

MINUTES

ELKHART COUNTY BOARD OF ZONING APPEALS MEETING

HELD ON THE 20TH DAY OF DECEMBER 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 Vice Chairman, Doug Miller. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Bill Kuhns, Doug Miller, Tony Campanello, Meg Wolgamood.

Absent: Randy Hesser.

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

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello.

3. A motion was made and seconded (*Campanello/Wolgamood*) that the legal advertisements, having been published on the 8th day of December 2012 in the Goshen News and on the 9th day of December 2012 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello.

4. A motion was made and seconded (*Wolgamood/Kuhns*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello.

5. There were no postponements of business items.

6. The application of **Gregg A. & Vicki S. Miller** 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 South side of CR 44, 400 ft. West of Brunswick Drive, West

of CR 31, common address of 16248 CR 44 in Jackson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #16248CR 44-121115-1*.

There were five neighboring property owners notified of this request.

Gregg Miller, 16248 CR 44, was present on behalf of this request. He stated he does not understand the residential issue they are denying as other than a subdivision to the east, most of the area around them is farmland and buildings. He indicated they bought the property with the 100 year old house and barn because they liked the idea of the American farm setting and added that they do not want to destroy the setting they have. He said the proposed building will basically be hidden from the road. He stated the subdivision to the east has a retention pond which is visible in the lower right hand side of the aerial so nothing will be developed in that area. He pointed out homes could be built on the two lots to the east of them, but the developer has already planted evergreen trees that act as buffer to their property. Mr. Miller said they planted additional trees as well. As there is only one resident who would be able to see the building, he said he does not see that they will hinder the subdivision.

Mr. Miller said the existing buildings are not designed to put a recreational vehicle in, and he does not like to leave things setting outside. He reported he would think someone would rather see a building than have boats and RVs sitting around on the property. Mr. Campanello confirmed the area of the trees on the right edge of the aerial photo.

It should be noted that Randy Hesser arrives at this time.

Mr. Miller went on to say the other smaller buildings as part of the old farm are a smokehouse and chicken house from yesteryear. He said one small building stores bicycles and lawn equipment and the barn stores boat equipment, an antique truck, several trailers, large lawn mowers, a lawn vacuum system, and four-wheelers that the grandkids ride. He stated he does not want to take down the barn because it is 100 years old and is unique to the property. He also added that they do not want to put anything up that will ruin the look of the property. They just want to be able to preserve their personal property.

Mr. Kuhns confirmed that the property is 2.43 acres. When Mr. Doug Miller asked if the finished height of the proposed building will be taller than the finished height of the existing barn, Mr. Gregg Miller indicated it would not. Mr. Gregg Miller suggested the height of the barn is approximately 30 feet or more to the peak, and the proposed building will probably be 14 ft. He also indicated the arborvitaes are at least 16 feet tall which will be in front of the proposed barn. He said he had considered enlarging the barn on the west end but the trees in front of the barn would have to be removed, and he would need another driveway off the road in addition to the three he already has. He stated by putting it in behind the arborvitaes, the building would be hidden and more convenient with access from the driveway to back the RV into the building.

When Mr. Doug Miller asked Mr. Gregg Miller if he had given any consideration to potentially moving his storage from the smaller buildings into the proposed building and removing the smaller buildings (smoke house and chicken house), Gregg Miller said that he would rather not take them down and their square footage is not significant. He reported the

back garage has some wood storage and a couple of motorcycles and would be the only building he would consider removing. However, he indicated it is less than 300 square feet. He reiterated with a silo also there, they enjoy the farm setting and do not want to take away from what they have.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Kuhns indicated he does not have a problem with the request as it will be hidden behind a row of 16 ft. tall arborvitaes, and it is an A-1 district. He added if the request lessens the resale value of the property, it is Mr. Miller's problem not the Board's. Mr. Campanello expressed agreement. Mrs. Wolgamood suggested if the Board is looking at approving the request, commitments should be added such as domestic personal storage only and no new driveways. She reported agreement with Mr. Kuhns' comments. She also pointed out that although the property is just shy of the recommended amount for agricultural use, even with three acres, Gregg Miller would still be in here asking for what he is asking for. Mr. Doug Miller mentioned good points were made.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that the Board finds that:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare as it will allow the petitioner to store his RV and boat indoors;
2. Approval of the request will not cause substantial adverse affect on the neighboring property;
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property;

and based upon these Findings, 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 commitments imposed:

1. The building to be used only for domestic personal storage.
2. No new driveways to be installed on the property.

Vote: Motion passed (**summary:** Yes = 4, No = 0, Abstain = 1).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello.

Abstain: Randy Hesser.

7. The application of *Fred Roy Joe Detwiler* for a Special Use for a mobile home on property located on the West side of CR 23, 650 ft. South of East West Toll Road, common address of 52405 CR 23 in Washington Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #52405CR 23-121119-1*.

There were 28 neighboring property owners notified of this request.

Dave Replogle, 61108 CR 17, was present on behalf of this petition. He stated his mother lives in the farmhouse on the property and has some health issues. He said he wants to move his mobile home onto the property to look after her.

Mr. Hesser asked how difficult it would be to move the proposed location for the mobile home so it is 300 ft. from the house to the north. Mr. Campanello pointed out the house and barn on the aerial. Mr. Hesser indicated the issue of the 300 feet is for the house to the north. When Mr. Replogle questioned if it was actually a residence, Mr. Mabry said it appeared to be a house when taking the site photos. When Mrs. Wolgamood asked where the septic system is located on this property, Mr. Replogle indicated the location on the aerial. He said he has paperwork stating it is a 1,000 gallon tank and is large enough for a three bedroom house. He reported the old trailer was torn down. Mr. Kuhns asked if there is an existing pad there now from the previous mobile home. Mr. Replogle said there are barrels with cement in them. When Mrs. Wolgamood asked the present location of the mobile home, Mr. Replogle indicated it is in Brookside Manor. He said his uncle, Mr. Detwiler, owns the property and lives in St. Louis.

Angela Buck, 52407 CR 23, was present in remonstrance to this request. She stated she lives on the property just north of this. She further indicated the proposed location is approximately 42 feet from their house. She mentioned their concerns are the degradation of the property value and the shared driveway as provisions would need to be made for it. When asked by Mr. Kuhns if she was opposed to the mobile home in general or if she was opposed to the closeness, she said she is opposed to the closeness. She further indicated if the mobile home met the 300 ft. requirement, she would not have a problem with it.

In response, Mr. Replogle said he can move it if required but feels it would be a waste of a good septic system. He added that the property has permanent easement rights for the driveway from 1947. Mrs. Wolgamood pointed out the Toll Road is just north of this and indicated when coming over the over pass, you cannot really see anything down there. She added that she recalled working with Mr. Detwiler previously regarding the easement, and the easement was given to the property by the Toll Road.

The public hearing was closed at this time.

Mr. Kuhns pointed out in looking at the aerial and talking about depth of property, there is plenty of room for Mr. Replogle to move the mobile home 300 feet away from the residence to the north. Mr. Campanello expressed agreement. Mr. Miller said he thinks in this instance in terms of being a good neighbor, there is enough room, and Mr. Replogle has the opportunity to be compliant.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Deny, Moved by Doug Miller, Seconded by Tony 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 Special Use for a mobile home be denied.

In further discussion, Mr. Hesser asked if they would have to re-advertise if the petitioner offered to move the mobile home to a different location. One scenario Mr. Mabry suggested was to deny the proposed placement of the mobile home, but approve it subject to a suitable location that meets the 300 ft. setback requirement.

Mr. Kolbus advised that if the entirety of the parcel was advertised, the Board can adjust the location here today. Mr. Hesser said he would rather give the petitioner the opportunity to move it rather than coming back at a later time and Mr. Kuhns agreed. However, Mrs. Wolgamood suggested they table the request to give the petitioner the opportunity to find another location, and to see if it is cost effective for him to install a new septic system and a new

driveway in order to meet the 300 ft. requirement. Mr. Hesser felt that made sense because they do not have a site plan and Mr. Kuhns was in agreement. Mr. Miller then withdrew his original motion.

Motion: Action: Table, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that the Board table this request for a Special Use for a mobile home until the January 17, 2013 Board of Zoning Appeals meeting to give the petitioner time to make revisions to the site plan and see if the mobile home can be relocated to meet the requirements of the Zoning Ordinance.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

8. The application of *Tri County Land Trustee Corp. Attn: Paul Schwartz* for an amendment to an existing Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) on property located on the East side of SR 13, 1,150 ft. North of CR 26, common address of 59800 SR 13 in Middlebury Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #59800SR 13-121119-1*. Mr. Mabry indicated the Staff Report does not show that this is an amendment to an approved existing Special Use permit for this property. He further stated staff did not feel commitments were necessary on this property because a Special Use was previously approved and it has been in compliance to this point. Mrs. Wolgamood mentioned #2 of the conditions was talking about previously approved conditions but they were not included in the packet, and she asked for a copy. Mr. Mabry read them and provided copies for the Board members.

There were seven neighboring property owners notified of this request.

Paul Schwartz, 59800 SR 13, was present on behalf of this request. He said he and his wife own and operate the greenhouses. He indicated sales would be moved into this building to make more room in the greenhouses. When Mrs. Wolgamood asked about outside storage, Mr. Schwartz indicated they have skids of potting soil in the spring, but the new building will house all of that. Mrs. Wolgamood pointed out #2 on the questionnaire talks about retail pots, pesticides, fertilizer, and etc. and asked Mr. Schwartz if that was included in the request previously. He stated it was, but those items have been stored inside the greenhouse which is humid and in direct sun light and not ideal conditions for storage of those items. When Mr. Miller asked about the proposed location of new building, Mr. Schwartz indicated they want to move the existing storage building and put this one in its place.

Mr. Campanello asked for the aerial photo of the property on the screen. Mr. Campanello indicated the proposed location of the building and asked about customers entering the property by way of the south driveway. Mr. Schwartz said that is how it was originally intended but after purchasing additional property north and east of their original property, they now use the north driveway on aerial which they now own. When Mr. Campanello inquired about the sign, Mr. Schwartz indicated it is located by the driveway to the south. Mrs. Wolgamood inquired if the construction of the new building will interfere with any large trucks entering and exiting the driveway. Mr. Schwartz indicated there is still plenty of room to turn around and drive back out. When she asked about the driveway to the north, Mr. Schwartz said it goes to a residence but

they own a portion of it with the owner of the residence having an easement across the Schwartz property.

Mrs. Wolgamood pointed out that the petition before the Board does not include the property to the north which is being utilized for the Special Use and asked if that is an issue. Mr. Mabry referred to the conditions he passed out to the members, #2 is access is to be from petitioner's property only which would indicate that access would need to take place from the lower driveway. Mr. Schwartz pointed out at the time of the previous approval, they only owned 2.3 acres but since that time they have purchased additional property to the north and east of them. In response to Mrs. Wolgamood inquiring when the additional property was purchased, Mr. Schwartz said the three acres to the east was purchased approximately three or four years ago with no intention to purchase more. But then the larger parcel of land became available, and they purchased it so that no one could build behind them and because of the north driveway. Mr. Mabry confirmed that Mr. Schwartz owns the property to the north including the driveway. Mrs. Wolgamood reiterated that the petition does not include all three parcels.

When Mr. Hesser asked Attorney Kolbus if the Board was inclined to approve this but wanted to correct it so it covered the right property would it be necessary to re-advertise, Mr. Kolbus indicated yes because the application is just 2.3 acres and the other parcels were not part of the application. He further added that as this petition was submitted, Mr. Schwartz would need to use the driveway to the south. In order to clean this up, include all three parcels, move the sign, and use the north driveway, this petition would need to be re-advertised. Mr. Kuhns suggested tabling this petition. Mrs. Wolgamood indicated she is not willing to accept the staff recommendation for approval because what is being presented here is not what the Board members have in front of them.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Table, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that this request for an amendment to an existing Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) be tabled until the January 17, 2013, Board of Zoning Appeals meeting to give the petitioner time to amend the application and include all of the properties (necessary for the petitioner's operation) with the amended application to be re-advertised.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

9. The application of *Arthur R. & Ronda S. Baer* for a Special Use for a home workshop/business for custom embroidery and heat transfers (Specifications F - #45) on property located on the North side of CR 40, 673 ft. West of CR 31, being Lot 3 of Prairie Trails Farm Sub., common address of 16123 CR 40 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #16123CR 40-121114-1*.

There were 15 neighboring property owners notified of this request.

Art and Ronda Baer, 16123 CR 40, were present on behalf of this petition stating they are making this request so they can have an in-home business. When Mrs. Wolgamood asked about

the necessary equipment for this business being large, he stated that the equipment is very small. When asked, he stated he did not see anything in the deed restrictions for the neighborhood that would not allow a home-based business. Although the Board does not have jurisdiction over deed restrictions, Mrs. Wolgamood stated she was just curious. Additionally, she asked about the days and hours of business listed on the questionnaire being part-time days and evenings Monday through Saturday with no specific hours for the public. Mr. Baer indicated it is a part-time business for just the two of them, and they have a small sign with a phone number to call if no one is home. He added that his in-laws live next door, and the sign also instructs the public to inquire next door if they wish. At this point, he stated they do not have specific hours because they both work during the day. He added that they are actually picking up and delivering items that they have completed at the location they are purchasing the business from. When Mrs. Wolgamood asked if most of their business is by appointment, Mr. Baer indicated yes and said it will continue to be. When Mr. Campanello inquired about the size of delivery trucks coming to the residence, Mr. Baer indicated the largest would be a UPS or Fed Ex vehicle. Mrs. Wolgamood confirmed that the application indicated a 2'x2' double faced sign for the business.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello said he does not see any problem with this request. Mr. Miller indicated he felt it was low impact and a nice, quiet home workshop/business.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Doug 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 a home workshop/business for custom embroidery and heat transfers (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 for placement in the petition file.

The following commitment was then imposed:

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

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

It should be noted Randy Hesser steps down at this time.

10. The application of **Jason Graber** for a Special Use for the parking of a school bus in an A-1 district (Specifications F - #57) on property located on the North side of CR 20, 200 ft. East of Sun Valley Blvd., common address of 19711 CR 20 in Jefferson Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #19711CR 20-121119-1*.

There were 43 neighboring property owners notified of this request.

Jason Graber, 19711 CR 20, Goshen, was present on behalf of this request. He stated he was not aware of the need for a Special Use permit to park a school bus at his residence. When Mr. Miller pointed out that staff mentioned measures he is taking to reduce idle time, Mr. Graber said during cold weather the bus is plugged into a block heater which allows the bus to heat up quicker and reduces the idle time in the morning. He added that the bus typically sits idle from approximately 7:20 to 7:40 A.M.

In reference to #21 in the questionnaire concerning speaking with neighbors regarding this request, Mr. Campanello noted the neighbor's concern was the driveway being resurfaced before the winter of 2012 or 2013. Mr. Graber stated they have an easement with the neighbors to the west. He said the neighbors did not think the bus was a good idea as they were concerned about the base of the driveway breaking down as the driveway was limestone. He added that they repaved the driveway with recycled asphalt in October of 2012, and he was under the impression with the neighbor that if that happened, parking the bus there was okay. Mrs. Wolgamood asked how long the bus has been parked there, to which Mr. Graber indicated since the beginning of this school year. When Mrs. Wolgamood asked for confirmation that the bus is sitting idle for 20 minutes, Mr. Graber indicated yes.

Penny Graber, 19711 CR 20, added that the bus idles approximately 10 minutes when the weather is warmer while she completes a pre-trip inspection, but she indicated in colder weather it takes longer for the engine to warm up. She pointed out that she starts the bus at 7:20 am, which is not real early. When Mrs. Wolgamood asked if they had considered the possibility of constructing a building to park the bus in, Mrs. Graber said no. Mr. Campanello pointed out the questionnaire indicates during the summer, the bus is parked on school property. Mrs. Graber said parking the bus at their house saves the school corporation 31 ½ miles per day on the bus plus fuel and maintenance as her route is in the area surrounding their house.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller pointed out that there were no neighbors present in remonstrance to this request. Mr. Campanello reiterated #21 states neighbors are okay with it.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Meg 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 the parking of a school bus in an A-1 district (Specifications F - #57) 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 for placement in the petition file.
2. Approved for a period of one year with renewal before the Board of Zoning Appeals.

The following commitment was then imposed:

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

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello.

Absent: Randy Hesser.

It should be noted that Randy Hesser returns at this time

11. The application of *Schrock Family Revocable Living Trust of August 15, 2004, Freeman D. & Ida M. Schrock as Co-Trustee* for an amendment to an existing Special Use for commercial greenhouses 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.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #14155CR 36-121119-1*.

There were four neighboring property owners notified of this request.

Mrs. Wolgamood asked if the site plan submitted was the one dated 11/05/12 to which Mr. Mabry said yes. He pointed out that the parking area is now labeled and the shaded area is the proposed building structure.

Freeman Schrock, 14155 CR 36, Goshen, was present on behalf of this petition. He said he is here for an amendment to the existing Special Use to add a sales room, storage, and office all in a 20'x40' building to go along with the greenhouses. Mrs. Wolgamood asked if the construction of the new building will interfere with any large trucks entering and exiting the property to which Mr. Schrock said no as there is still plenty of area of trucks to turn around. She also confirmed that they have two greenhouses and a 2'x3' existing sign.

There were no remonstrators present.

Regarding a copy of the result letter for April 2012 which the board members received last month when this was a staff item in which one of the conditions was that everything be submitted within 60 days and placed in the file including a list of nine commitments, Mrs. Wolgamood asked staff if that commitment was recorded and placed in the file. Mr. Mabry stated although at first uncertain that this had taken place, it was since discovered that the commitment was recorded and is in the file.

The public hearing was closed at this time.

Mr. Hesser said he has no problem with the proposal, but pointed out that the site plan is not to scale. He suggested the requirement of a revised site plan drawn to scale being submitted. Mr. Kuhns asked for clarification whether Mr. Hesser meant the entire site plan or just what is requested. Mr. Hesser said he felt the greenhouses should be included.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Doug 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 an amendment to an existing Special Use for commercial greenhouses in an A-1 district (Specifications F - #12) be approved with the following conditions imposed:

1. A site plan to be submitted to the staff for placement in the file that is drawn to scale showing everything on the November 5, 2012, site plan.

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and dated November 5, 2012, which shows the parking area and driveway.

2. All previously approved commitments be included in this approval.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

12. The application of *Jerry E. & Louise Miller* for an amendment to an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45), for a 5 ft. Developmental Variance to allow for an addition to an accessory structure 5 ft. from the rear property line (Ordinance requires 10 ft.), for a Developmental Variance to allow for two additional outside employees for a total of four (Ordinance permits two), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the square footage in the primary structure on property located on the North side of CR 26, 720 ft. East of CR 37, common address of 12857 CR 26 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #12857CR 26-121119-1*. He added that in 2006, there was a denied special use request to do finishing of products rather than just woodworking.

There were four neighboring property owners notified of this request.

David Bontrager, Jr., 59723 CR 33, Middlebury, was present representing Jerry Miller. He indicated he and Mr. Miller are leaning toward changing their plans a bit on the square footage part of the request considering the staff recommendation for denial. He suggested possibly tabling this petition until next month. He submitted a new site plan *[attached to file as Petitioner's Exhibit #1]*. He went on to say that Mr. Miller makes beds for special needs children and they are sold wholesale. According to Mr. Bontrager, a man from Elkhart picks up the beds for distribution. Although he believes the business was originally retail sales, Mr. Bontrager stated it is no longer. Mr. Bontrager explained on the new site plan on the north end of the property, they are considering changing the setback to 11 feet instead of five feet which would eliminate the need for the one setback variance.

To do away with their extra square footage, he said they were going to eliminate the proposed 12'x28' on the south end of the building. He also submitted photos *[attached to file as Petitioner's Exhibit #2]* showing a meeting room with a garage door in it so it is called a garage. He pointed out there is a kitchen in one end of the so-called garage accessory building which is what most Amish have for church. When Mrs. Wolgamood asked which building this is located in, he said it is the one with 1,156 sq. ft. and 680 sq. ft. that are attached to the house. He said they are going to put a wall inside to offset so that the kitchen can be considered a living area instead of a garage. Mr. Hesser asked if that would then add to the size of the house. Mr. Bontrager stated yes and it would eliminate the need for the five foot setback and the need for the variance to allow for the total square footage of accessory structures to exceed the square footage in the primary structure. Mr. Bontrager said Mr. Miller has a growing business but it is not to the point of moving to an industrial location.

Mr. Bontrager reiterated his suggestion to table this request and present it with better information or if the Board wanted to consider what they have presented and impose conditions, they would appreciate that too.

Mrs. Wolgamood pointed out that this is a big change and if the request is changed that drastically, there may be a different recommendation from the staff. She said she would rather give staff the opportunity to look at it and work with Mr. Bontrager and give the Board the opportunity to digest it. Attorney Kolbus said staff did indicate they would have to re-evaluate their recommendation.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Table, **Moved by** Meg Wolgamood, **Seconded by** Doug Miller that this request for an amendment to an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45), for a 5 ft. Developmental Variance to allow for an addition to an accessory structure 5 ft. from the rear property line (Ordinance requires 10 ft.), for a Developmental Variance to allow for two additional outside employees for a total of four (Ordinance permits two), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the square footage in the primary structure be tabled until the January 17, 2013 meeting of the Elkhart County Advisory Board of Zoning Appeals with the public hearing remaining open.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

13. The application of *Alfonso & Mali Perez (Buyer) and Kenneth L. Geans (Seller)* for a Use Variance for parking a commercial vehicle in an R-1 zone on property located on the South side of US 20, East of Meadowood Drive, East of CR 13, common address of 23240 US 20 in Concord Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #23240US 20-121119-1*.

There were 34 neighboring property owners notified of this request.

Mali and Alfonso Perez, 23240 Old US 20, were present on behalf of this request. Mr. Perez stated they own a towing business, and they just want to be able to park a tow truck at their residence after regular business hours. He pointed out they will not be running the business from the house. As the business is 24 hour service, he would like to have the tow truck there for calls in the middle of the night. When Mrs. Wolgamood asked where the tow truck is parked right now, he indicated their business is located at 1147 Thornton Street. He reported it is difficult for him, and he has been losing customers because he cannot get there fast enough in the middle of the night. When Mrs. Wolgamood inquired, Mr. Perez stated he has been running the business for five years but just moved to this house which is further away from business as the shop is off of Nappanee Street.

When Mr. Hesser asked if the truck would fit inside the current garage, Mrs. Perez said no as it is only one stall. Mr. Perez said it is inconvenient because the shop is across town so it takes 20 minutes just to get to the tow truck from the house, and from there he has to drive to the disabled vehicle. Mrs. Perez said they want to add a 12'x30' asphalt pad at the back of the property to park the truck.

Mr. Kuhns indicated there are a number of commercial sites in the area and suggested the possibility of getting permission to park the vehicle on one of those properties during the

overnight hours. Mrs. Perez said as the truck is diesel, it has to be plugged in to a block heater so they need to have access to electricity. When Mr. Campanello asked how many calls per week they receive during the night, Mr. Perez indicated probably only one or two because of the amount of time it takes him to get to the disabled vehicle.

Donna Enfield, 56590 Mark Manor Drive, was present in remonstrance to this request. She indicated she lives in the subdivision that is next to this property. She said in the subdivision and nearby houses, she counted 15 houses that have 30 children so she opposes this because of the potential of what could happen. She said she feels if they allow this variance in a residential area, more requests will follow, and it is a bad decision for the neighborhood. When Mr. Campanello asked what children have to do with this request, she said because of the potential of people coming in to pick up the truck or leaving with the truck and the possibility of having additional requests if this is approved.

Neil Bough, 56593 Meadowood Drive, was present in opposition to this petition. He stated his property is located in the Meadowood subdivision just west of the property in question. He added that his property does not actually adjoin the property in question, but he is within eyesight of it. His concern is that as they have already stated their business operates 24 hours a day, seven days a week and the vehicle is diesel, the vehicle would be running night and day. As he works in the automotive industry, he knows diesels are not particularly quiet, and he is concerned about the noise level. Having read through the petition, he expressed concern about the possibility of vehicles being stored on the property and leaking fluids into surrounding areas. As the property is surrounded by residential property with the exception of the US 20 side, he feels this is not an appropriate place for operating a business.

Edward Bellows, 56781 Wedgewood South, was also present in remonstrance to this request. As he believes the house has been empty for some time and has been in a rehabilitative state for many years, he said he is glad someone is working with it. However, he said his opposition to this petition is his concern about bringing vehicles onto the property and business being operated there after a period of time for convenience reasons.

Wanting clarification from staff or the attorney, Mr. Hesser asked if this vehicle was parked inside of a separate building or a large garage, if there would still be a need for the Special Use permit. Attorney Kolbus responded yes because it is in an R-1 zone.

Theresa Reardon was present representing the Meadowood Free Methodist Church, 56538 Meadowood Drive, and the parsonage at 56576 Meadowood Drive. She said the church is against this request because of the noise variance. She added that the church is concerned that the noise of the diesel truck will be disturbing for the pastor and his family at the parsonage at all hours of the day and night. She also expressed that the neighbor next door could not be present today but is also against this petition.

Dan Moore, 56619 Wedgewood North, was also present in opposition to this request. He indicated his house is actually on Meadowood, and his property is three houses down and across the street from the church. He identified three neighborhoods just south of US 20 as Park Ridge, Meadowood and Pinecrest. He said he considers these three neighborhoods as one, and this operation would affect the property values. He added he feels there is dangerous traffic on US 20. Lastly, he stated Meadowood is an older but very well maintained neighborhood, and he reiterated that he feels this request would negatively affect the property values.

Mr. Mabry submitted a negative written response from Wilma Elkin, 56594 Meadowood Drive [attached to file as Remonstrator's Exhibit #1].

In response, Mr. Perez said there will be no vehicles parked at his property. He stated any towed vehicles will be parked at their shop. Regarding property value, he said he believes their house will improve the value of the neighborhood. He further stated the tow truck would only be parked there after regular business hours and during the night. He also said he does not operate on Sundays except from the shop.

When Mr. Campanello asked about the size of the truck, Mrs. Perez indicated it is 20 ft. long. Mr. Perez said it is a medium duty truck. Mr. Kuhns asked about tonnage rate to which Mr. Perez said he thought it was 20,000. When Mr. Campanello asked the size of the largest vehicle it can haul, Mrs. Perez indicated it can haul two vehicles, one on top and one on bottom. She added that they do not bring customers' vehicles to their home because of liability. She said they pick up from point A and deliver to point B. She also reported that Mr. Perez does not get home until after 6 p.m. and leaves the house by 8 a.m. When Mr. Campanello asked if this is a big rig with a mast and a hook on it, Mr. Perez reported it is a flatbed truck that can pull a second car behind it on a dolly. Mr. Campanello also confirmed that every time Mr. Perez picks up a disabled vehicle, the vehicle goes somewhere and would never come back to this property. Mr. Perez added that this tow truck would always return to the property empty. Additionally, Mrs. Perez stated they are going to add fencing and evergreen trees around the property as a barrier after they move into the residence. Mr. Campanello asked about the size of the engine in the truck to which Mr. Perez responded it is a V6 Mercedes engine. Mr. Kuhns mentioned recalling an ordinance about tonnage rating with and without a permit. He asked Mr. Perez if it was a 1 ½ ton or two ton truck. Mr. Perez stated he thinks the tow truck can hold up to eight tons. Mr. Kuhns then said he thinks that would be a 1 ½ ton truck then. Mrs. Perez said they will try to do what they can to not disturb the neighborhood.

The public hearing was closed at this time.

Mr. Campanello indicated he knows the property well as he lived in Pinecrest for 15 years, and said it is nice to see that someone is going to live there and take care of the property. He questioned if this request would still be a problem if it was a school bus starting up every morning. He said this size of an engine is not going to be heard throughout the neighborhood, and he noted the constant semi truck traffic noise from US 20. Attorney Kolbus noted, however, that this request is not a Special Use petition. Mr. Hesser pointed out that the problem is that this is a Use Variance because of the zoning. Otherwise, he feels as it is not part of the subdivision, and it is not high impact. Because this is an R-1 zone, the Board has consistently denied similar requests, and he does not think there is any way they can say it meets the requirements for a Use Variance, Mr. Hesser indicated he cannot support this request. Mrs. Wolgamood expressed agreement.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Denied, **Moved by** Meg Wolgamood, **Seconded by** Randy Hesser 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 Use Variance for parking a commercial vehicle in an R-1 zone be denied.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

It should be noted that Randy Hesser steps down at this time

14. The application of ***Roland L. & Elizabeth A. Martin*** for an amendment to an existing Special Use for commercial greenhouses in an A-1 district, to allow for construction of an additional greenhouse (Specifications F - #12) on property located on the West side of CR 15, ½ mile South of CR 44, common address of 68417 CR 15 in Union Township, came on to be heard.

Mr. Miller noted the public hearing was previously closed. Attorney Kolbus mentioned he thinks staff is going to submit new site plan and suggested the Board might want to open the public hearing to accept it and see if there are any comments from the public.

Mr. Mabry said there is a new site plan dated 12/03/12 which is included in the members' packets. He explained the applicants met with staff after the previous meeting and worked out the discrepancies that were noted during the hearing and corrected the drawing and application to meet the reality of what is going on at the site and what is requested. When Mr. Mabry questioned the process, Attorney Kolbus stated he believed the Board could reopen the public hearing, accept the staff report, and then present any questions on matters involved. Mrs. Wolgamood commented that since the questionnaire is also stamped 12/03/12, it may need to be entered as well.

Motion: Action: Approved, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board reopen the public hearing to accept additional evidence.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello.

Absent: Randy Hesser.

Mr. Mabry submitted an updated site plan and questionnaire (both dated 12/03/12) at this time *[attached to file as Staff Exhibit #1 and #2]*.

Orpha Marie Martin, 64678 CR 15, was present representing her parents. She indicated she talked with staff to change and update the discrepancies from the last hearing.

In reference to page *11c* of the Revised BZA Staff Report under which is a list of commitments recommended by staff under "2. *The conditions of the amendment to the original Special Use permit granted on August 20, 1998 and March 20, 2003, to be recorded as commitments*", Mrs. Wolgamood suggested item C be corrected from a specific named person to "owner/occupant", item D says one unlighted sign permitted, four square feet per side and there is an existing 4'x4' sign, item E has a discrepancy with the number of outside employees, item G needs to say Monday through Saturday and closed on Sundays which was represented in the questionnaire, and item H still says May but the request is for March. She also noted on page *11b* under "Staff recommends APPROVAL with the following commitments imposed: 1. *Approved in accordance with the site plan submitted and as represented in the petitioner's application*", Mrs. Wolgamood suggested saying 12/03/12 site plan and under #2, if any of the commitments are recommended changed that the staff has presented, the wording for the statement under #2 will need to be changed as well. Mrs. Wolgamood pointed out that she just wants to get the inconsistencies cleared up in this request.

When Mr. Miller questioned what size sign is being requested, Ms. Martin indicated the sign is already there and it is 4'x4' double-sided. She also questioned the Planning Department indicating the sign could be even larger because this is commercial use. Mr. Mabry clarified that this request is not a home workshop/business as it is a commercial use so the normal commercial sign standards would apply to this. Mrs. Wolgamood pointed out that the 1998 request was granted one unlighted sign, four square feet per side, but they have a larger sign. She added that she does not know that she has an issue with the larger sign but wants them to be consistent. She said they either need to strike that in its entirety or make it one unlighted double-faced 4'x4' sign. Mr. Campanello indicated he thinks it should be changed to one unlighted double-faced 4'x4' sign. Attorney Kolbus confirmed with Ms. Martin that the request is for two outside employees. Mrs. Wolgamood said she recalled it is family.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that the Board close the public hearing.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello.

Absent: Randy Hesser.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg 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 an amendment to an existing Special Use for commercial greenhouses in an A-1 district to allow for construction of an additional greenhouse (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 for placement in the petition file.

The following commitments were also imposed by the Board:

1. Approved as per questionnaire submitted on December 3, 2012.
2. Approved as per site plan submitted on December 3, 2012, with proper parking, drainage, etc.
3. There shall be no outside storage of skids, used containers, etc. except to the rear of the buildings.
4. The permit is to be for the owner/occupant of the residence on site for a period of five years with renewal by the staff if no valid complaints are reported.
5. One 4 ft. x 4 ft. double-faced and unlighted sign permitted.
6. Two employees outside those who live in the residence on-site are permitted.
7. Curb cuts to be approved by the Elkhart County Highway Department.
8. Hours of operation to be 8:00 a.m. to 6:00 p.m., Monday through Saturday and closed on Sunday.
9. Approved for the months of March through July.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello.

Absent: Randy Hesser.

It should be noted Randy Hesser returns at this time

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

16. The first staff item was a minor amendment to Special Use Permit and Variance applications presented by Brian Mabry. Board members were provided with copies on the table prior to today's meeting. Mr. Mabry indicated the commitment deadline has been difficult for petitioners to comply with and suggested a change to eliminate the 60 day time limit. He did point out that the commitments would need to be completed and in the office before the issuance of any permits. Attorney Kolbus pointed out the motions cover that issue as they say approvals are not effective until executed, recorded, and returned to staff anyway.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Bill Kuhns that the Board accept that amendment to eliminate the 60 day time limit under Section B of 6.06 Conditions and Commitments of the Rules of Procedure.

Vote: Motion passed (**summary:** Yes = 4, No = 1, Abstain = 0).

Yes: Bill Kuhns, Doug Miller, Tony Campanello, Randy Hesser.

No: Meg Wolgamood.

Mr. Mabry went over the suggested amendments to four applications, Special Use for Mobile Home, Developmental Variance, Special Use and Use Variance. He indicated there are four changes which are in bold type: Section A. Item 4. Change to "On Wednesday after the submittal deadline, an Elkhart County staff member will visit your property to take pictures." Mrs. Wolgamood suggested giving leeway, "within a week after submittal deadline" instead. On Exhibit A, Page 3, he noted adding fax and email numbers for land owner and agent. He pointed out on the last page at the very bottom underlined and bold saying "More detailed drawings will be required in order to apply for an Improvement Location or Building Permit." He added that this is because applicants have thought once a site plan was provided for this application, this site plan was all the drawings needed for the permit process.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that the Board accept that amendments to the applications as proposed.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

17. The next staff item was 2013 Agreement for Legal Services was presented by Chris Godlewski to renew legal services for Jim Kolbus. Mr. Godlewski noted a slight increase of 1 ½ % in the pay rate.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Randy Hesser that the Board approve the renewal of the contract for legal services with Attorney Kolbus.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

18. The last staff item was a Zoning Ordinance update presented by Chris Godlewski. He indicated everything on is schedule with the next item being the Policy Committee on 01/08/13 followed by a Plan Commission meeting on 01/10/13. He said if there are any alterations to how

they are proceeding, that would be at the public meeting on 01/10/13. He stated the next step is for the Policy Committee to review Module 1 on 01/08/13. Mrs. Wolgamood indicated she understands something was voted on at the Plan Commission level and asked if that would have any effect on the Ordinance for the BZA. Mr. Godlewski said they are related as the BZA uses the Zoning Ordinance. He noted the Plan Commission voted 5-4 to take the approach of doing rezoning in agricultural districts but it goes back to the Policy Committee. Attorney Kolbus added that was just a guiding principle so staff knows how to draft the ordinance.

19. As a matter of housekeeping, Mr. Hesser questioned what is being done about signing the minutes during Robert Homan's absence. It was indicated that the minutes remain unsigned.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board approve the Vice Chairman being authorized to attest to the minutes in the absence of the Secretary.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

20. The meeting was adjourned at 10:54 am.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary or Doug Miller, Vice Chairman