

MINUTES

ELKHART COUNTY BOARD OF ZONING APPEALS MEETING

HELD ON THE 19TH DAY OF JULY 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: Robert Homan, Tony Campanello, and Meg Wolgamood. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Duane Burrow, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of June 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 July 2012 in the Goshen News and in 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 (*Wolgamood/Homan*) 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.

5. There were no postponements of business items.
Brian Mabry reported the Faus Groom & Room petition will not be heard today.

6. The application of ***Dennis A. & Shirley L. Yoder*** for a 17 ft. Developmental Variance to allow for the construction of an accessory building 33 ft. from centerline of the right-of-way of Wabash Avenue (Ordinance requires 50 ft.), for an 8 ft. Developmental Variance to be 2 ft. from the rear property line (Ordinance requires 10 ft.), and for a 3 ft. Developmental Variance to be 2 ft. from the North side property line (Ordinance requires 5 ft.) on property located on the Northwest corner of Wabash Avenue & Railroad Street, being Lot 16 and part of 17 in Lutz's Addition, common address of 309 E. Wabash in Olive Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #309EWabashAve-120618-1*.

There were eight neighboring property owners notified of this request.

*** It should be noted Doug Miller arrives. ***

Dennis Yoder, 309 E. Wabash Avenue, Wakarusa, was present on behalf of this request. He submitted a site plan [*attached to file as Petitioner Exhibit #1*]. Mr. Yoder explained BZA Staff Report incorrectly stated he would be demolishing a small building on the property. Instead, he would

be demolishing the existing garage and replacing it with a larger one. He indicated on the site plan submitted, the driveway would be moved approximately four feet from where it is presently located which would provide approximately 29 feet from the garage to the street. Mr. Yoder said he does not understand how this would contribute to the high intensity of residential use on this property as it is a garage not a business. To move the garage so he would not require variances would put the garage in the middle of his yard and make the back yard unusable for anything else. He pointed out that his proposed garage is actually farther away from the property line than it is presently. Mr. Yoder stated his neighbor across the corner from him put up a new building that is only 30 feet from the center of the road.

Mr. Hesser asked if the existing garage goes into the alley. Mr. Yoder indicated it is a couple of inches away but the overhang is actually over the alley. He also said the asphalt drive is about one foot from the edge of the building. The proposed garage would be two feet off the property line plus another three feet to the door. The driveway would have to be moved over approximately four feet from its current location.

In comparing the survey and overhead view of the property on the screen (aerial), Mr. Homan said he is trying to reconcile where the lines are because they are not the same. After reviewing the locations of the alley, existing garage, and the driveway with Mr. Yoder, Mr. Homan asked if he will continue to use the existing driveway if the proposed garage is approved in the location he is requesting. Mr. Yoder clarified that he will move the driveway over to line up with the new garage door.

Mr. Miller asked and Mr. Yoder indicated that the new drive will still come off of Wabash Avenue. Mr. Yoder mentioned there is a telephone pole right behind the building so there would be no building access on that side. Mr. Homan indicated one of the staff concerns is that there was not room to park more than one vehicle. Mr. Homan observed that Mr. Yoder located the driveway at the most narrow part of the lot. He indicated he is curious as to the reasoning for that and asked the Petitioner if he could move the driveway to the other side to make more room for parking. Mr. Homan expressed that he feels parking is an issue in this case. Mr. Yoder indicated relocating the driveway would cut his back yard in half. He stated originally he wanted the building up by the house, but his wife wanted room for his grandchildren to play.

Mr. Homan inquired about another small accessory building on the property which Mr. Yoder indicated will remain. It is the existing garage that will be demolished. Mr. Hesser asked about the driveway on the site plan being in the same place it is presently located. Mr. Yoder said it is not. He explained on the drawing, it will be moved south with the current driveway being at the very extreme north end.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood thinks if Mr. Yoder would locate his driveway on the east side south end of the garage and eliminate the driveway to the north, he would have adequate room for at least one vehicle. It concerns Mr. Homan that the site plan does not indicate the driveway or the measurements of the driveway to the property line. He does not think the variances or setbacks will have a substantial affect on property value in the area but the parking near the street is an issue. Mr. Hesser brought up the issue of the existing building being grandfathered. Mrs.

Wolgamood indicated the existing building is set back much farther. The petitioner pointed out there is a large tree to the south.

Mr. Homan indicated to Mr. Yoder that he would make motion for approval with requirement to move the driveway that faces Wabash Avenue to the south end of the garage, revise the site plan, and submit same to staff pending approval if that is an acceptable resolution to Mr. Yoder. Mr. Yoder asked about the possibility of any other options. He showed on the aerial an existing easement which he and his neighbor are pursuing closing which would give him another eight feet of property. Mr. Homan pointed out that is in the future and not being discussed today.

Mrs. Wolgamood mentioned the town right-of-way being large and that is what they are trying to accommodate. She suggested tabling this request with Mr. Yoder to rework the drawing to provide more information on site plan such as more measurements. Mr. Homan showed Mr. Yoder on his site plan where board is proposing he move his driveway. Mr. Campanello indicated about 18 feet is needed on the short side. Mr. Mabry also indicated staff would be willing to work with the Petitioner is he is unsure of what Board is asking.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Miller*) that this request for a 17 ft. Developmental Variance to allow for the construction of an accessory building 33 ft. from centerline of the right-of-way of Wabash Avenue (Ordinance requires 50 ft.), for an 8 ft. Developmental Variance to be 2 ft. from the rear property line (Ordinance requires 10 ft.), and for a 3 ft. Developmental Variance to be 2 ft. from the North side property line (Ordinance requires 5 ft.) be tabled by the Board until the August 16, 2012, Board of Zoning Appeals meeting (to allow the petitioner to submit a revised site plan relocating the driveway facing Wabash Avenue to the south part of the east facing wall of the proposed structure, and provide the length and width of the driveway). A roll call vote was taken and the motion was carried unanimously.

7. The application of ***John W. & Carla J. Lambert*** for a 30 ft. Developmental Variance to allow for the construction of a detached garage 45 ft. from centerline of the right-of-way of CR 10 (Ordinance requires 75 ft.) on property located on the Southeast corner of CR 10 and CR 27, common address of 16970 CR 10 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 #16970CR 10-120615-1*.

There were five neighboring property owners notified of this request.

