

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF MAY 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 Robert Homan with the following board members present: Meg Wolgamood, and Tom Lantz. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.

2. Mrs. Wolgamood noted that a correction needs to be made on Page 2 of the April 20, 2011, minutes. Before item #9, she said there is a statement that says, “*Mr. Miller stepped down from the Board at this time due to a potential conflict of interest.*” She recalled that this was due to a scheduling conflict and Mr. Miller was not going to return to the meeting. Mr. Kolbus said that is correct.

A motion was then made and seconded (*Lantz/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of April be approved as amended by Mrs. Wolgamood. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Wolgamood/Lantz*) that the legal advertisements, having been published on the 7th day of May 2011 in the Goshen News and 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 (*Lantz/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. See page 2, item #8 for the application of *Melvin Chupp*.

7. The application of *Middlebury Community Schools* for an amendment to an existing Special Use for a school to allow for two press boxes/concession stands (Specifications F - #38) on property located on the Northwest corner of Northridge Drive & Wayne Street (CR 16), 800 ft. Northeast of US 20, common address of 56853 Northridge Drive 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 #56853NorthridgeDr-110425-1*.

There were 20 neighboring property owners notified of this request.

David Harms, Athletic Director for Middlebury Community Schools, 56853 Northridge Drive, Middlebury, was present on behalf of this request. Mr. Harms explained they built two press boxes at their softball/baseball field. The school raised the money for the press boxes and

then made a presentation to the Board. The Board told him it was okay, so he built them, but the builder did not obtain a permit.

Mr. Homan questioned the type of structure and Mr. Harms said it is a 10 ft. x 12 ft. press box with a pole bottom and footers on each corner. The structure is two stories.

When mechanical and plumbing were questioned, Mr. Harms said they have electric to operate the sound system and the controls for the score board. He also noted this would not be used as a concession stand as all of the food will be pre-packaged.

Mr. Homan asked if they have obtained approval from the state and the petitioner's representative said yes. Mrs. Wolgamood clarified they would also need a permit from the Building Department.

Also addressing the Board was Craig Baker, Facilities Director of Middlebury Community Schools, 56853 Northridge Drive, Middlebury. Once they obtained approval from the Board, Mr. Baker contacted Progressive Engineering to look at the structure. Progressive Engineering worked directly with the builder.

Mr. Homan asked if Progressive Engineering supervised any of the construction and Mr. Baker said that was done by the builder. They had to re-address some electrical issues upon inspections, but the foundation was approved.

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/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a school to allow for two press boxes/concession stands (Specifications F - #38) be approved in accordance with the site plan submitted and as represented in the petitioner's application with all applicable permits to be obtained. A roll call vote was taken and the motion was carried with a unanimous vote.

* (*It is noted that board member Randy Hesser arrived for the meeting at this time.*)

8. The application of **Melvin Chupp** for a Special Use for an agricultural use for the keeping of horses on a tract of land containing three acres or less (Specifications F - #1) on property located on the West side of East County Line Road (CR 45), 1,560 ft. South of CR 32, common address of 61787 E. County Line Road in Clinton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #61787ECountyLineRd-110418-1*.

There were 4 neighboring property owners notified of this request.

Present on behalf of this request was Mervin Eash, building contractor for petitioner, 7300 W 500 S, Topeka. Mr. Eash explained that the petitioner would like to construct a small horse barn to keep his horses inside and out of the weather. The small storage barn he is currently using is not convenient.

When asked if this is a new home to Mr. Chupp, Mr. Eash said he purchased it a couple of years ago.

Mr. Homan asked if the property is fenced and Mr. Chupp said the entire property is fenced up to the shed. He also indicated that the three horses are already on site.

David Chupp, petitioner's father, 7405 W 300 S, Topeka, was present in favor of this request. Mr. David Chupp said he is in support of this request as his son would like to take better care of his horses. His existing structure will not accommodate that.

Mrs. Wolgamood asked if the proposed structure will house all three of the horses and the petitioner's father said yes.

The acreage was questioned by Mr. Hesser and Mr. David Chupp said approximately two acres.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said he would like the site plan to be amended to show where the fence is located.

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

1. Approved for the keeping of three (3) horses.
2. The site plan to be amended to show the location of the fencing.

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

9. The application of ***Sugar Grove Church, Inc.*** for an amendment to an existing Special Use to allow for an addition, additional proposed storage, expansion of the parking lot and addition of baseball diamonds (Specifications F - #48) on property located on the East side of Old CR 17, 250 ft. South of CR 118, common address of 58512 Old CR 17 in Concord 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 #58512Old CR 17Rd1-110425-1*.

There were 35 neighboring property owners notified of this request.

Bob Schrock, 25300 CR 24, Elkhart, was present on behalf of this request. Bob Schrock, 25300 CR 24, Elkhart, who is a member of the Sugar Grove Church, was present on behalf of this request. Mr. Schrock noted he appreciates the staff's recommendation for approval. The purpose of this amendment is to continue to use their land and to develop facilities that are compatible with their ministries. Specifically, they are adding another addition, more parking, a storage building and areas for outdoor sports and recreation.

They have been considering all of these things for the past couple years and they do eventually plan to do all of them. The reason they are here at this point in time is because of the opportunity that came to them this spring to develop the baseball/softball fields.

They were last before the Board in 2009, but due to the economy, they did not construct the ball diamonds. In March they were approached by a member of the church who runs a baseball club for middle school/high school boys and wanted to put the baseball diamonds in for free in exchange for him being able to use them for practices for his baseball club. Mr. Schrock indicated the Deacons approved the plan.

They started to start on the ball diamonds, but it was then pointed out that they weren't shown on the site plan. The church then asked the gentleman who was working on the ball diamonds to stabilize the site and hold off on any additional work until the Special Use was amended.

Mr. Schrock feels that everything included in their application are things you would expect to see on the property of a growing church. It is the church's desire to continue adding facilities and programs that are consistent with the ministry. They would like to make the most of the church property's 28 acre, but would also like to be mindful and respectful of the community and neighbors. He also noted they are in total agreement with the request from the staff not to have any lighting on the ball fields.

Mr. Homan asked if there will be league play and Mr. Schrock said the church currently has a softball league that plays off-site. They would like to host some; however, they have no plans for having league games there on a regular basis.

When Mr. Homan asked about parking, Mr. Schrock said the parking lot has over 300 spaces and there would be only two diamonds.

Mrs. Wolgamood asked if the area labeled "outdoor recreation area" is existing and Mr. Schrock said it's proposed. It is currently a wheat field, but they have a pretty aggressive youth, so they would like to use it in the future for soccer or flag football. They have no immediate plans for that area.

David Myers, 23929 US 33 East, Elkhart, was present in favor of this request representing the Sugar Grove Cemetery Association Board, which is a separate entity from the church. Mr. Myers indicated the Board has no issues with this request. He is also under contract to buy the property directly south of the church. He noted he has no objections to this request.

Hosea Jump, 58676 Old CR 17, Goshen, was present in opposition to this request. Mr. Hosea said he talked with Mr. Schrock on the phone about a week ago and he was told that the church hopes to have practice and games on both fields. This will not only be for Sugar Grove Church members and it will be open to other teams in the area. Mr. Jump is concerned about noise and PA systems. He feels it will be hard for the neighbors to have their windows open in the summer because it will be so noisy.

Mr. Jump is also concerned about the ball diamonds affecting the value of their property. He feels the ball diamond is already illegally built, but there aren't any fences or stands. According to the petitioner's representative, the church did not know they needed a permit. They were told to cease and desist, but Mr. Jump indicated they never stopped.

At this time, Mr. Jump read and submitted a letter to the Board from Brads-Ko Engineering & Surveying addressing the stormwater runoff on this site *[attached to file as Remonstrators Exhibit #1]*. He indicated DJ Construction was informed that they needed to file a SWPPP. They had six large pieces of earth moving equipment and piles of crushed rock on the site. They were digging several deep holes and he was unsure what the reasoning for that was. He noted there is also a 10 ft. x 30 ft. area that is filled with water.

If the church wants a facility for church league games, Mr. Jump feels it should be located back by CR 17 or on their proposed recreational area. He also feels the hours of use should be limited and there should be no lighting or PA systems.

Mrs. Wolgamood asked Mr. Jump to point out his property on the aerial photo and he did so at this time. His property is several properties to the south of the property in question.

Also present was Ronald Brooks, 58640 Old CR 17, Elkhart, was present in opposition to this request. Mr. Brooks indicated he lives directly west of the ball park, which is about 50 yards away. The work on the ball diamonds was started at least one month ago. He is concerned that the neighbors had no voice to oppose to this project prior to them starting work.

Terry and Dale Pace, 3700 S. Westport Avenue, #3450, Sioux Falls, South Dakota, were present in opposition to this request. Mr. Pace feels this will be detrimental to their rental property. He's concerned that there may be a possibility of them having lights in the future. If they add an additional ball diamond, that may cause issues as well. His main concern is noise because he may have problems selling/renting his property. He pointed their property out on the aerial photo at this time.

Mrs. Pace said they currently have renters living at the property who have been there for over 20 years. The renters like the property because it is quiet and she feels that will no longer be the case if this request is approved.

Mrs. Wolgamood asked if the home is a duplex and Mr. and Mrs. Pace both replied yes.

Gloria Fawley, 22288 CR 118, Elkhart, was present in opposition to this request. Mrs. Fawley indicated she also owns land that is directly across from Sugar Grove Church on Old CR 17. She questioned whether this will be a commercial enterprise or if it would be strictly for Sugar Grove Church. She would also like the issue of port-a-potties to be addressed.

Mr. Jump also expressed a concern that if this request is denied, then what will be limited because the ball diamond is already there. He feels they should be required to plow the field back up and replant grass. He would also like it in writing that the church will not use it for any type of ball park.

If the ball diamond were out toward the highway, Mr. Lantz asked if he would be opposed. Mr. Jump said he would not mind if it were only a softball diamond towards the back of the property and was limited to the use of Sugar Grove Church only. Mr. Schrock had also indicated to him that they would be building a storage shed. Another concern he has is water runoff on the site.

In rebuttal, Mr. Schrock noted that Enos Yoder, Deacon from the church, is also present to help address the concerns of the neighbors. He apologized that some work got started without prior approval. They had thought the ball diamonds were shown on the previous plan that was submitted in 2009. When they realized it wasn't, they did begin to cease operations.

Mr. Schrock indicated they are showing accurate figures on the site plan as far as the number of feet to the diamonds. They aren't planning on having a permanent PA system, but they may have a portable one out there for an event. He doesn't feel that will cause a problem for the neighbors due to the distances to their properties.

Mrs. Wolgamood asked if he is saying that there will not be a PA system and Mr. Schrock assured the Board there are no plans for a permanent PA system. They have a portable one which they use for church picnics, etc. He doesn't want to put a blanket limitation that there will never be a PA system, but that is not the type of program they are planning to run. These games are much lower key than what is being portrayed.

Enos Yoder, 57594 Heritage Way, Goshen, was present representing the Board of Deacons. Mr. Yoder indicated the church is equally concerned about the overall image of their property along CR 17 and Old CR 17. They will have portable toilets on site, but they will be located behind a shed and completely out of eyesight.

With regard to the PA system, Mr. Yoder said they are typically to communicate to the stands. If a PA system were used, the noise would not reach the neighboring homes any more than noise from traffic on CR 17.

There are church members who go to the church that are part of the baseball club. There are also young fathers who are coaching little league teams who are part of the church. He said it would be a pretty difficult task to limit this to church use only because they are synonymous with community use. Anyone who uses the diamond would have to follow the policies of the church. He understands the concerns of the neighbors and he appreciates the neighborhood.

Mr. Lantz questioned if the measurements of 425 ft. x 250 ft. are correct and Mr. Yoder said yes. The fields will be 650 ft. from the closest neighbor and he feels that is a pretty significant distance.

Mr. Homan noted that the neighbors had concerns about days and hours of operation. Mr. Yoder said everything is being managed by volunteers, so things will be done after hours. Without lights, all the operations will be before dark. The fields wouldn't be used on Sunday mornings or Wednesday evenings because it is part of the church's policy. It will be utilized on weeknights, Saturdays and possibly some Sunday afternoons.

Mrs. Wolgamood asked if any storage building will be constructed and Mr. Yoder said there is need for church storage, so there may be a small building where "future storage" is notated on the site plan.

Mrs. Wolgamood also asked if there would be fees involved and Mr. Yoder said no because there are a non-profit organization. If there are any concessions sold, the money from that will be used to defer expenses for uniforms and umpires. They hope to have some bleachers in the future, but that will not be significant as there are only two diamonds.

When asked to address the holes with standing water, John Drew, 27683 CR 24, Elkhart, said one hole is a designed retention area off of the softball field. There are some piles of dirt that will be used to slope the retention area better. There is a low area between the baseball field and the softball field where he intends to put in a small mound area for people to sit on. Had they continued the project, the hole would no longer be there.

When this request was originally approved in 2007, Mr. Hesser noted they approved a message board sign. He asked if they are in compliance with that and Mr. Schrock said he felt they were. He indicated the contractor came to the office to make sure it was in compliance and he thinks the message changes about every 60 seconds.

Mr. Hesser said he has no objection to the request, but he is concerned about the church's approach that is being taken. He gets the sense that they decided to ask for approval once they got caught and that bothers him. Mr. Schrock said that concerns him too and that is why they stopped the construction when they were advised to. They will be putting the buffer in as they were asked to do, so they are trying to do this right. He indicated they were told by a staff member that they could move the dirt.

Mr. Homan said there is some buffering on the south side of the church parking lot between the adjacent neighbors. He asked if the church would consider buffering with light vegetation further south. Mr. Schrock indicated the buffering was for the church's benefit, but they would be open to more buffering if required. They feel the distance is an adequate buffer, but they would be open to placing trees there if required.

After the approval of the Special Use, Mr. Burrow said the County Commissioners, along with the Plan Commission, adopted an electronic message board standards and the church is in

compliance with those standards. Since the County Commissioners and Plan Commission established standards that were alternative to the Board's imposition, the staff decided they would need to comply with the new standards established by the Zoning Ordinance.

Mr. Hesser asked if it is the view of the staff that they could not impose a condition on the flashing of the sign. The position of the staff, according to Mr. Burrow, is that the standards were adopted and established by the County Commissioners and Plan Commission. The Board's reasonable conditions were based on lack of standards.

The public hearing was closed at this time.

Mr. Homan asked if they have considered accessory structures, a dugout, or a press box to support the diamonds in the near future. Schrock said they would start with a small storage building and there are plans for dugouts. He acknowledged they would be required to obtain permits for both. They do have a master plan that they will submit when they amend their Special Use in the next phase of their growth.

Mrs. Prough said the staff would like the Board to approve the site plan due to the number of issues and remonstrance from the neighbors. She suggested the public hearing be tabled today with a revised site plan to be submitted to the staff within ten (10) days for review. This would allow the neighbors to review the revised site plan prior to the next public hearing.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that based on the testimony given today, some of the concerns raised and as requested by the staff, this request for an amendment to an existing Special Use to allow for an addition, additional proposed storage, expansion of the parking lot and addition of baseball diamonds (Specifications F - #48) be tabled until the June 16, 2011, Board of Zoning Appeals meeting with a revised site plan to be submitted to the staff within ten (10) days. A roll call vote was taken, and with a unanimous vote, the motion was carried.

10. The application of **Wyman D. Miller** for an amendment to an existing Special Use for an agri-business (Specifications F - #56) for commercial repair of farm machinery and manufacturing of agricultural (cattle and hog) equipment to allow for an addition to the existing weld shop, one additional employee that lives outside the residence on site, a larger sign, and additional parking on property located on the Southeast corner of CR 22 & CR 31, common address of 15980 CR 22 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 #15980CR 22-110420-1*.

There were 15 neighboring property owners notified of this request.

Wyman Miller, 15980 CR 22, Middlebury, was present on behalf of this request to amend his Special Use. Mr. Miller explained Barr Design has drawn up plans for the proposed building.

Mrs. Wolgamood questioned the location of the existing outside storage area on the site plan. Mrs. Prough said the outside storage is the parking area (#11) and #14 is where they want to extend the outside storage.

Mrs. Wolgamood noted that the completed questionnaire indicates semi traffic to the property. She asked the petitioner how the semis not only enter and exit and inquired if there was adequate room for them to turn around. Mr. Miller responded that they would like the semis to drive in, but acknowledged that at this time they do not have total control of that at this time.

He indicated that he would like to open up the back a little more so that the semis could turn around, eliminating the need to back out onto the road. He stated there is enough room for semis to drive in, back around, and drive out. Mrs. Wolgamood asked the petitioner if he would take the responsibility to ensure that happens. Mr. Miller responded by asking if he could do this through the use of a sign or similar item. Mrs. Wolgamood stated that he could do whatever it takes.

Mrs. Wolgamood questioned the petitioner about the 16 ft. x 18 ft. retail area indicated in his plans, as well as his definition of retail. Mr. Miller stated that when he refers to retail he planned to offer for sale to the public small items such as a campfire grill, a shelf of vice-grips, as well as a shelf area with additional items. He stated that this area would be located in the new building.

In regards to the proposed 4 x 4 ft. double-faced sign, Mrs. Wolgamood asked Mr. Miller if he currently had a wall-mounted sign. Mr. Miller indicated that it was marked as #13 on his original plan. Mrs. Prough clarified that it is reflected as #11 in the office building and that there is currently a wall mounted sign. She stated that it is a hanging sign on a bracket off of the building, which he intends to remove. She noted that the petitioner's contractor worked on the site plan and there may have been some misunderstanding. However, she did review the setbacks with the petitioner.

Mr. Miller stated that he is uncertain if he will erect a sign, but he is asking for one in case he does.

Mike Yoder, 59525 CR 31, Goshen, owns property to the south of the petitioner. Mr. Yoder stated that Mr. Miller welds his equipment for his farming operation and has been a good neighbor. He believes Mr. Miller's request is a good request and has no objections.

There were no remonstrators present.

Mr. Hesser then clarified that the storage is located in the parking area (#10), and the new building is shown as #11 on the site plan. A larger sign is being permitted, as well as the addition of one employee. Previously, Mrs. Wolgamood said the 30 x 36 ft. shed (#6) was not listed as being utilized for the business, however, now that it is being used the total number of buildings being utilized for storage numbers four. Additionally, the parking area is being extended for outside storage.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/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 an amendment to an existing Special Use for an agri-business (Specifications F - #56) for commercial repair of farm machinery and manufacturing of agricultural (cattle and hog) equipment to allow for an addition to the existing weld shop, one additional employee that lives outside the residence on site, a larger sign, and additional parking, be approved with the following conditions imposed:

1. Buildings #6, #9, #11 and #13 are to be used for the business.
2. No storage of any materials or finished products between the buildings and CR 31.
3. One (1) 4 ft. x 4 ft. double-faced and unlighted sign.
4. No more than three (3) employees who do not live in the residence on site.
5. Approved for the owner/occupant of the residence on site.
6. Outside storage, parking and unloading area per site plan.

7. No backing in of vehicles onto the site from CR 31.

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

11. The application of ***Eric A. & Pamela J. Stover*** for a Special Use to allow for an agricultural use (keeping of chickens) on a tract of land containing three acres or less and in an R-1 district (Specifications F - #1) on property located on the Southwest corner of Deerfield Drive & Mohawk Drive, 450 ft. North of CR 28, 750 ft. West of Old CR 17, being Lot 13 of Deerfield Subdivision, common address of 60921 Deerfield Drive 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 #60921Deerfield Drive-110425-1*. She also read and submitted a letter from Darrell and Lydia Kauffman, who are in support of this request *[attached to file as Staff Exhibit #2]*.

There were 19 neighboring property owners notified of this request.

Pam Stover, 60921 Deerfield Drive, was present on behalf of this request. She submitted a packet including a petition in favor of this request with 15 valid signatures, and an article from Backyard Poultry magazine *[attached to file as Petitioner Exhibit #1]*.

Ms. Stover explained that they have converted a shed and attached a run for their chickens. They have had the chickens for a year and were unaware that they were required to have a Special Use permit. She indicated that included in the packet which she submitted to the Board, were the signatures from all the landowners in her neighborhood indicating their support of her request.

Mrs. Stover stated that the chickens are not easily seen due to the placement of the shed. She pointed out the run area which was highlighted in green, next to the shed. She noted that the land behind her subdivision is all agricultural, as is the land across from the subdivision. She also relayed that there is a large area of non-buildable property near her home. She also provided the Board with information she obtained from an article from Backyard Poultry magazine. She acknowledged that noise and concern about property values is probably the most common concern among neighbors. She reported that chickens have the same decibel level as human conversation, and while roosters emit the same amount of noise as a dog barking, she has no plans to acquire a rooster. She went on to say that while waste is often a concern, a 40 pound dog generates more waste than ten chickens. She explained that she recycles waste and uses it as fertilizer. Concerning possible lowered property values, she stated that some realtors are offering a free chicken coop with each home sale. In support of her position, she stated that she shares eggs with her neighbors and she feels that caring for chickens has been a good hobby for her daughter, teaching her a sense of responsibility. She stated that the homeowners of her two neighboring properties have no objections.

Mr. Homan asked if she currently had eight hens and the petitioner replied yes. He then asked if she butchers them for food. She explained that she just has eggs. She stated that while they are most productive for only a year, she intends to keep the chickens.

There were no remonstrators present.

Mr. Hesser asked about restrictive covenants in place for the subdivision concerning this issue. Mrs. Stover responded that there were no guidelines or subdivision by-laws.

The public hearing was closed at this time.

Logically, Mrs. Wolgamood doesn't feel chickens are something that need to be in a subdivision, but given the support from the neighbors and the petitioner's testimony, she has no issues with this request.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for a Special Use to allow for an agricultural use (keeping of chickens) on a tract of land containing three acres or less and in an R-1 district (Specifications F - #1) be approved as represented in the petitioners' application and as presented today based on the following conditions:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance as the petitioner has indicated in her submittal what she will do with the waste, the number of chickens will be limited to eight and there will be no roosters.
2. Will not cause a substantial and permanent injury to the appropriate use of neighboring property considering everyone in the subdivision signed a petition in favor of the request.
3. Will substantially serve the public convenience and welfare as the petitioner gets along with her neighbors.

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

12. The application of *Bobeck Acres, Inc. (lessor) and Insite Re, Inc. (lessee)* for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located 350 ft. North off of South County Line Road, 4,100 ft. West of CR 43 in Benton 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 #0SOUTH COUNTY LINE ROAD-110329-1*.

There were 4 neighboring property owners notified of this request.

Present on behalf of this request was Ray Shinkle, representing Verizon Wireless, 2210 Midwest Road, Suite 213, Oak Brook, Illinois. Mr. Shinkle submitted four "before and after" photos to the Board at this time *[attached to file as Petitioner Exhibit #1]*. He explained the reason for this request is to erect a 150 ft. wireless communications facility/monopole tower to assist in filling a gap in coverage. They would like to improve their 4G network to the surrounding areas in Elkhart County. He explained that they had looked within the area for an existing tower to collocate on, however; they were unable to find anything existing.

In working with the owner of the proposed property, they were very specific about their choice of location for the facility. They wanted the facility located behind the newly constructed warehouse, so that it would be unseen from the road. That location is only 70 feet from the east property line, which is all farmed. He indicated that he has a signed, notarized letter from the landowner of that farmed property indicating that he has no objection to the placement of the tower. The letter was then submitted to the Board *[attached to file as Petitioner Exhibit #2]*.

Mr. Hesser asked if a Variance to deviate from the setback requirement is needed. Mrs. Prough explained that it is part of the Elkhart County Tower Policy, so no Variance is required. She noted that the staff recommendation is to maintain the required setback, which means the tower would need to be moved.

Mr. Shinkle said it would be more intrusive to the owner if moved to comply with the setback. He feels the purpose of the setback is for the benefit of the neighbor, but in this instance; the neighbor is not opposed to the location as indicated by his signed letter.

There were no remonstrators present.

The location of the neighbor who signed the letter was questioned, but Mr. Shinkle was unable to provide clarification.

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 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 wireless communications facility (Specifications F - #31.50) be approved with the tower being allowed to be located as indicated on the site plan. After a unanimous roll call vote was taken, the motion was carried.

13. The application of **Mervin Burkholder** for a Special Use renewal for an agri-business for a farm repair shop (Specifications F - #56) and for an amendment to allow for retail sales and a larger sign on property located on the Northwest corner of CR 42 & SR 119 in Harrison Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #26253CR 42-110425-1*.

There were 6 neighboring property owners notified of this request.

Present on behalf of this request was Mervin Burkholder, 26253 CR 42, Wakarusa. In reviewing the staff's history, Mr. Burkholder referred to #4 and said the loading and unloading of equipment is outside of those doors on that side of the building. That remains to be a little bit of problem and he's not sure to work around that apart from spending a lot of money and putting doors on the other side of the building.

In regards to #5, it notes that a visual barrier of trees, fencing, or evergreens was to be planted. He indicated they did that the same month that the permit was granted and he did not realize that he was supposed to report back to the Board that he planted the trees. The reason he didn't was because Loren Sloat helped him with the permit and all he did was pay his bill.

Next, on #9 of the Staff Report, Mr. Burkholder said he was also not aware that he needed a commitment specifying the conditions of approval. He thought Mr. Sloat was taking care of everything for him.

Lastly, in regards to #10, the petitioner indicated he has a list of machinery that he offers for rent, which he submitted to the Board for review at this time *[attached to file as Staff Exhibit #1]*.

Mr. Burkholder does not understand what would be causing permanent injury to the neighboring property. He asked if there have been any complaints because he has no idea what that is supposed to mean. He also questioned #3 of the Staff Analysis, which states that this request will not substantially serve the public convenience and welfare. He has no idea what the staff is trying to tell him there.

Mr. Hesser said #9 of the Staff Report deal with the permit being approved for a period of five years, which a commitment specifying conditions of approval to be recorded with the property. He asked the petitioner if he is agreeable to doing that and Mr. Burkholder said yes, but he's not sure what he needs to do.

Keith Martin, 26414 SR 119, Wakarusa, was present in favor of this request. Mr. Martin explained he lives south of the subject property and he uses Mr. Burkholder's business on a regular basis. The petitioner usually has what they need to repair their equipment. He also rents

equipment from the petitioner and Mr. Burkholder keeps the property very well maintained. He has no issues with the request and feels the petitioner is a good neighbor.

The staff was asked to address why there was no follow-up on the previous permit. Mrs. Prough explained that the file wasn't given to the staff as a follow up, but they are doing that now. If the Board asks someone to submit a site plan or a commitment, whether or not they put a deadline on it, Mrs. Prough is given a copy of the result letter to follow-up. We haven't always done that in the past.

When the staff has followed up with the petitioner recently, Mr. Hesser asked if he has provided the information that they requested. Mrs. Prough said the staff has not followed up with him until they received the petition. She indicated she has a copy of the original site plan that was submitted when Mr. Burkholder applied before, showing the storage area to the back of the property and also the conditions that were offered by his attorney.

Based on that site plan, Mr. Homan asked if there have been any citations on this property and Mrs. Prough said no, the staff has never received any complaints on the operation.

Mrs. Wolgamood said she would like to see what was submitted by the petitioner's attorney. Mrs. Prough said the Board's conditions were a little bit different from what the petitioner's attorney submitted. She then submitted a booklet of information that the petitioner's attorney submitted at the previous public hearing for the Special Use *[attached to file as Staff Exhibit #2]*, which contains a site plan.

Mrs. Wolgamood asked the petitioner if he was present at the previous public hearing and Mr. Burkholder said yes. He saw what his attorney submitted and heard what the Board said at that time.

Mr. Lantz questioned if the trees have been planted and Mr. Burkholder said yes, they were planted within a month after obtaining the permit. Mrs. Wolgamood noted that the trees are shown in one of the photographs.

The public hearing was closed at this time.

Mr. Hesser explained he is concerned about item #4 of the Staff Report because that provision has not been complied with. He didn't feel the petitioner provided a good reason to the Board of why he didn't comply with it.

The Board examined said request, and after due consideration and deliberation, a motion was made (*Hesser*) that this request for a Special Use renewal for an agri-business for a farm repair shop (Specifications F - #56) and for an amendment to allow for retail sales and a larger sign be approved with the original conditions to remain in effect for a period of one (1) year with a renewal before the Board.

Mrs. Wolgamood noted she visited the site yesterday and she counted no less than 16 outside storage items. There were five or six in front of the building, including the dumpster which was shown in the photographs. The way that dumpster is located, she is sure the driver backs in off of the county road. There is not adequate room for large vehicles to bring equipment in and park in front of the building without being in the roadway. The petitioner does have a turn around, but the doors are not on that side of the building. She feels the Special Use should be brought into compliance before any action is taken on this request.

Mr. Hesser said he is not opposed to continuing this for a month. He withdrew his previous motion at this time.

A motion was then made and seconded (*Hesser/Wolgamood*) that this request be tabled until the June 16, 2011 Board of Zoning Appeals meeting to allow the petitioner to bring the

existing Special Use into compliance. After a unanimous vote was taken, the motion was carried.

14. The application of *Timothy Michael* for a Special Use for warehousing and storing of commercial vehicles for a transport business (Specifications F - #44) on property located on the Southwest corner of CR 44 & SR 13, common address of 12046 CR 44 in Benton 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 #12046CR 44-110322-1*. She also read and submitted two (2) letters in opposition to this request *[attached to file as Staff Exhibit # 2 & 3]*.

There were 8 neighboring property owners notified of this request.

Timothy Michael, 12046 CR 44, Millersburg, was present on behalf of this request. Mr. Michael explained he submitted a request for a Special Use permit to operate a transport business.

Mr. Homan asked the petitioner if he is still operated the cleaning business and he indicated yes.

The petitioner was asked to describe the cleaning business. Mr. Michael said it is a commercial cleaning business in a commercial area. He indicated they clean offices and all work is done off site.

Mrs. Wolgamood asked the petitioner how long he's been warehousing and storing at this site. Mr. Michael said he started in September of 2010.

She then questioned the highest number of vehicles on site at any one time. Mr. Michael said he started pulling RV's back in February of 2010. At that time, he only had one ton trucks at the house. Occasionally, he would pull an RV onto the site and then take it out the next morning. There didn't seem to be any issues at that time because they were parking it there for a short amount of time. They ended up starting a transport business and applying for a USDOT number in September. At that time, he was planning to purchase more vehicles and truck, and then put drivers in the trucks to operate them. They did that for a few months and then started having some problems, particularly in the winter time. The drivers were parking out in the street because they weren't able to pull into the driveway due to a large accumulation of snow and mud in the field. He pointed out the field they operate in on the aerial photo at this time. The drivers were showing up at random hours with a load and parking in the road due to not being able to get into the field area. He understands how that causes problems in the flow of the traffic, as well as the neighbors. He addressed that issue with the drivers, but he didn't necessary talk to the neighbors about it. There were no complaints at that time with the neighbors. They ended up buying some rocks and putting them as an area to park the trucks. Trying to coordinate this with three or four drivers was chaotic. They have downsized since that time and there are no drivers coming to their property. The only drivers they have for the business are Mr. Michael and his wife.

Therefore, Mr. Michael said he would like to amend his request to include two one-ton dually's and three trailers. They will no longer have people parked in front of the road and blocking it. They have tried to add some organization where they line the trailers up so they aren't randomly parked in the field. They have purchased some large stones to create a nice base

due to the muddy field. He indicated he will continue to make the area look nice if the Board grants him the Special Use permit.

Mr. Michael noted they are open to any kind of considerations and restrictions. He said they don't have to park the cars in the field because they could be transported and dropped off, which would allow them to come back with an empty trailer. He also noted they don't have to stage cars in the field anymore.

He pointed out a stone area east of the driveway where they can pull in and back up the trailer. He can see that being a potential problem at night because the headlights may shine into the neighbors' houses. He can pull out without his headlights on until he gets out to the street. Mr. Michael said he is to and from the property at different times of the night, but it is not consistently every night. He doesn't feel this will be detrimental to the neighbors. He hopes that the Board allows him some flexibility to operate on a small scale.

Mr. Michael said he's not asking to grow the business by adding more trucks. He would appreciate the Board allowing him to operate within those conditions. If they ever consider growing the business, then they would be more than happy to relocate to a commercial area. He noted it is more cost effective for them to utilize their existing property rather than to lease commercial property to accommodate three or four trailers. He said the trucking business is not very profitable and they are grateful to be working and providing an income at this point.

In the past, Mr. Michael was allowed to operate under a Special Use and he complied with all of the conditions. He would be open to having a six month or one year review to verify compliance with the conditions of the Special Use. Mr. Michael would also be willing to install a privacy fence to provide a buffer for the neighbors. He has spoken to the neighbor to the west, Larry Winslow, who indicated he has no objection to this request as long as the property is maintained in an orderly fashion.

Mrs. Wolgamood asked how many trailers he has and Mr. Michael said four, along with two flatbeds. One of the trailers will be off the property when the semi is sold.

Michael Smith, 12172 CR 44, Millersburg, was present in opposition to this request. Mr. Smith pointed out his property on the aerial photo, which is the L-shaped property to the west of Mr. Michael's property. He is in opposition to the amount of equipment sitting on the property. The petitioner has started parking his old and inoperable trailers at the southeast corner of the property. There is also a dump area of the refuse from his business, which creates an eyesore for the neighborhood. Mr. Smith acknowledged that this location is convenient for the petitioner, but he hopes that he would move to a more appropriate area. He is very concerned about expansion in the future.

Also present in opposition to this request was Wendy Bittle, 67924 SR 13, Millersburg. She feels the property was and is still a mess and she doesn't like the burning of waste. She is very concerned that the value of the surrounding properties will decrease. She also noted that the trucks are very noisy.

Keith Bittle, 67924 SR 13, Millersburg, also addressed the Board in opposition to this request. The location of his property, buildings and a spring-fed pond were pointed out on the aerial photo. He feels the property in question should be kept agricultural. They have a lot of noise at all hours of the night. He admires the idea for this business, but he feels it is located in the wrong place for the type of work the petitioner wants to do. He too is concerned about property values and he doesn't think there is any way to control the comings and goings to make the business suitable.

Dennis Trigg, 68224 SR 13, Millersburg. He has no objection with people doing what they want on their property, but he said there is a curb cut on the corner of CR 44/SR 13, which is a dangerous intersection. He also objects to the dump site as he has a wetlands area directly across the street from this site and feels the dumping creates hazardous issues.

In rebuttal, Mr. Michael said they have only burned once since the beginning of the year. There were some trees and refuge on the dump trailer, so his wife took it to the back of the property and burnt it. As far as the appearance due to the burn pile or the extra vehicles he has behind the pond, those were moved to that location because he was trying to be considerate of the neighbors in regards to appearance. They are not inoperable vehicles and they have a bucket truck that they use to trim trees around their rental properties. They are using the building more frequently now and they need the extra space, which is why the items were moved back behind the barn.

Mr. Michael explained they are not asking to expand and they will continue to make improvements to the property if he is allowed to operate at this location. He disagrees with the comment stating he can't keep things under control. The only employees are he and his wife and they don't have drivers randomly pulling in anymore. He drove around the local community and there are several transporters driving RV's and trucks, and many of them park them in their driveways. Many of them have created a nice base with limestone on their properties and given the opportunity, he would do the same thing.

When Mrs. Wolgamood asked him to address the curb cut on SR 13, Mr. Michael explained they are no longer using that entrance and it can be returned to grass.

She also questioned the reference on the Staff Report about the permit that was issued for the second driveway to the service/domestic storage building. She is assuming that is the one shown on the aerial photo and Mr. Michael indicated that is correct.

Mr. Lantz felt that if Mr. and Mrs. Michael were the only ones operating the business, then it should eliminate most of the truck traffic.

The public hearing was closed at this time.

Mr. Hesser said if the petitioner has no outside employees and a limited number of vehicles involved, then that is vastly different from what was shown on the site plan and what was stated in the questionnaire. He would like to see an amended request as to what exactly is being asked for and allow the staff to make a recommendation with the modified information.

Mrs. Wolgamood felt that this request needs to be denied and the petitioner needs to re-file if he wants something other than what stated in the petition. The neighboring property owners based their decision of whether or not to come today on the information in the petition. She would agree with the staff's recommendation and would also place a condition that the petitioner be given 30 days to remove both driveways. She feels the driveway on SR 13 is very dangerous because the intersection of SR 13 and CR 44 has a hill.

Mr. Hesser noted the petitioner would have to pay another filing fee if he were to re-file.

Mr. Homan feels the petitioner is totally changing the request today from what was stated in the questionnaire, but it all comes down to land use. He feels this is a commercial use and he would be inclined to agree with the staff's recommendation for denial.

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 warehousing and storing of commercial vehicles for a transport business (Specifications F - #44) be tabled until the June 16, 2011 Board of Zoning Appeals meeting.

Mrs. Wolgamood then asked why he would like the request to be tabled. Mr. Hesser said he feels the Board is going to have a split decision. He senses two Board members prefer to deny the request and two members might consider an amended version of this request, with a staff review of that amendment. Tabling the request would also allow the absent Board member to be present and make a decision.

Mr. Kolbus asked what the staff's deadline would be for this because if it's a material change, then the request will have to be re-advertised. Mrs. Prough said the staff would need it by next Friday so they have a chance to review the information before the staff meets.

Mr. Hesser felt that was reasonable and also felt the neighbors should be made aware of any changes in the request.

Mr. Homan said he doesn't want to imply that an amendment would lead to an approval.

Mr. Hesser said he's not saying he would vote for an amendment. As represented in the questionnaire, he would vote for denial, but the petitioner has indicated today that significant modifications may be made. He's saying he might consider those modifications, but he's not making any indications that he would approve them.

A roll call was then taken on the previously stated motion with the following results: Homan – no; Wolgamood - no; Lantz – yes, and Hesser – yes.

A motion was then made and seconded (*Wolgamood/Lantz*) that that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request be denied with the following conditions imposed:

1. The business is to be relocated within thirty (30) days.
2. The petitioner be given thirty (30) days to remove the driveway of off SR 13 and the additional driveway off of CR 44.

A roll call vote was then taken with the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – no, and Hesser – no.

Mr. Kolbus said the matter was not acted upon, the public hearing is closed and the absent Board member will need to be present to split the vote.

Mr. Burrow indicated that the planning staff would not modify their recommendation even with the intended amendments. He also indicated there is not adequate information on the site plan and that is the petitioner's responsibility. Also, the petitioner is lacking compliance with the Elkhart County Highway Department regulations, Indiana State Highway Department regulations and the Stormwater Pollution regulations. The planners feel the petitioner needs a much more comprehensive application than what has been submitted.

The Board indicated that Mr. Burrow's comments do not alter the Board's vote.

Mr. Kolbus advised they table the petition until June with the public hearing closed to allow for a full board to be present.

A motion was then made and seconded (*Wolgamood/Homan*) that the petition be tabled until the June 16, 2011 Board of Zoning Appeals meeting to allow the absent Board member to review the minutes, review the file and to come prepared to vote on the existing petition with the public hearing remaining closed and all neighboring property owners to be re-notified. A unanimous roll call vote was taken and the motion was carried.

15. The application of *Donato & Florence DelPrete* for a Special Use for an agricultural use in a M-2 zone (Specifications F - #1) on property located 710 ft. West off of Maple Street, 2,470

ft. South of SR 120, common address of 707 Legion Street in Washington Township, zoned M-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #707Legion-110329-1*.

There were 4 neighboring property owners notified of this request.

Vince DelPrete, 30904 Cross Creek Drive, Granger, was present presenting the petitioners. Mr. DelPrete explained this petition is to get the ball rolling on doing some research into the seafood industry. Their concept is to take about four acres the six acre property in question and put in a small 30 ft. x 40 ft. pole barn style building to do research. The research would involve small tanks in the sizes of 4,000 gallons or 8,000 gallons, with mechanical filtration and biological filtration. It would be an enclosed recycle system, so there would be no dumping of water. The only wastewater you would get would be when you extract the solids from the mechanical filtration. The interesting thing about the solid waste is that it is usable in the farms and usable in a lot of the garden shops around here. The fish would be raised for the use of food for restaurants, fish fry's and possibly grocery stores.

The current fish they are talking about is a yellow perch, which is a pretty usable fish in terms of fish fry's and grocery stores. It is a very high dollar fish and he indicated most of the fish you see now are white perch from Canada. Yellow perch are harder fish to come by and they command about a \$16 per pound retail price. The idea for this particular use is just for the petitioners to get some research and get their feet wet as far as the fishing industry is concerned.

The existing building on site is a lumber mill. It has been a mill for several years and the property site said it was last purchased in 1962, so that building has been there for quite a while. No improvements have been made to that particular facility since that time. This would be a family owned business and they have four other facilities in other areas of the country. They may possibly transfer all facilities to this location in the future. The potential for hydroponics is there, although; they are not really considering that at the present time because it doesn't command a real good market. The potential for having certain vegetables grown with the nutrients from the water is also a possibility. This particular petition is just for a research facility to get them started. There won't be any retail sales on this property and he doesn't feel it is a good location for that. Processing will not be done on this property as it will be done at a local butcher store down the street from this property.

Mr. DelPrete was then asked by Mr. Lantz to describe how they handle the water. The petitioner's representative said the water is a complete recycle system. If there is a 4,000 gallon tank, it will go through a mechanical filtration to pull out the solids, then it will go through a biological filter. The biological filter will actually take the higher nitrate out of it and convert it to nitrate, so that the fish will live in that. There is also UV sterilization, which is just a system of lighting, which is actually a disease preventative. A lot of the fish hatcheries are going to UV lighting specifically for that reason. Mr. DelPrete indicated there are all new technologies to indoor systems.

Mr. Lantz asked how long the water is good for and Mr. DelPrete said until it evaporates, or until you dump something in to get the solids out of it. The filtration could be done on a daily basis, but that particular liquid waste is a sellable product.

The petitioner's representative was then asked by the Board how the fish are fed. Mr. DelPrete said they are hand fed and it is a pellet food that is non-toxic. It is a soy bean based meal, which is high in protein.

Mrs. Wolgamood asked if this would be done in a newly constructed building and Mr. DelPrete said yes.

Mr. Homan asked if this is a year-round operation and Mr. DelPrete said yes. He said this will be a canvas type building. Once you raise these building, they can be deconstructed easily and moved. If you had it in a certain spot and then wanted it somewhere else, you could take the building down and move it. They like the canvas structures because they have nature light, which the fish do much better with and the ventilation is a lot better. There is a possibility that they might do a metal construction, but they are not real thrilled about that idea.

Mr. Homan asked if they would be using the town's water or a well. Mr. DelPrete said they would be using a well, so that would need to be installed. He noted that the town is aware of that.

Mrs. Wolgamood questioned whether they will be hooking up to city sewer and the petitioner's representative said they don't want to do that. The existing building that is there would be the building that they would be in 90 percent of the time as far as personnel goes. The new building they would like to construct would not need any facilities because there won't be someone there on a regular basis.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she feels this is a permitted use and she doesn't know why it's a Special Use. She feels the Board should have a discussion about that later. She has no issues with this request.

Mr. Hesser said in the Board's packet, he saw a request to build on an easement, but Mrs. Prough said that request was amended and should not have been included in the board's packets.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agricultural use in a M-2 zone (Specifications F - #1) 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 unanimously.

16. The application of *Elkhart Christian Academy* for a Special Use for an existing school (Specifications F - #38) on property located on the Northeast corner of CR 22 & CR 9, common address of 25943 CR 22 in Concord Township, zoned R-1 PUD, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #25943CR 22-110421-2*.

There were 14 neighboring property owners notified of this request.

Present representing the petitioner was Gary Frank, Architectural Group III, 201 S. Nappanee Street, Elkhart. Mr. Frank explained they are the ones that prepared the site plan. The school has an existing soccer field and they are asking to widen it by about 30 feet. They have a donor who would like to install four lights to light the field for night games. The staff recommended having the school rezone from a DPUD to just a straight R-1 zoning. The lights

will be about 90 ft. high and they have photometric showing that the lights will not bleed off onto US 20.

Mrs. Wolgamood questioned the existing residences to the west and Mr. Frank said it should not bleed off. They have the lights pretty well concentrated to the field itself. He also noted that the houses to the west are owned by Elkhart Christian Academy and should not be affected by the light. Naturally if you look at the field, you will see lighting, but it will not reach those areas.

Mrs. Wolgamood asked if they have already filed for the rezoning and the petitioner's representative indicated yes, it would be heard in June.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked they include "and the residences to the west" to condition #2.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for an existing school (Specifications F - #38) approved in accordance with the site plan submitted and as represented in the petitioner's application with the following conditions imposed:

1. Approved provided the property is successfully rezoned to R-1.
2. The soccer field lighting restricted to the "field only" being mindful to fugitive lighting, US 20 Bypass traffic and the residences to the west.

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

17. The application of *Marcus Yoder* for a Special Use to allow for horses on a tract of land containing three acres or less (Specifications F - #1) on property located on the Southeast side of Lakeside Drive, 1,100 ft. South of CR 34, being Lot 15 of Lake Side Homes 2nd Subdivision, common address of 63170 Lakeside Drive in Clinton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #63170Lakeside Drive-110425-1*. She then read and submitted a letter in opposition to this request [attached to file as Staff Exhibit #2] from Humerickhouse. Mrs. Wolgamood noted the Board has the letter in their packet.

There were 14 neighboring property owners notified of this request.

Marcus Yoder, 6650 W 200 S, Topeka, was present on behalf of this request. Mr. Yoder explained he bought this property at a Sheriff's auction as a repossessed house. He didn't realize what he was getting into and wasn't aware that he needed to have three acres to have his horses when he bought the property. He will keep the horse fenced in on the east side of the house where it is level. There is a pond sloping down into the lake across the street from his property. He realizes the property is zoned for residential use only, but he will be using the horse only for transportation. He has contacted the Soil and Water Conservation District and they said there are no regulations as far as how close the horse can be to the water and the homes.

When asked by Mr. Hesser if he will build a barn, the petitioner said yes and indicated that would be on the east side of the property. He would like to have a small barn to keep the horse in. He applied for two horses, but he would be acceptable of having only one.

Gerald Humerickhouse, 63171 Lakeside Drive, Millersburg, was present in opposition to this request. Mr. Humerickhouse said he has lived at this location for 26 years.

Mr. Hesser asked if his lot is shown on the aerial photo and Mr. Humerickhouse noted he lived directly across the street from the petitioner. He feels the covenants of the subdivision should be honored. The biggest problem he sees is that eighty to ninety percent of the property drains down to a pond. That pond drains under Lakeside Drive and goes through an easement into Fish Lake. He has a great concern about the pond emptying into the lake. Mr. Humerickhouse then submitted a poster board of photos to the Board [attached to file as Remonstrator Exhibit #1] and some loose, current photographs [attached to file as Remonstrator Exhibit #2], which illustrate the property and the septic dome. He also noted he was unsure of how much area would be needed for one horse grazing. He feels this is a very small area on the east side of the house.

Also speaking in opposition to the request was Richard Hackel, 63191 Lakeside Drive, Millersburg. Mr. Hackel pointed out his property on the aerial photo and explained he bought his property because of the lake frontage. He is concerned about the long-term quality of the water in the lake. The pond does drain on the east of Lakeside Drive and he questions whether the land is level enough as strong rainstorms and such may cause manure to go into the pond. The pond will then drain directly into the lake and feed algae, which would be a detriment to the quality of the lake. Also, trying to keep the horse restricted to an area where the septic mound is could erode the septic mound and create issues of a septic release. If the Board were to approve the request, he would think there would have to be berms to separate the grazing or pasture area of the horse from the pond.

Raymond Miller, 63177 Lake Drive, Millersburg, was also present in opposition to the request. Mr. Raymond Miller noted he lives across from the land in question on Lot #9 and #10. His biggest concern is the drainage of the manure and mud into Fish Lake. There is a requirement in the covenant stipulations that no barns are to be in the subdivision. Seven out of eight of the houses in this area are opposed to this request. Mr. Raymond Miller then submitted a letter from a neighbor in opposition who couldn't be present today [attached to file as Remonstrator Exhibit #3].

Calvin Miller, 63273 E. County Line Road, Millersburg, was present in favor of this request. Mr. Calvin Miller explained he has property bordering the petitioner's property.

Mr. Hesser asked if his property is part of the subdivision and he indicated no.

As far as horses, Mr. Calvin Miller said the property on the east side is fairly flat and he doesn't feel there should be an issue with drainage. There are other in the area and he feels Mr. Yoder would be a good neighbor.

In rebuttal, Mr. Yoder said there is another neighbor in the area who offered to swap some land with him, which may help out.

The public hearing was closed at this time.

Mr. Hesser said if this property was not a lot in a subdivision, he doesn't feel a horse would be that big of an impact. He doesn't feel one horse would cause concerns for pollution, etc. He noted the issue of the subdivision covenants not allowing a barn is a different issue.

Mrs. Wolgamood clarified that the petitioner is asking for two horses and not one.

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

a tract of land containing three acres or less (Specifications F - #1) be denied in accordance with the Staff Analysis. After a unanimous roll call vote was taken, the motion was carried.

** Mr. Kolbus stepped down from the Board for this public hearing due to a potential conflict of interest.*

18. The application of **Paul S. & Debra J. Hoffman** for a Use Variance to allow for the construction of an accessory structure without a residence on property located 149 ft. West off of Holub Lane (West side of Lot 4 in Holub Subdivision), 335 ft. North of Hackett Road, 1,914 ft. East of SR 15, common address of 1211 Holub Lane in Elkhart Township, zoned R-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 #1211HolubLn-110420-1*.

There were 15 neighboring property owners notified of this request.

Present representing his brother and sister-in-law was Stanley Hoffman, who lives at 56784 Ramblewood Lane, Elkhart. Mr. Hoffman said it is difficult to see from the petitioners' standpoint how public health, safety, morals or general welfare would be harmed by allowing a person to build a garage/storage building on their property. The issue of an accessory structure without a primary residence is addressed with a deed restriction, which the Board has in their packets. This deed restriction would make all of the parcels inseparable, so they could not be sold off separately.

In regards to the use and value of the land adjacent to property, Mr. Hoffman said they don't feel they will be substantially affected in an adverse manner. The fact that part of the land is within the city limits, it doesn't affect the surrounding values. Many of them have the same issue. He pointed out other properties in the area where buildings have been constructed in the county, but have residences inside the city.

Mr. Hesser asked the petitioner's representative to point out the house on the aerial photo and he did so at this time. He also pointed out the proposed location of the accessory building.

Mr. Hoffman noted there was a concern when they talked with the staff because there is an issue between the two buildings, currently, but that is one of the reasons for the deed restriction so there can be no future separation of the building. Mr. Hoffman submitted photos of the property in question at this time *[attached to file as Petitioner Exhibit #1]*. Most of the photos were taken from where the building would be. There's one that is viewed north, one that is viewed south and one that is viewed west.

Based on the large number of trees shown in the photos, he said it would be difficult to even see the proposed building from most of the places around it. He explained it is a long way from Hackett Road and you may be able to see it on Holub Lane between two residences. He doesn't feel this building would lower the value of the property. He pointed out the residences on the aerial photo that would be most likely to see the building.

Mr. Hoffman said in regards to staff finding #3, he feels this property is peculiar because it is half in the city and half in the county. He noted that annexation could be suggested, but in talking with the city, they did not seem interested. They prefer to annex improved land, not unimproved land.

Mr. Hesser questioned whether you can have a parcel that is partly in and partly out of the county. He asked what the harm would be in converting these three parcels into one. Mr. Burrow said the problem they run into is that the Plan Commission cannot adopt a replat of those parcels because two of them are within the City of Goshen, where we have no jurisdiction.

Mr. Hoffman indicated they would like to construct the building now and annexation would delay the process. Mr. Burrow also added that the City of Goshen has to pay for extra legal fees when they go through the annexation process.

Mr. Homan questioned how this happened that the parcel is split down the middle. Mr. Burrow explained the subdivision itself annexed into the city to be able to get city services. At that time, they did not annex in the undeveloped properties. The city does not take in land unless you voluntarily ask for it. The City of Goshen has always been hesitant to do that.

Mr. Hesser asked the petitioner if he would be willing to include a provision in his deed that he would not object to annexation. Mr. Burrow said they normally don't ask for that. Mr. Hoffman said if it doesn't delay the project, there wouldn't be an issue and they would include that revision in their restriction. If the city wants to annex the property once the building is constructed, they would not object to that.

Mr. Hoffman feels it would be unlikely for them to construct the building before next spring if they go through the process of annexing to the city and the permit process. He understands that Goshen prefers to annex improved land, so he does not feel this would interfere substantially with the Elkhart County Comprehensive Plan.

With the petitioner's representation, in addition to what he's already offered, that he would not object to annexation should the city pursue it, Mr. Hesser asked if that changes the staff's analysis.

Mr. Burrow said essentially, the staff has no alternatives. Their responsibility is to be conservative and he feels the submission of the commitment helps alleviate some of the issue. The voluntary acceptance of remonstrating to annexation also helps, especially when it's on the public record. It would be something that the City of Goshen would review and they would use that as justification.

Mrs. Wolgamood asked if a permit was issued for the building to the north, which is in the county. Mr. Burrow said yes and indicated they secured an Appeal to build on an easement. He could not confirm that a condition of a recorded easement was imposed.

If this gentleman's property was inside of the city right now, Mrs. Wolgamood asked if a building permit could be obtained for what he's asking for. Mr. Burrow said yes and noted he did confirm that.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that this request for a Use Variance to allow for the construction of an accessory structure without a residence be approved based on the petitioners' agreement of the written commitment stating that the parcels be maintained together and based on the following findings:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.

3. A need for the Variance does arise from a condition that is peculiar to the property involved due to it being adjacent to the city limits. The petitioner has represented that he would not oppose or remonstrate to annexation by the City of Goshen.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

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

Mr. Burrow asked the Board if they want the non-remonstrance to annexation on the prepared document. Mr. Hesser said the petitioner offered to do that. If not, it is on the record and in the minutes. He noted the Board has to sign the document and if it is not signed today, then it would take another 30 days for him to obtain the building permit.

Mr. Hesser asked if it needs to be recorded and Mr. Burrow said yes. The Board of Zoning Appeals needs to accept it into the record, then it would be recorded and then we would be able to give him a building permit within days.

Mr. Hesser felt they could sign the document. If they determine later, or if both parties think it would be in their better interest to put that on record, then the document can be amended. The petitioner has agreed to the terms, it is part of the record and it is part of the conditions. The updated document was then signed by the Secretary, Tom Lantz, at this time.

** Mr. Kolbus returned to the Board at this time.*

19. The application of **Daniel & Diana Pysh** for a Use Variance to allow for the construction of a second residence on a parcel on property located on the South side of SR 120, 550 ft. West of CR 43, common address of 10970 SR 120 in York Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #10970SR 120-110425-1*.

There were 8 neighboring property owners notified of this request.

Diana Pysh, 10970 SR 120, Middlebury, was present on behalf of this request. Mrs. Pysh said she and her husband would like to build a garden shed with an apartment in it for her in-laws. Her father-in-law is 90 years old and her mother-in-law is 86 years old. She indicated her father-in-law is blind in one eye and still has a driver's license, but that is becoming more questionable every year. They currently live south of Valparaiso in Morgan Township. If he loses his driver's license, then they would have no transportation to get to the doctor, hospital, grocery store, etc. Mrs. Pysh indicated it is an hour and a half drive for her to get to their house, which she does every week. She helps her mother-in-law with therapy and she was also recently diagnosed with dementia. Overall, they would like to put an apartment into their garden shed so her in-laws can be close and be taken care of.

At this time, Mrs. Pysh submitted four letters in support of this request from the neighbors *[attached to file as Petitioner Exhibit #1]*. None of them object to this request and it is not now, nor will it ever be, a rental property.

Mrs. Wolgamood asked if a new septic system would be installed and the petitioner said they would do whatever is required.

Mrs. Pysh said there are other options, but moving them into their home is not a good option for them as they are still a viable married couple and she would like to give them independence.

Chris Marbach with Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart, was also present representing the petitioners. Mr. Marbach indicated he assisted the petitioner in gathering some data for this application. He submitted a copy of the definitions of an accessory building in the Elkhart County Zoning Ordinance to the Board at this time, which includes a temporary guest house *[attached to file as Petitioner Exhibit #2]*. He feels that is exactly what the petitioners are trying to do. Their parents are older and this would be a temporary situation. As soon as the situation changes, then it would be a very small guesthouse/garden house for the petitioners to use.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she commends the petitioners for what they are attempting to do. She agrees with what Mr. Marbach submitted; however, when you read the definition of a guesthouse, it doesn't allow for kitchen facilities. She would not be opposed if a commitment was recorded stipulating this would not be used for rental purposes in the future. Mrs. Wolgamood also noted she would like the Board to have a discussion regarding dawdy haus's in the future. Mrs. Pysh indicated she would be willing to do that.

Mr. Homan said if this request were approved, it would make sense for the written commitment to state that after the building is no longer occupied by the parents, then the petitioners are to comply with the definition of a guesthouse, which essentially means to remove the kitchen.

Mr. Hesser agreed, but said he cannot get past finding #3 of the staff's analysis.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that this request for a Use Variance to allow for the construction of a second residence on a parcel be approved based on the following findings:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community as evidence by supporting letters from neighbors.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the building being represented today conforms in terms of appearance and will have a partial use to an A-1 presentation.
3. The need for the Variance does arise from a condition that is peculiar to the property involved as this is a large tract of land. There are supporting family members on the tract and this doesn't seem like the residential nature of this part of the county as it is a scattered development, which is unusual. The petitioner has also demonstrated a substantial hardship with the parents in terms of age and infirmity.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following conditions were imposed:

1. A recorded commitment is to be provided by the petitioner within thirty (30) days stating that when the parents represented no longer reside in this building, then the building will

be brought into conformity with the definition of a guesthouse as set forth in the Elkhart County Zoning Ordinance.

2. Approved in accordance with the site plan submitted and as represented by the petitioner in the application and today.

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

20. The application of **Mary Demerly** for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the North side of Walerko Drive, 370 ft. West of CR 5, being Lot 41 of Walerko Whispering Acres 2nd Subdivision, common address of 29215 Walerko Drive in Cleveland Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OWALERKO-110421-1*.

There were 24 neighboring property owners notified of this request.

Abraham Miller, 9494 Barker Road, White Pigeon, Michigan, was present representing the petitioner. Mr. Miller explained the petitioner bought lots 40 and 41, and would like to construct a building in the back as there is no room to construct it on the lot where the home is located. The petitioner also plans to plant a hedgerow in the back along the 7.5 ft. easement. The neighbor to the west has a privacy fence, so there would be no visibility other than from the property across the street. The property has always been well maintained.

Mr. Miller indicated the owner is willing to have a deed restriction stipulating that lot 41 not be sold separately from lot 40, unless a permit for residential structure is issued at the point of sale and completed in less than one year. They have also taken steps to combine the properties into one tax parcel. He submitted a Tax Combination Form from the Auditor's Office to the Board at this time *[attached to file as Petitioner Exhibit #1]*.

If granted, they have also taken steps in the course of construction. He noted a limestone driveway would be installed on the site, and he submitted a copy of a quote for the driveway to the Board at this time *[attached to file as Petitioner Exhibit #2]*. An article on sediment control was also submitted to the Board *[attached to file as Petitioner Exhibit #3]*. Lastly, he submitted an aerial photo to the Board showing they would have to straddle the property line with the building as an alternative *[attached to file as Petitioner Exhibit #4]*. He doesn't feel that would benefit anyone because the grade falls off on the east side of the subject property into the back of Lot 40, so it would require a lot of fill. He is proposing they can put the building 15 or 20 feet from the east property to conform to the other buildings in the area. It will be a storage building and it will not be used for any business purposes. He noted it would look like the other buildings in the area as far as color, structure and materials.

When Mr. Homan asked if there are any covenants and restrictions in this neighborhood, Mr. Miller explained the first set of covenants for Walerko's Whispering Acres 2nd was created in 1973 and an amendment was done in 1986. It also stipulates that the owners in the subdivision have to review the covenants every ten years or they expire. Copies of the covenants were then submitted to the Board *[attached to file as Petitioner Exhibit #5 & 6]*.

Mr. Kolbus advised that they require a commitment rather than a deed restriction as that would be enforced by the Board.

Mr. Hesser said he is surprised that there aren't any covenants in effect.

Carolyn Cash, 29248 Walerko Drive, Elkhart, was present in opposition to this request. Mrs. Cash explained they were not aware that the covenants needed to be reviewed. All of the land had been sold. The reason the A-1 property was not sold is because Walerko originally built the house and the covenants show how far it has to be from the property line. All of the houses had to be so far away from each property line. She does not feel this is a full lot and could not be sold as one. When Mrs. Cash had moved in, she wanted to buy the property next to hers to build a swimming pool. She was unable to do that from what the developer told her.

A petition in opposition to this request was submitted to the Board at this time, which includes signatures from nearly every person on Walerko Drive *[attached to file as Remonstrator Exhibit #1]*. Mrs. Cash requested that a building not be allowed on this lot because she feels the covenants are still in effect.

Also present was Irene Staley, 29230 Walerko Drive, Elkhart, was present in opposition to this request. Mrs. Staley indicated she lives across the street from the property in question. She questioned why they are building a pole barn in a residential area. The house is on a curve and if they put a driveway in there, the pole barn will be standing right out in front of everyone when they drive past. She is also concerned that it will face the back of the residents on Carpenter Drive. She sits on her porch a lot and doesn't want to see a pole barn.

Ruth Ann Berry, Mrs. Staley's daughter, 29285 Carpenter's Drive, was also present in opposition to this request. She does not want to look at a pole barn on this property. She doesn't know how they can combine the properties and she feels a 30 ft. x 40 ft. pole barn is pretty big. She feels a pole barn belongs out on a farm, so she is against the request.

In rebuttal, Mr. Miller said the covenants are now history. He noted the RV would be kept inside the building, so there wouldn't be anything parked outside. The property owner would like to put his lawnmower and equipment inside the storage building. It would look like the rest of the buildings in the neighborhood.

He feels the neighbors have the assumption that a pole barn will be a steel building with big sliding doors on it, but it won't be like that. It will have a residential overhead garage door with openers and there will be a regular entrance door and window just as a house would. Mr. Miller also reiterated that they are willing to plant a hedgerow in the back so it is not visible. If the property were to ever be sold in the future, the person would have to build a residence on it.

Mr. Hesser asked if there is a reason why a residence could be put there. Mr. Miller said no, but explained that the homeowner chose to buy both lots because the real estate representative told him there were no covenants on that. He didn't investigate that very well, but he did talk to the neighbors and they indicated there were no covenants.

When Wolgamood asked if the petitioner recently purchased the home and the lot in question, Mr. Miller replied yes.

The public hearing was closed at this time.

Mr. Homan explained to the audience that although they ask about covenants, they are not used as a basis for their decision. After reviewing the findings, he said it is his opinion the petitioner has not met the standards of a Use Variance. Mr. Hesser and Mrs. Wolgamood were in agreement.

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 an accessory structure without a residence be denied in accordance with the Staff Analysis. A roll call vote was taken and the motion was unanimously carried.

* *(It is noted that Bob Homan stepped down from the Board at this time due to a potential conflict of interest.)*

21. The application of **Thomas Zurek** for a Use Variance to allow for the construction of a residence on property served by an access easement on property located on the 281.17 ft. off the Northeast end of Heritage Way cul-de-sac, 2,410 ft. North of CR 18 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #0HERITAGE WAY-110425-1*.

There were 8 neighboring property owners notified of this request.

Gary Floyd, 2812 Vernon Avenue, Elkhart, was present representing the petitioner on behalf of this request. Mr. Floyd explained that Mr. Zurek would like to build a new 1,500 to 1,800 sq. ft. home on the subject property and allow his daughter to reside in his existing residence. The new home would be on property that is not part of the subdivision and would be accessed by an easement. If the parcels were combined, he could build a guesthouse, but he said the petitioner needs a kitchen in his home. The home is more of a custom home and is not a modular, so they don't want to start putting thousands of dollars in plans to design this. The style of home the petitioner is looking at is a prairie/craftsman style home.

According to Mr. Frank, the petitioner also has a condo in Chicago and a house in Florida, so he is not at this property often. By allowing him to build at this location, then his daughter would be able to oversee and maintain his new home. He talked to Mr. Zurek about a restrictive covenant stipulating the parcels be sold together.

The history on how this parcel was created was discussed briefly. Mrs. Wolgamood guessed it was split off the parcel to the north which has road frontage.

A copy of the restrictive covenants being proposed was then submitted to the Board by Mr. Miller *[attached to file as Petitioner Exhibit #1]*. He also pointed out the location of a utility easement on the property. Mrs. Wolgamood noted that it describes all three parcels.

Wayne Slabach, 19560 Heritage Way, Goshen, was present in opposition to this request. Mr. Slabach explained he owns Lot 6 and he has lived at this location for about 30 years. He negotiated with the previous owner and the farmer to buy the land to avoid having someone build back there. The previous owner sold the property due to the location of the creek as it was hard for his cattle back and forth. The easement the petitioner's representative is referring to comes off of the cul-de-sac and there is only about 65 ft. there. Mr. Slabach doesn't know how they will access the property with only having one driveway.

If approved, this request would negatively affect the cul-de-sac and property values would decline. Most lots on Heritage Way have roughly two acres and all of them have more frontage than this one does. Things change over a period of time and he's not sure what would happen to the property 20 years from now.

Mr. Slabach noted he is speaking on behalf of the two closest property owners. One was here this morning and couldn't stay and the other was having surgery. He does not have

documentation from then, but they have agreed to provide some if it is needed. Overall, he doesn't feel this would be in the best interest of the neighborhood.

In response, Mr. Frank said they are not asking for a driveway due to the minimal amount of frontage. They would like to extend the current driveway for access to the subject property. He's not sure if utilities go across the back.

The public hearing was closed at this time.

Mrs. Wolgamood does not feel the covenants submitted are viable. She questioned what happens if the daughter decides she wants to move and then they have an empty house. She feels the idea is great, but the Board can't look at the family aspect of the request. She also noted that the ingress/egress easement is adjacent to the south and it does not follow the existing driveway and proposed driveway.

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 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 denied in accordance with the Staff Analysis. A unanimous roll call vote was taken and the motion was carried.

* (*It is noted that Mr. Homan returned to the Board at this time.*)

22. 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 an 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, 26, 27 and 28 of Mather's Addition, common address of 401 W. Warren Street in Middlebury Township, zoned M-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #401WWarrenSt-110419-1*. She read and submitted a letter from Tom Corson in support of this request *[attached to file as Staff Exhibit #2]*.

There were 26 neighboring property owners notified of this request.

Joey Cripe, 401 W. Warren, Middlebury, was present on behalf of this request. Mr. Cripe explained he would like to construct an accessory building and a pool. This would allow him to remove the smaller shed and provide storage for his vehicles and for the mechanicals for the pool.

When Mr. Hesser asked where he lives, the petitioner pointed out his property on the aerial photo.

When asked why the property was zoned M-1, Mr. Cripe said his parents purchased property over 40 years ago and it has always been zoned M-1. A boat company was located across the street and that may be the reason for the M-1 zoning. A body shop is also located in the area.

When Mrs. Wolgamood asked if he has considered rezoning this property, Mr. Cripe said he talked to the Town of Middlebury and they indicated that was going to be on their agenda. He would like to get the process going on the building, so that is the reason for his request.

For clarification, Mr. Nemeth said he had gone to the Town of Middlebury for a rezoning of a property located within the town limits and while he was there, this request was on their agenda. The town was asked if they would support this project of adding the garage and Mr. Nemeth said they were supportive. He said the house pre-dates the ordinance, so it has always been zoned M-1.

Mr. Cripe was asked if he attended the town meeting, but he indicated he arrived late.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood felt that the best solution would be the rezone the property. If anything should happen that the house was burnt down for any means, he would be able to rebuild.

Mr. Kolbus was asked if the building could be rebuilt if it is destroyed. He noted the Zoning Ordinance has a 60 percent rule, so if the damage is bigger than that he would not be able to rebuild without coming back before the Board. He feels it's in the petitioner's best interest to rezone the property.

The Board examined said request, and after due consideration and deliberation, a motion was made (*Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for a residential use and construction of an accessory structure in an 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 be denied. The motion died due to lack of a second.

Mr. Homan asked if it would be possible to table the Developmental Variance until after the petitioner has gone through the re-zoning so he would not be required to pay an additional filing fee.

A motion was made and seconded (*Wolgamood/Homan*) that 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 construction of an accessory structure in an M-1 district be denied. The motion was carried with the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – yes; and Hesser – no.

A motion was then made and seconded (*Wolgamood/Homan*) that the request for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be tabled until such time that a rezoning is completed. After a unanimous roll call vote was taken, the motion was carried.

23. The application of ***Delbert D. Borkholder*** for a Use Variance to allow for the construction of a residence on property served by an access easement (Parcel A), for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, a 3 to 1 depth to width ratio Developmental Variance, and a 47 ft. lot width Variance (Ordinance requires 80 ft.) (Parcel B) on property located on the 250 ft. Southeast off of Yarian Street, 600 ft. South of CR 50, 2,300 ft. East of CR 3, being West 33 ft. of Lot 68 of Eby's First Addition in Locke Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OYARIAN STREET-110425-1*.

There were 17 neighboring property owners notified of this request.

Present representing the petitioner was Charlie Zercher, Attorney, Kindig & Sloat, 102 Heritage Parkway, Nappanee. Mr. Zercher submitted a packet of information pertaining to this request *[attached to file as Petitioner Exhibit #1]*, which he reviewed with the Board at this time. The petitioner began construction of the pavilion before he realized he needed a building permit. As soon as he realized that, he came into the office to obtain the permit and in course of doing so, it was recognized that the calculations for the square footage of accessory structures exceeded the square footage of living space. The property is very isolated and few people would know the cabin has been built. The petitioner primarily uses the area for family and friend gatherings. In reviewing the photos with the Board in a PowerPoint presentation, he noted that the petitioner's property is very well maintained.

Mr. Zercher explained the petitioner originally owned the west half of lot 69 and the east half of lot 68. The petitioner obtained approval of a 3 to 1 depth to width ratio Variance and then built his driveway on the west half of lot 69. Several years later, his neighbor was going to build a residence and needed a little more room for a garage, so Mr. Borkholder sold the east half of lot 69 to him as Mr. Borkholder didn't need it. The parcel has been in its current configuration since 1994.

With regard to the Use Variance, Mr. Zercher said the petitioner would like to build a retirement home for him and his wife and his son would live in the existing home. Mr. Borkholder would like to split off a 4.7 acre piece and then eventually sell the remainder of the 38 acre piece to his son. The petitioner had a petition in support of this request signed by the neighboring property owners.

By putting an additional residence in this area, it won't change the property surrounding the split off area. It is already zoned residential and the various platted subdivisions have been there for years. Mr. Zercher doesn't feel that one more additional residence will adversely affect any of the residences.

A list of proposed conditions were then displayed, which Mr. Zercher reviewed with the Board.

As far as the peculiar aspect of the property, if you look at the plat of the lot area, the whole place is peculiar as you have vacated alleys and streets all over the place. In particular, this parcel is of interest to the petitioner from the standpoint that it is actually on an easement. Mill Street was vacated and he pointed out the property that lot 53 owns for access out to Yarian Street. Mr. Zercher said there is precedent to have this type of an arrangement.

Mrs. Wolgamood asked if parcel 007 has a residence on it and Mr. Zercher said yes. The residence on that site has been there for years. The county took the affirmative step of approving a vacation of Mill Street and then left a landlocked parcel. There is a potential that if Mill Street wouldn't have been vacated, then it would've come up to the corner of the petitioner's property. Mr. Borkholder may have had potential access to that street.

From the peculiar aspect of the property, the petitioner's representative said there are conditions out there in connection with vacation of streets and alleys that make the whole area somewhat peculiar.

Granting the Use Variance will not be injurious to the health, safety, morals or general welfare of the community. The use and value of the adjacent properties won't be affected by the additional house and he feels that the strict enforcement of the terms of the Zoning Ordinance would create a hardship on the petitioner. A need for the Variance arises due to the peculiar condition of the property. The Variance would not interfere substantially with the Elkhart

County Comprehensive Plan. He respectfully requested that the Board grant the Use Variance along with the Developmental Variances.

Mrs. Wolgamood questioned where the guesthouse is located and Mr. Zercher said it is back in the woods and is labeled as "cabin" on the site plan. The reason that is a guesthouse is because it has very minimal kitchen facilities. There are no utilities, running water, electric or gas. He noted it does have a sink and a wood burning stove.

Mr. Zercher asked if it would help the Board if they had some pictures of the inside of the structure and Mrs. Wolgamood said no.

She then asked if the easement leading to Parcel 'A' has not been fully described and Mr. Zercher said that is correct. On the easement that was submitted, he did not fully describe the easement. Part of the reason for that was because they weren't really sure where the drive was going to come through, but that is something he could easily do. He would certainly do that in connection with recording the deed. He said they could reserve the easement in the deed itself.

Mrs. Wolgamood questioned the acreage and Mr. Zercher said Parcel 'A' is 4.7 acres.

She also asked if the 3 to 1 Developmental Variance was never granted before. Mr. Zercher said the petitioner purchased the entire 36 acre parcel and he needed access to Yarian Street because all of these residences are there. He bought the west half of lot 68 and he also bought the east half of lot 69. In 1987, he filed the Variance for the 3 to 1 and the lot width Variance based upon owning those two half lots. In 1994, he sold the half of lot 69 to his neighbor, not knowing that would have caused any problems.

Mr. Burrow said the first condition the petitioner's representative is offering for Parcel 'A' cannot be complied with. He noted you cannot a lot under the new subdivision regulations without frontage, which is why this is a Use Variance.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lantz indicated he has no issues with the request.

Mr. Hesser said he doesn't agree with the Use Variance.

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 the construction of a residence on property served by an access easement (Parcel A) be denied in accordance with the Staff Analysis. A unanimous roll call vote was taken and the motion was carried.

A motion was then made and seconded (*Wolgamood*) that the requests for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, a 3 to 1 depth to width ratio Developmental Variance, and a 47 ft. lot width Variance (Ordinance requires 80 ft.) (Parcel B) be approved as represented in the petitioner's application. A unanimous roll call vote was taken and the motion was carried.

24. The only staff/board item was the presentation of a written commitment from *Allen J. and Judith Kauffman* for acceptance by the Board. Mr. Burrow explained a Use Variance was approved with a commitment to be submitted. Gordon Lord wrote up the commitment form and he needs the Board to accept it into the record, have it signed and then it will need to be notarized.

Mr. Kolbus noted that the form indicates the document was prepared by Mr. Burrow. Mr. Burrow said he has reviewed the document and has no objection because it does comply with the standards for recording the document.

A motion was made and seconded (*Hesser/Wolgamood*) that the commitment form be adopted as requested by the staff. After a unanimous vote was taken, the motion was carried.

25. The meeting was adjourned at 2:26 p.m.

Respectfully submitted,

Kate A. Keil, Transcriber

Kathleen L. Wilson, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary