

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 20<sup>TH</sup> DAY OF JANUARY 2011 AT 8:30 A.M.**  
**MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING**  
**4230 HART ROAD, GOSHEN, INDIANA**

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Tom Lantz, Doug Miller, and Robert Homan. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Homan/Lantz*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16<sup>th</sup> day of December 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 8<sup>th</sup> day of January 2011 in the Goshen News and on the 8<sup>th</sup> day of January 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/Miller*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Homan/Lantz*) 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. During a brief discussion, the Board decided to have the Officers remain the same as follows: Randy Hesser, Chairman; Doug Miller, Vice Chairman; and Tom Lantz, Secretary. The Board then made a motion (*Wolgamood/Homan*) to approve the Officers for 2011. A unanimous roll call vote was taken and the motion was carried.
8. The application of ***Dennis A. & Sharon K. Forbregd*** for a 3 to 1 depth to width ratio Developmental Variance to allow for an existing residence and accessory buildings on proposed Lot 1, and for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence on proposed Lot 2 on property located on the West side of CR 27, 1,430 ft. South of CR 10, common address of 54787 CR 27 in Washington 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 #54787CR 27-101220-1*.

There were 6 neighboring property owners notified of this request.

Rick Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9<sup>th</sup> Street, Goshen, was present representing the petitioner. They are asking to divide a piece of property into two lots. The smaller lot would be to build a home for their son. Mr. Pharis indicated they have spent some time with the Health Department and resolved any issues they may have regarding the septic systems. The two lot minor subdivision plat has been submitted for review and they will adhere to any Technical Committee comments. He indicated that will be heard at the February 11, 2011 Plan Commission meeting.

Mr. Homan questioned the driveway and Mr. Pharis said they are working with the Highway Department on that issue because they would like it to be a shared driveway. He asked if there would be an easement recorded with the driveway and Mr. Pharis said yes, it would be on the plat.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said in her opinion, this is one of the best reasons to approve a three to one depth to width ratio Variance because it is in marsh land.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 3 to 1 depth to width ratio Developmental Variance to allow for an existing residence and accessory buildings on proposed Lot 1, and for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence on proposed Lot 2 be approved provided successful completion of the minor subdivision is achieved. After a unanimous roll call vote was taken, the motion was carried.

9. The application of **Lamar D. Yoder (buyer) and Mabe, LLC (seller)** for a Special Use for a school (Specifications F - #38) on property located on the West side of CR 37, 775 ft. North of CR 28/CR 26 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 #00CR 37-101217-1*.

There were 6 neighboring property owners notified of this request.

David Bontrager Jr., 59723 CR 33, Middlebury, was present representing the petitioners. Mr. Bontrager explained the schoolhouse on CR 35 is getting too full and needs to be divided again. They try to keep the number of students between 30 and 50. The current population is in the 60's, so they would like to build a new schoolhouse to better accommodate the community.

Mr. Bontrager noted that the site plan still has to go through the architect and they will have to get everything drawn out professionally.

Mrs. Wolgamood asked if the school is going to end up with about three acres and the petitioner said yes. Mr. Bontrager pointed out the three acres on the aerial photo at this time.

She asked if they have talked to the Highway Department regarding the curb cut and the petitioner's representative said yes and indicated they sounded favorable of everything.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted they are required to get state approval.

She pointed out that the site plan indicates that it may be revised by the architect. She asked if the Board has any issues with the schoolhouse being located in a different location. Mr. Homan felt that if the location of the schoolhouse changes, then the petition should be brought back before the Board as a staff item for a major/minor change.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a school (Specifications F - #38) be approved with the following conditions imposed:

1. Approved as represented in the petitioners' application provided all required permits and inspections are obtained.
2. A final site plan is to be submitted for the file and if the staff finds that it is substantially different, then the request is to be brought back before the Board as a minor change.

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

10. The application of ***Daniel J. Yoder (LC Purchaser) and Stanley Hochstetler (LC Holder)*** for an amendment to an existing Special Use for a home workshop/business for auto glass repair and replacement (Specifications F - #45) to allow for the use of an outside storage box for auto glass delivery on property located on the East side of CR 17, 375 ft. North of Clinton Street, common address of 62420 CR 17 in Elkhart Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #62420CR 17-101129-1*.

There were 16 neighboring property owners notified of this request.

Daniel Yoder, Yoder's Auto Glass, 62420 CR 17, Goshen, was present on behalf of this request. Mr. Yoder explained he would like to move the storage box to the side of the garage and build a privacy fence around it. He has glass delivered every night for the next day. He doesn't feel it would be any different than UPS dropping off some packages at someone's front porch. The only other option he has is to open his garage for the delivery drivers. He wouldn't prefer to do that, but he would agree to it if it was his last resort. He has storage racks built in the garage. Every morning, he moves the glass that is in the storage box into the garage.

Mrs. Wolgamood asked if the storage box is mobile and the petitioner said yes, it is on skids.

Mrs. Wolgamood questioned the size of the storage box and Mr. Yoder said it is 4 ft. wide. He would have a gate to open and the storage box would fit right up against the garage and the sidewalk.

Mr. Yoder said his dilemma is that he doesn't currently have the funds to build a privacy fence, but he would be able to do it at some point in the future.

Mrs. Wolgamood asked whether the storage box has been stored outside since he's obtained the Special Use permit and the petitioner said yes. The box is too large to put inside. After the last meeting, he built racks inside the garage for storage.

Mr. Homan asked how many pieces of glass he receives per week and the petitioner said five or six on a big day. He normally gets deliveries two or three nights a week around 11 or 12.

There were no remonstrators present.

Mr. Hesser asked how difficult it would be to give the delivery people access to the racks inside the garage. The petitioner said he could install a box with a lock that all of the delivery people have a key to. He could also have a keypad installed.

Mr. Miller asked if the petitioner is before the Board due to a complaint and Mrs. Prough said it was due to an inspection to verify compliance.

Mrs. Wolgamood recalled that most of the complaints were due to noise, lights and deliveries.

The public hearing was closed at this time.

Mrs. Wolgamood said she doesn't want to rescind the original Special Use, but she is not happy with having outside storage in a very highly residential area.

Mr. Homan asked if the business truck can be parked in the driveway or if it is parked in the street. Mr. Yoder indicated he parks it inside the garage.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that this request for an amendment to an existing Special Use for a home workshop/business for auto glass repair and replacement (Specifications F - #45) to allow for the use of an outside storage box for auto glass delivery be denied based on the fact that the petitioner is asking for outside storage. The following condition was imposed:

1. All outside storage, including the storage box, is to be moved inside within three (3) months with a review by the staff at that time.

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

11. The application of **Richard A. & Trina R. Hornor** for a Special Use renewal for a beauty shop in an R-1 zone (Specifications F - #46) on property located on the Southeast corner of Shady Lane and Ray Drive, being lot 58 of Sturdy Oak 14th Subdivision, common address of 51208 Shady Lane 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 #51208ShadyLn-101206-1*.

There were 22 neighboring property owners notified of this request.

Trina Hornor, 51208 Shady Lane, Elkhart, was present on behalf of this request. Mrs. Hornor explained she would like to continue with her beauty shop, but she would like to have the Special Use approved indefinitely.

Mr. Miller asked if everything is still the same and Mrs. Hornor indicated yes.

Mrs. Wolgamood asked if there have been any complaints and Mrs. Prough said no.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use renewal for a beauty shop in an R-1 zone (Specifications F - #46) be approved for an indefinite period of time with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. Approved for one (1) chair only.
3. No signs.

4. Days and hours of operation to be Tuesday and Thursday, 9:00 a.m. to 8:00 p.m. and Wednesday from 9:00 a.m. to 3:00 p.m.
5. NO parking on Shady Lane or Ray Drive
6. No employees other than the petitioner.

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

12. The staff item regarding *Maynard E. & Rosetta L. Yoder* was presented by Mrs. Prough at this time. She explained this property is located on SR 4 in Clinton Township. In July of 2010, the Board approved a Special Use permit for a home workshop/business for furniture manufacturing, as well as a Developmental Variance to allow the total square footage of accessory structure to exceed the total square footage of the primary structure. The petition was approved as per site plan submitted and they were allowed to add on a 30 ft. x 40 ft. addition onto the accessory building for the business. Mr. Yoder would like to add on an additional 8 ft. to the addition and make it a 30 ft. x 48 ft. addition. He has submitted a letter and a site plan, which was included in the Board's packet, asking that this be considered a minor change to the Special Use permit. The petitioner has not started the addition yet, but he plans to do so in April of this year.

Mrs. Wolgamood asked if it would be for lumber storage and Mrs. Prough said yes. She then questioned how many employees he has and Mrs. Prough said two full-time employees and one part-time, who all reside on site. There are no outside employees and the business is family owned/operated.

Mrs. Wolgamood asked if he has close neighbors and Mrs. Prough said yes, there are neighbors to the west. She noted that the addition is buffered well by trees and his buildings sit further back off the road. Photos from the file were submitted for the Board at this time.

When Mrs. Wolgamood asked if the petitioner currently uses the existing 30 ft. x 40 ft. pole building for his business, Mrs. Prough indicated yes.

Mrs. Prough said prior to asking for this change, the petitioner's square footage of accessory was 1,024 sq. ft. over the living space. With the additional 8 ft. being added on, there will be a difference of 1,340 sq. ft. She didn't feel comfortable authorizing the change without the Board reviewing it since the petition was approved as per site submitted. She noted the staff doesn't have a problem with it.

Mr. Homan didn't feel the 8 ft. would make that big of a difference and Mrs. Wolgamood agreed.

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

13. The staff item regarding *Curt Haberstitch* was presented by Mrs. Prough at this time. She explained this property is located on SR 13 in Benton Township. In February of 2009, a Special Use permit was approved for warehousing and storing of a mini storage building. The petition was approved as per site plan submitted, but it showed the proposed driveway to be located towards the south end of the property. Mr. Haberstitch would like to move the proposed driveway further north on the property. He has obtained approval for a driveway permit from the State of Indiana for the new location.

The reason for this is because a lot of improvements would have to be made to put the driveway to the south. The petitioner would have had to re-locate the utilities, so he decided to

move the driveway to the north. He is asking that the Board consider this a minor change to the Special Use permit. He has submitted a copy of a site plan showing the new location as well as a copy of the permit from the Highway Department. Mrs. Prough said she talked with Alicia Sanders from the Highway Department and she indicated they have no issues having the driveway at the new location.

A motion was made and seconded (*Wolgamood/Miller*) that this request be considered a minor change. A unanimous roll call vote was taken and the motion was carried.

14. The application of ***Mervin & Ruth Ann Bontrager*** for renewal of an existing Special Use for a home workshop/business for the sale of vegetables and baked goods (Specifications F - #45) on property located on the Northeast corner of CR 7 and CR 48, common address of 69852 CR 7 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 #69852CR 7-101213-1*.

There were 9 neighboring property owners notified of this request.

Mervin Bontrager, 69852 CR 7, Nappanee, was present on behalf of this request. Mr. Bontrager said he would like to renew his Special Use permit. He requested that the Board approve it indefinitely so he doesn't have to come back for anymore renewals. He noted that business is very slow and it is not feasible for him to pay \$150 each year for a renewal.

Mr. Miller asked if everything is still the same and Mr. Bontrager said yes.

Mr. Hesser asked if they are using a different building and the petitioner said no, they are currently using the house. The building that was previously used for sales was identified on the aerial photo at this time.

Mrs. Wolgamood asked how much of the house is being used for the business. Mr. Bontrager said business is so slow that they are just doing orders only. They don't have a walk-in area for customers to purchase items; it is done by order only.

When Mrs. Wolgamood asked where the business would be located if business picks up, Mr. Bontrager said they have no plans of having walk-in customers.

She also asked if they are selling vegetables and the petitioner said not at this point in time. When they do sell vegetables, he isn't sure where those will be sold from.

Mr. Bontrager noted that the amount they make for the whole year is only \$300 to \$400.

Mr. Miller asked if there is any space in the house dedicated for this and the petitioner said no.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said he understands the reason for the petitioner not wanting to come back for renewals every year, but he's concerned that it may grow in the future.

Mrs. Wolgamood said she doesn't have an issue with what they are currently doing, but she's concerned about what will happen down the road if they make it indefinite.

Mrs. Prough suggested having the staff review it on a two or three year basis. The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for renewal of an existing Special Use for a

home workshop/business for the sale of vegetables and baked goods (Specifications F - #45) be approved in accordance with the petitioner's testimony with the following conditions imposed:

1. The business is to be operated by the owner/occupant of the residence on site.
2. The one (1) existing non-illuminated sign is permitted.
3. No outside employees.
4. Hours of operation to be Wednesday through Friday, 8:00 a.m. to 5:00 p.m., and Saturday from 8:00 a.m. to noon.
5. No customer parking within 50 ft. of the road.
6. The 10 ft. x 16 ft. portable building is not to be used for the business.
7. Approved for a period of two (2) years with a staff review to verify compliance.
8. If any changes are made to the home workshop/business, then the petition should be brought back before the Board.

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

15. The application of **Steve L. Chupp** for an amendment to an existing Special Use for warehousing and storing for a concrete business in an A-1 district (Specifications F - #44), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage of the primary structure on property located on the West side of E. County Line Road (CR 45), 1,500 ft. North of CR 40, common address of 65737 E. County Line Road in Clinton Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #65737ECounty LineRd-101220-1*.

There were 2 neighboring property owners notified of this request.

Justin Plank, 10516 N 650 E, Syracuse, was present representing the petitioner. Mr. Plank explained the petitioner would like to construct a new building. They have worked hard to clean the place up, but there is a lot of equipment sitting outside. They were trying to decide whether to move the business or work with what they have. The petitioner decided to keep it on site so it can remain a family oriented business. He noted that the petitioner has three young boys who help out with the business.

Mr. Plank doesn't feel this will cause substantial or permanent injury to the appropriate use of neighboring properties. He explained there are some buildings to the north of the property in question that are three or four times the size of the petitioner's building. The petitioner normally only has one delivery a day with approximately 11 employees. Most of the employees drive a company vehicle, but they hardly ever come to this site. They normally are only at the job sites, which vary from Chicago to Indianapolis. The deliveries they have coming to this site are only small packages. Any of the larger deliveries get sent directly to the job site.

Mr. Plank indicated there are several other businesses in the area. There is a hog barn to the east of this property and there are going to be two large duck barns built to the south. He also indicated there are horse barns in the area and also a fabric business. He feels they will be improving the property values because all of the equipment will be inside if they are able to construct the proposed building.

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

Mrs. Wolgamood asked if the business to the north is in an industrial zone. Mrs. Prough said she believes the property to the northwest is operating under a Special Use permit. The properties the petitioner is referring to towards the east side are in LaGrange County.

Mr. Homan questioned the number of employees and Mrs. Prough said the questionnaire from the previous application indicates five employees. The days and hours of operation listed on that application are 6:00 a.m. to 3:30 p.m., five days per week. She also noted there was a large outside storage area approved along with the previous approval. When the staff went out to the site, they felt he was in compliance with the size of the storage area.

Mr. Homan asked how many employees don't reside on the property and the petitioner's representative said ten with two being part-time. Mr. Plank also noted that some of the employees ride bikes to work, so it would be hard for them to move to an industrial area.

When the height of the proposed building was questioned by the Board, Mr. Plank indicated 18 ft. and noted it will be a steel building.

Mr. Miller asked if they plan to move all of the equipment inside the building and Mr. Plank said that is their goal.

Mrs. Wolgamood asked what the employees do when they come to the site. Mr. Plank said the employees that ride bikes will go to the proposed property and someone will pick them up to take them to the job site.

Mr. Homan asked if the new building would be a path to growth for the business and the petitioner's representative said no. They are asking for a certain size of building so they can fit all of their current equipment inside, but they don't have any plans of expanding.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said the Board approved outside storage for a certain area and Mrs. Prough has indicated he is still in compliance with that. The proposed building is within the realm of that area and would clean up the mess.

Mr. Homan asked what impact the building would have on the outside storage. Mr. Plank indicated the purpose of the building is to make it big enough so that everything can be stored inside. There may be 15 to 20 percent outside, but they would like to make it so nothing is stored outside.

The Board had further discussion about the site plan at this time.

Mr. Hesser said his concern is that this business is substantially bigger than what was approved in 2003. He also noted that the business hasn't had any complaints. He's concerned that letting them construct the new building might allow them to expand in the future.

Mrs. Prough said she went out and met with Mr. Chupp because he wanted to review all of this prior to making his application. The petitioner represented that the goal was to get as much as the equipment inside as he could. He did indicate that he wasn't sure if everything could fit inside and he referenced bringing home a trailer at night. She went inside the current building and it is completely full.

If the Board were to grant the amendment, Mr. Homan asked what the Developmental Variance square footage difference would be. Mrs. Prough said the staff calculated the difference to be 14,944 sq. ft.

Mr. Homan said they are not talking about changing the intensity of the use of the property. Allowing for the building would get a lot of equipment out of sight, which would benefit the petitioner. The construction and appearance of the building would be fairly



consistent with many other agricultural buildings in Elkhart County. He noted he would like the area labeled “parking lot” on the site plan to be used for that purpose and not for equipment storage.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Miller*) this request for an amendment to an existing Special Use for warehousing and storing for a concrete business in an A-1 district (Specifications F - #44), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage of the primary structure be approved with the following conditions imposed:

1. Approved as represented on the site plan.
2. The “outside storage area” is to be limited to licensed trailers and vehicles.

The motion was carried with the following roll call vote results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – yes; and Hesser – no.

16. The application of ***Amerco Real Estate Company C/o U-Haul of Northern Indiana*** for a Use Variance to allow for the placement of truck beds to be used for storage on property located on the North side of US 33, 500 ft. West of CR 3, being Lots 7, 8, 9, 10 & 11 of Highway Gardens Subdivision, common address of 29057 US 33 in Baugo Township, zoned M-2, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #29057US33-101025-1*.

There were 10 neighboring property owners notified of this request.

Mr. Hesser briefly explained the reason why the hearing was tabled at last month’s meeting.

Mr. Lantz indicated he is in favor of this request. He reviewed the documents from the previous hearings and he has no issues with the request.

There were no remonstrators present.

The public hearing was closed at this time.

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

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

The motion was carried with the following roll call vote results: Homan – no; Wolgamood yes; Lantz – yes; Miller – yes; and Hesser – no.

*\* It is noted that Mr. Miller was not present for the remainder of the meeting.*

17. The application of ***Don Arnett (buyer) and William & Peggy Russell (sellers)*** for a Use Variance to allow for warehousing and storing for a transport business in an R-1 zoning district on property located on the Southwest corner of E. Jackson Blvd. (SR 120) & CR 15, common address of 4045 E. Jackson Blvd. in Concord Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #4045EJacksonBlvd-101220-1*.

A copy of a letter from a neighboring property owner was submitted to the Board at this time *[attached to file as Staff Exhibit #2]*. Mrs. Prough indicated the person who submitted the letter lives to the west of the petitioner.

There were 22 neighboring property owners notified of this request.

Don Arnett, 4045 E. Jackson Boulevard, Elkhart, was present on behalf of this request. At this time, Mr. Arnett submitted information for the Board regarding his property, the business, and the surrounding area *[attached to file as Petitioner Exhibit #1]*. He explained they own a repossession company and he transports cars to auctions. He goes to pick up a vehicle from somebody who is being repossessed or to move it from a dealership to an auction. He gets a trailer full of five vehicles and then takes them to their destination.

When they moved to this property in July, the only change he made was to put a privacy fence up. The rear of the property is entirely wooded, so the only person this would have a visual impact on are the people right across the street.

At the most, Mr. Arnett indicated he will have about five vehicles on site at one time. He also noted he has no employees and no signage. Every once in a while if he has a tow company coming by that has something he needs delivered; he will work with them to have them drop it off for him.

Mr. Arnett said the area behind his property is an industrial park. As far as noise, he indicated they sit right beside the railroad tracks. Since the petitioners moved to this property, they have cleaned out the woods area behind them.

The petitioner said it is only him coming and going to the site. He said one vehicle may sit there for three days. He doesn't feel he could find a lot in Elkhart County to rent that is 50 ft. x 50 ft. to meet his needs.

The first complaint that came in was regarding auto work and oil changes, but that wasn't the case. Mr. Arnett said he believes the neighbor saw him working on his own personal vehicles. He noted there are approximately 16 other businesses in this area.

When Mr. Homan asked how long he has been operating the business, the petitioner said six years. He started doing the subcontracting one year ago.

The encroachment was questioned by the Board and Mr. Arnett explained the area used to be fenced in and that's where the previous owner would turn around the motor home and buses.

Mrs. Wolgamood asked where the transport trailer is stored and the petitioner said it is parked to the southeast corner of the property, behind the fence. The vehicles the remonstrator mentioned in the letter are his personal vehicles. The cars he transports are parked to the southwest corner of the property.

When Mrs. Wolgamood asked how many vehicles he has, the petitioner indicated he has a boat, a motor home, two vehicles and a project car.

Mrs. Wolgamood also asked what is stored in the building and the petitioner said tractors, his boat, and several items that were left from the previous owners. He also indicated a lot of items have been donated to the Salvation Army.

Ray Gildner, 51185 Aqua Drive, Elkhart, was present in opposition to this request. Mr. Gildner pointed out his property on the aerial photo, which is across the street from the petitioner. He feels it wouldn't be fair to the other property owners if this request were

approved. There will be a traffic increase in the area if the petitioner is approved. Mr. Gildner doesn't feel this is a very desirable area for this business.

Danny Thursby, 54978 Woodhold Court, Elkhart, was present in opposition to this request. Mr. Thursby indicated he lives in the first house off of Jackson Street on the east side of Woodhold Court. The proposed property is located to the south of him. His objection to this request is the increased traffic at the corner of CR 15 and E. Jackson Boulevard. He feels there is currently a very large amount of traffic at that light. He indicated that when Middlebury Street was enlarged to four lanes, most of the neighbors thought the trucks coming off of the toll road would go down CR 17 and south into the industrial park, but he has not noticed a difference.

John Scheets, 54955 Woodhold Court, Elkhart, was present in favor of this request. Mr. Scheets asked if there was a new building being constructed on the site and the Board indicated no. He then stated he had no issues with the request.

Scott Deshone, 4046 E. Jackson Street, Elkhart, was present in opposition to this request. Mr. Deshone noted he lives catty-corner to the petitioner to the northwest. He is concerned about there being crime in the area if the petitioner is running a repossession company. He is also concerned that this may become more like a car lot. While he was walking home from the neighbors' house last night, he could see the tow truck backing up and beeping. He built a house in this area because it was zoned residential and he feels they had an opportunity to do their homework on this before they bought the property.

Judy Gill, 4044 E. Jackson Boulevard, was present in opposition to this request. Ms. Gill indicated she lives on the north side of Jackson Boulevard next door to Mr. Deshone. She is worried that if this request is granted, then the entire area will eventually become business.

Heidi Barheit, 4033 E. Jackson Boulevard, Elkhart, was also present in opposition to this request. She explained she has a direct view of the building from her back door as well as her front door. Her front door faces CR 15 and she doesn't want to look at this business. She bought her house in this area because it is residential. If the existing fence that is up is any indication of what the rest of the fence will look like, Ms. Barheit said it was put up poorly.

Harold Atkins, 22721 SR 120, Elkhart, was present with a concern. Mr. Atkins has lived in this area for about 20 years and he is concerned that business is taking over the residential area.

Mrs. Wolgamood asked him to point out his property on the aerial photo and he did so at this time.

Mr. Arnett agreed that the traffic in the area is horrible. He indicated he doesn't do repossession work anymore and he only transports vehicles from one place to another. There are no vehicles, apart from his personal vehicles, that are there for more than 72 hours. When the theft was happening, that was when he was located in downtown Elkhart.

The tow truck that one of the neighbors saw was picking up one of Mr. Arnett's personal vehicles that he sold. The majority of the time, the tow trucks will come between 9:00 a.m. and 3:00 p.m.

The public hearing was closed at this time.

Mr. Homan feels the problem with this request is that this is an R-1 zoning district and certain criteria have to be met in order for the petition to be approved. Asking for a warehousing and storing business does not meet the five criteria for a Use Variance and there is a considerable amount of concern in remonstrance. He doesn't feel he can support the request. Mr. Hesser agreed.

Mrs. Wolgamood said she agrees with the petitioner that there is a lot of traffic in this area. She feels badly that the petitioners have relocated here and started the business, but she cannot overlook the fact that it is in an R-1 zoning district. She feels the petitioner needs to be located in a manufacturing area and she is in support of the staff's analysis.

Mr. Lantz feels the use is low impact, but he understands the neighbors concerns.

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 Use Variance to allow for warehousing and storing for a transport business in an R-1 zoning district be denied with the business to be relocated within six (6) months. After a unanimous roll call vote was taken, the motion was carried.

18. The application of *Ceja Consuelo* for a Special Use for an existing church (Specifications F - #48) on property located on the South side of Modrell Avenue, 400 ft. West of Independence Street, being Lot 57 of Rose Lawn Subdivision, common address of 25404 Modrell Avenue in Osolo Township, zoned R-2, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #25404ModrellAve-101025-1*.

There were 19 neighboring property owners notified of this request.

Bernie Feeney, 715 S. Michigan Street, South Bend, was present representing the petitioner. Mr. Feeney explained the sign is located on the lot that is to be sold as a house. The sign will be a cross with writing on it and it will be located on the northeast side of the property. The sign is to be moved onto the church's property. The drainage plans have been provided for each lot. The plans for the septic and wells have also been provided in the plans. Mr. Feeney noted they have resubmitted the subdivision for consideration by the Plan Commission.

Mrs. Wolgamood said all her concerns have been addressed.

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/Lantz*) that this request for a Special Use for an existing church (Specifications F - #48) be approved as per site plan submitted. A unanimous roll call vote was taken and the motion was carried.

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

20. There were no audience items.

21. See page 5, item #12, for the staff item regarding *Maynard & Rosetta Yoder*.

22. See page 5, item #13, for the staff item regarding *Curt Haberstitch*.

23. Mr. Watkins gave a brief update on the Zoning Ordinance at this time. They will be having a workshop in February, but he was unsure when the Zoning Ordinance would be voted on.

24. The meeting was adjourned at 11:09 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