

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21ST DAY OF JULY 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 Vice-Chairperson, Doug Miller, with the following board members present: Bob Homan, Meg Wolgamood and Randy Hesser. Staff members present were: Ann Prough, Zoning Administrator; Robert Nemeth, Planner; and James W. Kolbus, Attorney for the Board.

2. Mr. Miller noted that he is shown as making a motion in item #3 of the June 2011 minutes, but he is not shown in the minutes as attending. A motion was made and seconded (*Wolgamood/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of June 2011 be approved as amended by the Board to include Mr. Miller in attendance of the meeting. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Wolgamood/Homan*) that the legal advertisements, having been published on the 7th day of July 2011 in The Elkhart Truth and on the 8th day of July 2011 in the Goshen News, 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 ***Jerry A. & Eva M. Myers*** for a Special Use for a beauty shop in an existing mobile home in an A-1 district (Specifications F - #46) on property located on the North side of CR 40, 385 ft. West of CR 37, common address of 13099 CR 40 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 #13099CR 40-110613-1*. She then submitted a letter dated June 26, 2011, from Jane Yoder in support of this request *[attached to file as Staff Exhibit #2]*. Mrs. Yoder's mother has been a customer of Mrs. Myers for over 30 years, and the letter indicates that Mrs. Myers has operated her beauty shop out of this mobile home for many years without complaints.

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

Eva Myers, 13477 CR 40, Goshen, was present on behalf of this request. She wants to renew the Special Use for her beauty shop as she enjoys her work and is not ready to retire. She is agreeable to the conditions recommended by the staff.

There were no remonstrators present.

The public hearing was closed at this time.

The Board discussed approving this permit for a period of five years and the staff was agreeable.

Mr. Kolbus suggested that the four conditions suggested by the Staff be in the form of a commitment. He explained that the purpose of commitments is to take the place of restrictive conditions that would be on a more permanent basis, which is the intent of the new state zoning laws. Conditions are to be something temporary such as a highway curb cut approval prior to obtaining a building permit.

Mr. Homan asked if the staff can prepare the commitment as long as it is signed by the petitioner and notarized. Mr. Kolbus responded affirmatively. The risk with conditions that are not recorded, he said, is that they might not be enforceable, depending on how the law is interpreted. They are, however, binding on the owner because they know about it. He said the concern involves subsequent owners of the property.

Mrs. Prough's concern is how commitments will be handled procedurally. If they are prepared prior to the meeting, she pointed out that the Board may not accept those conditions.

Mrs. Wolgamood asked Mr. Kolbus if the new procedure could begin next month, allowing them to act on the petitions currently before the Board. Mr. Kolbus stated that the only risk is the subsequent owners having knowledge of the conditions.

It was the consensus of the Board to move forward and act on the petitions as they have done in the past. Mr. Hesser did state that he feels this is an argument for keeping the Special Use limited to three years rather than five.

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

1. Approved for the owner/operator of the beauty shop.
2. No expansion or replacement of the beauty shop and/or structure.
3. Days and hours of operation to be Tuesday, Wednesday, Thursday, Friday and Saturday, 8:00 a.m. to 12:00 p.m.
4. Special Use approved for a limited time of five (5) years.
5. Approved in accordance with the site plan submitted as represented in petitioners' application.

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

7. The application of **Jeffrey M. & Allison S. Hilty** for an amendment to a site plan and conditions of an existing Special Use permit for warehousing and storing of excavation equipment in an A-1 district (Specifications F - #44) on property located on the East side of SR 19, 1,000 ft. South of CR 36 in Harrison 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 #OSR 19-110617-1*.

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

Present on behalf of this request was Jeff Hilty, 64200 SR 19, Goshen. Mr. Hilty explained that he wanted to change the location of where things are parked, as he has a goal to build a house on the back side of the building. The home would be situated in the area that is

currently zoned for Special Use. He would like to relocate the equipment that was parked in that area to the other side of the building.

Mr. Miller asked what side of the property Mr. Hilty wished to move his proposed storage area. Mr. Hilty stated that it would be to the south and west sides of the current warehouse. He noted that there is stone parking surrounding the building. The storage area would be limited to that area with some additional stone parking to the south. The stockpiling area would be to the west of the parking. Mrs. Prough stated that he is eliminating storage that he had on the east 50 feet, and moving it further south to the west.

Mrs. Wolgamood noted that truck parking still exists on the new site plan. Mr. Hilty explained that the truck parking is shown on the site plan because there is still stone in that location. He stated that he did not have a timeframe for building a house; it was just his intent to get things ready. He would like to keep things sitting on the stone for the time being. Since he has the stone parking he would like for that to be limited to his truck parking and equipment parking. He said that it would not be beneficial to have stone parking out there if he could not use it for parking. He explained that when he puts a drive off that side of the parking it would change because parked items would be sitting in front of his drive. Mr. Miller asked if, essentially, the house would be situated behind the business. Mr. Hilty responded affirmatively.

The Board reviewed the original and new site plans at this time. Mrs. Prough explained that in February 2010 the property was 4.52 acres. At this time, he would like to shift the line back 50 feet to the east, allowing him to move more items to the west. While he will still have parking, he would like to shift it 50 feet. He has always had the truck parking and he had asked the Board to move 50 feet east to use that as farm ground, which he never did. Now, he would like to take that back and shift it.

Mr. Miller asked if the proposed area is still the same. Mrs. Prough explained that it is still situated on the same 4.52 acres. He is not increasing the size he is just shifting the area to the west and south.

It was clarified that the petitioner lives in the front of the property. Mr. Hilty stated that it was his goal to obtain a building permit for his house today.

Mr. Homan pointed out that the request for an amendment to the site plan has nothing to do with a new home. The site plan shows a house, however, they are not discussing a house at this hearing.

There were no remonstrators present.

The public hearing was closed at this time.

If approved, Mr. Hesser felt they should clarify that this is the western 4.52 acres in condition #9, which is what the site plan shows. Mrs. Wolgamood agreed and also pointed out that the number of employees has been increased from two (2) to three (3).

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 and the petitioners' testimony, this request for an amendment to a site plan and conditions of an existing Special Use permit for warehousing and storing of excavation equipment in an A-1 district (Specifications F - #44) be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioners' application.
2. Three (3) employees who live off-site.

