

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 15TH DAY OF DECEMBER 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: Bob Homan, Tony Campanello, Doug Miller, 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 15<sup>th</sup> day of September 2011 be approved as read. The motion was carried unanimously.

A motion was then made and seconded (*Campanello/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17<sup>th</sup> day of November 2011 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Wolgamood/Campanello*) that the legal advertisements, having been published on the 3<sup>rd</sup> day of December 2011 in the Goshen News and on the 4<sup>th</sup> day of December 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 (*Homan/Wolgamood*) 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. The application of **Clarence & Anna Miller (landowners) and Jeffery A. & Meribeth Miller (landowners)** for a Developmental Variance to allow for an existing residence and the construction of a detached accessory building on property served by an access easement, for a 5 ft. Developmental Variance to allow construction of said detached accessory building 5 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located West off of CR 18 a distance of 515 ft., then South a distance of 260 ft., 668 ft. South of US 20, common address of 12028 CR 18 in Middlebury Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #12028 CR18-111118-1*.

There were two (2) neighboring property owners notified of this request.

Present representing Clarence and Anna Miller on behalf of this request was Elva Mast, 404 Hackett Road, Goshen. Mr. Mast reviewed the zoning map, noting pages 2e and 2d, before referencing the site description. He noted that while the property is residential, the land to the south and west is light manufacturing. In some instances, the utilities of those properties border the property line of the subject property. To the north of the property, across U.S. 20, is a golf course with a presumed business zoning. Mr. Mast indicated that everything else to the east is zoned agricultural. He stated that the likelihood that anything would change significantly in the immediate area is quite unlikely.

According to Mr. Mast, this was considered a connected family dwelling by the county and was permitted until recently. Subsequent to the permit of the residence on the subject property that parcel was deeded separately, which Mr. Mast speculated happens quite frequently. Aging parents, for whom the property may have belonged, move to someplace else, at which time the property is then sold. This is the situation facing the petitioners. When they expressed an interest in building an extra garage on the property, Mr. Mast directed them to Planning & Development. Mr. Mast reported that the petitioners were told there was nothing they could do with the property. He stated that the staff worked diligently to come up with a plan. Due to the fact that the lot is a triangle, a variance for the rear lot line setback of five feet is necessary. While initially there was no easement recorded to the property, easement has now been recorded. The petitioners believe that this easement now provides legal access to the property. There is a 100 foot easement coming off of C.R. 18 extending back 600 to 800 feet, then proceeding south 300 feet along the front of the property. The only other tenant utilizing the easement is a tower company, to access the back corner of Jeff & Meribeth Miller's property. It appears that the tower company does not go back to the property frequently.

Jeff & Meribeth Miller resides on the eight acre property with access through the use of a little strip. Mr. Mast believes that it is a very common arrangement throughout the county to have access strips on the edge of the property, particularly where homes are set back off the road. Mr. Mast noted that this area is often a very desirable setting because it is far enough from the roadways to eliminate the road noise, which makes for a more secluded setting. Mr. Mast did not foresee any significant changes down the road, with the exception of Jeff & Meribeth Miller possibly subdividing the acres they own. They have the 100 foot right-of-way where the easement runs. Mr. Mast indicated that, for one family, this easement seems adequate and very much in line with other properties within the county.

Mr. Hesser inquired about the property owners for the surrounding property. Mr. Mast stated that Jeff and Meribeth Miller, the son-in-law and daughter of Clarence & Anna Miller, own the parcel to the west, as well as the easement and the strip going out to U.S. 20.

Mr. Homan asked how tall the eave would be on the proposed 30 x 30 garage. Mr. Mast indicated that it would be a residential, single story garage, not commercial.

Lavon Bender, 63905 CR 33, Goshen, was present in favor of this request. Mr. Bender is also a son-in-law of Clarence and Anna Miller. He stated that due to their age, Clarence and Anna have decided to move to a care facility, resulting in the need to sell the property. Mr. Bender expressed frustration about the opposition encountered when attempting to sell the property. He is concerned about what will become of the property if it is unable to be sold.

Mrs. Wolgamood asked the staff for clarification regarding the splitting of the property. The Staff Report indicates that in February, 1999 there was an appeal for a second residence on a single zoning lot, 3 to 1 to allow for the construction of two residences on a 9 acre parcel, which

the board granted. Mrs. Prough noted that the property was the same configuration except that the triangle piece was part of the 9 acres. She stated that it was all one piece. Mrs. Prough went on to explain that at that time, the petitioners sought approval to build the second residence. They were allowed to build one home, which is the home that is now located in the little triangle. Mrs. Wolgamood sought confirmation that the Board granted two residences on a single piece of property.

Robert Nemeth explained that the house owned by Jeff Miller was built in 1987. In 1996, petitioners requested approval to put two houses on one zoning lot, which at that time included the triangle, with a 3 to 1 variance. That petition was denied in August 1996. Within the next two months, one acre with the house and pole barn was divided from the parent parcel. The petitioners returned in November 1996 seeking 3 to 1 approval. They were granted approval for one house on a 3 to 1, but the lot width was denied. Subsequently, the petitioners asked for two houses on nine acres, which was also denied. The Board granted a 3 to 1 indicating that one house may be located on nine acres. In 2000 a house permit was issued for the house for Clarence and Ana Miller on nine acres. There was no lot width variance at that time because they had enough lot width. Subsequently, six months after they were issued the permit for one house on nine acres, they cut out the triangle. Two houses were never granted for one piece of property.

Mrs. Prough went on to explain that when the petitioners came back to build two houses and they were granted one, the one they were granted was on eight acres and did not include Jeff Miller's home. They actually wanted to build two additional houses at that time, which means we were looking at three houses. In 1999 that nine acre parcel was likely not nine acres, but was rounded up. Jeff Miller's home was there. They wanted to build a second home, which was denied. They came back in and tried a 3 to 1 and lot width, which was denied. Then they came back again and asked to build two homes, which did not include Jeff Miller's home, which was the whole corner piece. They asked to build two more homes on the eight to nine acres. The Board said they could not build two, but they could build one. A building permit was issued for one, accepting Jeff Miller's parcel as separate. After that, they split the triangle piece off in 2000, cutting off the entire road frontage.

The Staff researched the property and determined that when Jeff Miller's home was built it was built on property off of U.S. 20 and there may have been a variance for that.

Mr. Bender stated that Jeff and Meribeth Miller owned the house and the acreage the house was originally built on. Jeff wanted to build in another location while Clarence and Anna were building a house up front. At that point, there was a request for two homes, which was denied. Jeff Miller owned the whole property, but Clarence and Anna needed to buy some land because they had a house that belonged to them. This was when the triangle was developed, enabling Clarence and Anna to own the land where their home was situated.

Mr. Homan asked how the location of the driveway was determined. Mr. Bender explained that Jeff Miller realized that to sell the home in the future he would need access to easement, so he bought 100 feet of land from the neighbor so that there is access to the property.

Mrs. Wolgamood questioned if the board created the situation.

Mrs. Prough explained that the Board did not create any property without road frontage. The petitioners had road frontage and were granted a permit to build one house with 100 feet of road frontage in a 3 to 1.

Mrs. Wolgamood noted that after the petitioners received the building permit in July 2000, they gave away eight-and-a-half acres, with no road frontage, just easement. Clarence and Anna Miller only own the triangle with an easement.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that based on the Finding that this will not result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance as this is a self-imposed hardship created by all petitioners, this request for a Developmental Variance to allow for an existing residence and the construction of a detached accessory building on property served by an access easement, for a 5 ft. Developmental Variance to allow construction of said detached accessory building 5 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be denied by the Board. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Campanello – no; Miller – no; Wolgamood – yes; Hesser – yes.

\* *(It is noted that Mr. Hesser stepped down from the Board for the following public hearing due to a potential conflict of interest.)*

7. The application of **Scott & Dawn Briskie (buyers) and Tamela L. Osborn (seller)** for a 72 ft. Developmental Variance to allow for the construction of an addition to an existing building for a quilt store 48 ft. from centerline of the right-of-way of SR 13 (Main St) (Ordinance requires 120 ft.), for a 1 ft. Developmental Variance to allow for said addition 9 ft. from the south side property line (Ordinance requires 10 ft.), for a 7 ft. Developmental Variance to allow for said addition & existing building 3 ft. from the north property line (Ordinance requires 10 ft.), for a 9 ft. Developmental Variance to allow for the existing building 6 ft. from the east rear property line (Ordinance requires 15 ft.), for a lot coverage Developmental Variance to allow 62 percent coverage (Ordinance allows 50 percent), and for a Developmental Variance to allow for no on-site parking (Ordinance requires 18 spaces) on property located on the East side of Main Street (SR 13), 150 ft. South of Berry Street, being part of Lots 6, 7, 8 & 9 of the Original Plat of Middlebury, common address of 204 S. Main St. in Middlebury Township, zoned B-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 #204SMainSt-111118-1*. She then submitted a letter the staff received from the Town of Middlebury in support of this request *[attached to file as Staff Exhibit #2]*. According to Mrs. Prough, the town has made some recommendations on the parking, and after review by the staff, they would still be short of the required parking spaces of the zoning ordinance.

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

Scott and Dawn Briskie, 14309 Rosewood Lane, Middlebury, were present on behalf of this request. Mr. Briskie explained that they intend to purchase a quilting and fabric store in Wakarusa which they would like to move to Middlebury.

He noted that this property formerly housed a business. However, after a recent fire, the building was demolished. The only thing remaining is a three car garage in the back of the property, with a concrete apron leading to the garage.

Mr. Briskie acknowledged that they are seeking numerous variances. He noted that the permit for the three car garage was issued in 1994, with variances, including a six foot variance on the back side. He noted that they would not make any additions on the east side, other than taking out some windows and possibly re-siding the building to make it look nice. He stated there should not be an adverse affect on the back. Mr. Briskie explained that the building is situated three feet off the property line which was allowed via a building permit years ago. He said they would just like to extend the building forward so that it is even with the post office.

In terms of the variance off of Main Street, they would like to bring the building to the front edge of the post office and the front edge of the residential house. Mr. Briskie recognized that the major concern was parking. He noted that there is a paved alley, where there has been parking in the past. He explained that he has worked with the Town of Middlebury. He stated that there are 12 feet between the property line and the edge of the alley. He would like to go in another five feet so they have parking which is 17 feet deep. He proposes to put in a four foot sidewalk, which would result in 21 feet between the building and the edge of the alley. This would allow him to utilize diagonal parking. He noted that this type of parking is not unusual for Middlebury, as the library has diagonal parking which is 15 feet deep. First State Bank has parking that is 16 feet and 13 feet deep. This parking backs out onto streets that are around the bank. The Methodist Church has diagonal parking which is 13 feet deep. He explained that besides the diagonal parking in the 17 feet spaces, the employee parking area could be used for double parking. He acknowledged that this plan would still not provide adequate parking; however, he stated that his business is a downtown retail business, located two blocks off of Main Street. He noted that most downtown businesses do not have on-site parking and instead use some kind of town parking.

Mr. Briskie pointed out that the proposed site is not in a residential area. The location is zoned business. He believes this shop would be a great addition to Middlebury. He realizes that he is asking for numerous variances but does not feel that it is an extreme request.

Mrs. Wolgamood noted that the existing parking on Main Street is parallel parking, not diagonal. Mr. Briskie stated that all parking on State Road 13 is parallel, not diagonal.

Mr. Miller questioned if the building to the south was residential. Mr. Briskie stated that the home is residential, and then pointed out a hair salon, Nikis on Main, which currently utilizes the alley going to the east.

Mr. Homan asked Mr. Briskie how many diagonal spaces he could get in the alley. Mr. Briskie determined that while there are about twelve parking spaces, a utility pole is blocking two of the spaces. In addition to the 10 to 12 parking spaces in the alley, there are a few more in front of the building.

Mr. Miller asked the petitioner if it would be possible to get two deep for employee parking, plus diagonal in front. Mr. Briskie responded that it would not be possible.

After some clarification, Mr. Homan determined that there are approximately twelve parking spaces, which includes some double parking involving employee parking.

Mr. Briskie noted that additional parking is available on Main Street. The post office is nearby, as well as additional parking areas. One parking area is a block east of main with a

second lot located a little bit north. Mr. Briskie commented that those parking areas usually have availability. He estimated 36 spaces in one lot with 45 spaces in the other.

Mrs. Wolgamood inquired if parallel parking was permitted on State Street, which is located ½ block from the subject property. Mr. Briskie replied that there is parallel parking on State Street.

Mrs. Wolgamood noted that the submitted site plan indicated a 45 x 52 structure, with a future addition for expansion of the business. She questioned if the petitioner was seeking a variance for the future expansion or the proposed 45 x 52 structure.

Mr. Briskie explained that they are seeking a variance for both the initial structure and the addition. To relocate the business they wish to purchase, the new structure is a necessity, as is the variance approval. The future addition is contingent primarily on financing. Mr. Briskie indicated that it would be several years before he proceeded with the addition.

Mrs. Wolgamood confirmed that the variance request is from the center line to the beginning line of the future addition. She asked staff if the variance request would still be approved in two to three years, as this is the time frame Mr. Briskie indicated would be necessary to construct the addition. Mrs. Prough explained that the variance expires in 90 days unless an exception is made, which is permissible. If an exception is made to waive the 90 day period, the variance is approved for two years.

Mark Salee, Middlebury Town Manager was present in favor of the petition.

Mr. Salee noted that most of the buildings in downtown Middlebury would not meet the variance requirements. He said that the Town of Middlebury is in support of granting the variances for the setbacks, particularly the 120 foot setback from State Road 13. He stated that all the buildings in town are in this situation. He addressed the letter previously submitted to staff which focused primarily on parking. He explained that he has talked to the petitioners and they are agreeable to the conditions put forth in the letter regarding the parking. Mr. Salee noted that the key component is that the parking will remain public parking, which would add to parking for the town. He stated that the petitioners are aware that they would not be able to put up any signs indicating private parking. He commented that there is a significant difference between this variance request and the previous noted variance request involving Deloris Fry. The previous request involved a residential property, and to his recollection, there was no request for additional parking. Mr. Salee is willing to construct additional parking, which would be utilized not only by the petitioners but also by the community.

Mr. Salee stated that the Town of Middlebury supports waiving the 90 day time to obtain a building permit. He remarked that the Town of Middlebury is in favor of this request.

Mrs. Wolgamood noted that Condition #1 in the letter submitted by Mr. Salee stated that “the applicant provides the required parking spaces for the building project in accordance with the Elkhart County Zoning Standards,” which cannot be achieved. Mr. Salee responded that he would waive that condition, and asked to change Condition #1 to read “maximize the number of spaces they can accommodate on the site.”