John Lambert, 16970 CR 10, Bristol, was present on behalf of this request and submitted a site plan [*attached to file as Petitioner Exhibit #1*]. He explained the reason for the revision is they are adding a 16'x32' addition on the back of their house with a walk-out basement which is shown in red. He stated when he submitted this application, he was not sure if they were going to proceed with the addition. Looking at site plan, he said there is really no other place to locate a detached garage. There is a 25 foot drainage easement on the East side of the lot. On the back side of the lot, there is a culvert that comes underneath CR 27 that dumps water into the yard when it rains heavily. He indicated sometimes there is water from CR 27 all the way to his shed which has been under about six inches of water making that area unusable.

Mr. Lambert did correct one item on the Staff Report that said there were no existing turn-arounds on either driveway as there is a turn-around at this time on the driveway to the house. He reported he would not be opposed to putting a turn-around on the other driveway or to moving the garage back approximately eight feet. He stated he feels there is adequate parking on that driveway for one, possibly two vehicles. He further stated there would not be a vehicle parked on that driveway. Any vehicles would be parked at the main house. He reported he has three vehicles and one sits on the turn-around driveway. He wants to get this vehicle inside a garage as it has been broken into a couple of times in the past. The vehicle that will be stored in the proposed garage is only used approximately once a month during summer months so there would not be much traffic on that driveway.

Mr. Campanello suggested possibly situating the proposed garage so the length runs east and west and more linear footage would be gained from the centerline. Mr. Miller further explained Mr. Campanello's suggestion to Mr. Lambert. Mr. Lambert mentioned he is not sure how that would tie in to the walk-out coming out of the basement. He stated from the back of the house where the new addition is back by the septic is about a nine foot drop. He also indicated in the 33 foot area, the drop is five to six feet through there. Another possibility suggested by Mr. Lambert is reducing the size of the garage from 24'x30' to 24'x24' to get it back from the road. He indicated it will be used for storage of one vehicle and lawn equipment. Mrs. Wolgamood clarified that Mr. Lambert did, in fact, state earlier in his presentation that he could move the proposed garage back eight feet.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan reminded the Board they are treading on the "Let's fix it for the petitioner" conversation which is treacherous. He stated he understands what Mr. Lambert wants to do, and it would look great. But a 30 foot variance on a County Road is significant, and Mr. Homan cannot support that and suggested a reconfiguration. Mr. Campanello stated he thinks Mr. Lambert needs to come back with a new drawing showing the garage further away from the centerline of the road as much as possible. Although he understands it is going to cost more in foundations and footings.

Mr. Homan stated his concern and question for the Board is if tabling is stringing the Petitioner out with something that may or may not work. Mr. Hesser clarified by saying that as long as the revised site plan did not seek more than a 30 foot variance, it would not need to be re-advertised, and Mr. Kolbus indicated that was correct. With that said, Mr. Hesser expressed feeling it was only fair to give some indication of what people would like to see. Mr. Kolbus further explained the Board could grant up to the request of 30 feet. For example, if the Board granted a 20 foot variance, the Petitioner would have to move garage back 10 feet and get site plan approval.

Mr. Miller brought up another issue on the site plan about measurement along back line of existing house of 40 foot total dimension and then a dimension of 24 feet plus 16 foot for the new addition which totals 40 feet but the Petitioner has got the new addition extending beyond the south line of the house. Mr. Miller is not sure if the 24 foot dimension is correct which would actually give him more room to relocate the garage.

Mr. Homan asked the Board what number of feet would be an acceptable developmental variance for setback other than 30 feet. Mrs. Wolgamood stated she believes he has justified his request for variance because of the lay of the land, the drainage situation, and everything that is already there plus what he is adding to his house. She just does not know if he is justified a 30 foot variance. She further stated she would not be opposed to accepting along his original presentation today if he goes from 45 feet centerline to 55 feet even if that means reducing the size of the garage. She reiterated that she feels he is justified a 20 foot variance. The greater setback would also improve sighting distances from the corner according to Mrs. Wolgamood. She indicated she would not be opposed to 20 foot variance with site plan with measurement correction to be submitted to staff for approval.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board approve a 20 ft. Developmental Variance to allow for the construction of a detached garage 55 ft. from centerline of the right-of-way of CR 10 (Ordinance requires 75 ft.) based on the following Findings and Conclusions of the Board:

1. Will not be injurious to public health, safety, morals or general welfare.
2. Will not cause substantial adverse affect on the neighboring property.
3. Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance based on the property limitations expressed in today's testimony.

The following condition was imposed:

1. Prior to the issuance of a building permit, the petitioner to submit to the staff a corrected site plan properly relocating the detached garage in accordance with this approval, and correcting the dimension errors that are reflected in the document submitted today (Petitioner Exhibit #1).

A roll call vote was taken and the motion was carried with Mr. Hesser voting in opposition.

8. The application of **Noah R. & Marilyn K. Petersheim** for a Special Use for a home/workshop business for an existing bike shop (Specifications F - #45) on property located on the West side of CR 33, 2,152, ft. North of CR 26, common address of 59647 CR 33 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 #59647CR 33-120622-1*.

There were 15 neighboring property owners notified of this request.

Noah Petersheim, 59647 CR 33, Middlebury, was present on behalf of this request. Mr. Petersheim indicated he would like to operate a bike shop for the community around his location. Mr. Homan asked if Petitioner is aware of the employee and sign limitations of home workshop/business to which Mr. Petersheim indicated he did. Upon Mr. Hesser's questioning, Mr. Mabry indicated the house is two stories and has more square footage than accessory buildings on the property. Mr. Miller asked if the driveway was sufficient for customers and deliveries to pull in, turn around, and drive out. Mr. Petersheim reported he has previously had livestock trailers turn around in his driveway. Mrs. Wolgamood confirmed there would not be

anything larger than a UPS truck coming to the shop. Mr. Homan reiterated there should be no outside storage or inventory outside for sale.

There were no remonstrators present.

Mrs. Wolgamood asked if the building will be used for the home/workshop in its entirety. The Petitioner indicated about a quarter of the building will be used for the shop.

The public hearing was closed at this time.

Mr. Homan expressed his opinion that this is what a home workshop is supposed to be with Mrs. Wolgamood agreeing.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/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 home/workshop business for an existing bike shop (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 commitments were also imposed by the Board:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Bike repair business to be operated by the owner/occupant of the residence on site.
3. Days and hours of operation to be Monday through Friday, 8:00 a.m. to 5:00 p.m. and Saturday, 8:00 a.m. to noon.
4. No outside display or retail sales.

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

It should be noted Mr. Hesser turns meeting over to Mr. Campanello at this time and steps down for this hearing.

9. The application of **Robin G. Kerwood** for a Special Use to allow parking of a school bus in an R-1 zone (Specification F - #57) on property located on the East side of Garver Avenue, 337 ft. North of Creek Park, West of CR 113, and West of US 33, Lot 11 of Creek Park Two, common address of 59828 Garver Avenue in Concord Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #59828GarverAve-120604-1*.

There were 26 neighboring property owners notified of this request. Robin Kerwood, 59828 Garver Avenue, was present on behalf of this request. She indicated she has been parking the bus there for the past 11 years and made extra parking for the bus. She explained that she was unaware that she needed a permit. At this time, she submitted a list of signatures from neighbors in support of her petition [*attached to file as Petitioner Exhibit #1*]. She further indicated that she did not understand the staff report issue of ingress/egress of parking the bus. Mr. Kolbus explained that is due to the fact that she is backing in from a road. She did acknowledge that she has the only school bus but stated there are motor homes and recreational vehicles parked in her neighborhood.

Mrs. Wolgamood pointed out that Ms. Kerwood drives for Middlebury Schools but lives in Concord School district. Ms. Kerwood stated that she used to live in Middlebury and asked permission when she purchased her home to take her bus home. She explained she lives four miles from the start of her route in the morning and ends three miles from her home in the afternoon. Mrs. Wolgamood asked where Ms. Kerwood would have to park if she didn't park at home. She stated she would park at the Middlebury bus garage which would be ten miles in the morning from the start of her route and 14 miles from her last stop at the end of the day.

Craig Baker, Middlebury Community Schools, 56953 Northridge Drive, was present in favor of this request. He stated Ms. Kerwood has been parking at her home for 11 years, and indicated approximately 60 percent of their bus drivers park their buses at their homes. He indicated it is very beneficial for the school as her route is over on the southwest portion of their school district and saves them fuel, maintenance, and mileage alone. He further stated it is a very good convenience for them. He indicated Ms. Kerwood has been a great driver for them, and he would hate to lose her.

Mr. Homan asked and Mr. Baker answered that the bus is owned by the school system, and she is not an independent driver. As a side note, regarding Mrs. Wolgamood's concern about the Middlebury bus in the Concord school district, Mr. Baker commented that there was a Concord bus that sat at a residence on Main Street in Middlebury for years.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello acknowledged personal awareness of the area of Ms. Kerwood's residence and of many recreational vehicles of various styles being parked there. He stated she has been parking there for 11 years with no complaints, and she has 24 signatures from her neighbors in favor of her request.

Mrs. Wolgamood indicated these are always difficult petitions to which the Board agreed. Mrs. Wolgamood did ask Ms. Kerwood of all of the signatures that she gathered if any were her immediate adjacent neighbors. Ms. Kerwood said she did not have a signature from the neighbor to the south that just moved in as she felt that was possibly where the complaint came from. She also stated she did not go behind her on CR 113. However, she did obtain signatures of houses she drives past in her bus, and everyone she went to did sign.

Mrs. Wolgamood pointed out that in the questionnaire, Ms. Kerwood indicated that she plugs her bus in if the temperature is below 32 degrees and does not let it idle for periods of time. Although Mrs. Wolgamood expressed that it is still difficult because buses do not really belong in neighborhoods. Mr. Homan further expressed that is buses or any commercial vehicles. Mr. Homan's expressed his opinion that when someone files a complaint, the ordinance is on their side. Mr. Campanello suggested there could have been a different conclusion from the Board if someone had spoken against this petition.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Campanello/Wolgamood*) that this request for a Special Use to allow parking of a school bus in an R-1 zone (Specification F - #57) be approved based on the following Findings and Conclusions of the Board:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance by allowing the parking of a commercial school bus in a single family residential subdivision.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring property. The school bus has been parked on this property for the past 11 years.
3. Will substantially serve the public convenience and welfare as demonstrated by the petitioner.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's questionnaire.
2. The school bus driver is to be the owner/occupant of the residence on site.

A roll call vote was taken and the motion carried with Mr. Homan voting in opposition.

It should be noted that Mr. Hesser returns at this time.

10. The application of **Jeffrey M. & Allison S. Hilty** for an amendment to an existing Special Use for warehousing and storing of excavation equipment and to allow for retail sales, recycle of aggregate and change the site plan (Specifications F - #44) on property located on the East side of SR 19, 1,015 ft. South of CR 36 in Harrison Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #OSR 19-120625-1*.

There were six neighboring property owners notified of this request.

Jeff Hilty, 64200 SR 19, was present on behalf of this request. Mr. Hilty read letter submitted at this time *[attached to file as Petitioner Exhibit #1]* stating he would like an amendment to his Special Use to allow for recycling concrete and retail sales on a permanent basis and to revise his site plan. He stated in his concrete business, he frequently gets jobs that have concrete to be removed. He also stated many of his jobs require recycled material. Mr. Hilty indicated since the first of the year, he has been able to sell about 7,500 tons of this material for driveways, parking lots, building pads, etc. In six months time, this material has produced approximately \$4,500 in sales tax. He stated ninety percent of this material has stayed within a ten mile radius of his location. The demand is high because the only alternative is limestone with the closest limestone quarries being a three hour round-trip and the price of trucking being so high.

He feels he is very conveniently located on SR 19 just a mile north of the Utilimaster complex and the old Hoosier Pallet Company is just across the field. Both are commercially zoned. He feels the noise of the truck traffic from early morning until late it night is worse than the noise of the crushing. Mr. Hilty further stated the county roads will not be affected by the extra truck traffic of hauling the broken concrete in and the recycled concrete out because it is located on a state road. He expressed that he has talked with his neighbors who indicated they are fine with this petition because the Hiltys have been keeping the location neat and clean, and it makes economical sense. Several neighbors stopped the last time to observe the crushing operation and were amazed how quiet and clean it was. He stated the neighbors have all benefitted from the material already and feel fortunate that it is so conveniently close. Mr. Hilty reported nine months ago he collected over 30 signatures of neighbors within a mile who supported him.

His plan is to haul concrete in throughout the year. When the pile is large enough, the recycling equipment will be brought in and set up which takes a couple of days. Depending on the size of the pile, the crushing may last two to four weeks. Mr. Hilty indicated this process would not happen more than once year with the hours of operation being the same as his business under the Special Use permit. He explained the reason the stock pile area is so large is because the material to be recycled is on one side and the finished product on the other with the crusher and conveyers in the middle. Mr. Hilty indicated the pile will mostly likely not get as large as last time because he does not often get large jobs like he had for that one. He proposed a three year trial period with a hearing at that time to discuss any complaints from neighbors. He feels if his neighbors are for it, the county should not be against it.

Mr. Campanello asked if Mr. Hilty expected any more large jobs like the last one. Mr. Hilty said that was a once in a lifetime job for him although he did not want to say it would never happen again. He reported he has lots of smaller jobs, and he would prefer the pile never get that large again. However, he stated if he does get another job that large, it does not make sense to stop in the middle of a job to complete the crushing process and then resume that job. Mr. Hilty said he has been told typically 4,000-6,000 tons is determined to be a sizeable pile to recycle and that was 11,000 tons. Setting up the crushing equipment is a large task and the operator does not want to do it for a small amount.

Mr. Hilty told Mr. Campanello he has no intention of getting his own recycler. Regarding the proposed three year trial period, Mr. Campanello asked Mr. Hilty if he plans to appear before the board again at that time. Mr. Hilty indicated he would like to set it up like that as he feels confident that in three years, the neighbors will have a good idea of what to expect and know how things are running. He reported his closest neighbor is present for today's hearing, although the neighbor moved in recently and has not heard the crushing sound yet. Mr. Hilty reported he has trees that will help filter a lot of it out.

Mr. Campanello inquired about the dust situation to which Mr. Hilty replied there might have been a couple of days when it got a little windy and some dust was blowing. It has been recommended by the recycler to complete the recycling process towards winter which is the best time for dust control. However, concrete cannot be crushed when it is too cold. Mr. Hilty reported completing the recycling in November of last year, and he would like to continue the same if the recycler's schedule permits. Mr. Campanello also mentioned that house windows would normally be closed that time of year which would help with dust and noise. Mr. Hilty indicated a normal conversation could be carried on from his shop with the pile being no more than 80 feet away. He reported that diesel engines are what you hear from this process, not the crushing of concrete.

The reason for the larger stock pile area is to make room for placement of conveyors so things go right where they are supposed to be according to Mr. Hilty. When Mr. Hesser asked how long it took to recycle the pile last year, Mr. Hilty indicated it took approximately 3 1/2 weeks, working nearly every day, last fall with the large pile. The average job is about two weeks, working every day beginning around 7:30 a.m. Mr. Campanello asked how much of the recycled product is used for agricultural purposes, and Mr. Hilty indicated approximately 50%.

Mr. Homan asked if the source of concrete is just from Mr. Hilty's jobs or if other excavators will bring material in. Mr. Hilty stated he would like to be able to take outside

concrete if allowed. Mr. Homan pointed out the possibility of this becoming a large business. Mr. Hilty said his is a family owned/run business with his son and one employee. He is only allowed two employees and they can only get so much work done. He stated he has no intention of getting hooked up with the big companies. This is mostly for his own benefit and convenience and neighboring property owners.

Amos Raber, 64254 SR 19, the next house south of Mr. Hilty, was present in support of request. He stated he was present last fall when crushing process was in progress. He pointed out they have noise from trucks and SR 19 traffic. He feels it is well worth it for the benefit of a small family owned business. Mr. Campanello asked about the comparison of traffic noise from SR 19 versus crushing noise. Mr. Raber reported that traffic noise varies quite a bit between big trucks and cars but it is continuous and after time, you do not realize it. From what he heard of the crushing process, he feels they are about the same. He does not believe the noise is piercing or bothersome.

Sandy Kreps, 27870 CR 36, was present in opposition to this request. She stated he is not in favor of this request as it is very noisy. She does not feel the trees serve as an adequate buffer, and she stated her two dogs are disturbed by the noise. As she works at night, the noise disturbs her sleep during the day. She also reported concern about the air pollution especially for elderly neighbors with heart and lung problems. She submitted copies of photos taken on several different days showing dust *[attached to file as Remonstrator Exhibit #1]*. Her attempts to record the sound and noise were unsuccessful.

Mr. Campanello asked if Ms. Kreps felt it would make a difference if the operation were on a different part of the property. She said the vibration and the noise even when it is being dumped into the truck is loud even with the doors closed. Ms. Kreps feels it sounds the same from inside her house as it does outside. When Mr. Campanello asked, she stated she has lived in her home for 37 years while Mr. Hilty indicated he began his business in 2003. Ms. Kreps asked for denial due to air and noise pollution.

She stated Mr. Hilty had said in a letter that he sent out previously that the concrete recycling was going to be a one-time thing. She also indicated Mr. Hilty gave her a gift card which she refused. Mr. Homan asked to see the overhead photo again to view the location of Ms. Kreps' house in relationship to Mr. Hilty's business. She indicated the gentleman who lives to the east of her works in construction and is gone from 5:00 a.m. so he does not hear it at all. She reiterated her concern for the elderly neighbors with heart and lung problems.

Mr. Homan inquired where her photos were taken from. She stated they were taken from her back porch with a zoom lens on the camera across a corn field.

In rebuttal, Mr. Hilty apologized but expressed frustration that since he has been in business, every time he has appeared before the board, Ms. Kreps has expressed her opposition. He stated he has tried to talk to her on three occasions as he does not like having upset neighbors.

Mr. Campanello asked if there would be any way to sprinkle the product as it is coming off the conveyor. Mr. Hilty stated the recycler indicated he could do that if the dust gets bad. As he recalled, he felt it was only windy two or three days during the entire process last fall. Although he is unsure if the dust got to Ms. Kreps' house, he did say there was dust coming off the piles as shown in the photos. He indicated most times the prevailing winds are from the west

and would blow back towards his shop. Further west beyond his shop is nothing but cornfields to County Road 7. He said he will do whatever he can to appease the neighbors.

Mr. Homan asked Mr. Hilty if the grinding contractor had only been there one time to complete the concrete recycling process to which he responded affirmatively.

The public hearing was closed at this time.

Mrs. Wolgamood asked staff what zoning classification or district this business would need to be located in to be legal other than the Special Use request. She suggested that it would be either an M-1 or M-2. Mr. Mabry indicated he did not see anything in M-1 that would completely match what is proposed. In looking through M-2, he stated he does not know if there has been an interpretation in the past that would have put this in with another use. When asked what kind of rezoning would be appropriate for a use like this to make it such that a Special Use permit would not be needed, Mr. Burrow stated it would probably require an M-2 conditional use because of the nuisance caused to the neighboring property owners. Mr. Mabry indicated there is a rock crushing use listed under Conditional Industrial Unit Development which would be a pretty rare type of request but it would be one that the plan commission would actually make a recommendation on and the County Commission would either approve or deny. Attorney Kolbus reiterated it is a Heavy Industrial PUD in effect.