3. No sign.
4. No exterior loud speakers.
5. Exterior lighting to be limited to security, dusk-to-dawn type lighting.
6. Hours of operation to be Monday through Friday, 6:00 a.m. to 6:00 p.m., and Saturday, 6:00 a.m. to noon.
7. No retail sales on site.
8. Must be in compliance with the Elkhart County Groundwater Ordinance (which requires containment for all fuel tanks).
9. The Special Use is approved for the western 4.52 acres of land on this site.
10. The number of pieces of equipment is limited to no more than twelve (12).

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

8. The application of **Victory Christian Fellowship** for a Special Use for an existing church (Specifications F - #48) and for a Special Use for a cemetery (Specifications F - #6) on property located on the Southwest corner of CR 50 and CR 15, common address of 23012 CR 50 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 #23012CR 50-110621-1*. The staff recommendation for the Special Use for the church was amended to read, *"Staff recommends approval in accordance with the site plan submitted and as represented in the petitioner's application."*

There were seven (7) neighboring property owners notified of this request.

Present on behalf of this request was Luke Hoover, 68869 CR 31, New Paris, pastor and elder of Victory Christian Fellowship. He said he did not realize a Special Use was required for meeting as a congregation. Therefore, they are requesting a Special Use for a church as one has never been obtained. They are also requesting a Special Use for a cemetery to bury their members as they pass on. In checking with the county, Mr. Hoover said he found no laws pertaining to cemeteries, nor is he aware of any federal laws or where to locate such laws. He assured the Board that the church wishes to be law abiding in everything they do.

There were no remonstrators present.

The public hearing was closed at this time.

On the site plan, Mr. Homan noted the proposed cemetery site is shown right on the property line and he presumes there is a side setback for plots. Mrs. Prough said she is not aware of any, but she believes the Department of Natural Resources (DNR) has a regulation that a cemetery has to be a certain distance from a property line. She suggested the petitioner check with the DNR.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Hesser*) that the Board adopt the amended Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an existing church (Specifications F - #48) and for a Special Use for a cemetery (Specifications F - #6) be approved in accordance with the site plan submitted and as represented in the petitioner's application. A roll call vote was taken and the motion was carried unanimously.

9. The application of **John & Tammy Moore** for a Special Use for warehousing and storing of trucks, trailers and machinery for a snow plowing, property maintenance and light excavating

service business in an A-1 district (Specifications F - #44) on property located on the East side of Ash Road, 530 ft. North of CR 28, common address of 60904 Ash Road in Baugo Township, came on to be heard.

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 #60904AshRd-110621-1*. She then submitted a letter from Vera Berger dated July 14, 2011, in support of this request *[attached to file as Staff Exhibit #2]*. Mrs. Berger lives to the south, and her letter indicates the petitioners have always tried to be considerate of others while trying to make a living for their family, and that their business has not caused any distraction for her.

Mrs. Prough also submitted photos taken of this site yesterday (7/20/11) *[attached to file as Staff Exhibit #3]*, which she said shows a great deal of clean-up and improvement in the housekeeping of the site.

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

John Moore 60904 Ash Rd., Osceola, was present on behalf of this request. Mr. Moore asked if all board members were present at the hearing. It was noted that there is a vacancy at this time. He asked if he could reschedule his public hearing. Mr. Kolbus explained that there is a four member Board now and they do not know when the vacancy will be filled. Mr. Moore indicated that he would like to procure representation to assist him in presenting his request to the Board.

Mrs. Wolgamood asked if there were any neighboring property owners present for the hearing. It was then noted that some neighbors were present for today's hearing. Mr. Moore said one of his neighbors came with him and he is willing to come back. Another neighbor said he took off work to be here today so he would like to address the Board.

George Bake, 60872 Ash Road, Osceola resides north and west of the petitioner. He said that there is noise 24/7, with clanging, banging, delivering, unloading and loading. He stated that he has put up with it for 20 years and it is coming to a head. He has approached the petitioner on several occasions about the noise, stating that it interferes with his sleep. He stated that they did not seem to care. If there is a snow advisory in the mornings the petitioner is out at 2 a.m. or 3 a.m. to start the vehicles. Mr. Bake approached some of his neighbors who indicated that they did not want to get involved. As evidenced by the photos, the petitioner's shop is located right behind Mr. Bake's home. He said that on at least one occasion, while watching his grandchild, he approached one of the petitioner's employees and asked that they keep the noise down so that his grandchild could sleep. Initially, the employee laughed; however, eventually, the noise was discontinued.

Mr. Bake said the warehouse that the petitioner is requesting is also a garage where he works on his equipment, which is a source of a great deal of noise in the evening.

On the south property line along Mr. Moore's property, Mrs. Wolgamood asked if the privacy fence belonged to Mr. Bake. Mr. Bake indicated that the petitioner erected the fence and extended it. She then asked if there was a privacy fence from the southeast corner, north. He stated that the petitioner erected a privacy fence all along the property line a week or so ago. He believes that it was erected so that the debris would be concealed; however, it does not stop the noise.

Mrs. Wolgamood asked if there was always parking along Mr. Bake's south property line. Mr. Bake acknowledged that the petitioner did move a lot of the parking back earlier in the year. He noted that when the petitioner went out of town there was a radio in one of the vehicles

that played all night long. When he asked an employee to move the vehicle, the employee responded that the vehicle had always been haunted and eventually moved the vehicle.

When Mr. Miller asked who moved to the area first, Mr. Bake said he was there first, having built his home in 1976.

Mr. Miller asked if anyone else wished to speak concerning this matter. An audience member indicated that he could come back next month.

When Mr. Moore was asked if he wanted this tabled for one month or two, he said one month would be adequate.

A motion was made and seconded (*Hesser/Miller*) that this request for a Special Use for warehousing and storing of trucks, trailers and machinery for a snow plowing, property maintenance and light excavating service business in an A-1 district (Specifications F - #44) be tabled until the August 18, 2011, Board of Zoning Appeals meeting with all neighboring property owners to be re-notified. With a unanimous roll call vote, the motion was carried.

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

According to Mrs. Prough, she was advised by Ronnie Weiss that Richard Miller called the office at 3:55 p.m. yesterday (7/20/11) asking to table his petition as he was in Missouri on business and could not get back for the public hearing. She advised Mr. Weiss that the petitioner needed to submit his request in writing so he called Mr. Miller this morning and left him a message. She has heard nothing more so she is assuming Mr. Miller is still out of state.

It was noted that no one was present for this request, either in support or remonstrance.

Mr. Kolbus advised that the Board wait until 9:30 a.m. before they act on this request. (*See page 7, item #14 for further action on this request.*)

11. At this time, Mr. Hesser asked if a new Secretary would need to be elected to replace Mr. Lantz and Mr. Kolbus replied yes.

Mr. Hesser moved to elect Robert Homan as Secretary of the Board of Zoning Appeals replacing Tom Lantz for 2011. Mrs. Wolgamood seconded the motion, which then carried with a unanimous roll call vote.

12. At this time, Mrs. Prough submitted a letter dated July 1, 2011, from the building committee for the ***Morning Star School*** [*attached to file as Staff Exhibit #1*], which is located on the North side of CR 142, 400 ft. East of CR 11 in Union Township. Attached to this letter is the original site plan approved in 1987 and a revised site plan showing a 12 x16 ft. portable building they would like to construct for storage only.

She explained that she would have considered approving this as a minor change to the Special Use, except she was uncertain if it was going to be used for storage or for storage/classrooms. If the building is going to be used for classrooms, whether temporary or not, they would need to amend their Special Use. She reported that they have determined the building would be used for storage purposes only, at which time she asked the petitioner to put that in writing. She noted that the original site plan did not show an accessory building.

A motion was made by Mrs. Wolgamood and seconded by Mr. Hesser that the Board consider this request to construct a 12 x 16 ft. portable building for storage only a minor change to the Special Use Permit. The motion was then carried with a unanimous roll call vote.

13. Mr. Kolbus distributed copies of a proposed revision to Article 2 Membership, Officer and Staff, 2.01 Membership, and a proposed Certification of Residency. He explained this will be an amendment and attachment to the Rules of Procedure based on the new law that became effective July 1, 2011.

Mr. Hesser moved to amend Article 2, 2.01 Membership, A. and attach the Certification of Residency (Exhibit D) to the Rules of Procedure as proposed by Mr. Kolbus (*see attached*). Mrs. Wolgamood seconded the motion, which then carried with a unanimous roll call vote.

14. The application of **R & Y Farms** for a Special Use for warehousing and storing of commercial trucks and trailers in an A district (Specifications F - #44) on property located on the West side of CR 31, 2,600 ft. South of CR 36, common address of 64475 CR 31 in Elkhart Township, came on to be heard. (*See page 6, item #10 for previous discussion on this request.*)

A motion was made and seconded (*Wolgamood/Hesser*) that the Board table this request for a Special Use for warehousing and storing of commercial trucks and trailers in an A district (Specifications F - #44) until the August 18, 2011, Board of Zoning Appeals meeting. The motion was carried with a unanimous roll call vote.

15. The application of **Devon R. & Marietta S. Troyer** for a Special Use for a kennel with indoor pens and/or runs in an A-1 district (Specifications F - #15.00), and a kennel with outdoor pens and/or runs in an A-1 district (Specifications F – #15.10), on property located on the North side of CR 20, 620 ft. East of CR 33 South, common address of 14885 CR 20 in Middlebury 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 #14885CR 20-110621-1*. She then submitted a memo dated June 28, 2011, from Bill Hartsuff of the Elkhart County Health Department regarding the installation of a septic system that will be required for the kennel operation [*attached to file as Staff Exhibit #2*].

There were fourteen (14) neighboring property owners notified of this request.

Attorney Theora O'Haneson, P.O. Box 58, Middlebury, was present representing the petitioners on behalf of this request. She submitted to the Board a booklet of information pertaining to this request [*attached to file as Petitioner Exhibit #1*]. Also submitted was a photo of the puppy play area [*attached to file as Petitioner Exhibit #2*].

According to Mrs. O'Haneson, the Troyers were not aware they needed a Special Use Permit. She believes that the kennels are appropriate in every way. She stated that the Troyers have done a fantastic job of caring for the dogs. The petitioners have a capacity for up to 150 adult dogs and 170 puppies. She noted that the birthing house is sanitary, quiet and decorated like a home. The petitioner's children play with the dogs, which helps socialize the dogs in preparation for future placement into homes.

Referring to the aerial photo, Mrs. O'Haneson pointed out the outline of the property. She noted the long lane accessing the property and the trees and woods surrounding it. Adjoining property owners have no objection to this request, as noted by their signatures on the

petition contained within the paperwork given to the Board. She explained that the neighbors to the north have expressed some concerns about barking dogs. She talked with those neighbors and attempted to obtain a decibel level of the barking dogs. Due to the noise emitted from nearby C.R. 22, she was unable to pick up any decibel readings for barking dogs. She noted that while she could hear birds, she did not hear any barking dogs. She noted that the Elkhart County Humane Society always has barking dogs, whereas the petitioner's facility is so comfortable that dogs rarely bark.

Mrs. O'Haneson said that included in the packet of information given to the Board was the petition signed by neighboring property owners, an inspection report, and an AKC Compliance Report. She stated that the petitioners have been in compliance at all times on everything.

Since the surrounding property is agriculturally zoned she wondered why there would be a problem with the request. In terms of odor, she stated that there are much more objectionable odors in the area than the odor emitted from the kennels. As far as the noise, a single dog barking in her neighborhood makes more noise than the dogs on the petitioner's property. She stated that the petitioners are simply trying to operate a business. Their family helps them in this venture by caring for the animals. She believes this is an all around positive situation. The community benefits from this operation by allowing individuals to purchase puppies and dogs. The petitioners feel they are providing quality animals. She emphasized that all of the dogs are well cared for and the birthing room is fabulous. She asked that the Board approve the request.

Mr. Hesser questioned the number of dogs currently on the property. Mrs. O'Haneson stated that while there are currently 108 adult dogs, there is room for 150 dogs. She noted that there are a lot of puppies out currently.

Mrs. Wolgamood sought clarification concerning the two different classifications of breeders. She asked if the number of dogs at a facility is a factor in determining classification. Mrs. O'Haneson stated that number of dogs does not impact the classification. The number of kenneled dogs is based on space, not classification of breeder.

Present in support of the request was Hilary Reinhold, LaGrange Veterinary Clinic, 1005 N. Detroit St., LaGrange. She is also the attending veterinarian for Pinecreek Kennels. In her opinion, the petitioners have gone above and beyond in implementing exercise areas which are not required. While there is enough square footage in the kennels to meet requirements they chose to increase the exercise area to benefit the dogs. She is on site every month or two to check the facility, as well as to check any dogs that may have issues. Dogs with urgent problems are brought to the clinic. When she makes her visits, she addresses issues such as chronic problems, eye problems, etc. She stated that the petitioners set up a behavior program with a pet store owner in Michigan. They also consulted with Dr. Rolan Tripp, a well-known animal behaviorist who created a program for the petitioners, as well as several other kennels. The program provides instructions and recommendations on interacting with the puppies, beginning at one week of age and continuing through eight weeks.

Ms. Reinhold feels the petitioners provide the dogs with the best health and genetics possible. The petitioners recently became involved with OFA certification. This certification confirms that adult dogs are good physical specimens, including the knees and heart. She noted that the petitioners are also doing dentals on the dogs, which increases the health of the dogs and the overall health of the kennel. The petitioners attempt to provide the best possible care to their

dogs. Their children help socialize and exercise the dogs. She explained that the puppy area is kept small and portable in an effort to decrease exposure to parasites.

Mrs. Wolgamood questioned how the dogs were exercised during the winter. Ms. Reinhold stated that exposure to cold temperatures can result in respiratory infections, severe pneumonia and other illnesses in puppies. The puppies are taken outside when the weather permits. There is a cemented inside area where the puppies can be let in the same pen. The puppies are housed in pens in two sections. There is a section for sleeping and a section for bathroom use. Most of the puppies will use that section choosing to go outside rather than using the sleeping area; however, it does require some occasional cleaning. During the winter the puppies still take part in the socialization program, where individual puppies are held and manipulated per Dr. Tripp's recommendation. The puppies are manipulated, held, socialized and exposed to human touch and smells. She explained that adult dogs have access to the outside year round.

Mr. Homan noted that a report dated 11/3/10 from the AKC (Kennel Check Report) indicated 142 adult dogs and 56 puppies. He asked what number would be considered a reasonable maximum number of adult dogs. Ms. Reinhold explained that at the time of the report Mr. Troyer was not working. She noted that it does make a difference when Mr. Troyer is home and able to help. The petitioners have reduced the number of dogs since that report, as they want to limit the number of dogs to an amount they feel they can properly care for. Ms. Reinhold feels that the needs of the dogs are being met if she visits the kennel and finds that the dogs have proper haircuts, fresh food, a clean kennel, and there has been a continuation of the exercise program. The exercise program involves the dogs getting out on a regular basis a few times a week, when they are actually outside playing, not just playing in the social groups set up in the kennel. She believes that the maximum number of dogs maintained does not really depend on the number of people; it depends on the people's ability to work. She said that when she has visited the site, things are always clean. While she does not inspect the kennels during each visit, on the occasions she has walked through the kennels she found the conditions to be acceptable. She noted that the petitioners do not know when she will be walking through the kennels.

The number of dogs sold each month was questioned by Mr. Miller. Ms. Reinhold said that it depends on the month. The petitioner, speaking from the audience, indicated that they sell approximately 30 dogs per month.

Also present in support was Michael Lehman, 14844 CR 20, Middlebury, who lives directly across the road. He stated that the area is always quiet and clean. He feels the puppies are comfortable.

Wyman Miller, 14981 CR 20, Middlebury, said his property is surrounded on two sides by the petitioner's property. He stated that his residence is located away from the street, somewhat down the lane. He said that as far as the adult dogs, they do not hear much noise. He agrees that it always appears to be clean and he feels it is a good situation. He noted that the petitioners have always been good neighbors. He supports the request for a Special Use permit.

Freeman Miller, 14781 CR 20, Middlebury, may live in the closest proximity to the petitioners. He stated that he enjoys having them as neighbors. He feels they are operating a good family-oriented business. He has no complaints about the dogs barking, stating that while he may occasionally hear a dog, the barking is no greater than the barking of his own dog.

Lynn Miller, 14733 CR 20, Middlebury also appeared before the Board in support of this request. He explained that he lives next door to the petitioners. He believes that the petitioners do a good job of taking care of the dogs. He has been in the birthing room and found it to be clean. He thinks it is a good family business.

Present in opposition to this request was Gerald Miller, 14928 CR 22, Middlebury, whose property adjoins the Troyer's property to the rear. An aerial photo was submitted to the Board *[attached to file as Remonstrator's Exhibit #1]*, along with a petition signed by neighboring property owners in remonstrance to this request *[attached to file as Remonstrator's Exhibit #2]*. Also submitted was a USDA Inspection Report of the facility dated October 5, 2010

Mr. Miller is concerned about his property value should a puppy mill be permitted in his "back yard." He was surprised that supporters indicated that they could not hear the 142 adult dogs, and 61 puppies. He then referenced the petition in remonstrance, noting that the neighbors all indicate they can hear the dogs bark. The petitioners recently sold 42 dogs which may have minimized the noise; however, during the past six years while the business has been in operation, it has been none stop barking. He feels there is excessive noise, far more than has been indicated. During a recent conversation between Mr. Miller and the petitioner, the petitioner stated that they spray the dogs with water to quiet them down.

Jenna Oliver, 54503 CR 19, Bristol, is concerned that Elkhart County is getting the reputation of a "puppy mill" county. There are already several puppy mills in the county, and she is disheartened to see another petition emerge. She expressed concern that the business has been operating illegally for five to six years. She provided the Board with a report written within the last year that reflected a dirty inspection of the petitioner's animals *[referring back to Remonstrator's Exhibit #3]*. The inspection took place after the business had been in operation for over four years. The report reflects the condition of the animals, noting that seven animals required additional care.

She noted that neither the questionnaire nor Staff Report indicated the number of dogs to be maintained. Caring for ten puppies is far different than caring for 150+. She questioned if the two full-time employees and two-part time employees were 1099 employees or family members, including Mr. Troyer. With Mr. Troyer she questioned how many dogs could be cared for by one person and two children. The Staff Report indicated that the dogs should be exercised twice a day for at least ½ hour per day. She questioned how one full time and two part-time employees could meet that requirement.

Ms. Oliver asked if the Elkhart County Humane Society had been involved in this facility, noting that the Staff Report indicates that the petitioners must be in accordance with all of the state, local and federal ordinances. She felt it would be prudent to have the Elkhart County Humane Society involved in an operation of this size. The petitioners stated in their petition that these dogs go to Detroit. Therefore, they are not supplying these dogs to individuals in the Michiana community. According to her research, 250 dogs are euthanized each week in the Detroit area, whereas the Michiana area euthanizes approximately 19 dogs per week. She questioned how this operation could be considered a benefit to the community when dogs are intentionally bred for areas that have these euthanasia rates.

She provided the Board with a list of infractions found in the facility within the past year *[referring back to Remonstrator's Exhibit #3]*. She noted that the petitioner's attorney said that the operation was for business and income, while the questionnaire stated that it is something they want their

children to do to learn responsibility. She offered as a possible option, having the children volunteer at the local humane society to learn responsibility.

She challenged the statement that the area was buffered by trees. She noted that the neighbors disagree with that statement as evidenced by the signatures of over 50 individuals who do not agree that there is buffering in place. The petitioners noted that noise is minimal as they have a six foot privacy fence and have planted pines and other trees around the kennels, but neglected to mention the use of the water hose to keep noise at an acceptable level.

She pointed out that #22 of the questionnaire was answered with a question mark. She believes that the lack of an answer to how this special use would be consistent with the spirit, purpose and intent of the zoning ordinance, indicates that it would not be consistent with the spirit, purpose and intent of the zoning ordinance.

She requested that the petition be denied and that the kennel operation be closed.

Also present was Fred Greenawalt, 14796 CR 22, Middlebury. His primary concern had to do with the barking dogs. He stated definitively that the dogs bark. He noted that there is constant barking with the noise becoming worse during the winter when there are no longer leaves on the trees. While the dogs do not bark 100 percent of the time, they do bark the majority of the time. He said that it is a constant barking, which is to be expected with that number of dogs. He requested that the petition be denied.

Next to address the Board was Brett Tobias, 14746 CR 22, Middlebury. Mr. Tobias said that he is not opposed to the petitioners operating a family business. He acknowledged that moving to an agricultural area he expected to smell manure and hear cows and agricultural sounds. When he first moved to the area he could sit on the patio and enjoy the peace and quiet. However, he is no longer able to do that without being subjected to the sound of barking dogs. He cannot say with any degree of certainty that the petitioners have buffers in place; however, if there are buffers, they do not work. He expressed concern that property values have declined due to the economy. Should he decide to sell his house, a potential buyer would likely inquire about the noise. He acknowledged that the dogs do not bark 24 hours per day, and understands that it is natural for the dogs to bark several times during the day, such as at feeding times. He stated that he does not have a problem with the dogs barking on such occasions. He is more concerned about those occasions when he has heard the dogs barking at one o'clock in the morning for whatever reason. On those occasions it has not been just one dog, it has been multiple dogs. The barking dogs and the need to keep windows closed to maintain a quiet atmosphere, were factors in his decision to install central air in his home. He believes the approval of this request would prohibit neighbors from fully enjoying their surroundings. He noted that he has nothing personal against the petitioners having a business.

Kim Evans, 10730 N. Brown St., Syracuse, was present to share information with the Board. She is a friend of one of the remonstrators and stated that she has researched this type of operation in several counties. Based on USDA records, Board of Animal Health records, and pet store reports there are 38 operations in Elkhart County. She feels there are many more operations, since unlicensed operations would not appear in the records she accessed. She questioned if the Board was truly in favor of one more dog breeding facility in Elkhart County. She noted that there are discrepancies between what the petitioners are presenting and the USDA reports.

In rebuttal, Mrs. O'Haneson noted that a wooded area is located behind the kennel. Jerry Lambright, who has voiced no objection, owns the property located between the petitioners and

the remonstrators. Neighbors concerned with barking dogs could contact the Elkhart County Sheriff's Department. To the knowledge of Mrs. O'Haneson, the petitioner's property has not been the source of any documented complaints concerning barking dogs. She believes that the remonstrators may have incorrectly identified the source of the barking. She believes that the barking is coming from neighboring properties.

Also responding was Hilary Reinhold, the attending veterinarian. She agrees that puppy mills are horrible, stating that most puppy mills are not inspected by any entities. The petitioner's dogs are inspected by a veterinarian, the USDA and the AKC. The dogs referenced in the inspection, which were reported to have health issues did not have major issues. The maladies were addressed without the need for extreme measures.

She would like to know the breeds of dogs that are being euthanized at the shelters. She euthanizes dogs from the LaGrange shelter regularly that are primarily pit bulls, pit bull mixes, or entire litters of puppies. The litters are not from breeders but are from individuals who chose not to spay or neuter their own personal pet. The petitioners work with the Detroit pet store owner who purchases the puppies. The store owner is very aware of the euthanasia rate in the area. She speculates that the dogs that are being euthanized are likely pit bull type breeds, not house pets.

She explained that the behavior program implemented by the Troyers is part of what the Detroit pet store owner calls *Raising the Perfect Puppy*. The primary reason given for dogs to be euthanized or relinquished to shelters is behavior issues. The behavior modification attempts to socialize puppies so that they are a better fit in the home, keeping them from ending up in the shelter.

Referring to the October 2010 USDA Inspection Report submitted by remonstrators, Mr. Homan asked if the license was ever granted. Ms. Reinhold explained that the Troyers were licensed before the report. The USDA requires that individuals reapply when switching operations from personal to an S Corporation. He noticed that the report identified specific breeds. He asked Ms. Reinhold how many different breeds she has observed on the property. Ms. Reinhold stated that the largest dogs they have are English Bulldogs. The other breeds, Shitzus, Yorkies and Poodles, are small, weighing less than 20 pounds.

The public hearing was closed at this time.

The board members felt this is one of the most professionally run operations they have reviewed. They noted the noise impact to the neighbors and acknowledged that no solution has been offered. Another concern involved the number of dogs at this facility and that no limit to the size of this operation was offered by the petitioners.

With regard to buffering (item #2 of the Staff Analysis), Mr. Homan questioned the staff's criteria for evaluating substantial and permanent injury to neighboring property. Mrs. Prough said this is a large tract of ground and the kennel is operated in the central portion of that property. The operation is not visible when pulling up to the property, as it is situated at least 600+ feet beyond the road. She also said they looked at the surrounding property and noted there is a large machine shop in the area that has been rezoned for a manufacturing PUD.

According to Mrs. Prough, the staff did not feel comfortable with limiting the permit to a specified number of dogs since the State determines the size of area needed for dogs. The staff recommendation indicated that this kennel operation must meet all federal, state and local codes. The noise factor is always an issue with kennels, but she said the staff cannot determine what is reasonable and unreasonable. She reported that the Animal Control Ordinance no longer

addresses noise; however, barking is addressed through the Noise Ordinance enforced by the Sheriff's Department.

When Mr. Homan asked the petitioner how many adult dogs he has had over the last five years, Devon Troyer, 14885 CR 20, Middlebury, said he has never had more than 150. He purchased a couple of puppies and the operation grew from there. According to the petitioner, most of their breeding stock comes from their operation, but they do occasionally buy outside. He said everything is genetically checked so they have the best of the best.

For clarification, Mr. Homan then asked Mr. Troyer if he is representing he may have had 100 dogs for the last three years and he said probably.

Mr. Homan asked if this petition was the result of a complaint and Mrs. Prough said it was not. Mr. Troyer explained that until recently he was unaware of the Elkhart County ordinance requiring a kennel permit for four or more dogs.

Mrs. Prough did note that she received a call two days ago from Mr. Miller inquiring about the application. She was asked to document an official complaint due to the number of dogs (maybe 100) and noise, which she did, but she advised Mr. Miller they were taking no action due to the upcoming hearing.

If approved, Mr. Homan feels there should be a limit on the number of dogs and Mrs. Wolgamood wholeheartedly agreed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Hesser*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings and the testimony of the petitioners, this request for a Special Use for a kennel with indoor pens and/or runs in an A-1 district (Specifications F - #15.00) and a kennel with outdoor pens and/or runs in an A-1 district (Specifications F - #15.10) be approved by the Board with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. Approved in accordance with the site plan submitted and as represented in the petitioners' application.
3. The kennel operation is to meet all federal, state and local laws.
4. The total number of adult dogs limited to 100.
5. Approved for a period of two (2) years with renewal before the Board of Zoning Appeals.

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

16. The application of **Mervin Burkholder** for an amendment to an existing Special Use for an agri-business for a farm repair shop (Specifications F - #56) to allow an addition to said shop on property located on the Northwest corner of CR 42 and SR 119, common address of 26253 CR 42 in Harrison Township, zoned A-1, came on to be heard.

One (1) photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #26253CR 42-110616-1*.

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

Mervin Burkholder, 26253 C.R. 42, Wakarusa, was present on behalf of this request. He stated that the purpose of the addition is for additional room to move tractors inside the shop as it is currently not wide enough.

Mrs. Wolgamood asked if his access will be from the west driveway and he replied yes.

She also asked if the equipment shown in the photo is now parked on the west side and again the petitioner replied yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood complimented the petitioner for the appearance of the property, and as long as it remains that way, she said she has no objection to amending this permit.

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 an amendment to an existing Special Use for an agri-business for a farm repair shop (Specifications F - #56) to allow an addition to said shop be approved by the Board with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. All previous conditions imposed on June 16, 2011, to remain in effect.

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

17. The application of ***Jeff & Lisa Weaver (buyers) and Kenneth K. Keggereis Rev Trust (seller)*** for a Use Variance to allow for the construction of a residence on property served by an access easement located on the East side of River Heights Drive (Private Drive), 450 ft. East of River Shore Lane, 750 ft. North off of CR 16, common address of 56100 River Heights Dr. in Baugo Township, zoned R-1, came on to be heard.

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

A photo of the property was submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #56100RiverHeightsDr-110613-1*.

There were seven (7) neighboring property owners notified of this request.

Linda Miller, 23267 CR 4, Elkhart, co-owner of DL Miller Construction was present on behalf of this request representing the Weavers. The petitioners would like to construct a new single family residence on the subject property. The need for the variance arises due to the fact that the parcel is served by a private road, created in 1946. This parcel was created prior to 1962 as documented in the Recorder's office. A building permit could be issued without a Use Variance request if any portion of the property bordered a county road. However, no portion of the property adjoins a county road. Strict enforcement of the zoning ordinance would constitute an unnecessary hardship if applied to the property. Jeff and Lisa Weaver cannot construct a single family residence in this residential neighborhood without the granting of a Use Variance.

A residence and garage were previously located on this property. The construction of a new home will add value to the neighborhood and adjacent property. The property is served by municipal water.

The Elkhart County Health Department has made an on-site inspection and determined that a conventional septic system may be installed. Included in the information provided to the Board is a plot plan which indicates the location of the new residence and the garage. All setbacks comply with the requirements of the zoning ordinance. The property will be served by a compacted gravel driveway extending from River Heights, which is a dirt road, and terminating in concrete at the residence.

Mrs. Wolgamood questioned the number of houses on the private road, but Mrs. Miller did not have an exact number. She noted that there was a fence and locked gate on the property where they wish to construct a home. In response to Mrs. Wolgamood's question about the maintenance of the road, Mrs. Miller indicated that she did not know who maintained River Heights Drive. She did not think that the county maintained the road, but was uncertain if there was a homeowner's association.

Mr. Homan wondered if there was a commitment or statement on the deed regarding who is obligated for the maintenance of the private road. He expressed concern about snow removal for medical safety and noted that because it was not a paved road it would need to be graded and maintained. Mrs. Miller could not address that question, but she said she knows that other subdivisions hire people to maintain the road.

Mr. Homan wondered if the Board should take into consideration the issue of public safety. Mrs. Prough said that she thinks it is an issue with the property owners. She knows there is a resident at the end of the road who has a plow and suspects he may plow the road. It is also possible that the residents work together in maintaining the road.

After Mr. Kolbus reviewed a 1946 deed from when the easement was created, he stated that the document references access only and does not refer to maintenance.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan disclosed that while he knows the person who lives at the end of this road, he does not feel that the resident is part of the discussion. It is his personal feeling that the property owners will have to work that part out. With regard to land use, he sees very few Use Variance requests that so perfectly meet the five criteria necessary for a Use Variance. Mrs. Wolgamood agreed that this is an excellent example of a request that meets the criteria for a Use Variance. She noted that there was previously a residence and garage, and the petitioners simply wish to reconstruct a home and garage on the site.

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 the construction of a residence on property served by an access easement be approved by the Board in accordance with the site plan submitted and as represented in the petitioners' application. The motion was carried with a unanimous roll call vote.

18. The application of *Allen J. Gingerich & Susan K. Yoder* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the East side of SR 13, 3,000 ft. North of CR 10, common address of 53962 SR 13 in York Township, zoned A-1, came on to be heard.

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

One (1) photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #53962SR 13-110621-1*.

There were thirteen (13) neighboring property owners notified of this request.

Mrs. Wolgamood asked if the entire building would be used for the shop. Mrs. Prough explained that a building permit was issued for a 1,500 square foot shop and house so only a portion of the building is accessory. Mrs. Wolgamood then asked if the shop was agriculturally related and Mrs. Prough said it is personal domestic storage.

Mrs. Wolgamood questioned the determination of appropriate land use. Mrs. Prough said an accessory building and/or a guest house, which means no kitchen and no permanent residence. If they wish to convert a portion of it to agriculture, that would be permissible.

Present on behalf of this request was Susan Yoder, 16860 Arbor Vista Drive, Goshen. She stated that she is requesting to construct a second dwelling on their parcel. Currently the petitioners have a barn with a small kitchenette and bathroom. Her fiancé is residing there, so a temporary wall has been erected. When her current residence is sold they will build a new house.

She stated that they would like to keep the bathroom and small kitchenette, which would allow her to better tend to her large garden and can. Her fiancé also hunts and he would do his cleaning in this area. They have no plans to rent out the building as they enjoy their privacy.

She explained that once the second house is built the temporary wall will be removed so they will have more use of the area for his shop. Only a small bathroom with a sink and a refrigerator will remain.

Mr. Homan asked if there was a structure on the northeast corner of the property. Ms. Yoder stated that was correct.

Mr. Homan asked the petitioner if she was aware of the modifications to her property that would be required upon the completion of the second residence if her request was approved. The petitioner said that she thought she would get clarification at the hearing regarding what would be required.

Mrs. Prough explained that Elkhart County will need to do an onsite inspection. Normally, kitchens are removed, while bathrooms sometimes remain. She stated that she would not have any objections to a kitchen used for canning as long as the building was not being occupied for residential purposes. She explained further that the building permit is tagged in such a way to ensure that the construction is monitored and an inspection takes place prior to the issuance of a Certificate of Occupancy.

Mr. Homan questioned the timeline for construction of the residence. Ms. Yoder stated that as soon as her home is sold construction could begin. However, she had no idea when that would occur. She explained that her fiancé relocated from Michigan and is staying in the existing living quarters.

For clarification, Ms. Yoder said they would be agreeable to a stipulation that they would not rent out the living quarters.

Mr. Homan noted that there was no timeline on the Staff Report. He questioned if there should be a timeline. Mrs. Prough said the staff did not address a timeline, but suggested a timeline be imposed with the condition that the structure would not be used for a residence.

Mr. Homan asked if the commitment is something that is put into place immediately or at the time a building permit is issued. Mrs. Prough said the County could ask that a commitment be recorded and accepted prior to issuance of a building permit. Mr. Kolbus felt that would be an appropriate course of action.

If allowed to have the kitchen, Ms. Yoder said the only modifications needed would be to remove both the bed and dresser and remove the temporary wall.

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 and the petitioner's testimony, this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved by the Board with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The existing shop/house to be converted into an appropriate land use within thirty (30) days of occupancy of the new residence.
3. A signed commitment, as agreed to by the petitioner, to be presented prior to the issuance of an improvement location permit/building permit that would clarify that the shop/house will not be used as a residence upon completion of the new residence, and that the temporary wall (sliding door) will be removed as represented by the petitioner.

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

19. The application of **Joey W. & Kelly L. Cripe** for a Use Variance to allow for a residential use and construction of an accessory structure in a M-1 district, 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 Southwest corner of Warren Street and Grand Street, being Lots 25-28 of Mather's Addition, common address of 401 W. Warren St. in Middlebury Township, came on to be heard.

The photos of the property submitted at the May 19, 2011, Board of Zoning Appeals meeting were distributed to the Board for review [attached to file as Staff Exhibit #1].

Mrs. Prough presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #401WWarrenSt-110419-1*. She amended the staff recommendation by striking the last portion of the sentence as she said the property has been rezoned.

There were nine (9) neighboring property owners notified of this request.

Present on behalf of this request was Joey Cripe, 401 W. Warren, Middlebury, who said he just wants to build a larger accessory structure.

There were no remonstrators present.

It was noted that the request for a Use Variance was denied by the Board on May 19, 2011, but the Developmental Variance was tabled until the rezoning of the property was complete. The Board had no additional questions so the public hearing was not reopened at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the amended Staff Analysis as the Findings of the Board, and based upon these Findings, this 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 in accordance with the site plan submitted and as represented in the petitioners' application. A roll call vote was taken and the motion was carried with a unanimous vote.

20. The application of **Elena Moreira** for a Use Variance to allow for a residential use and the storage of vehicles awaiting repair in a R-2 zoning district on property located on the Northeast corner of CR 20 (Mishawaka Road) and Paul Street, being Lots 20 & pt. of 21 of Revised Locust Grove, common address of 28295 CR 20W in Baugo Township, came on to be heard.

A photo of the property was submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*. Also submitted were two 8.5" x 11" photos that were taken of the property on July 20, 2011 *[attached to file as Staff Exhibit #2]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #28295CR 20-110621-1*.

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

Elena Moreira, 56387 CR 15, Elkhart, appeared before the Board. She stated that she is requesting a Use Variance for storage of vehicles in the backyard at the subject property. The vehicles are being stored there while they await repair by Chapin's Auto Repair, located on an adjacent property. She would also like to maintain the rental home situated on the property.

She does not believe that granting the request would be injurious to the public safety, morals and general welfare of the community since the house is not being utilized for personal use. The home is rented to two single males with no children. The house is primarily occupied only at night, when the adjoining business, Chapin's Auto Repair is closed. She noted that as a rental property, the home does produce income, which is an additional business. In her opinion, the use and value of the area adjacent to the property would not be affected at all since she is the property owner. As the adjacent property owner, the petitioner obviously does not oppose the Use Variance.

She disputed a statement in the Staff Report that stated she has not demonstrated that she can comply with the developmental standards for the parking of vehicles on the property. She noted that she did not receive a copy of the photo taken at her property on June 22, 2011. The petitioner explained that renters reside in the house and on occasion they may use the backyard for parking, visitors, or to wash vehicles. She felt that she is being told that the backyard cannot be used at all. She noted that there is a cement slab in front of the garage that could be used for parking. The petitioner claimed that the photo was not current as they have not used the back area for storage of vehicles awaiting repair since Code Enforcement visited the site in March. At that time she was told she was allowed to have three working vehicles as long as they were operable and parked on the property for no more than 20 days. She pointed out that there was no way to ascertain how long the car in the photo had been there and that it could have been there for as little as five minutes. She expressed frustration that there seems to be an attempt to prove small infractions as grounds for denial.

Ms. Moreira stated that she is trying to comply with the rules and regulations which would allow her to operate her business, and thus, make a living. She stated that the need for the variance arises from the condition that is peculiar to the property in that she owns the adjacent property, she needs the extra space for the business and she would like to maintain her rental property. Strict enforcement of the zoning ordinance would constitute an unnecessary hardship if applied to the property. The hardship pertains to the business, since they would have to turn away business if her petition was not approved. She stated that her intent is in no way to affect anyone in a negative manner. The granting of the Use Variance would allow her to have sufficient funds for the upkeep of both properties involved. She said that the approval of her

petition would not interfere substantially with the Elkhart County Zoning Ordinance since there are surrounding businesses and residences. Additionally, anything being stored would be in the enclosed back yard and would not be seen by anyone except for property owners or anyone taking vehicles to the business for repair.

Mr. Homan asked if the house was purchased as a rental property. The petitioner stated that they have never resided in that home. She noted that the loan on the property is a rental loan.

Mr. Hesser asked which property they bought first. Ms. Moreira said that the M-1 property, currently the auto repair location, was purchased in December 2005. The R-2 property was purchased in July 2006. She explained that the R-2 was not for sale when they purchased the M-1. After they started their business the neighbors indicated that they wanted to move. The petitioner thought it would be helpful to have both properties and subsequently purchased the property.

While reviewing the history of the property Mr. Homan noted the 5/12/11 meeting with the Plan Commission. He wondered if B-2 zoning was considered since that would allow rental property. He asked if the Plan Commission considered rezoning the M-1 property in addition to the R-2 property, or solely the R-2 property. Mrs. Prough explained a complaint was received about the property regarding the parking of vehicles. Upon investigation the accessory use to the auto repair business was discovered. While a B-3 zone is required for this situation, that zoning would not allow for a residence on site. When the petitioner went before the Plan Commission, different options were discussed, including PUD, Special Uses, and Use Variances. Mr. Nemeth worked with the petitioner. The petitioner decided to ask for a Use Variance.

Mrs. Prough offered another option which may not have been previously discussed. The petitioner could ask to have the property rezoned to B-2, which allows residential use. She could then ask for a Special Use permit to warehouse and store automobiles in a "B" zone. Basically, it comes down to the fact that the petitioner wants both uses. She would like to keep her rental property as well as the accessory use for the business. Both lots are small, and the petitioner is very limited with the M-1 property. The property north of her property is a junkyard, which was rezoned in the 1970's and has a Conditional Use permit. Mrs. Prough stated that she just completed an authorization for a license involving that property so she is very familiar with its history.

Mrs. Prough directed any additional questions to Mr. Nemeth, stating he worked extensively with the petitioner through the process. Ms. Moreira said she was told in the last meeting that a B-2 zoning would dictate that the property be used strictly for the business or strictly for renting. For that reason, she chose to seek the Use Variance. It is her understanding that if granted, she could have both uses on the same property.

Mrs. Wolgamood concurred that there are two separate uses. Mr. Homan acknowledged that it is not permissible to have two separate uses in B-2 zoning. Mrs. Moreira asked if it would be helpful if they offered signed proof that they would only rent the house to single males, not families.

Mr. Hesser asked if the scenario Mrs. Prough proposed was feasible. He asked if it would be permissible to have both uses in that situation. Mrs. Prough confirmed that both uses would be permitted if it was rezoned to B-2 and a Special Use was granted. Rezoning to B-2 would allow the petitioner to have her rental property; however, a Special Use would be required to warehouse and store vehicles. The petitioner could also seek rezoning to B-3, but she would be unable to use the home as a residence. It could be torn down or used as an office since an

office is permitted in a B zone. Mrs. Prough explained that the petitioner asked for the B-3 zoning when she appeared before the Plan Commission, but when it was explained to her she elected not to proceed in that direction because she is seeking both uses. The Plan Commission indicated that if rezoned to B-2, she would have to use it strictly for the business or renting. She wants the Use Variance so she could have both uses.

There were no remonstrators present.

Mr. Hesser said that he does not feel that their request to allow vehicles interferes with the neighborhood, based on surrounding properties. He stated that he would be more comfortable with a B-2 rezoning coupled with a Special Use, rather than a Use Variance. He does not feel that the threshold has been met for a Use Variance. He is not sure that a Special Use would be appropriate, although he thinks the storing of cars is fine if there was no residence on the property.

The public hearing was closed at this time.

Mrs. Wolgamood said she has visited this site on several occasions and has viewed vehicles on the property each time. She does not dispute that they may belong to the residents residing in the rental property. However, she visited the site during the day, not the evening. There were a number of vehicles, operable or inoperable on the M-1 zone property. Many of those autos were sitting in the county right-of-way, although that is not the County's jurisdiction. She noted the trash bin, among other things, and that there have been vehicles parked south of the business in the M-1 zone, which is permitted. She stated that while the petitioner wants it all, she needs to decide if she wants the rental house or parking for the vehicles because she cannot support both uses. Mrs. Wolgamood stated that, at least from the outside, the house appears to be in disrepair. While the petitioner has indicated that adults live in the home, it is still being used as rental property. She stated that she is in full agreement with the staff analysis.

Mr. Hesser stated that he has not driven by the site, although he understands the concerns, based on the information provided. He felt that the petitioner needed to make a decision about how to proceed so that they would have enough property to properly service the vehicles. He did not feel this would support a residential rental property. Mrs. Wolgamood noted that the petitioner still has a request pending with the Plan Commission for B-3 zoning. It would go back to the Plan Commission, then to the County Commissioners for their final approval, or disapproval. Mr. Homan stated that the approval of B-3 would allow for commercial use, but no residential. Mr. Hesser explained that to do both, the petitioner would need to get B-2 zoning and then return for a Special Use permit, which she may or may not receive.

Mr. Nemeth explained that the M-1 property owned by the petitioner used to be the location of a band instrument shop. It was requested to have an M-1 zoning to reflect the land use. The owners of the property, at that time, also owned the R-2 property. They wished to keep it zoned R-2 because a relative was residing in the home. Therefore, the home was kept out of the rezoning request when it was done in the early 1980's.

Mr. Homan asked if he would be correct in presuming that the surrounding property was all zoned "R" at some point, but had been used up in commercial uses over time. Mr. Nemeth stated that he was correct. The property used to be part of the Locust Grove Subdivision, although over time the land use has changed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow

for a residential use and the storage of vehicles awaiting repair in a R-2 zoning district be denied by the Board. With a unanimous roll call vote, the motion was carried.

21. See page 17, item #19 for the application of *Joey W. & Kelly L. Cripe*
22. There were no items transferred from the Hearing Officer.
23. See page 6, item #12 for the staff item regarding the *Morning Star School*.
24. See pages 6 and 7 items #11 and #13 for additional staff items.
25. The meeting was adjourned at 11:36 p.m.

Respectfully submitted,

Teresa McLain, Transcriber

Kathleen L. Wilson, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary