

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF APRIL 2012 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Doug Miller, Meg Wolgamood, and Robert Homan. Staff members present were: Chris Godlewski, Plan Director; Ann Prough, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of March 2012 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Wolgamood*) that the legal advertisements, having been published on the 7th day of April 2012 in the Goshen News and on the 8th day of April 2012 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Homan/Miller*) that the Board accepts the Zoning Ordinance, Subdivision Control Ordinance and Staff Reports as evidence into the record and the motion was carried with a unanimous roll call vote.

5. There were no postponements of business items.

6. The application of *Lyle R. & Edith Miller* for a Special Use for a home workshop/business for a woodworking business (building and retail sales of furniture) (Specifications F - #45) on property located on the North side of CR 42, 0.3 miles East of CR 33, common address of 14641 CR 42 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 #14641CR 42-120301-1*. Mrs. Prough added that the existing building/business is on the parcel to the west.

There were four neighboring property owners notified of this request.

Lyle Miller, 14641 CR 42, Millersburg, was present on behalf of this request. He stated his business was located at 14739 CR 42 and he wants to move it to this property. He stated he has down-sized just a bit. Mr. Miller would like to maintain retail status in the event he is not able to do physical work later on, but at this point, the retail business will be inactive.

Doug Miller noted the site plan shows a circular drive which allows for driving in, around, and out onto the County Road. Mr. Hesser asked if there is presently a house on the property. Mr. Miller states the house is there, and construction is nearly complete.

If approved, Doug Miller asked if Petitioner is comfortable with the commitments recommended by the staff. Lyle Miller stated he is absolutely comfortable.

Mrs. Wolgamood asked what the woodworking business involves and Mr. Miller stated they make furniture. She then asked how the business collects saw dust and waste product that is

generated. Mr. Miller stated they have on-sight portable dust collectors for each saw. All dust is inside the building and contained. Same is later used in personal use for animal bedding.

Referring to item #8 on the questionnaire, which talks about provisions for safe entrance and exit, Mrs. Wolgamood questioned the concrete slab to be added as per specifications. Mr. Miller stated that the Highway Department wants him to put an apron at the entrance of his drive according to their specifications. For clarification, Mrs. Wolgamood asked if the measurement of the 20 by 24 sign (in item #18) is referring to inches. Mr. Miller stated that is correct.

There were no remonstrators present.

The public hearing was closed at this time.

The conditions of the original Special Use granted on March 21, 2002, were briefly discussed at this time. Those conditions did not include renewal of the Special Use, but no additional buildings could be constructed without Board of Zoning Appeals approval. The Special Use was approved for Lyle and Edith Miller as owner/occupants and there were to be no outside displays. Days and hours of operation were established as 9:00 a.m. to 5:00 p.m. Monday through Saturday. According to Mrs. Prough, no complaints had been received by Code Enforcement.

When Mr. Hesser asked if the original Special Use was approved for retail sales, Mrs. Prough said they were approved for the building and sales of furniture. It was then clarified that the retail sales was limited to a 39.5 x 33 ft. area.

Mrs. Wolgamood asked Mr. Miller when he plans to move into the new home, and he said they are living there now.

It was pointed out that time limits are normally imposed, but Mr. Hesser said the petitioner has been operating this business for ten years next door to the subject property. If approved, Mr. Homan feels it is clearly understood the retail portion of this business would be furniture type sales and not dry goods, food, or other items in the future.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a woodworking business (building and retail sales of furniture) (Specifications F - #45) be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.
2. Upon relocation of the home workshop/business to 14641 CR 42, Millersburg, Special Use Permit #2004-3398 located at 14739 CR 42, Millersburg, shall be rescinded.

The Board also imposed the following commitments:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for the owner/occupant of the residence on site.
3. No outside display or storage related to the business.
4. Days and hours of operation to be Monday through Friday, 6:00 a.m. to 4:00 p.m.
5. The retail sales are for furniture created at this home workshop/business.

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

7. The application of *Matthew Bontrager & Verlin Yoder (buyers) and Larry Yoder (seller)* for a Special Use for a school (Specifications F - #38) on property located on the East side of CR 43, 1,050 ft. South of CR 44, common address of 68100 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 #OCR 43-120315-1*. Mrs. Prough stated the reason the staff approved the preliminary site plan is because the petitioner indicated the site plan may change based on soil borings. Upon review, she said the staff has no problem with that as long as all developmental standards can be met.

There were 12 neighboring property owners notified of this request.

David Bontrager, Jr., 59723 County Road 33, Middlebury, was present to represent the school. He explained that the existing school is getting crowded and because the community is growing down south, they decided to construct a new school in that area. Mr. Bontrager stated they have talked to the adjoin neighbor to the south and no objections were expressed.

With regard to the preliminary site plan, Mr. Bontrager said the reason they put that statement in the petition is because they are waiting on results of their soil borings. He does not think the buildings are going to change, but he said the septic might be relocated based on those results.

Mrs. Wolgamood asked if there is any possibility of other changes to enlarge the school or enlarge the barn and Mr. Bontrager stated no. He said the buildings might just be shifted ten feet or so.

*** It should be noted that Mr. Campanello arrived at this time.*

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood stated she thinks they need to be a little more explicit about the note on site plan saying it could change and whether or not they want the staff or the Board of Zoning Appeals to approve any changes. She also stated she does not have a problem with staff approving site plan if it is changed.

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

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.
2. Any changes to the preliminary site plan to be reviewed and approved by the Staff prior to the issuance of a building permit.

The following condition was also imposed:

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

A roll call vote was taken and the motion was carried with Mr. Campanello abstaining.

8. The application of **John S. Hupp & Terri E. Bloxson-Hupp** for a Special Use to allow parking of a school bus in an R-1 zone (Specification F - #57) on property located on the South side of North Cobus Drive, 800 ft. West of Cobus Court, North of Cobus Lake Drive, Northwest of CR 1, Southwest of CR 10, common address of 30160 N. Cobus Drive in Cleveland Township, came on to be heard.

*** It should be noted Mr. Hesser stepped down for this public hearing due to a possible conflict.*

Mrs. Prough reported that yesterday afternoon a faxed letter was received from Terri Bloxson-Hupp asking that this public hearing be postponed. She then read Ms. Bloxson-Hupp's letter to the Board. Mrs. Prough reported that she did receive a letter yesterday in opposition to this request, but she would not present that letter unless the public hearing is opened. It was then noted there were remonstrators in the audience.

When Mr. Miller asked members of the board if they wanted to hear those people who have come to speak, it was the consensus of the Board to take their testimony at this time.

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 #30160NCobusDr-120222-1*. She read and submitted a letter from Tom and Vivian Longcor in opposition to this request *[attached to file as Staff Exhibit #2]*. Attached to this letter is a photo of the bus parked in the driveway and a list of signatures in opposition to this request. Also submitted was the Petitioner's letter for the record *[attached to file as Staff Exhibit #3]*.

There were 24 neighboring property owners notified of this request.

Attorney Kolbus explained that they should ask if there is anyone present in favor of or in opposition to this request and then the Board should decide whether or not to grant the tabling or rule on it. Mrs. Wolgamood stated she also thinks the neighboring property owners who are present should be given the option not to speak and come back next time if they like. They need to know they have that option.

The audience was then given the opportunity to speak for or against the request. Mr. Miller advised that should the Petition be tabled, the Public Hearing would be reopened at the next meeting and they would have an opportunity at that point in time to speak again.

There was no one present to speak on behalf of the Petition.

Gregory Burtsfield, 30087 North Cobus Drive, Elkhart, was present in opposition to this request. He stated that Steve Hupp developed the housing project where he built his house and lives. Mr. Hupp gave them conveyances to be abided by and strongly enforced them. In these conveyances, he addressed recreational and commercial vehicles by stating that no recreational or commercial vehicles over $\frac{3}{4}$ ton are to be placed in the driveways. He also said it is just for overnight parking.

Mr. Burtsfield feels the bus is an eyesore. It weighs 22,000 pounds which eventually will destroy his driveway. The bus is 30 feet long and it will not fit in his garage. So it will always be setting there. It is a diesel engine and there is excessive noise in morning when he starts it up and lets it idle. Being on the corner lot, like he is, when Mrs. Hupp backs out, there is no way she can see children or walkers. It is a safety hazard to the community because she cannot enter the driveway from the North. She has to enter from the South due to the angle of entry and has to swing out to get into driveway. Also, she cannot back out and go south because there is not enough room there. Right now there are ruts beside the road where she drives off the road.

There is not enough room on the street where two cars could park and she could get by because the bus is so large.

Mr. Burtsfield went on to say that the road is in very poor condition and has ruts in it. The road has not been resurfaced since Mr. Hupp put it in and now Mrs. Hupp is driving a 22,000 pound school bus down these roads that are in very bad shape. They were chipped and sealed a couple of years ago, but he said it is deteriorating. Mr. Burtsfield said there is a puddle of water that does not run off the road when he washes his car. Plus being a foreign bus, from out of the county, Penn Harris-Madison and St. Joseph County do not contribute a cent to repaving our roads. He said he had to call the school corporation and inform them they were in violation of Elkhart County law before they even contacted the Hupps.

According to Mr. Burtsfield the bus was off the property for a few days, then the Code Enforcement inspector went out and told them they could have 30 days to park it there until this meeting today. He feels that Mr. Hupp drove people out of the community by enforcing these restrictions he set for this subdivision so he was really surprised to see a school bus parked on this property. If he would have done that, he said Mr. Hupp would have been down there the next day with a letter saying it was not allowed.

Mr. Burtsfield also mentioned the possible fire danger with the bus being diesel and there is no fire hydrant in that area. Mr. Burtsfield stated part of the R-1 rating is to keep 18 wheelers, RV's, and 22, 000 pound school buses out of the area because it is a menace and destroys the roads. He is concerned that parking the school bus there is decreasing their property values. Mr. Burtsfield suggested that if insurance companies know of the school bus parking there, insurance rates will increase because of the hazard the bus provides in that area.

Mr. Burtsfield said most of the driveways in the neighborhood are not long enough to park a bus and it would stick out into the roadway. He feels the area is not made for industrial sized vehicles to drive through it. School buses drive through to pick up kids, but he pointed out they are in the middle of the road and it is for a brief time. By parking in the driveway, the bus is in and out 4 times a day, but a school bus picking up and dropping off kids only goes through twice a day. Mr. Burtsfield concluded his comments by requesting that this petition be denied.

When Mrs. Wolgamood asked how Mr. Burtsfield feels about tabling this issue, Mr. Burtsfield stated the family health matter must not be too serious because Mrs. Hupp left this morning in the bus at the normal time. He feels it just delays this issue and requested that it not be tabled.

Dan Wierzbicki, 53358 Cobus Creek Drive, Elkhart, was present in opposition to this request. Mr. Wierzbicki stated the biggest objection he has is the bus is 30 feet long, and due to the woods, the bus is half way in the road before she can see anything when backing out of the driveway. Mr. Wierzbicki expressed fear of a precedence being set if this petition is granted. Mr. Wierzbicki agrees that the subdivision is not conducive to commercial vehicles, and he too asked the Board not to table this petition.

Bennie Leazenby, 53376 Cobus Creek Drive, Elkhart, was also present in opposition to this request. He stated he lives three houses from Steve Hupp and his wife. He agrees with Mr. Burtsfield and Mr. Weirzbicki that the bus is 30 ft long and you cannot see when backing out. There is a 25 mph speed limit in the subdivision, but he stated she goes faster than that. There are young kids on bikes and people walking, and he is concerned she could not see them when backing out of that driveway.

Mr. Leazenby stated he previously lived at 30031 N. Cobus Drive and according to Mr. Hupp, his sons could not keep a small snowmobile trailer in the back corner of their lot, which was clear out of sight. Mr. Leazenby stated Mr. Hupp has forced neighbors to comply with the covenants for years including vehicles. He does not understand how you can approve of keeping a bus in a driveway that is a hindrance to the whole neighborhood. He explained that Mrs. Hupp enters from County Road 1 and drives all the way around. That diesel engine makes a big roar and disturbs everyone in the neighborhood. Mr. Leazenby stated on behalf of his wife and himself, he requests this petition be denied.

Mr. Homan asked how long the bus has been parked at this location and Mr. Leazenby said this is the second school year she has parked the bus at her house. He feels the bus sitting there for a couple of hours would be one thing, but he cannot see it sitting there all day, all night, and the entire weekend. He said it is not a good sight for anybody to see.

The public hearing was closed at this time.

Mrs. Wolgamood stated she can sympathize with someone who has an issue or reason such as the Petitioner has given for not appearing today. However, the neighbors in the audience state they saw her leave in the bus this morning. Mrs. Wolgamood stated the Board can deny this petition without the Petitioner being heard, and she thinks the staff has made an excellent recommendation. Whether it is postponed for a month, two months, or three months, she indicated she would not go along with anything other than what the staff has recommended. Mrs. Wolgamood stated she would make the recommendation that the Board deny this petition today.

Mr. Homan stated he completely agrees with Mrs. Wolgamood as he feels this is an egregious violation of the ordinance in an R-1 district. Mr. Homan acknowledged it would not make any difference to him if the Petitioner spoke. Mr. Miller was also in agreement.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow parking of a school bus in an R-1 zone (Specification F - #57) be denied.

Mrs. Wolgamood suggested that as of the end of this week, the bus is no longer to be parked on the subject property.

Prior to voting, Mr. Miller amended his motion to include a condition that the bus is to be relocated by the end of this week. Mr. Homan seconded the amended motion, and with a unanimous roll call vote, the motion was carried.

9. The application of *Ezra L. & Louise E. Miller* for a Special Use for a home workshop/business for a woodworking business (Specifications F - #48) on property located on the South side of CR 46, 1,475 ft. West of CR 13, common address of 24314 CR 46, in Union Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #24314CR 46-120316-1*.

There were six neighboring property owners notified of this request.

Ezra Miller, 24314 CR 46, Nappanee, was present on behalf of this request. Mr. Miller wishes to re-open his workshop to make kids furniture and cabinets in his retirement years. Mr. Campanello asked Mr. Miller if he sells out of his workshop and Mr. Miller stated yes.

Mrs. Wolgamood questioned the metal shop building shown on the site plan, and Mr. Miller stated that building is where the shop was previously located. When asked what that building is being used for now, Mr. Miller said for storage, a family room, and church. Mr. Miller said everything is cleaned out of the building and it has no affiliation now with the business. Mr. Miller stated part of that building will be a shop again. Mr. Miller stated the south end of the building is where the workshop will be located.

Mrs. Wolgamood asked how long the previous Use Variance has been void and Mr. Miller said since the end of 2005.

When a question was raised about the full-time and part-time employees referenced in item #3 of the questionnaire, Mr. Miller explained that one of his children who no longer lives at home might want to help. He then clarified that he has no intention of having paid employees.

Mrs. Wolgamood questioned the hours of operation and Mr. Miller stated five days a week, Monday through Friday. He then reported there will be no signs of any kind on the property.

Mrs. Wolgamood reiterated Condition #2 of the Staff recommendation which stipulates the Petitioner is to voluntarily rescind the existing Use Variance approved in 1995 and Mr. Miller expressed no objection.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Campanello/Wolgamood*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a woodworking business (Specifications F - #48) be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.
2. Petitioner to voluntarily rescind the existing Use Variance approved in 1995.

The following commitment was also imposed:

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

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

10. The application of *Schrock Family Revocable Living Trust of August 15, 2004, Freeman D. & Ida Mae Schrock as Co-Trustee* for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) on property located on the North side of CR 36, 868 ft. West of CR 35, common address of 14155 CR 36, in Clinton Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #14155CR 36-120319-1*.

There were five neighboring property owners notified of this request.

Freeman Schrock, 14155 CR 36, Goshen, was present on behalf of this request. He stated the greenhouse is presently on the adjoining property and he would like to move it onto his property and continue the business.

Mr. Campanello asked about employees and Mr. Schrock said all employees live on site. Mr. Hesser then asked about sales before March or after June. Mr. Schrock explained There are some sales after June, but the steady flow or heaviest traffic is between March and June.

Mrs. Wolgamood inquired about the definition of "garden supplies". Mr. Schrock reported potting soil, some fertilizers, hose, bird houses, and some little knick-knack items that go with gardening and greenhouses. He stated all items will be stored inside. When Mr. Campanello asked about the possibility of bags of mulch or manure, Mr. Schrock stated he is not going to have any of that.

Semi-truck deliveries were then questioned by Mrs. Wolgamood. Mr. Schrock said deliveries are not always by semi. Depending on the size of the shipment and how the orders are shipped, sometimes deliveries come by Fed-Ex. Mrs. Wolgamood asked about the availability of a turn-around for trucks on the property. Mr. Schrock stated there is room for trucks to drive in, turn around, and drive back out.

Mrs. Wolgamood asked if the greenhouses will be removed during the winter. Mr. Schrock stated no. He explained they are permanent steel structures with a plastic covering.

Mrs. Wolgamood inquired of Mrs. Prough about the setback and design of the sign. Mrs. Prough stated Mr. Schrock just has to place the sign behind the right-of-way. There is no setback for greenhouse sales in an agricultural zone.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Campanello/Wolgamood*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) be approved with the following condition imposed:

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

The following commitments (as amended by the Board) were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No outside display or storage of inventory or merchandise.
3. Months of operation to be March through June.
4. Days and hours of operation to be Monday through Saturday, 8:00 a.m. to 4:30 p.m.
5. No backing out, parking, loading or unloading of inventory or merchandise on CR 36.
6. No new curb cut to be constructed.
7. All required permits to be obtained.
8. Approved for the owner/occupant of the residence on site.
9. One (1) 2 ft. x 3 ft. double-faced, free standing, unlighted sign.

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

11. The application of **Matthew & Martha Bontrager** for a Special Use Renewal for a home workshop/business for small engine repair service and sales (Specifications F - #45) and for a

Developmental Variance to allow existing signage to exceed the signage requirements for a home workshop/business on property located on the East side of SR 13, 1,690 ft. South of CR 46, common address of 68832 SR 13, 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 #68832SR 13-120315-1*. Mrs. Prough added that upon completion of the staff site visit, outside storage was located on the south side of the building which is reflected in submitted photos of property. Staff member, Ronnie Weiss, worked with the owner and notified owner that outside storage is not permitted for a home workshop business and needed to be removed. Mr. Weiss was out to the site two days ago, and outside storage was removed. Mrs. Prough said staff is also working with the owner on a State required curb cut, and according to the State Highway Department, an application for same has been submitted.

There were three neighboring property owners notified of this request.

David Bontrager, Jr., 59723 CR 33, Middlebury, was present representing the Petitioners. Mr. Bontrager addressed the outside storage by saying customers sometimes drop off equipment for repair by leaving it outside. Occasionally a mower is left outside before being repaired. Mr. Bontrager reported the Petitioner has moved everything inside and the outside looks good. Mr. Bontrager stated the Petitioner had a misunderstanding about the driveway. He was waiting to hear back from the Highway Department; however, he had never submitted the application. Mr. Bontrager stated the Highway Department was out yesterday and gave approval.

Mrs. Wolgamood asked about signage by the roadway. Mr. Bontrager stated there is no free-standing sign at this time. The site plan shows wall mounted signs. Petitioner wants signage to remain the same according to Mr. Bontrager.

Mr. Hesser then clarified that a sign by the roadway would not be permitted if this petition is approved now as submitted.

Marty Long, 15482 SR 4, Goshen, was present in opposition to this request. Mr. Long stated he is the owner of a business exactly like this. He was told this is zoned Agricultural and he was shocked to find out there was already a workshop permit. He feels it needs to be treated as a commercial business with the proper curb cuts, and be permitted by the State and Homeland Security in the same manner as he has been required.

Mrs. Wolgamood inquires about Mr. Long's current business. Mr. Long reported he is required to obtain State, County, and City approvals. He stated he has periodic inspections by the Health Board for proper containment of hazardous materials, inspections by the Fire Department at least two to three times per year for proper storage of flammable materials as well as other routine inspections. He also reported an inspection by the Fire Inspector due to retail business customers for proper signage for lighting to get out in case of power failure.

Mr. Campanello asked Mr. Long if he owns an agricultural land. Mr. Long stated he does at his personal property; however, he does not have a workshop permit. Mr. Long stated his business is a commercial business in the City of Goshen and he did not request a home workshop. He stated his neighbor, Lester Yoder, had a business just like this located at the corner of County Roads 33 and 34 that was closed down by the council about 12 years ago. Mr. Long stated Mr. Yoder only had one employee. Mr. Long expressed he is not here to complain about a competitor but reiterated that he feels this request needs to be treated as a commercial business and that everyone be on the same playing field.

In response, Mr. Bontrager acknowledged Mr. Long's comments. Mr. Bontrager pointed out, to his understanding, "commercial" is a business not at your home. A home workshop cannot be placed where there is no home. Because there is only one employee plus the homeowner, Mr. Bontrager was under the impression this request would still meet the criteria of a home workshop and he reported no known complaints from neighbors. Mr. Bontrager suggested the Board list any requirements for hazardous material in the commitment if changes are necessary for compliance.

Mrs. Wolgamood requested that Mr. Bontrager address Mr. Long's concern about hazardous waste, but Mr. Bontrager said he did not ask the homeowner about that issue. He did say, however, that he feels certain the homeowner would agree to list any requirements for hazardous materials in the commitment for compliance.

Mr. Homan asked what agency is responsible for inspections. Mrs. Prough believes this business should be registered with the Health Department as the Ground Water Ordinance requires such registration. She knows they do inspections and check above-ground tanks, but she also believes they check containment for oils, paints, etc. She knows they have checked small businesses for car repair. Mrs. Prough suggested imposing a condition that the Petitioner has the business registered with the Health Department and they would address the environmental issues. The Building Code requirements would be a decision by the Building Commissioner whether or not the building needs to meet building code. Mrs. Prough stated she recalls when Mr. Bontrager previously applied, the structures were existing. There was previously no condition that he need to do that.

Since the property is zoned A-1, Mr. Campanello asked if farmers are registered with the Health Department for their hazardous waste for tractors or used oil. Mrs. Prough stated she is not aware of that, but she does know that small businesses are registered. Mr. Campanello inquired if there is something that says a home workshop/business has to register with the Health Department in an A-1 zone and Mrs. Prough stated the Board can make that a condition. She believes all businesses are to be registered. There have previously been conditions placed on permits that all required permits are obtained which would include the Health Department.

Mr. Bontrager feels certain the Petitioner is willing to register his business. Mr. Bontrager stated he is a farmer and does not believe farmers are required to register. He feels it is fair to list such requirements in the commitment. Mrs. Prough stated a requirement could be placed that Petitioner is in compliance with Health Department ordinances.

Mr. Campanello asked if a precedence is being set for this type of home workshop and not any other type of home workshop. When dealing with something where gasoline and hazardous materials are involved and a commercial enterprise is permitted in an agricultural zone by way of "special permit", Mrs. Wolgamood does not think a precedence is being set any more than whether the Board says yes to two curb cuts or one.

Mr. Hesser asked about language for commitment. Mrs. Prough stated, "Petitioner to register business with County Health Department."

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/Homan*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use Renewal for a home workshop/business for small engine repair service and sales (Specifications F - #45) be approved with the following condition imposed:

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

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The home workshop/business to be limited to the building as designated on the submitted site plan.
3. Approved for the owner/occupant of the residence on site.
4. No outside storage or display of inventory or merchandise related to the business.
5. Days and hours of operation are to be Monday through Friday, 7:00 a.m. to 5:00 p.m. and Saturday, 8:00 a.m. to 12:00 p.m.
6. The home workshop/business shall be operated only by occupants of the residence and by no more than two (2) employees, associates, or partners who do not occupy the residence.
7. The retail sales on the site be limited to 700 sq. ft. inside the existing building.
8. The petitioner required to register the business with the Elkhart County Health Department.

Prior to voting, there was a brief discussion about imposing a time limit on the Special Use. Mr. Hesser then amended his motion to include the condition that the site to be monitored by the staff for compliance. Mr. Homan seconded the amended motion.

It was then reported by the staff that this business (South Side Enterprises) is currently registered with the Health Department and has been inspected at least twice.

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

A motion was then made and seconded (*Hesser/Campanello*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow existing signage to exceed the signage requirements for a home workshop/business be approved with the following condition imposed:

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

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

12. The application of **Clyde B. Selby & Katrina K. Selby** for a Special Use for warehousing and storing of log home material and equipment in an A-1 district (Specifications F - #44), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the North side of CR 40, 660 ft. West of CR 1, common address of 30195 CR 40, in Olive Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #30195CR 40-120319-1*.

There were four neighboring property owners notified of this request.

Clyde Selby, 30195 CR 40, Wakarusa, was present on behalf of the request. Mr. Selby expressed gratitude to Mrs. Prough for helping them work through some of the needs and requirements. He explained they are a construction company that builds and sells log homes. He explained that because of today's standard and modern technology, they are not a true log home. They build a stick frame home that has log siding on outside and logs on inside. It is more decorative, but you get the look and feel of a log home. Mr. Selby stated the impact of material is much less. They do not have semi-truck loads of logs being delivered. They do not pre-erect any buildings. Basically, they need a place for storing materials. Sometimes materials might need some "cleaning up" such as sanding, or a few cuts before delivery. There is an existing sign on the site plan which is requested as part of this variance.

Mr. Homan commented, when looking at one of the photos, he saw a couple of logs. He asked about cutting or sawing on the property. Mr. Selby stated there is no sawing. He stated he has one pile of old barn beams that are incorporated into some of the new homes, which will be stored inside. He stated he has a large pile of firewood. Mr. Selby stated sometimes they will cut mortis and tenons in an order to get them ready to go out, but very little work is done on site. They are mainly a construction crew. If a crew is there, it is just to load and unload materials to take out to a job.

Mrs. Wolgamood asked about storage of materials. Mr. Selby stated there will be no outside storage. Outside equipment storage was discussed. Mr. Selby stated he believes in the site plan the flatbed trailer is sitting on the proposed building site. He indicated the outside storage would be just to the south of that.

Mrs. Wolgamood asked about proposed screening along the south side of the location of the equipment as she is concerned about the neighboring property to the south and east. Mr. Selby indicated he was not planning on any screening, but would be willing to comply if requested by the Board. Mr. Selby also stated his wife is very much in favor of planting trees so it might be a nice place for a row of pines.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan feels it would be reasonable to request Petitioner to screen the south property line along the storage area. Mrs. Wolgamood expressed agreement.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for warehousing and storing of log home material and equipment in an A-1 district (Specifications F - #44) be approved with the following condition imposed:

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

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for the owner/occupant of the residence on site.
3. No outside storage of materials or debris related to the business.

4. The outside storage of equipment be limited to one (1) flat bed trailer, one (1) skid loader and one (1) job site construction trailer.
5. Petitioner to provide screening to the south side of the equipment storage area, with the revised site plan showing that screening to be submitted by the petitioner and subject to approval by the staff.

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

A motion was then made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within ninety (90) calendar days from the date of the grant and construction work completed within one (1) year from the date of the issuance of the building permit, unless specific permission for additional time is granted by the Elkhart County Advisory Board of Zoning Appeals.
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

13. The application of **Walter Ray & Marilyn Faye Weaver (buyers) and Ora Miller, Jr. and Karen Miller (sellers)** for a Special Use to allow for a home workshop/business for a general merchandise store (Specifications F - #45), for Developmental Variances to allow illuminated signage to exceed the signage requirements for a home workshop/business, and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the West side of CR 35, 500 ft. North of CR 38, common address of 64923 CR 35, 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 #64923CR 35-120319-1*. Mrs. Prough then submitted three letters in opposition. These letters are from Ronald & Marcia Christner who reside at 14073 CR 38, Goshen, *[attached to file as Staff Exhibit #2]*, Martha Christner, 14109 CR 38, Goshen, *[attached to file as Staff Exhibit #3]*, and from Greg and Carol Hooley at 14009 CR 38, Goshen, *[attached to file as Staff Exhibit #4]*. Concerns expressed by these neighbors include traffic safety as the property site is on a blind hill and the illuminated sign.

There were 11 neighboring property owners notified of this request.

Ray Weaver, 109 Country Drive, Denver, PA 17517, was present on behalf of this request. Mr. Weaver expressed thanks to the Board for the time to hear his presentation and to Mark Kanney who has been very informative and helpful in this process. He reported they lived in Goshen for nine years approximately eight years ago. He stated his wife is from this community. They presently live in Denver, Pennsylvania, working with the family business. He grew up in the retail merchandise business. He stated they are looking at moving back into this community once again as they have an opportunity to purchase a small retail business located on County Road 126. Upon researching the community, he feels they could offer a very good

product, very good quality merchandise for a good price. He sees this also as an opportunity to work with his family, especially their boys. He indicated the general merchandise would consist of shoes, clothing, coats, dress, hardware, house wares, notions, and things of that nature. He reiterated it would be a general merchandise store. He is trusting the zoning board will accept the proposal of this endeavor.

When Mr. Hesser asked about the existing business located on County Road 126, Mr. Weaver stated it is the R & B Country Store. He referred to it as a “mom and pop store” that has been in business for approximately 15 years. He stated it is located off of CR 35 about one mile west on CR 126. Mr. Hesser asked if it was a stand-alone store or part of a home workshop. Mr. Weaver reported it is part of a home workshop and the current owners want to sell the business. The Weavers are looking to carry on the business that is serving the Amish community and to broaden their clientele with their merchandise. Mr. Weaver clarified they would just be purchasing the inventory, not the property.

Mr. Hesser asked Mr. Weaver if he has seen the three letters the staff submitted before today and Mr. Weaver indicated he just received them. Mr. Hesser indicated Mr. Weaver will have time to respond to the letters after the Board hears from any additional members of the audience who wish to speak.

Eric Woolace, 64898 CR 35, Goshen, was present in opposition to this request. He indicated he lives directly across the road from this property. He stated he is not totally opposed to the business, but he is slightly opposed to the illuminated signage. He stated he moved out there two years ago to get away from some of the lights. He reported being a little surprised by the size of an 8,000 square foot retail building and feels it is too large for that location. Mr. Woolace identified an additional concern being the safety of traffic entering County Road 35. He stated visibility is a concern due to the hills in the roadway. He expressed from the north, the line of sight is poor.

Mr. Miller asked Mr. Woolace if pulling out of his own driveway is a problem because of the hill and Mr. Woolace said extra caution should be used. The view of on-coming traffic heading south is obstructed by the hill. Mr. Woolace stated that type of retail shop that size seems much larger than a home-based business. However, he feels that is the Board’s business, not his own.

Mr. Weaver responded to the issues raised in the letters although he did not have time to look at them closely. Mr. Weaver is proposing a sign mounted on the wall of the building with soft glow background lighting. The building would sit back off the highway at least 174 feet and he feels lighting with a soft glow would not be distracting. Regarding the concern of pulling out into the roadway, Mr. Weaver said he has been talking with the Elkhart County Highway Department. They raised similar concern as well. There is potential of putting the access south of the house, taking the drive approximately 500 feet south of the hill.

Mr. Homan expressed curiosity as to why Mr. Weaver selected this site. Mr. Weaver said this location is in a very good area and the location would allow them to meet the needs of the clientele. Traffic moves through there, which is an advantage in retail, and the owner is asking an affordable price for the property.

Mr. Hesser asked the Petitioner to address the size of the building, which he feels seems big. Mr. Weaver stated the reason for that size building is to allow room for the merchandise they carry in order to meet the needs of the community.

Mr. Hesser asked if the lighted sign would remain on when the store is closed. Mr. Weaver said they are proposing to be open Friday evenings until 9:00 p.m., but the store would close by 6:00 p.m. on the other days. Mr. Weaver said if the Zoning Board would allow the sign on at all times, he would appreciate it; however, if it needs to be off when the store is closed, he will comply.

When comparing the site plan and the aerial photo, Mrs. Wolgamood said she sees one curb cut. She asked if two curb cuts are going to be eliminated. Mr. Weaver stated the access still needs to be worked out with engineers. Mr. Weaver indicated they will follow the requirements of the Board and the Elkhart County Highway Department. Mrs. Wolgamood reiterated the site plan shows a 24 foot wide highway access, which appears to be in the middle of two existing accesses. Mr. Weaver stated there will only be one access in the middle and that grass will be planted in the outside two accesses.

Mr. Woolace indicated he had an additional question and returned to the podium. He stated he has not seen the proposed site plan. He asked if there will be a new building. Mr. Hesser responded by saying that one of the buildings will be new. At this time, Mr. Woolace was given a copy of the site plan to review. Mr. Woolace asked if the signage would be toward County Road 38 or County Road 35. Mr. Hesser stated the site plan appears to show it facing County Road 35.

The public hearing was closed at this time.

Mr. Hesser reiterated that he feels the building seems big.

Mr. Homan indicated that home workshops are strictly defined in this County and he feels the light is way outside the definition of a home workshop/business. Mr. Homan stated he did not hear anything in testimony that let him think it was secondary to the use of the property for residential purposes. He feels it sounds like the petition is there because that is where the business wants to be located.

Mrs. Wolgamood agreed and indicated the difference of 7,407 square feet is huge. The location is really in the back yard of four or five single family residential units. Mrs. Wolgamood stated she knows there are some existing general merchandise stores around the county, but in her opinion, this exceeds the definition.

Mr. Hesser indicated the Board always struggles with petitions of this type and he feels the lines are not clearly drawn. Mr. Miller stated this petition really fractures the definition beyond what he can justify for a home workshop. Mrs. Wolgamood reported she is in full agreement with the staff analysis.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for a home workshop/business for a general merchandise store (Specifications F - #45) be denied. The motion was carried with a unanimous roll call vote.

A motion was then made and seconded (*Hesser/Wolgamood*) that the Board deny this request for Developmental Variances to allow illuminated signage to exceed the signage requirements for a home workshop/business, and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure based on the fact the home workshop/business has been denied. A roll call vote was taken and the motion was carried with a unanimous vote.

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

15. The staff item for a minor change to the Special Use for a gravel pit for *Scott & Karrie Clark* was presented by Mrs. Prough at this time. This property is located on the south side of CR 36, east of CR 11 in Harrison Township. After reviewing a letter she received from Mr. Clark on March 23, 2012, Mrs. Prough explained that in 2011, Mr. Clark was before the Board to ask for an amendment of his Special Use permit and site plan. The Board allowed him to have a second temporary drive due to the Bayer clean-up job he has in Elkhart. Mrs. Prough indicated Mr. Clark was given the deadline to have the temporary drive removed by March 23, 2012. According to Mr. Clark, the job is not complete so he is asking the Board to consider this as a minor change and allow him to keep the second temporary drive open until July 1, 2012. Mrs. Prough reported Mr. Clark has already contacted the Highway Department and they have extended his temporary driveway permit. Mrs. Prough indicated she attached the minutes of the June 16, 2011, meeting. Mr. Kolbus then clarified that Condition #17 of the Special Use is where the temporary driveway is addressed.

Mr. Homan acknowledged it is only a month and Mrs. Prough indicated the staff would be in support of request. She stated if they asked the Clarks to come in as a minor change, it will be another month by the time they would get here to file the application. Mrs. Prough reported the Highway Department feels it is a safer situation, which they did represent at the meeting in 2011. Mrs. Prough indicated there have been no complaints recently and she has seen no activity when driving by a couple of times in the last few weeks.

Mrs. Wolgamood stated she is a little conflicted with this issue. She agrees with the fact that where the driveway is currently located is safer. However, previously the neighbors were always notified of changes. The neighbors know there is a deadline. She stated Mr. Clark went to the Highway Department first the last time, got his approval, and then came to the Board, full well knowing that any changes needed to come to the Board of Zoning Appeals.

Mr. Kolbus then submitted a copy of the original letter from Mr. Clark for the record *[attached to file as Staff Exhibit #1]*. Attached to this letter is a copy of the renewal of the Road Impact Agreement from the Highway Department.

Mr. Miller feels the Board has an overriding responsibility to public safety in respect to what he has done. Mr. Campanello stated the Board has already heard testimony against the petition, but he indicated the Board is still going to give him the requested extension.

Mr. Miller stated he would not disagree with anything. He reiterated Mr. Homan's point, "What's one more month?" However, Mr. Hesser pointed out it is three months.

Mrs. Wolgamood states she believes the issue is whether the Board considers it is a major change and in need of a public hearing, or if it is a minor change and grant it until July 1st. Mr. Hesser feels it is a minor change. Mr. Miller stated they would just be changing the date, not the road location, or the traffic flow. Mr. Campanello agreed that it appears to be minor.

A motion was made and seconded (*Hesser/Miller*) that this request, with respect to Condition #17 that the temporary driveway be closed on March 23, 2012, be modified to state July 1, 2012, or upon completion of the Bayer job, whichever first occurs, and further that this request is considered a minor change to the Special Use. The motion was carried with the following roll call vote results: Miller – yes; Wolgamood – no; Campanello – yes; Homan – yes; Hesser – yes.

16. The meeting was adjourned at 10:45 a.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary