

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>TH</sup> DAY OF FEBRUARY 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: Tom Lantz, Doug Miller, and Robert Homan. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Lantz/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20<sup>th</sup> day of January be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Miller/Lantz*) that the legal advertisements, having been published on the 5<sup>th</sup> day of February 2011 in the Goshen News and on the 5<sup>th</sup> day of February 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/Lantz*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Lantz/Miller*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.
6. There were no postponements of business items.
7. The application of ***Kenneth Howard & Dyanna Wissman*** for a 13 ft. Developmental Variance to allow for the placement of a mobile home 107 ft. from the centerline of the right-of-way of SR 120 (Ordinance requires 120 ft.) on property located on the North side of SR 120, 50 ft. West of CR 37, common address of 13009 SR 120 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 #13009SR 120-110124-1*.  
There were 5 neighboring property owners notified of this request.  
Kenneth Howard and Dyanna Wissman, 57057 West Lake Drive, Elkhart, were present on behalf of this request.  
Mrs. Prough explained the Special Use for the mobile home was approved, but the petitioners have decided they would like to place the mobile home vertical instead of horizontal, which created a need for the Variance.  
Mr. Hesser asked if they would be replacing the existing mobile home and the petitioner said yes. Ms. Wissman noted the current mobile home is from 1971. They couldn't place the

mobile home east/west because there is a \$10,000 garage they would like to keep on site. They are unable to move the garage.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 13 ft. Developmental Variance to allow for the placement of a mobile home 107 ft. from the centerline of the right-of-way of SR 120 (Ordinance requires 120 ft.) be approved in accordance with the site plan submitted with all required permits and inspections to be obtained. After a unanimous roll call vote was taken, the motion was carried.

8. The application of *Dale & Shelley Deisinger* 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 East side of CR 109 at the end of Downey Street, being the South half of Lot 7 in Maple Grove (excluding 22 rods East side of Lot 7) in Osolo Township, common address of 51546 CR 109 in Osolo Township, zoned R-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #51546CR 109-110110-1*.

There were 4 neighboring property owners notified of this request.

Dale and Shelley Deisinger, 51546 CR 109, Elkhart, were present on behalf of this request. Mr. Deisinger explained they currently have a storage shed that is starting to rot away. They would like to tear that down and construct a garage. They would like to store their personal items in the garage and do maintenance on those items.

Mrs. Deisinger indicated they have three garden tractors, but they are currently all outside. Mr. Deisinger also noted they would like to be able to park one of their vehicles inside the garage to keep it out of the weather.

Mrs. Deisinger explained it would be the smaller of the two sheds that would be torn down, which she pointed out on the aerial photo at this time.

Mr. Miller asked if all of the outside storage would be moved inside the building and Mr. Deisinger said yes. He would like to eliminate all of the outside storage and make the property look better.

Lorell Nihart, 25799 Lake Drive, Elkhart, was present in opposition to this request. Mr. Nihart explained he is disappointed with the staff report because he feels this building is going to be used for the petitioners' business. The petitioners have a roto-rooter business and they have three trucks outside with the company logo on the side. There are also race cars, a truck with a snow plow, a pick-up truck, a small paving roller, some dump trucks, and some tar equipment on the site. He submitted three photos of the property at this time along with advertisements for their business out of different phone books *[attached to file as Remonstrator Exhibit #1]*. In conclusion, Mr. Nihart said he is very opposed to this request.

In rebuttal, Mr. Deisinger explained the roller is for rolling their yard. He does have a roto-rooter business, but he doesn't have an office on site. All of the work he does for his business is done out of his van. There is no equipment that has to be stored for that business.

Mr. Homan asked the petitioner if he parks the van inside the proposed building and Mr. Deisinger said no. The petitioner has two vans, but one of them is broke down.

Mrs. Prough questioned whether they have any employees and the petitioner said no. She noted she worked with the petitioners several years ago in regards to a striping business. She asked them to move all of the equipment off site and they did so. When the staff did their on-site inspection at the beginning of the month, they didn't see any equipment related to the striping business. The staff would not be in support of anything to do with the striping business. The petitioner can have the roto-rooter business as a home occupation provided he has no sign, no customer/client traffic and no employees.

Mr. Deisinger indicated he recently stopped operating the striping business. He sold the dump truck and got rid of the trailers which had the pavers on them.

The public hearing was closed at this time.

Mr. Homan asked if a Special Use is required and Mrs. Prough said a home occupation is permitted but with no outside storage, no sign and no customer traffic. The van with the logo is permitted.

Mrs. Deisinger noted there are currently a couple vehicles on site which they are trying to sell.

Mr. Homan said it's not uncommon for people to end up using their storage buildings for businesses.

A motion was made and seconded (*Miller/Lantz*) that the public hearing be re-opened. A unanimous roll call vote was taken and the motion was carried.

A petition in favor of this request was submitted to the Board at this time by Mrs. Deisinger *[attached to file as Petitioner Exhibit #1]*.

The public hearing was closed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved in accordance with the site plan submitted and as represented in the petitioner's application with the building to be used for personal domestic storage only. A unanimous roll call vote was taken and the motion was carried.

9. The application of ***Elvin M. & Vada M. Nolt*** for a Special Use renewal for an existing mobile home on property located on the North side of CR 32, 700 ft. Est of SR 19, common address of 27845 CR 32 in Harrison Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #27845CR 32-110112-1*.

There were 4 neighboring property owners notified of this request.

Elvin Nolt, 27781 CR 32, Elkhart, was present on behalf of this request. Mr. Nolt indicated he would like to have his Special Use permit renewed. He submitted a letter in favor of this request from the neighbor *[attached to file as Petitioner Exhibit #1]*.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use renewal for an existing mobile home be approved for a period of three (3) years with a one (1) year review to verify compliance with Conditions "A". A roll call vote was taken the motion was carried.

10. The application of ***Jerry Lehman (buyer) and Jodi Gustafson & Lisa Steffen (sellers)*** for a Special Use for an agricultural use for the keeping of horses in an A-1 zoning district on a tract of land containing three acres or less (Specifications F - #1) on property located on the East side of CR 29, 2,590 ft. South of CR 20, common address of 58996 CR 29 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 #58996CR 29-110119-1*.

There were 6 neighboring property owners notified of this request.

Toni Bontrager, 520 S. Main Street, Middlebury, was present representing the buyers and the sellers. Ms. Bontrager said the petitioners will be getting married in April and they would like to start their life off here. They feel this is the perfect property for them, but they do need the Special Use permit to provide for two horses.

Mr. Homan said the Staff Analysis specifically states two horses and he asked if that would be sufficient. Ms. Bontrager said they asked for three, but two will work for them.

When Mr. Homan asked if there will be a fenced in area, Ms. Bontrager said yes. She also indicated there is already a barn on site.

Mr. Hesser said he didn't see any fencing indicated on the site plan. He asked if there is a pasture fenced off and the petitioner's representative said not at this time, but the petitioners plan to add that.

Don Mast, 58768 CR 29, Goshen, was present in opposition to this request. Mr. Don Mast explained he lives to the north and he has a cornfield on two sides of the property in question. He feels the three acre rule was put in place for a reason and he would like it to remain that way. He questioned what the petitioners plan on doing with the 34 ft. x 142 ft. building on the property. He feels there are too many farm buildings, but not enough land. Mr. Don Mast is also concerned because this property sits on a curve and it won't be safe for a horse and buggy to enter the road. In conclusion, Mr. Don Mast said he is in opposition to this request.

Mr. Homan asked Mr. Don Mast if this affects his business in anyway and he said he is afraid the horses will chew on his corn.

Mark Mast, 59036 CR 29, Goshen, was also present in opposition to this request. Mr. Mark Mast explained he lives to the south and would like to voice the same concerns as Mr. Don Mast. He doesn't feel this would be safe because the property is on a curve and a hill. He's also concerned that they may have a church service on their property, which may generate more traffic. Mr. Mark Mast pointed out his property on the aerial photo at this time.

In rebuttal, Stan Miller from Hallmark Realty, 520 S. Main Street, Middlebury, explained the reason this is being requested is for a young couple to get started. If the petitioners have church on their property, it would only be once a year and he doesn't feel that would be an issue.

Mr. Stan Miller also noted that there was an attempt made to purchase this property by one of the two remonstrators at a much lower price than what the sellers are asking for. He doesn't feel keeping two horses on this property will cause any problems.

When Mr. Homan questioned the poultry barn, Ms. Bontrager said the buyers indicated to her that they would like to take it down as it is in pretty bad shape. They were getting estimates on how much it would cost to remove it. Mr. Homan explained that they would not be able to put the poultry barn in operation without approval from the Board. If this request is approved, Mr. Homan stressed that it will be limited to two horses only.

The public hearing was closed at this time.

Mr. Hesser feels there will be traffic regardless of who owns the property. He doesn't have an issue with this request.

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 a Special Use for an agricultural use for the keeping of horses in an A-1 zoning district on a tract of land containing three acres or less (Specifications F - #1) be approved with the following conditions imposed:

1. Approved for the keeping of two (2) horses only.
2. A revised site plan is to be submitted to the staff within thirty (30) days showing the fence line where the horses will be kept and it should also reflect whether or not the poultry barn will be removed.

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

11. The application of *Union Grove Brethren in Christ* for a Special Use for a church and related activities, including child daycare (Specifications F - #48) on property located on the Northwest corner of CR 11 and CR 48, common address of 69954 CR 11 in Union Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #69954CR 11-110106-1*.

There were 4 neighboring property owners notified of this request.

Darrin Simms, 70995 CR 15, Nappanee, was present representing the church. Mr. Simms explained the church was purchased two years ago and they were unaware that they needed a Special Use permit. They are currently operating and they have approximately 60 people who attend on Sunday mornings. They are in the process of re-seeding the grass, but that is the only change that is happening.

Mr. Lantz asked if this is the old Union Grove School and Mr. Simms said yes.

When Mr. Lantz asked how the complaint came about, Mr. Simms explained there was a gentleman who was previously homeless and the church helped him by using him as the caretaker for the facility. After a year and a half of him living there, Mr. Simms told him it was time for him to move on, which resulted in the gentleman calling Code Enforcement to complain.

Mr. Homan asked the petitioner how long it will take to address all of the issues on the Staff Report. Mr. Simms proceeded to address the issues at this time. He explained there isn't a

permanent school on site and there isn't a daycare. The people who utilize the recreation fields are members of the community.

The existing septic system was built for the school and it is more than what they need to operate the church. The septic system sits on the southeast corner of the property.

Mr. Simms explained they have no plans for outside lighting and they don't have any plans for fencing. When they do have recreational activities, they have some portable poles they put up to net off the farmers' crops. They have spoken to the neighbors about that and they are fine with it. There is no plan for having security on site because they don't feel there is a need for it.

There is no childcare on site, but if they plan to in the future, there is a fenced play area in the southwest area of the property. Mr. Hesser noted that is shown on the site plan.

As far as the erosion control and drainage plan, Mr. Simms said the property is tiled. All of the drainage goes from the north to the south.

Mr. Homan asked if the sign was existing and Mr. Simms said yes, they put their sign over the top of what was already there.

There were no remonstrators present.

Mrs. Prough said the petitioner has adequately addressed all of the staff's concerns. The staff's recommendation would be for approval as represented today and in the questionnaire.

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/Lantz*) that this request for a Special Use for a church and related activities, including child daycare (Specifications F - #48) be approved as represented in the questionnaire provided by the petitioner with all childcare to comply with the state standards and regulations. A roll call vote was taken and the motion was unanimously carried.

12. The application of ***Helena Chemical Company*** for an amendment to an existing Special Use for an agri-business to allow for the construction of a building to store dry fertilizer, and to include additional property (Specifications F - #56) on property located on the West side of SR 13, 1,100 ft. South of CR 34, common address of 63239 SR 13 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 #63239SR 13-110124-1*.

There were 9 neighboring property owners notified of this request.

Todd Hochstetler, 63239 SR 13, Goshen, was present on behalf of this request. Mr. Hochstetler explained they had a portion of their fertilizer building blow down during one of the wind storms and they would like to replace it.

Mr. Hesser asked if the staff photos are showing the existing buildings and the petitioner pointed out all of the buildings on the aerial photo at this time. The fertilizer building, which they are asking to replace, is located on the northeast side of the property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser questioned the additional land they are requesting and Mr. Hochstetler said they originally owned ten acres, but they would like to extend further to the south. Mrs. Prough indicated the staff has no issues with that.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for an agri-business to allow for the construction of a building to store dry fertilizer, and to include additional property (Specifications F - #56) be approved in accordance with the site plan submitted with all required permits and inspections to be obtained. After a unanimous roll call vote was taken, the motion was carried.

13. See page 7, item #15, for the Special Use regarding *Patricia Patrick*.

14. The application of *Daniel J. & Brenda K. Lehman (land contract purchasers) and Tri County Land Trust (land contract holder)* for a Special Use for a home workshop/business for bicycle sales, repair, parts and accessories (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the West side of CR 33, 755 ft. South of CR 18, common address of 57943 CR 33 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 #57943CR 33-110124-1*.

There were 13 neighboring property owners notified of this request.

David Lehman, 2355 N 1150 W, Middlebury, was present on behalf of this request. Mr. Lehman explained he likes to come home from work and fix bikes in the afternoon.

Mr. Hesser asked if they are converting part of the area of the existing building to use for the home workshop/business and Mrs. Prough said yes.

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 home workshop/business for bicycle sales, repair, parts and accessories (Specifications F - #45) be approved in accordance with the site plan submitted and as represented in the petitioner's application with the following conditions imposed:

1. The business to be operated by the owner/occupant of the residence on site and in accordance with the definition of the home workshop/business.

The motion further reflects that the request for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be approved as per site plan submitted. A roll call vote was taken and the motion was carried unanimously.

15. The application of *Patricia L. Patrick* for a Special Use for an agricultural use for the keeping of two pigs in an A-1 zoning district on a tract of land containing three acres or less (Specifications F - #1) on property located on the South side of CR 4, 375 ft. West of Iris Court, 3,000 ft. West of CR 7, common address of 27750 CR 4 in Osolo Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #27750CR 4-110124-1*.

There were 11 neighboring property owners notified of this request.

Patricia Patrick, 27750 CR 4, Elkhart, was present on behalf of this request. Ms. Patrick explained she would like to keep her two pet pigs. She called the Elkhart County Humane Society last year and they told her there was nothing against keeping pet pigs as long as they weren't inside the city limits.

When Mr. Hesser asked how she deals with waste, Ms. Patrick said she puts lime on it and then turns it underground so there is no smell. She noted they have a mud hole in the summer and she gives them daily showers. She hasn't had a problem with nuisance wildlife since she has had the pigs and they get rid of all the grubs in the ground. Ms. Patrick said her next door neighbor brings her puppy over to play with the pigs. She submitted some photos of the pigs to the Board at this time *[attached to file as Petitioner Exhibit #1]*.

Mr. Hesser asked if the pasture area is fenced in and the petitioner said yes.

Kathy Courier, 52063 Iris Court, Elkhart, was present in opposition to this request. In 2008, Mrs. Courier explained that the petitioner had asked for a Special Use permit for her animals. At that time, the Board allowed her to have twelve chickens but said she would need to get rid of the rest of the livestock. Mrs. Courier said these pigs are not small and she has read information saying that they can be very destructive. In the past, the petitioner had talked about keeping the pigs in the house, but she doesn't feel that would be possible as the pigs can't be litter box trained.

Mrs. Courier is also concerned because the petitioner does not mow her yard or keep the property looking nice. She asked how Ms. Patrick is going to clean pig feces out of the yard when it is full of weeds.

Gary Courier, 52063 Iris Court, Elkhart, was also present in opposition to this request. At this time, Mr. Courier submitted some photos of the petitioner's property and the pigs which were taken from his property *[attached to file as Remonstrator Exhibit #1]*. The pigs can be seen from his patio deck. Mr. Courier pointed out his property on the aerial photo at this time. Ever since the pigs have been on this property, he said there have been a lot more skunks in the neighborhood. If any of the pigs come onto his property, Mr. Courier said he will shoot them.

In rebuttal, Ms. Patrick said the only ways the remonstrators can see onto her property are with binoculars or a telescope lens. She also noted that there have always been skunks in this area.

When Mr. Homan asked if the chickens are gone, Ms. Patrick said yes. She explained her pigs are Mule Foot pigs and are rescue pigs.

Mr. Hesser asked what the maximum weight will be for the pigs and the petitioner said approximately 150 pounds.

A letter from the neighborhood watch was submitted to the Board by Mrs. Courier at this time *[attached to file as Remonstrator Exhibit #2]*.

When Mr. Hesser questioned the petitioner's lot size, Mrs. Prough said it is a little under an acre.

The public hearing was closed at this time.

Mr. Hesser doesn't feel this will be particularly intense if it's just for two pigs. He doesn't have an objection to the staff's recommendation.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agricultural use for the keeping of two pigs in an A-1 zoning district on a tract of land containing three acres or less (Specifications F - #1) be approved in accordance with the site plan submitted and as represented in the petitioner's application with the following conditions imposed:

1. Approved for two (2) pigs with no other animals to be permitted on site.
2. Approved for the owner/occupant of the residence on site.

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

16. The application of **David J. & Michele L. Muir** to amend an existing Special Use for a home workshop/business for winery, wine tasting, and retail sales (Specifications F - #45), and for a Developmental Variance to allow the proposed signage to exceed the Developmental Standards of signage for a home workshop/business on property located on the West side of SR 15, 60 ft. South of CR 112, common address of 55503 SR 15 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #55503SR 15-110124-1*.

There were 5 neighboring property owners notified of this request.

David & Michele Muir, 55535 SR 15, Bristol, were present on behalf of this request. Mr. Muir explained they currently have a winery business with a tasting room. Due to the reconstruction of SR 15, they are not allowed to put an entrance sign in a reasonable proximity to the road. One of the comments they have received from customers is that they drive past and can't tell where the business is located.

They would like to install a sign in compliance with the proposed Zoning Ordinance. Mr. Muir explained they would like to put a sign on the side of the building that is 30 sq. ft. If they can make arrangements with the state, they would like to place a smaller sign closer to the highway.

When Mr. Miller asked if the sign would be lit, the petitioner said no, but indicated they would like to shine landscape lights on the sign when it gets dark. They currently have lights on-site that are on a timer and they go off around 10:00 p.m.

There were no remonstrators present.

Mrs. Prough said when the petitioners originally came in for their Special Use, the staff was in the beginning stages of the new Zoning Ordinance. A winery would be permitted in the new Zoning Ordinance in this zoning district, which would allow for more signage than he currently has.

The public hearing was closed at this time.

Mr. Miller doesn't see any issues with this request.

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 to amend an existing Special Use for a home workshop/business for winery, wine tasting, and retail sales (Specifications F - #45) be approved in accordance with the site plan submitted and as represented in the petitioners' application. All required permits are to be obtained.

The motion further reflects that the request for a Developmental Variance to allow the proposed signage to exceed the Developmental Standards of signage for a home workshop/business is approved as requested and in accordance with the site plan submitted. The motion was carried with a unanimous roll call vote.

17. The application of *Allen J. & Judith Kauffman* for a Use Variance to allow for a second residence on a single zoning lot and a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the West side of CR 116, 1,600 ft. South of CR 16, common address of 56815 CR 116 in Middlebury Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #56815CR 116-110114-1*.

There were 5 neighboring property owners notified of this request.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the petitioner. Mr. Doriot noted that the builder, Harley Bontrager, with HD Bontrager Construction was also present. The petitioners were not present because they live in Florida for the winter. Mr. Kauffman has problems with the cold weather due to asthma and he is also in remission from cancer. Mr. Doriot noted there is a hardship in this case due to Mr. Kauffman's medical problems.

Under the new Zoning Ordinance, this zoning district would allow for dawdy houses. Mr. Burrow clarified that a second dwelling will be allowed in this type of district. Mr. Doriot pointed out the property on the aerial photo at this time. There is a PUD to the west and a private road to the north which serves the PUD.

Mr. Doriot said the character of the new building will be converted to a storage building/church meeting house when the parents pass away. He noted the church meeting house will be used approximately twice a year. The structure will be built to a rural character which will look like a shed or shop building. The structure will be dressed up a little bit with nice windows. A third of the building will be used for storage and the rest will be living space, which will be converted to storage space after Mr. and Mrs. Kauffman pass away. The petitioners' son could not be here today due to the fact that he works in a factory, but he will be moving into the home on site and plans to have children in the future.

The petitioners are willing to put a deed restriction on this request if it is approved stating that if the property is sold, then the building cannot be used as a dawdy house or a separate home. If that were to happen, it would be required to go through a minor subdivision at that time. The owner is offering an irrevocable deed restriction which could be enforced civilly or by the Board.

Mr. Doriot does not feel this will be injurious to the public, health, safety, or general welfare of the community because they have conservative families to the north and south. They are over 500 feet from the PUD where they are going to build this structure. Mr. Doriot believes there is a hardship and this family chooses to have their parents close to allow them to care for them. He feels granting this request would benefit the public.

Mr. Miller asked if the new building would be converted to storage space after the parents pass away and Mr. Doriot said that is correct.

Mr. Homan asked what the disability issue is and Mr. Doriot said the father has asthma and he is in remission from cancer. He noted they do go to Florida in the winter, so they will be going there in the wintertime as long as they are able to travel.

Mr. Kolbus asked if there would be a deed to the son with the parents reserving a life estate. Mr. Doriot said they would record a deed stating that the residential use for the proposed building is extinguished upon the death of Mr. and Mrs. Kauffman.

If this were to be approved, Mr. Miller asked what the sequence of events would be to make the life estate happen. Mr. Kolbus said the recording of the deed to the son would have to be recorded before the permit was issued.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller feels this is different from the requests in the past due to the deed restriction the petitioners are offering.

Mr. Hesser said the new Zoning Ordinance is not yet in effect and it may change. With these types of requests, he always has issues with findings 3 and 4 on the Staff Analysis.

Mr. Lantz feels there will be a lot of requests like this in the future and he feels that a child taking care of their parents is the responsible thing to do.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that this request for a Use Variance to allow for a second residence on a single zoning lot and a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be approved based on the following findings:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance does constitute an unnecessary hardship if applied to the property.
5. The Variance does not interfere substantially with the Elkhart County Comprehensive Plan as this type of request would have the potential to be approved under the proposed Zoning Ordinance.

The following condition was imposed:

1. Approved based on the supporting testimony from the petitioner, including the creation of a life estate and the recording of a deed that would precede the issuance of a building permit.

A roll call vote was taken with the following roll call vote results: Homan – no; Lantz – yes; Miller – yes; and Hesser – no. The motion did not pass due to a tie vote.

A motion was then made and seconded (*Hesser/Homan*) that this request be tabled to the March 17, 2011 Board of Zoning Appeals meeting to allow all five Board members to be present.

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

19. There were no audience items.
20. There were no Staff/Board items.
21. The meeting was adjourned at 10:22 a.m.

Respectfully submitted.

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Kate A. Keil, Recording Secretary

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Randy Hesser, Chairman

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Tom Lantz, Secretary