Tamela Osborn, 55401 C.R. 35, Middlebury was present in favor of this request. Ms. Osborn is the current owner of the property and formerly operated a restaurant on the property. She stated that despite economic hardships, the restaurant was thriving. After a fire ended her business she entertained several different options regarding the property before placing it for sale. She had talked to the Town of Middlebury to see if there was any interest in purchasing the property which could be used for additional parking. However, additional parking would not

provide any revenue for the Town of Middlebury. She noted that when her restaurant was in operation, there was ample parking. At that time, she worked with the Town Board to make the alley one way, for the safety of the public. As an involved member of the community, Ms. Osborn is in full support of this request. She believes this business would be an asset to Middlebury. While Ms. Osborn attempted to market this property to a broad audience, the petitioners are the only individuals who expressed in interest in acquiring the property.

Niki Zimmerman, 206 S. Main Street, Middlebury is the owner of Niki Hair Salon, located across the alley from the subject property. She supports the request. Her concern was the parking situation, which was adequately addressed.

Stan Miller, 403 East Spring Street, Middlebury appeared to express his support for this request. He is the real estate agent selling the lot. He expressed his belief that granting this request would not be injurious to public health, safety or general welfare. He believes the staff has not provided any documentation indicating that it would be injurious. He noted that there is on-site parking proposed along the south side of the parcel. It is his opinion that the addition of parking in downtown Middlebury would be advantageous. The paved portion of the alley, running along the south side of the parcel in question, is one way from west to east and is 12 feet wide. If the parking that is proposed is designed for angle parking leaving an adequate space behind the parked vehicles it should not be a problem for traffic in the alley. Since this property is located in downtown Middlebury, Mr. Miller disagrees with the Staff's finding that the proposed structure would be overbuilding the site. In addressing Item #2, he noted that the denial issued by the Board on August 19, 2010 involved property that was in an R-2 zoning district. The subject property is zoned B-1, and adequate parking has been proposed, including four parking spaces on State Road 13/Main Street. Mr. Miller disputed Item #3 in the Staff Report. He believes that denial of this request *will* result in unnecessary hardship. He commented that the present owner has agreed to sell the property and the petitioner has agreed to buy the property. Denying the request for variances will kill the sale which is financially injurious to the seller. He acknowledged that a lot of variances were requested

Mr. Briskie asked that the 90 day requirement be waived, due to the weather. He indicated that he would like to have the business opened by June or July. He noted that the building they wish to construct is a single story with a porch and/or overhang out front. While the drawings have not been started for the building, Mr. Briskie did submit a picture of a similar building *[attached to file as Petitioner Exhibit #1]*.

Mr. Homan confirmed that the porch would face State Road 13. He asked if the edge of the porch falls within the dimension of the site plan, or if it is in addition to the 52 foot wall to the west. Mr. Briskie replied that they have not thought about that yet. He noted that they want to run the peak on the front of the building east and west.

Mrs. Wolgamood addressed the need waiving the 90 day requirement. She noted that when the building permit is taken out, it is good for one year. It is her opinion that the petitioner does not need the 90 days waived for construction now, but would for the future addition. The ILP is what needs to be issued within 90 days.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller questioned if the staff recommendation changes in light of the letter received from the Town of Middlebury. Mrs. Prough explained that eighteen parking spaces (9 x 20 ft.) are required, and after doing some calculations on just straight parking and not diagonal, she said

there are 12 spaces with an additional four (4) in the driveway so they are close. They have represented they want to build in-line with other buildings in the town so this will not be out of character; therefore, she feels the staff could support this request.

For clarification, Mrs. Wolgamood said should the quilting store no longer be there, there are other permitted uses that could go on this property. She has reviewed the permitted uses in the B-1 zoning district in the zoning ordinance, and with the exception of a bowling alley, she said they would all be acceptable. She supports this request, including the waiving the 90-day requirement for the future addition. She feels they have adequately demonstrated the parking, which she said is no different than any other place in Middlebury.

In response to Mrs. Wolgamood's earlier question about the 90-day timeframe for obtaining a building permit, Mrs. Prough said a Variance from the developmental standards of the zoning ordinance would be void unless an Improvement Location Permit is obtained within 90 calendar days from the date of the grant, and construction work completed within one year from the date of the issuance of a building permit; therefore, they would technically have a year and a half.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that based on the findings 1) that this will not be injurious to the public health, safety, morals or general welfare; 2) that it will not substantially cause adverse affect on the neighboring property owners; 3) and that it will result in an unnecessary hardship in the strict application of the terms of the zoning ordinance, this request for a 72 ft. Developmental Variance to allow for the construction of an addition to an existing building for a quilt store 48 ft. from centerline of the right-of-way of SR 13 (Main St) (Ordinance requires 120 ft.), for a 1 ft. Developmental Variance to allow for said addition 9 ft. from the south side property line (Ordinance requires 10 ft.), for a 7 ft. Developmental Variance to allow for said addition & existing building 3 ft. from the north property line (Ordinance requires 10 ft.), for a 9 ft. Developmental Variance to allow for the existing building 6 ft. from the east rear property line (Ordinance requires 15 ft.), for a lot coverage Developmental Variance to allow 62 percent coverage (Ordinance allows 50 percent), and for a Developmental Variance to allow for no on-site parking (Ordinance requires 18 spaces) be approved by the Board as requested with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.
2. The ninety (90) day requirement to obtain an Improvement Location Permit for the future addition as shown on the site plan extended to two (2) years.

The following commitments were then imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application and testimony.
2. Approved as recommended in the letter dated December 13, 2011, from the Town of Middlebury, as amended by Mark Salee:
  - a. Petitioners allowed to maximize the number of parking spaces they can accommodate on the site.
  - b. The parking area to be constructed in accordance with the Elkhart County and Town of Middlebury standard specifications at the owner's expense.



- c. The parking area allows for a minimum of 11 feet of clear space in the existing alley, measured from the south side of the new parking area to the south edge of the existing alley pavement.
- d. The west end of the parking area shall be at least 20 feet from the east side of the existing north-south sidewalk along Main Street.
- e. The parking area will be a public space and the public shall have access to the parking area at all times without restriction.
- f. The parking area shall be maintained by the property owner at the property at the property owner's expense, including snow plowing.

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

8. The application of ***Jean A. Martin & Anita R. Martin (lessors) and Mary Jane Weaver (lessee)*** for a 38 ft. Developmental Variance to allow for an existing building 82 ft. from centerline of the right-of-way of SR 119 (Ordinance requires 120 ft.), and a 54 ft. Developmental Variance to allow for the construction of a storage shed 66 ft. from centerline of the right-of-way of SR 119 (Ordinance requires 120 ft.) on property located on the South side of CR 40, 530 ft. West of the intersection of CR 40 and SR 119, North side of SR 119, 630 ft. Southwest of the intersection of SR 119 and CR 40, being Lots 3 & 4 of Martin's Southwest Estates, common address of 24856 CR 40 in Harrison Township, zoned B-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #24856CR 40-111114-1*.

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

Jean Martin, 24920 CR 40, Goshen was present on behalf of her petition. Ms. Martin owns the property. She stated that the building was built in 2007. She had no idea the building was not in compliance. She worked with a contractor and they both thought the structure was in compliance.

Mr. Hesser asked Ms. Martin why she wanted to locate the storage shed on the southeast corner. Ms. Martin stated that the existing storage shed is portable and was placed on the property in October 2011. She explained that she owns the building and has a fabric store contained in the north 2/3 of the shed, while Mary Jane Weaver has a variety store located in the south 1/3 of the shed. Ms. Weaver needed more storage to expand her business and expressed a desire to locate a storage building on the property. Worried about the appearance of a storage building, Ms. Martin agreed to allow a storage building on her property if the materials used to construct the building matched the materials used on the home. In terms of location, she stated that they made sure there was room for a full size semi to pull around. There is a mound system and drainage ponds on the property that limit the options for the building location.

Mr. Hesser asked if it could be relocated to the north side of the building. Ms. Martin stated that that area is used for parking, plus it allows adequate space for trucks to maneuver. He then asked if it could be moved to a southwest location. Ms. Martin stated that it would block windows and be much more noticeable. She discussed the location with a neighbor and the neighbor did not seem troubled by the location.

Mary Jane Weaver, 26108 C.R. 40, Goshen, was present to support the request. She stated that the location of the building is convenient for her. She operates a small variety store in the shed and the storage room door is only a few yards from the storage shed. This allows her to transfer her items back and forth. She is frequently the only person in the store. If a customer

asks for something that is out in the storage barn, she can go to the storage room, exit the building to retrieve the item, and the customer never realizes she left the building.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan expressed concern that the existing building was built in the wrong place initially and he asked who looks at that. Mrs. Prough said the building permit indicated the building would be 120 ft. from centerline, but she believes it may have been turned in the opposite direction. She said the building department does not verify setbacks, and when Mr. Homan said somebody should, she agreed.

Mrs. Wolgamood indicated that she could not support the Developmental Variance for the 10 x 16 ft. storage building as she believes they could find storage for the additional 160 sq. ft. in the existing 7,500 sq. ft. building, even if there are two businesses there.

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 38 ft. Developmental Variance to allow for an existing building 82 ft. from centerline of the right-of-way of SR 119 (Ordinance requires 120 ft.) be approved by the Board with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

A motion was then made and seconded (*Hesser/Wolgamood*) that based on the Finding that this will not result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance, the request for a 54 ft. Developmental Variance to allow for the construction of a storage shed 66 ft. from centerline of the right-of-way of SR 119 (Ordinance requires 120 ft.) be denied. A roll call vote was taken and the motion was carried with a unanimous vote.

9. The application of ***Jimtown Historical Museum, Inc.*** for an amendment to an existing Special Use site plan for a museum and community center to allow for the construction of a storage unit (Specifications F - #28) on property located 600 ft. East off of CR 3, North of US 20 bypass, 1,350 ft. North of CR 26, common address of 59710 CR 3 in Baugo Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #59710CR 3-111118-1*.

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

Mark Cook, 29084 Bernice Drive, Elkhart, was present in support of this petition.

Mr. Cook stated that he is requesting to place a building on the property. The construction of a 24 x 24 ft. post frame building has been donated for storage. There is currently a small shed; however, more room is needed to store items. Mr. Cook noted that the neighboring properties include woods in back, a field with a creek, the U.S. 20 Bypass, and a cornfield, with the homeowner's house located several acres away. He believes that the addition of a storage unit will improve the appearance of the property.

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 (*Campanello/Hesser*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use site plan for a museum and community center to allow for the construction of a storage unit (Specifications F - #28) be approved with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

10. The application of ***Glen & Julie Ann Hostetler*** for a Special Use for a bed and breakfast homestay in an A-1 district and for a Developmental Variance to allow for a double faced sign with six square feet per side (Ordinance standard allows four square feet per side) (Specifications F - #4.50) on property located on the South side of CR 38, 1,250 ft. East of CR 3, common address of 28718 CR 38 in Olive 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 #28718CR 38-111121-1*.

There were 39 neighboring property owners notified of this request.

Mrs. Prough noted that on a recent visit to site, the sign has been moved behind the right of way, which now makes it in compliance.

Glen Hostetler, 28718 C.R. 30, Goshen was present on behalf of this petition.

Mr. Hostetler stated that it is his desire to operate a Bed and Breakfast at this location.

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 (*Campanello/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 a bed and breakfast homestay in an A-1 district be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Bed and Breakfast to be operated by the owner/occupant of the residence on site.
3. No more than six (6) guest rooms.
4. Bed and breakfast to be subordinate and incidental to the main residential use of the building.
5. Breakfast to be provided to guests as part of the accommodation fee.
6. Sleeping accommodations limited to no more than fifteen (15) consecutive days to a particular guest.
7. One (1) on-site parking space to be provided for each guest room.

A motion was then made and seconded (*Campanello/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, the request for a

Developmental Variance to allow for a double faced sign with six square feet per side (Ordinance standard allows four square feet per side) (Specifications F-#4.50) be approved by the Board. The motion was carried with a unanimous roll call vote.

\* *(It is noted that Mr. Hesser stepped down from the Board for the following public hearing due to a potential conflict of interest.)*

11. The application of ***Middlebury Solar, LLC (buyer) and Wagner Land Development Co., Inc. (seller)*** for a Special Use to allow the construction and operations of a solar photovoltaic electric generating facility (Specifications F - #31.50) on property located on the East side of the intersection of SR 13/CR 12, a distance of 635 ft., in York Township, zoned M-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 12-111118-1*.

There were 21 neighboring property owners notified of this request.

Mrs. Wolgamood asked Staff for additional information concerning Condition #3. Specifically, she wanted to know what permits are required. Mrs. Prough stated that sign-offs will need to be obtained for MS4, Health, Building and State. She stated that Staff has worked with the petitioner and commented that the petitioner is very organized and will likely be able to address any concerns during the course of their presentation.

Chris Little, 1333 Northland Drive, Suite 210, Mendota Heights, Minnesota, was present representing Middlebury Solar, LLC.

He stated that he is requesting a special use permit to build a ground mounted portable photovoltaic solar project. He commented that the request is for a special use permit is due to the fact that currently there is nothing in the zoning ordinance to address such a use. He noted that this is a unique project for the area.

He explained that the project will consist of modulars, or panels, that are found on the roof of a house or business. The panels are mounted on the ground on an aluminum and steel racking system. They are fix-tilted at 30°, it is just on a much broader scale. The project in question will be 1-1/2 megawatts alternating current, slightly larger on the direct current side. They anticipate it will power on average, over the course of a year, approximately enough power to power 200 homes in the area.

Mr. Little explained that the property was selected due to its availability and its location, which was the most suitable zoning district. Additionally, the selected location is extremely flat terrain, which lends itself nicely to the facility. It is well screened, as noted on the eastern side of the property. There are additional buffers which are not as visible. Most importantly, this site is zoned industrial or manufactured and provides access to a 3 phase NIPSCO distribution line. This access is critical for these kinds of projects. It is imperative that power be delivered into the grid and that there is demand from businesses to consume the power. Mr. Little stated that they have worked extensively with NIPSCO to work through the interconnection process and have received approval. There is also a power purchase agreement to sell power to NIPSCO for a period of 15 years.

Mr. Little stated that they propose to fence in the facility, however, there will be ancillary equipment such as transformers switch gear and inverters. Little traffic is expected after

construction has taken place, which will take approximately three to four months. The only traffic to the site after construction would be for periodic maintenance. Mr. Little explained that the modules are washed once or twice a year. There is light maintenance on the inverters and transformers which would entail no more than one or two visits per month. The only noise generated is a slight hum which can be heard only by those in close proximity to the inverters and transformers.

Mr. Little noted that concern about glare typically raises questions. He explained that these modules/solar panels are designed to absorb solar insolation as much as possible. Potentially, there could be some reflective glare, but the likelihood of any one particular neighbor experiencing that glare is miniscule. He commented that the sun would have to be at the exact right angle. If there was a concern he stated that a glare study could be done. This would provide information concerning what point during the day, as well as what day during the year glare might be experienced.

Mr. Little addressed the road issues that have come up with staff. He explained that the private road located off of State Road 13 is currently a private road that is shared with Meijer to the south. There is a mutual easement agreement between the two parties that dates back several years that addresses who is to maintain, who is to construct, and who is responsible for payment. While that road currently exists, it ends short. It is platted all the way out, but there is no intent to continue to build the road all the way. Nor is there intent to build an access road. Based on the intended location of the facility, the intent is to place a cul-de-sac at the end of one road, eliminating the right of ways which are currently dedicated to the Highway Department. He would like to have the highway department vacate those. The listing agent who is representing the current land owner has been consulting with the Highway Department. The vacation of these particular roadways is in progress. The intent is to dedicate that back to the town, which would put it in compliance with code, which requires a turn-around for fire trucks and emergency vehicles. This would provide an access road to the facility.

Mr. Campanello asked if the access road would be gated or fenced in. Mr. Little stated that they propose to fence the site with an eight foot fence and a one foot hog wire rampart, primarily for security purposes. The intent is to keep trespassers from stealing or tampering with the equipment. Mr. Little stated that while equipment could be touched without someone getting hurt, the modules are subject to theft and everything will be under lock and key. He explained that people have been known to steal the equipment and sell it on eBay. He noted that the security measures are in place to protect that from happening. Prevention is preferred, rather than dealing with the aftermath of theft or equipment tampering.

Mrs. Wolgamood asked why the equipment needed to be located on the west side, rather than locating them farther away from the neighbors.

Brad Wilson, 1333 Northland Drive, Suite 210, Mendota Heights, Minnesota responded to Mrs. Wolgamood's question by explaining that the equipment pad is located where the system will interconnect with NIPSCO's distribution grid. An existing NIPSCO switch gear box is located at that point which was likely installed in anticipation of a future fully developed industrial site. By situating the equipment on the west side it is easier and less costly to tie in to NIPSCO. It is better for the project for the pad to be located closer to the interconnection pad.

Mrs. Prough asked Mr. Wilson and Mr. Little to address the power purchase agreement. Mr. Little explained that there is a power purchase agreement which has confidentiality clauses prohibiting them from releasing copies of that document. However, they are willing to provide

any sort of notarized affidavit attesting to the agreement. He further stated that there is a representative of the landowner that could attest, or speak as a witness, that the actual agreement has been signed. Mr. Little noted that they would never invest that amount of money if there was not an agreement in place to sell the power.

Mr. Homan asked about the height of the panels. Mr. Wilson referred the Board to Page 5 and Page 7 of the site plan. He explained that from the ground to the top point, at a 30° tilt, the panel measures just below nine feet.

Mr. Miller asked if the facility is more susceptible to lighting strikes than a normal electric distribution facility. Mr. Wilson stated that while he is not an electrical engineer, he does not believe it is more susceptible. He noted that each panel is grounded to the racks and the racks are grounded through their metal foundations. There is grounding all the way through each row. He stated that he did not feel comfortable answering the question definitively, but based on his knowledge there is not an increased risk. The equipment manufacturers, construction vendors and engineers have never indicated that there is an increased risk.

Mr. Miller stated that the structural project will be designed to withstand 100 mph winds. Wind should not present an issue, with the exception of a possible tornado. Based upon testing that takes place in a facility, the modulars are warranted to withstand hail up to golf ball size. Mr. Miller stated that he witnessed a demonstration with the modulars withstanding 70 mph wind and almost up to baseball size hail.

Jim Skillen, 3930 Edison Lakes Parkway, Mishawaka, is a commercial real estate broker assisting the buyer with the process. He submitted a copy of the drawing for the application for vacation of the original platted street, which he said they do not need for this project *[attached to file as Petitioner Exhibit #1]*. He confirmed that the application has been made and is on file. Marbach, Brady & Weaver was hired to do the engineering for this project and carry the application through the process with the county Highway Department, with a Tech Review date of 12/16/11.

Additionally, they have worked with the town of Middlebury and the engineering firm used by Middlebury for their roadway work, Wightman Petrie. Wightman Petrie has been hired to do an analysis of the existing roadway to determine if it meets the town's specifications for them to take over the maintenance of that road. There are a few items that are necessary to bring that road up to meet town standards. He has a copy of recommendations from Wightman Petrie to improve that road, which he submitted to the Board at this time *[attached to file as Petitioner Exhibit #2]*. The owner, Jim Wagner, has agreed to pay for those improvements; however, he said the money will need to be escrowed at closing, with the funds being held since the asphalt plants will be closed and construction probably will not begin until Spring. A contract has also been signed with Wightman Petrie for the design specifications to meet the town's standards for the additional road work, namely, the construction of the cul-de-sac. A copy of this contract was also submitted to the Board *[attached to file as Petitioner Exhibit #3]*.

Mr. Skillen explained that during the due diligence process the buyer had to work with NIPSCO to obtain various interconnection and power agreements. It was a requirement that the property owner reviews, approve and sign these documents. Mr. Skillen stated that he was the liaison for that process. He hand-delivered those documents to NIPSCO and application processes, as necessary. He noted that he has witnessed all of the signed documents for the power purchase agreement and interconnection agreement.

Mr. Skillen said that he asked Mark Salee, Middlebury Town Manager to be present at the hearing. Since the project involves a county road, the petitioners were trying to come up

with an appropriate solution for the correction of the roadway situation. The town of Middlebury was approached to see if they would consider taking this on. Mr. Salee has assisted in the process and can verify that if the petitioners bring it up to standard, the town will take it over.

Mark Salee, Middlebury Town Manager is present representing the town of Middlebury, and is in favor of this petition. He noted that there had been a hold on issuing building permits for the area, due to road construction. From the town's perspective and from the county's perspective, the road situation had to be addressed. He explained that Wightman Petrie evaluated and assessed the situation. They provided evaluations to the developer and were contracted to design the improvements. Money will be escrowed to make the improvements to the roadways to the acceptability of the town. Mr. Salee stated that the town will be reviewing, approving, and evaluating the plans, as well as watching the construction.

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/Campanello*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow the construction and operations of a solar photovoltaic electric generating facility (Specifications F - #31.50) be approved by the Board with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.
2. All required State and local permits to be obtained.

In addition, the following commitment was imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioners' application, including petitioners' application Exhibit B.

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

12. The application of *D & M Rentals, LLC (owners) and Tim Scott (renter/business operator)* for a Special Use for warehousing and storing of equipment for a roofing business in an A-1 district (Specifications F - #44) on property located on the West side of SR 15 and 1/4 mile North of CR 24, common address of 59343 SR 15 in Jefferson Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #59343SR 15-111121-1*.

There were 23 neighboring property owners notified of this request.

Maynard Miller, 7205 South 900 West, Topeka, owner of the property was present on behalf of this request. He explained that they would like to use a barn to store equipment for a roofing company. He noted that tools, such as scaffolding, ladders, air hoses, trailers and other roofing equipment are kept in the barn. Mr. Miller stated that sometime in 2000 an application was submitted for special permit to operate a lawn and garden center at that location. They anticipated having approximately 20 customers per day and quite a few employees with semis coming in and out, delivering material. The application was denied and the building remained vacant for several years. He explained that he was approached by Craig Stahly, owner of a

home improvement business, about using the barn for storage for his equipment. Mr. Stahly explained that his friend, Tim Scott of A Roofing Specialists and Home Improvement, would also like to rent part of the barn for storage. This would allow Mr. Stahly and Mr. Scott to split the rent, keeping overhead down. Mr. Miller said that he went ahead and rented it out, not realizing he would need a Special Use permit. He estimated that this arrangement began approximately 7-8 years ago. Mr. Stahly moved his equipment to a storage building he built approximately three years ago, leaving Mr. Scott as the sole tenant. Mr. Scott continues to store equipment for A Roofing in Mr. Miller's barn.

Mr. Miller disagrees with the staff's finding that to grant the petition would not be consistent with the spirit, purpose and intent of the zoning ordinance. He commented that no work is being done at the site, nor are there any signs. The barn is being used for equipment storage only. He stated that there are no customers coming or going. Mr. Miller said that his property looks like any other property in the area to passers-by. In further addressing the staff findings he stated that, as a small business, A Roofing is an asset to the community. This small business is able to minimize overhead costs through the use of Mr. Miller's storage building. He noted that while they store equipment on his property, they maintain a working office in a separate facility.

Mrs. Wolgamood asked if everything is stored inside the building. Mr. Miller responded that he believes there are some trailers stored outside.

Tim Scott, 59192 Lower Drive, Goshen, the business operator, also appeared on behalf of this petition.

Mr. Scott addressed the storage question by explaining that the majority of his equipment is kept inside the building, along with a small amount of materials. He stated that an area exists behind the building where they place scrap aluminum. There is also a trash can in back, along with one vehicle which remains on the property. Mr. Scott stated that the vehicle could be removed if necessary. In addition to the vehicle currently being stored on the property, there are two trailers stored on the back side of the building, on the west side.

Mr. Hesser asked if the trailers could be stored inside. Mr. Miller stated that while it is possible, doing so would little room inside. He noted that the trailers, in their current location, are barely visible from the neighbor's house or State Road 15.

Tim Jones, 59344 State Road 15, Goshen, submitted to the Board a petition in remonstrance to this request *[attached to file as Remonstrators Exhibit #1]*.

Mr. Jones stated that he has lived at that location for approximately eleven years. During that time, Jefferson Township has experienced a building boom, resulting in increased traffic in front of his home. Within the last year he has had several cars travel across his lawn in an effort to avoid trailers turning into Mr. Miller's drive. On one occasion, the driver barely missed Mr. Jones' light post. In another instance, the driver caused substantial damage to his yard as his car traveled from his drive, going across and out of the barn area. The trailers, carrying asphalt, are frequently required to stop while they wait for clearance before entering the drive. Vehicles behind these trailers cannot see the tail lights, which causes safety issues and lawn damage. There is no shoulder on the road, so vehicles have no choice but to travel on lawns.

Mr. Jones then pointed out the location of the properties owned by Jared Gardner and Lyndell Chupp, who both signed the petition in remonstrance.

Mr. Jones submitted numerous pictures taken over a two month period which were displayed on a large board *[attached to file as Remonstrators Exhibit #2]*. He stated that there is traffic at the



site beginning at approximately 5 a.m. during the summer. The gathering of equipment and tools at this hour wakes up neighbors. It appears that the business is thriving since traffic continues throughout the summer. Mr. Jones commented that while they put trailers in the back, that area is completely full. The trailers reflected in his photo were on the premises from November 23 until they were emptied, which occurred on December 8. He explained that one photo shows individuals loading and unloading, with trucks coming in and out. There are multiple cars coming in the morning and leaving in the afternoon, with parking taking place every day. Mr. Jones noted that if he is out in his yard he can easily see the trailers. He believes that with the addition of approximately five subdivisions in the last six years and the increased traffic, it has become dangerous to allow the additional traffic that is generated through the use of the storage barn. Mr. Jones explained that before he realized it was illegal, he had allowed Mr. Stahly to store some items in his barn. After Mr. Stahly was asked to vacate the barn, he came to an agreement with Mr. Miller about using his barn. Mr. Jones stated that he has taken several measures to keep vehicles out of his yard, to no avail.

Mr. Hesser asked Mr. Jones if the photos were taken from his property. Mr. Jones responded affirmatively.

Mr. Scott was asked to review the submitted photos and respond to the concerns voiced by Mr. Jones. Mr. Scott questioned where Mr. Jones was at when he took the photos. Mr. Scott said that trailers are covered with tarps when they are loaded with debris.

Mr. Miller explained that there are many places on State Road 15 where vehicles whiz around to avoid a vehicle that is pulling into the property. He stated that his situation is no different than the situation faced by several businesses on State Road 15.

Mr. Miller noted that while the pictures reflect trucks on the property, there have been times throughout the summer when he travels past and it doesn't appear as though anything is going on. He said that it is his understanding that when things get busy, workers drive to the job site. Mr. Scott explained that the number of vehicles in the photo is unusual and occurs when trying to wind down for the year and he utilizes other contractors. He estimated that there are only two vehicles there in the summer. Most of the time there are no vehicles or activity because they meet up on the job site. Mr. Miller noted that there is no office in the barn. The barn is used solely for storage. Mr. Scott explained that there is never any noise on the property. He questioned how a vehicle pulling into the property could be heard by a neighbor across the street because both the barn and the neighbor's home are located some distance off the road. He stated that he is unaware of any other complaints concerning noise.

Mr. Hesser asked who was residing in the home on the premises. Mr. Miller stated that the home is rented to a family of six, who have nothing to do with the roofing business.

Mr. Scott stated that he has been using the barn for seven years, during which time they have not had any issues. He stated that they are on site in the morning to pick up tools and there in the evening to drop off tools. He said that they have never caused an accident.

Mr. Campanello asked Mr. Scott how many semi trucks are on the road, in that area at 5 a.m. in the morning, when they are arriving at the site to pick up tools. Mr. Scott stated that the traffic they encounter is primarily individuals traveling to work, with very few semis.

Mr. Hesser asked Staff if the building that is used for storage exceeds the size of the home. He noted that the size of the building probably was not considered an issue because it was considered an agricultural building. Although it is no longer an agricultural building if it is approved for storage use.

Mrs. Prough stated that during a recent conversation with Mr. Miller, he explained that the building was an agricultural building, which they re-sided. There was an addition to the front and a silo, which were replaced. Originally, all the buildings were agricultural buildings, with the exception of the garage.

Mr. Hesser questioned if a developmental variance would also need to be approved, if the Board approved the petition. Mrs. Prough stated that the issue of a developmental variance had already been discussed among Staff. After considerable discussion, Staff felt as though a developmental variance would not be needed for warehousing and storing, since that request stands on its own. It is the opinion of Staff that a developmental variance is only needed when it is a home workshop business that is tied to a residence.

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/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings and the testimony given, this request for a Special Use for warehousing and storing of equipment for a roofing business in an A-1 district (Specifications F - #44) be denied by the Board with the business to be relocated within ninety (90) days. A roll call vote was taken, and with a unanimous vote, the motion was carried.

13. The application of *Culver Duck Farms, Inc., Herbert R. Culver Revocable Trust and Culver Duck Farm, Inc., an In Corp* for a Special Use for a renewable energy facility/anaerobic digester (Specifications F - #31.50) on property located on the North side of CR 10, 2,000 ft. East of CR 39, common address of 12215 CR 10 in York Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #12215CR 10-111031-1*.

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

Peter Schnaars, Wightman Petrie, 4703 Chester Drive, Elkhart appeared on behalf of the petition. He stated that his firm has been assisting Culver Duck in developing this project for renewable energy based upon using waste generated on the site that it currently sent off site. He explained that his firm is in complete agreement with the Staff recommendations.

Mrs. Wolgamood asked if Culver had city water. Mr. Schnaars responded that they did not have city water.

Mrs. Wolgamood inquired if they had the capacity to obtain the 800,000 gallons of water from somewhere. Mr. Schnaars responded affirmatively. Mrs. Wolgamood referenced question #23 in the questionnaire which discussed the reduction of ambient odor. She asked if the process creates odor. Mr. Schnaars referred this question to Steve Froelich, an engineer with Wightman Petrie.

Steve Froelich, Wightman Petrie, 4703 Chester Drive, Elkhart, appeared before the Board to answer questions.

Mr. Froelich explained that Wightman Petrie has been working with Culver Duck for nearly two years. He addressed Mrs. Wolgamood's concern about odor. He stated that in the past, there had been infrequent complaints about the odor from Culver Duck Farms. He said that usually they try to stay on top of that. The odors come from a small lagoon that is to the north side of the main processing plant. The lagoon receives some of the processed water. He stated

that lagoons were constructed further north, as noted on the site plan, and referenced as a condition for approval. This was part of an IDEM approved expansion to the lagoons and wetlands and was related to how the lagoons are handled during spray irrigation, among other things. Mr. Froelich stated that they do possess a valid IDEM approved land application permit. While Culver Duck had to go through IDEM for that permit, Wightman Petrie was not involved. Mr. Froelich indicated that while he was aware that the smaller, existing lagoon will be covered, Wightman Petrie would not be involved. He acknowledged that most of the odors have come from that lagoon. That problem should be eliminated once the cover is in place. He stated that the new larger lagoons and wetlands will have a membrane cover in place.

Mr. Froelich explained that the digester is a completely sealed unit. There will be combinations of corn silage, duck offal and other waste products. Vegetable waste from Meijer may potentially be used. He stated that the corn silage will come from Pioneer in Constantine, Michigan. With the digester, it is imperative that there is a good recipe that will work to produce the methane that produces electricity. Culver does currently have a power purchase agreement with NIPSCO. Culver is in negotiations with NIPSCO regarding their interconnection costs, but it appears that NIPSCO is ready to cut a deal with them. The digester will be using specially made generators, purposefully designed to run off of biogas, not like a normal generator that runs off of gasoline. They will be producing about 1.2 megawatts of electricity. Mr. Froelich stated that Culver Duck is a heavy electric user right now. He noted that Culver is going to participate in the same tariff as Middlebury Solar LLC. According to Mr. Froelich, NIPSCO offered a very attractive fee and tariff that has been gobbled up by renewable energy developers. Of the 30 megawatts made available, 2.7 megawatts will be located on the north side of Middlebury.

Mr. Miller noted that there are 800 gallons of this mixture in an enclosed environment. He asked about the longevity of the mixture. Mr. Froelich responded that it is replenished every day. He explained that ducks are processed six days a week, which results in waste being generated every week. The waste stream will go directly into the digester, together with some of the processed water. While there are other large anaerobic digesters, such as the one in the wastewater plant for the City of Elkhart, agricultural anaerobic digesters are relatively new to the area. Compared to Iowa, Wisconsin and Minnesota, Indiana is about ten years behind in terms of developing agricultural digesters to produce power. Mr. Froelich noted that there is a digester in Reynolds Indiana which generates 2.4 megawatts with another one in northwest Indiana that generates 5 megawatts, which is one of the biggest operations in the Midwest.

Mr. Campanello asked about the noise generated by this process. Mr. Froelich stated that the gensets will be enclosed inside containers. There will also be sound covers that go over the containers, sealing them down. The digester will stick out of the ground only about 15-20 feet. It is approximately 85 feet in diameter and 30 feet in size, with 15 feet protruding above grade and another 15 feet below grade. Adjacent to the digester will be a control room building. Three proposed generators will sit directly outside of the digester. The generators will have enclosures over them to eliminate sound and to provide protection against the elements.

Mr. Homan asked if, after processing, there is solid remainder. Mr. Froelich replied that there is a liquid product that is approximately 6% solids. He noted that this product is highly desirable for agricultural operations. The liquid is put through a roll press, where it is possible to obtain bio-fibers which are used for bedding purposes. The remaining liquid is land applied. A high nitrogen level in the liquid is one of the reasons larger lagoons were built. IDEM regulations permit putting 400 pounds of nitrogen per acre per year. Instead of taking waste

product which contains a lot of nitrogen to Kendallville, the waste product is going to be turned into electricity. There is still nitrogen laden water coming out of the digester, which necessitated larger lagoons to ensure that IDEM regulations were not exceeded. Mr. Homan clarified that, for the most part, waste water will be stored in these lagoons, which are open. Mr. Froelich stated that the liquid that comes out of the digester is very small in relation to their regular processed water. The regular processed water which currently goes into the small pond that causes odors is probably about 10x more water than what goes into the digester. The digester is heavy in solids, with minimal water. He explained that while there are dry digesters that use no water, they are utilizing a liquid digester which requires some liquid to make it work.

Mr. Miller asked if the lagoons would be blanketed or have some type of filter. Mr. Froelich responded that the only one that needs to be blanketed is the existing one that has been there for a number of years. He stated that once the water leaves that pond there are no problems with odors in any of the other lagoons. Mr. Froelich reported that everything is covered by an IDEM permit.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood suggested that Condition #3 regarding the power purchase agreement be deleted due to the privacy issue and because they've indicated there is one in existence. However, she does believe that Condition #4 should remain as recommended by the staff and the board members were in agreement.

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 renewable energy facility/anaerobic digester (Specifications F - #31.50) be approved by the Board with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.
2. All required State and local permits to be obtained.
3. The Culver Duck complex and real estate to be brought into compliance with the Elkhart County Zoning Ordinance by submitting an application for a Conditional Industrial Unit Development for the ten (10) existing recently constructed lagoons.

The following commitment was also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

The motion was carried with a unanimous roll call vote.

For clarification, Mrs. Wolgamood asked if they would have been required to obtain a Special Use if this property were zoned M-2 and Mrs. Prough said the planning staff determined that they would.

14. The application of *Middlebury Township Building Corp. (lessor) and Middlebury Township/Middlebury Fire Department (lessee)* for an amendment to an existing Special Use site plan for a fire station, emergency medical services, and general governmental offices (Specifications F - #27 and #52) to allow for the construction of a storage building, and a 4 ft.

Developmental Variance to construct said building 6 ft. from the North side property line (Ordinance requires 10 ft.) and a 28 ft. Developmental Variance to allow said building 27 ft. from centerline of the right-of-way of North Brown Street (Ordinance requires 55 ft.) on property located on the Northwest corner of N. Main St. (SR 13) and Bristol Ave. and Northeast corner of Brown St. and Bristol Ave., common address of 117 N. Main St. in Middlebury Township, zoned B-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #117NMainSt-111118-1*. She then clarified that the Developmental Variance from the North side property line should be 5 feet as indicated in the Staff Report rather than 4 feet as stated in the petition.

There were 34 neighboring property owners notified of this request.

David Swihart, 130 N. Main Street, Goshen was present on behalf of Middlebury Township.

Mr. Swihart explained that the request is to replace a small storage shed on the property. The proposed storage shed will eliminate two parking spaces; however this will still allow sufficient parking. He explained that the fire department purchased the shed to use for the storage of equipment that is not used to provide services or operate the fire department. The items they intend to store in the shed are outdoor lawn equipment as well as other equipment non-essential in fire fighting. He stated that the shed was placed in its initial location without any zoning approvals, which resulted in some complaints since it was obviously too close to the street. Once the fire department was notified by the Planning Staff that the location of the shed was a problem, they cooperated with the Staff to determine another location for the shed. The shed was moved to its current location with the consent of the Planning Department, who allowed the move, with the condition that the fire department submits a petition for a Special Use and Developmental Variance.

Mr. Swihart stated that the shed is a 16' x 14' storage shed. The neighboring property owner, Max Myers Motors, has consented to the location of the shed. He explained that when the complex was built, there was a 5 foot variance for parking, making this variance consistent with the initial variance. He pointed out that the location of the shed is consistent with the setback of the current building.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use site plan for a fire station, emergency medical services, and general governmental offices (Specifications F - #27 and #52) to allow for the construction of a storage building, be approved by the Board with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

A motion was then made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, the requests for a 5 ft. Developmental Variance to construct said building 5 ft. from the North side property line

(Ordinance requires 10 ft.) and a 28 ft. Developmental Variance to allow said building 27 ft. from centerline of the right-of-way of North Brown Street (Ordinance requires 55 ft.) be approved by the Board in accordance with the Staff Analysis with the following condition imposed:

1. 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.

15. The application of *Norman E. Lehman (buyer) and Tri-County Land Trustee Corporation (seller)* for an amendment to the site plan and conditions of an existing Special Use for a home workshop/business for a retail store (Specifications F - #45), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the North side of CR 16, 1,900 ft. East of CR 116, common address of 11401 CR 16 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Prough submitted a letter received on December 12, 2011, from Mr. Lehman requesting to table his petition until the January meeting *[attached to file as Staff Exhibit #1]*. She said he has contacted Blake Doriot to represent him.

There were 13 neighboring property owners notified of this request.

There was no one present in the audience to comment on this request.

A motion was made and seconded (*Homan/Miller*) that this request for an amendment to the site plan and conditions of an existing Special Use for a home workshop/business for a retail store (Specifications F - #45), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, be tabled until the January 19, 2012 meeting of the Board of Zoning Appeals as requested by Norman Lehman with neighboring property owners to be re-notified. A roll call vote was taken and the motion was carried unanimously.

16. The application of *Jimmie J. & Lynne E. Houston* for a Special Use to allow for an agricultural use (storage of farm equipment) on property containing three acres or less (Specifications F - #1) located on the East side of Walnut Street, 250 ft. South of 1st Street, and South of CR 46, common address of 68632 Walnut St. in Jackson Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #68632WalnutSt-111012-1*.

The photos submitted at the November 17, 2011, meeting were resubmitted by Mrs. Prough at this time *[attached to file as Staff Exhibit #1]*.

This request was tabled at the last meeting.

Mrs. Prough submitted a notarized document the staff received on November 17, 2011, from Bonnie Roch, a representative of the New Paris Cemetery Association, which gives the petitioners permission to access their new proposed building through the cemetery property *[attached to file as Staff Exhibit #2]*.

Mrs. Prough stated that she also has a copy of what the Department of Natural Resources requires to obtain a permit to build within 100 feet of a cemetery, but this was not submitted to the Board.

Nathan Kauffman, 68394 Main Street, New Paris appeared on behalf of the petitioners. Mr. Kauffman agrees with the Staff Report. He indicated where the proposed building would be located. He confirmed that they have permission from New Paris Cemetery to use the drive. The petitioner plans to store some tractors and trailers in the building.

Mr. Homan confirmed that Mr. & Mrs. Houston reside on the property to the south. He commented that there is some mention of maple syrup production and inquired where the maple syrup production takes place. Mr. Kauffman stated that the maple syrup production will not take place in the building, but will take place in a sugar shack.

Mr. Homan asked if there would be any maple syrup festivities taking place on the property. Mr. Kauffman replied that no festivities take place on the property, and the maple syrup production is not for business purposes.

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/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 to allow for an agricultural use (storage of farm equipment) on property containing three acres or less (Specifications F - #1) be approved by the Board with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No agricultural animals to be kept on site.

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

17. The application of *Alliance Industries (buyer) and Sommers Farm, LLP (seller)* for a Special Use for installation of solar panels (Specifications F - #31.50) on property located on the West side of CR 19, 750 ft. South of CR 50 in Jackson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 19-111024-1*. This petition was tabled at the last meeting for additional information to be submitted, which she said has been done. She then submitted that additional information to the Board *[attached to file as Staff Exhibit #2]* noting that copies were in the board members' packets for review.

Bob Adle, representing Gemini Power Solutions, 922 South 500 West 90, Markle, Indiana was present on behalf of the petitioners.

He stated that they would like to build a six megawatt solar facility at the location. He agrees with the Staff Analysis. According to Mr. Adle, the proposed location is the right spot in the county. The area is very remote with little to no impact to neighbors. The location will not be unsightly. It takes approximately five acres per megawatt, resulting in the placement of equipment on 30-40 acres, of the approximately 60 acres available. While this results in 50%

land usage, there will be only a few concrete pads to support invertors, transformers and switchgear. Mr. Adle does not believe this project would result in any risk to the health, safety and welfare of the public. The project will be fenced in with appropriate electrical switchgear and protection. There is no noise, vibration, dust, smoke, odor, heat, traffic, minimal impervious surface, no effect on ground water and minimal security lighting. He stated that this is a very innocuous project. He believes it will be a good neighbor. Concerning the neighbor to the south, Mr. Adle does not think this project will result in any hardships as far as residential use or agricultural use. As setbacks are met, the proposed project will be further back from his property than the cornfield or existing crops are today.

Mr. Adle stated that the solar panels will be between 5 and 6 feet in height, and will be tilted so that they are not blocking any view of the horizon. This project is good for the public convenience and welfare as there is an aging electrical grid which needs more distributive generation. He believes that using renewable energy will reduce our dependence on fossil fuels and foreign oil and reduce green house gases.

Mr. Campanello asked if there is an agreement in place to sell power to NIPSCO. Mr. Adle responded affirmatively. Mr. Campanello asked about the distance to tie in to NIPSCO program.

Mr. Adle responded that the substation is ¼ mile south, located on County Road 19. It is a very desirable location, with power lines on both sides of the road. It may be necessary to change or upgrade wires along the existing poles but there won't be any noticeable change among the infrastructure.

Mrs. Wolgamood asked if there would be just one inverter and switching gear component on site. Mr. Adle referenced the diagram, stating that each ½ megawatt ties into its own inverter and transformer. The inverter and transformer transforms it from DC to AC and then it sends it up to the switchgear. There is one set of switchgear located next to the driveway. Mrs. Wolgamood questioned the height of the equipment. Mr. Adle replied that the inverter and transformer might be 7 feet, and the switchgear by the gravel driveway might be 8 feet.

Mr. Homan questioned the prospect of future expansion on this site. Mr. Adle stated that nothing is planned at this time, while acknowledging that expansion is never completely out of the question.

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 a Special Use for installation of solar panels (Specifications F - #31.50) be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.
2. All required State and local permits to be obtained.

In addition, the following commitment was imposed:

1. Approved in accordance with the revised site plan and information submitted to the staff on 11/28/11, and as represented in the petitioner's application.

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



18. At this time, Mr. Godlewski presented the *Agreement for Legal Services for 2012* for approval by the Board. A motion was made by Mrs. Wolgamood and seconded by Mr. Homan to accept the Agreement for Legal Services for 2012 (*see attached*). With a unanimous roll call vote, the motion was carried.

19. Mr. Godlewski then reported that the County Council reappointed Bob Homan to the Board of Zoning Appeals. He also explained that the County Commissioners intend to appoint Doug Miller to the Plan Commission as well as Board of Zoning Appeals. Meg Wolgamood has resigned from the Plan Commission and will be Board of Zoning Appeals only.

20. The meeting was adjourned at 11:50 a.m.

Respectfully submitted.

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Teresa McLain, Transcriber

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Jane Yoder, Recording Secretary

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Randy Hesser, Chairman

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Robert Homan, Secretary