Mrs. Wolgamood said it was general information for the Board and she thinks that is the information the staff used to come up with their conclusions.

Mrs. Prough explained that the staff had not considered allowing them in “A” zones originally, but Tom Lantz thought the Board should consider allowing them in “A” zones by Special Use so that’s why they offered that in this position paper.

It was Mrs. Wolgamood suggestion that the Board ask the Staff to take this to the Plan Commission.

She then moved that the Board of Zoning Appeals confirm the interpretation of the Zoning Administrator that fish farming be a permitted use in manufacturing districts only and Mr. Miller seconded the motion. A roll call vote was taken, and the motion was carried with Mr. Hesser voting in opposition.

If they want to pursue a Special Use in the “A” zone, Mr. Kolbus advised that they need another motion to direct the staff to pursue that with the Plan Commission.

Mrs. Wolgamood moved that the Board of Zoning Appeals requests the Staff pursue amending the Zoning Ordinance with the Plan Commission to allow for fish farming or aquaculture in an A-1 zone as a Special Use. Mr. Homan seconded the motion, and the motion carried with a unanimous roll call vote.

26. The meeting was adjourned at 1:41 p.m.

Respectfully submitted.

Laura Beltz, Transcriber

Kathleen L. Wilson, Recording Secretary

Randy Hesser, Chairperson

Robert Homan, Secretary