Mrs. Wolgamood stated if she understands the Petitioner correctly, he wants to stock pile 12 months out of the year and he wants to crush for approximately possibly four weeks out of the year. But he is also asking to increase the size of the area where he wants to stock pile by quite a bit. She also stated he originally asked to store excavating equipment which was approved. Now he is asking for something that is by the Zoning Ordinance, he needs an M-2 zoning classification with a Conditional Industrial Unit Development permit which is only granted by public hearing heard by the Plan Commission and then moved on to the County Commissioners.

As it stands right now, Mrs. Wolgamood stated she cannot support this request. She further stated she feels the Board was very benevolent in the beginning when it granted his request last year in the fall which Mr. Homan pointed out it was a one-time thing. Mrs. Wolgamood feels this operation needs to be in the proper zoning classification.

Mr. Hesser expressed his difficulty because it is an A-1 area and there can be uses in an A-1 area that are much more offensive than this but that really does not deal with the issue that Mrs. Wolgamood brought up. He indicated he is not sure he would object to it as a neighbor. But he thinks the point is well made about the ordinance. Under the ordinance, this is not where this type of business should be. Mr. Hilty made a good presentation both times according to Mrs. Wolgamood. She stated he also has plans to build a house there. Mr. Campanello feels that his business is going to grow with the request for additional area to stock pile. While he wants to see businesses to grow, he wants to see that happen within the ordinance regulations.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Campanello/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 warehousing and storing of excavation equipment and to allow for retail sales, recycle of aggregate and change the site plan (Specifications F - #44) be denied with the understanding the petitioner can continue to warehouse and store

excavation equipment under the existing Special Use Permit. With a unanimous roll call vote, the motion was carried.

11. The application of **William A. Kirk** for a Special Use for an agricultural use for the keeping of one horse on a tract of land containing less than 3 acres in an A-1 district (Specifications F - #1) on property located on the South side of CR 6, 2,771 ft. West of CR 21, common address of 20036 CR 6 in Washington Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #20036CR 6-120523-1*. He also submitted two letters in remonstrance at this time *[attached to file as Staff Exhibit #1 and #2]*. Board members were provided copies prior to the start of the meeting today. The Petitioner was given copies at this time.

There were 13 neighboring property owners notified of this request.

William Kirk, 20036 CR 6, Bristol, was present on behalf of this request. He stated he resides on the property and has and would like to keep one three year old stallion horse. Mrs. Wolgamood indicated a neighbor, Mr. Finn, is concerned with waste disposal. Mr. Kirk said a friend takes the manure to his farm to dispose. Mrs. Wolgamood also indicated another neighbor, Ms. Yoder, said that Mr. Kirk's horse has gotten loose on a couple of occasions. Mr. Kirk said since that time, he has repaired and added additional fencing including electrical fence, and posts to make sure the horse does not get out any more.

Mrs. Wolgamood indicated that Ms. Yoder also expressed concern that the Petitioner was out of town for several days and the horse was unattended. Mr. Kirk stated he works for the railroad and sometimes might be gone for a day at a time. He indicated his neighbors, who are present here today, look after his horse while Mr. Kirk is out of town. Mr. Kirk only intends to have this one horse.

Phil Grose, 20060 CR 6, next door neighbor, was present in favor of this request. He stated he and his wife look after the horse when Mr. Kirk asks them to. He reported no complaints and expressed love for the horse. They feed the horse grass that they cut from their yard. Lastly, he stated the horse is very friendly.

Beth Grose, 20060 CR 6, was also present in favor of this request. She stated their dog has made friends with the horse, and she would hate to see the horse leave.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood stated the property is a little over two acres with a request for one horse with a fenced corral, and she said the Board approves this type of request 99% of the time. She reiterated that Mr. Kirk takes care of the waste product. She also feels he is aware of the possible consequences if the horse gets out of the fence in the future.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of one horse on a tract of land containing less than 3 acres in an A-1 district (Specifications F - #1) 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:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for one (1) horse only.

Prior to voting on the motion, Mr. Hesser commented that the Board's focus is on the land use issue as opposed to the animal husbandry aspect, which he thinks there are some concerns about. A roll call vote was taken and the motion was carried with a unanimous vote.

12. The application of **Powell & Edna J. Gagich** for a Special Use for warehousing and storing of concrete forms, vehicles and miscellaneous concrete supplies in an A-1 district (Specification F - #44) on property located on the West side of CR 35, 2,080 ft. North of SR 120, common address of 52625 CR 35 in York Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #52625CR 35-120625-1*.

There were six neighboring property owners notified of this request. Powell Gagich, 52625 CR 35, Bristol, was present on behalf of this request. He stated the construction business was on his property for ten years. Then due to illness of his parents, he obtained a Special Use permit for a mobile home on his property for them to reside. He had to move his concrete forms off his property due to the Special Use permit. He stated because of this, he bought property that was zoned for business in Bristol for his concrete business. He stated he was there for several years until someone complained. He reported he had to move off that property and was told that all businesses were moving across the railroad tracks. So, he relocated his business again, however, none of the other businesses moved.

He stated his business is struggling and reported pouring only three jobs last year and two so far this year. In an effort to stay in business and pay back lot rent, he said he has sold 14 trucks, mortgaged his house, and is currently two payments behind on his mortgage. Mr. Gagich stated he is asking for a temporary permit for a year or two to get straightened out and pay off debts. He reported he has been pouring foundations in this county for 46 years. He feels those years should account for something. This will be the third time he has had to move, and he does not have any place to go now.

Mr. Homan asked about the number of employees which Mr. Gagich reported is two at this time. He further stated he only has seven trucks but will probably only have three trucks on the property. Concerning Mrs. Wolgamood's question about what other equipment Mr. Gagich has on the property, he stated just concrete forms and trucks. When looking at the photographs, she asked about areas of outside storage for the business. He said he has six areas on his lot of concrete forms, concrete chutes, and insulation blankets. Mrs. Wolgamood inquired about the signatures in support obtained by Mr. Gagich. He reported the six are from all of the close area neighbors.

Mr. Homan asked about a photo showing a white fence and garage to which Mr. Gagich reported they belong to a neighbor. Mr. Homan mentioned it seemed peculiar that the garage

doors open toward Mr. Gagich's property. Mr. Gagich explained that property belonged to him at one time. Then his brother-in-law bought half of it. His brother-in-law sold the house then later sold the garage to someone else.

Mr. Miller asked just to be clear about any dumping, leaks, or anything that could contaminate the property. According to Mr. Gagich, when somebody has a porch foundation, he has barrels he cuts the top and bottom off and fills them with concrete. He stated he keeps these barrels on his property. He stated he buys his material from Eagle in a five gallon bucket which he dumps into a sealed tank but does not store it on the property.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked the Petitioner how long he has been storing trucks and equipment at this location to which he said about a year. She stated she agrees with staff that it should be denied; however, does not know that another year or two is going to hurt.

Mr. Homan stated his personal feeling is that lot size is large enough that the material is basically out of sight and kept behind the tree row. Further he stated, Mr. Gagich has two employees and a terrible housing market so there is no intensity in terms of actual use, dust, or truck traffic. Warehousing is permitted with a Special Use by the Board of Zoning Appeals. Although he understands the staff comment and to a certain extent appreciates it, Mr. Homan said he would be more in favor of giving a time period and allowing Mr. Gagich to come back to the Board to review the progress made.

Mrs. Wolgamood asked if there is enough room on the site to drive in, turn around, and drive out with no backing necessary. The Petitioner indicated yes.

Mr. Homan asked if the Board had an adequate site plan to which Mrs. Wolgamood stated she thought the site plan was pretty good.

Mr. Hesser asked if commitments would be included. Mr. Kolbus indicated that because of the time limit, they would be.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that this request for a Special Use for warehousing and storing of concrete forms, vehicles and miscellaneous concrete supplies in an A-1 district (Specification F - #44) be approved based on the following Findings and Conclusions of the Board:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. Will substantially serve the public convenience and welfare.

The following condition was 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 then imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a period of two (2) years with renewal before the Board of Zoning Appeals.

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

13. The application of ***Clinton Frame Mennonite Church*** for an amendment to an existing Special Use for a church (Specifications F - #48) to allow for the placement of an electronic message board sign on property located on the East side of CR 35, 900 ft. North of CR 36, common address of 63846 CR 35 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #63846CR 35-120622-1*.

There were six neighboring property owners notified of this request.

Dwayne Bontrager, Administrator of Clinton Frame Mennonite Church, 63846 CR 35, was present on behalf of this request. He made a correction to Mr. Mabry's presentation stating the existing sign and bushes will be removed. The proposed sign will replace them. Mr. Bontrager stated the reason for the requested setback is due to trees and an existing walking track. If they move the sign in to the 45 ft. setback, they will either have to significantly trim a tree or possibly remove it. He submitted a Google photo *[attached to file as Petitioner Exhibit #1]* to show same, and also indicated the crushed asphalt walking track prevents them from putting the sign at the 45. ft. setback.

At the 28 ft. setback, the sign is visible but outside of the easement. With the speed cars are travelling past, it needs to be visible from both directions. As far as the sign falling, he stated the post itself is going to be three and a half concrete blocks wide and two blocks thick, back to back with a steel strap. They are going three feet into the ground with the footer, and there will be rebar from bottom to top. He further stated if the sign falls, it is going to be a tornado taking it down.

Mrs. Wolgamood asked Mr. Bontrager about the aerial he submitted. He indicated the purpose was to show the walking path and the trees that would block the view from the south. She asked if the 28 ft. was from the right-of-way. Mr. Kolbus corrected that the 28 ft. is from the centerline. Mr. Mabry pointed out that it is 25 feet from the centerline to the right of way line as noted on the black and white site plan. Mrs. Wolgamood clarified that the proposed sign is only three feet off of the right of way.

Todd Lehman of Signtech, 1508 Bashor Road, was present in favor of this request. At this time, he submitted a three dimensional aspect of the proposed sign *[attached to file as Petitioner Exhibit #2]*. He stated they were setting the sign the same distance off of the centerline as the light poles currently are. From the utility poles, they measured and thought they were seven feet from the property line instead of three. He pointed out Signtech has done 50 foot setback requirements on signs out by Simonton Lake where there is a centerline with a turn lane in the middle of the road with two other lanes, and it has the same setbacks. In that case, the sign is actually right close to the road while this setback is back behind the trees. He stated he does not understand how it comes about that the highway setback is the same as a two-lane road in the county. They would like to move the sign closer to the road so the trees can be saved, and the sign will be more visible.

Mr. Homan asked for clarification on this request that it is for 28 feet from the centerline to the outer edge of the sign, not to the edge of the foundation. Mr. Lehman verified that the outer edge of the sign would be at 28 feet.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he thinks 28 feet is reasonable. Mr. Homan said the proposed sign has a full masonry foundation so it is not going to fall over. Therefore, it is not a concern for him.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a church (Specifications F - #48) to allow for the placement of an electronic message board sign be approved with the following commitment imposed as amended by the Board:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application (28 ft. from centerline of CR 35).

Prior to voting, Mr. Hesser commented that he does not feel a 40 ft. setback is an unreasonable restriction.

A roll call vote was then taken and the motion carried with Mr. Hesser voting in opposition. For clarification, Mrs. Wolgamood noted that the petitioner indicated the other sign would be removed.

14. The application of ***Wilbur L. & Debra M. Lehman*** for an amendment to an existing Special Use for a home workshop/business to manufacture counter tops for cabinets (Specifications F - #45) to allow for the construction of a shop building, for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure (residence) and for a 30 ft. Developmental Variance to allow for an existing sign 25 ft. from centerline of the right-of-way (definition of the use standard for a home workshop/business is 55 CL) on property located on the North side of CR 52, 1,200 ft. East of CR 11, common address of 24793 CR 52 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #24793CR 52-120625-1*. He explained that the existing sign was approved as part of the original Special Use, but it was constructed closer to the centerline than what is allowed so they are attempting to correct that error with this petition.

There were nine neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present on behalf of this request. A corrected site plan is submitted [*attached to file as Petitioner Exhibit #1*]. He pointed out that there is an error in dimensions of the existing structure as submitted in the application, as represented on drawings, and in the Staff Report. The structure listed as 28'x44' is actually 44'x44' as there was a typo on the original drawing. Therefore, the proposed building is not actually six times the size of the current building with the correction.

Mr. Sloat indicated this is one of those cases where the staff has concluded that the building is too large. The request is actually for a building that is 60'x120' with an attached office area. He submitted a worksheet of cases he was previously involved in where the Board has approved buildings of similar size and class [*attached to file as Petitioner Exhibit #2*]. He noted in two of

the cases, staff even recommended denial. He stated there really is not anything in our ordinance that says this building is too large.

He reported Mr. Lehman has been in operation for approximately 20 years and makes high end counter tops for custom motor homes, recreational vehicles, and residential applications for local contractors. In the beginning, it was a part-time business but now it is full-time. Mr. Sloat stated the business is not any larger now than it was in 2004 when the Special Use permit was obtained. The reason for the request is that his business is being conducted in building that was originally constructed as a barn. The work area is very crowded causing a lack of efficiency. He stated Mr. Lehman does not want to increase size of business. This is a small family operation. Mr. Lehman has seven boys who will learn the trade.

The property is located next to a farmstead. Mr. Sloat indicated the proposed shop with an office in front is 270 feet off the road with a parking lot and large turn around area with access off of CR 52. The existing building is only 100 feet off the road. Any noise generated from this operation is going to be minimized in the neighborhood from what it is now. The proposed building is bound on the west side by a tree line and on the rear by woods. In speaking with the neighbors, Mr. Sloat indicated there were no complaints with this petition. Mr. Lehman owns property across the road. According to Mr. Sloat, it is not intrusive in the neighborhood at all, and the building will have the appearance of the agricultural buildings next door.

In talking about a home workshop/business, Mr. Sloat read the definition as a gainful occupation carried on by occupant of a dwelling unit as a use which is secondary to the use of the unit for residential purposes and within a building accessory to it. He feels this petition meets both of those standards. He stated this house and this property is going to be Mr. Lehman's residence regardless of the outcome of this petition. The residence is the principle use of this property. Mr. Sloat said there is no language in the ordinance that really restricts the size of a building. Submitted on the record was case law *[attached to file as Petitioner Exhibit #3]*, with a portion from Page 3 highlighted and read by Mr. Sloat.

Mr. Hesser indicated that the staff's point is an observation, and he does not think they are saying that there is a size limit. He said one of the items that the Board considers when they are considering a home workshop/special use type item is question if this is ancillary or is this something where it is a business that needs to go out. He doesn't think that anyone is saying there is a set number of square feet where you have crossed that threshold. But the size of the building is an indicator. Mr. Sloat stated he was not sure he followed in Mr. Hesser's position unless there are some parameters to determine what size the building is that makes it too large. Mr. Hesser stated he was saying that whether it is ancillary to a home or whether it is a separate business is a judgment call, and the size of a building is "a factor" when considering this petition. Mr. Sloat stated that ancillary or accessory use is one that, in this situation, Mr. Lehman is using this for his family so it is clearly connected to the principle primary use of the building is residence. Mr. Hesser noted that his understanding of this petition is that Mr. Lehman is not expanding the business, he just wants to spread out his work area.

Mr. Sloat continued reading from case law paperwork on Page 3, Paragraph 2 (highlighted). He feels when looking at the Staff Analysis, there is some conjecture in that this is not supported by any facts and is just an opinion. He reiterated that the primary use of the property is residential, and it is in a residential area. Mr. Sloat indicated that in the present

building, the work space is all very crowded. He pointed out the proposed building would be a much safer environment for employees as well as the Petitioner's children by moving the truck traffic farther away from the residence. Mr. Sloat argued the points of the Staff Analysis stating Mr. Lehman has no intention of enlarging the business. There are two employees permitted by ordinance in the Special Use. Regarding Item 2 in the Staff Analysis about the size and type of the proposed building limiting future reuse for agricultural purposes, Mr. Sloat said he did not know there was a standard that buildings had to have an alternate/default use for agricultural purposes. In addition, he indicated this proposed building has potential for several agricultural uses if not being used as a home workshop. Again, he reiterated that the proposed building is not six times the size of the existing building but only two and half times. Mr. Sloat stated this petition is not about adequate land in Elkhart County zoned and built to accommodate this type of business. This petition is about this property. He stated if we were to adhere to that standard, no Special Uses would be approved because everybody would be sent to town.

Regarding the Developmental Variance Staff Analysis Item 1, Mr. Sloat argued that there is nothing that says a person cannot build a large accessory building in relation to the principal residential use on site. Going back to the Washington case, he said there is nothing that says you cannot, and a man with reasonable intelligence needs to be able to read the code and see what the limits are. In response to Item 2, Mr. Sloat stated he did not know the County had an intention to regulate building sizes or if so, he would like to have a copy of it so he can advise his clients in the future. Concerning Item 3, he stated it is true Mr. Lehman can continue to work in the crowded conditions, tripping over air hoses and electric cords, and having to sweep up sawdust and debris on the floor so he can move onto the next operation. Mr. Sloat stated he feels Mr. Lehman meets all the standards and totally disagrees with the Staff Analysis.

Mr. Sloat stated Mr. Lehman and his wife are present today. He stated they are good, hard working people just trying to support their family. He stated he would appreciate a favorable motion today.

Mr. Campanello asked Mr. Sloat why they don't just put a 100'x100' steel building on this property if he is talking about sizes of buildings compared to the size of the dwelling. He said with what Mr. Sloat is trying to explain to the Board, he could ask for just about any size building on this property as Mr. Campanello understands it. Mr. Sloat said there is no reason to build a building beyond the scope of their needs. Mr. Campanello said Mr. Sloat is more or less saying that the Board has no jurisdiction to limit size of a building on this property. Mr. Sloat said what he is telling the Board is what the Court said in the Washington case that a zoning ordinance does not have to meet impossible standards of specificity but it must be set forth with uniform guidelines so that its interpretation is not left solely to the discretion of administrative bodies or officials. He stated there is nothing in our code with any guidelines as to how big a building ought to be.

Mr. Hesser said there is something in our code that says you cannot build an accessory building larger than the primary residence. He stated the whole purpose of this Board is to make discretionary decisions and you cannot use discretion with specific guidelines. He indicated you have to pick one or the other, and it is a question of reasonableness. Mr. Hesser said he may not agree with the staff report either, but he does not believe you can say that it is baseless if they cannot consider the size of a structure. He stated he feels it is an absurd argument. Mr. Hesser

indicated he does not have a problem with the use as presented but for Mr. Sloat to argue that the Board cannot consider the size of a building, he does not think that follows. Mr. Sloat stated there are no facts to support the staff recommendation. He indicated he wants to know why the building is too large.

If this new building is approved, Mr. Homan asked if the existing shop will return to its use as a barn to which Mr. Sloat indicated yes. Mr. Campanello mentioned the revised site plan previously submitted which shows the current shop is 44'x44' does not show the size of the house in terms of feet, not square footage. Mr. Sloat submitted another site plan showing proposed building, parking spaces, parking lot, and drive *[attached to file as Petitioner Exhibit #4]*. Mr. Sloat stated it is included in the questionnaire. Mr. Sloat stated the house is not all two-story. Mr. Campanello suggested in the future, Mr. Sloat indicate size of structures as that is one of the items considered.

Mr. Miller asked Mr. Sloat if the short conclusion of this exercise is to simplify and make the operation more efficient. Mr. Sloat indicated that was correct.

Allen Molebash, 1302 McCormick Drive, Nappanee, was present in support of this request. He indicated he came to know the Lehmans through purchasing countertops from them approximately 18 months ago. They also sometimes stop by the visit them and the shop. He stated a new shop will be safer for employees and family, quieter because it is back off the road, and it will be much cleaner because of the new equipment and ways of controlling dust. He requested the Board's consideration of this request.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller mentioned the good debate regarding the size of the accessory structure and obviously there are different points of view. Mr. Campanello stated he is just afraid the business and operation is going to get much larger and grow beyond what Mr. Sloat has presented. He feels that something that goes into a larger building does not stay the same.

Mr. Hesser indicated Mr. Lehman is not asking to change the number of employees. Mr. Hesser agrees with Mr. Campanello in that the shop becomes more efficient then it will become a bigger operation. Mr. Miller stated he would not argue that point but the representation is that they are cleaning up the operation so those are the facts that the Board has to go on.

Regarding the Board talking about increasing the operation, Mrs. Wolgamood pointed out the number of employees could increase as any of the eight children who live on site can work there. They would be increasing production at that point.

Mr. Homan said it seems to him that when the Board has large home workshop businesses, they run into problems with intensity of the growing business and particularly when it spills outside of the building. He stated there is no evidence that this home workshop is going outside of the building unlike a few other well-known home workshops that have become commercial businesses. Mr. Homan said the current shop is going back to agricultural use. It looks to him that except for the size of the building he wants to build, this is a home workshop business. He said he is operating within the confines of a home workshop business.

Mr. Hesser agrees with Mr. Homan. He did state he thinks you can question the size of the building, but that those questions have been answered.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the request for an amendment to an existing Special Use for a home workshop/business to manufacture counter tops for cabinets (Specifications F - #45) to allow for the construction of a shop building be approved based on the following Findings and Conclusions of the Board:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. Will substantially serve the public convenience and welfare.

The following condition was 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 imposed:

1. Approved in accordance with the revised site plan submitted at the hearing on July 19, 2012, and as represented in the petitioner's application.
2. The following original conditions of the Special Use approved July 15, 2004, as modified by the Elkhart County Advisory Board of Zoning Appeals, to remain in effect:
 - a. Approved for Wilbur Lehman as the owner/occupant of the residence on-site.
 - b. There shall be 1 sign no larger than 4 square feet per side, double faced and unlighted.
 - c. There shall be no more than 2 employees that live outside of the residence on-site.
 - d. Hours of operation to be Monday through Friday, 6:00 a.m. to 3:30 p.m.
 - e. There shall be no additional buildings built for this business without BZA approval.

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

A motion was then made and seconded (*Miller/Homan*) to approve the request for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure (residence) based on the following Findings and Conclusions of the Board:

1. Will not be injurious to public health, safety, morals or general welfare.
2. Will not cause substantial adverse affect on the neighboring property.
3. Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance.

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

Mr. Miller then moved that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that the request for a 30 ft. Developmental Variance to allow for an existing sign 25 ft. from centerline of the right-of-way (definition of the use standard for a home workshop/business is 55 CL) be approved by the Board in accordance with the Staff Analysis. Mr. Homan seconded the motion, which carried with a unanimous roll call vote.

*** It should be noted Mr. Hesser leaves at this time. ***

15. The application of *Dean & Wrennie Howard* for a Use Variance to allow for the construction of an accessory structure prior to construction of the primary structure (residence) on property located on the East side of CR 33, 2,100 ft. North of CR 44, being Lot 1 of Grindle Minor Subdivision, common address of CR 33 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 33-120622-1*.

There were seven neighboring property owners notified of this request.

Dean Howard, 69885 CR 29, New Paris, was present on behalf of this request. He submitted a letter from former land owners who are also the neighbors to the south in support of the variance *[attached to file as Petitioner Exhibit #1]*. He stated the request is to construct a pole building there just preceding the construction of the home. Currently at his home on CR 29, he indicated he has a 30'x40' pole barn. He stated he is a hobby blacksmith so he has some equipment in there that they would like to move out in the effort to sell their current home. He further stated they would like to be able to move the equipment beforehand so they can clear out the shop space and also to cue some of the construction materials for the home. He reported they do not currently have a contract. However, he has spoken with Paul Hostetler regarding construction of building and as well as the home. He stated a building contract is contingent on what is decided today. He noted they have already had a septic approved.

Mr. Miller asked when the construction would proceed and if it would depend on the sale of the existing home. Mr. Howard stated they would like to construct the pole barn this summer. Originally their goal was once the pole barn was constructed and the equipment could be moved out of the shop, then the house would be listed for sale. He mentioned he thought they were going to try to put the house up for sale now as they have spoken with a realtor who said properties are selling good now. They would like to get it on the market before fall really hits. He further stated they are currently completing a few improvements. Because some of his equipment is difficult to move, he feels getting his equipment out would facilitate getting a new homeowner into their current home. Otherwise, if they sell the home, they would have to move the equipment to a temporary storage facility before they could get the pole building and home constructed. Mr. Miller asked Mr. Howard if their residence would be sold prior to the construction of the new residence, and Mr. Howard stated yes.

Mrs. Wolgamood asked Mr. Lehman if the proposed pole building is 1500 square feet and the proposed new home is a minimum of 2500 square feet to which he indicated that was correct.

Paul Hostetler, 54824 CR 33, Middlebury, was present in favor of this request. As far as the construction of the house and the time line, he stated he and Mr. Lehman did talk about committing to pulling both permits at the same time. They believe it will be realistic to sell the house and build a new one in a 15 month window, with one year permit and three year extension. He stated the parties have a verbal agreement but are willing to present written documentation on the contract if requested by the Board once this is approved.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he believes the Board did this before with a building permit but then they were putting condition on the length of time of the building permit. He asked if it does not get built, does it then go to the Hearing Officer. Mr. Miller disagreed and said typically in the past the Board has not approved building of accessory structures prior to the primary residence.

Mrs. Wolgamood stated unfortunately right now, they do not have many people who know the history of the Board's decisions in the past. She said she does not know what the policy is of the Building Department anymore regarding the issuance of a Zoning Clearance for both of the buildings (house and accessory structure) at the same time. She indicated she knows that they used to do that frequently and that the Board also put a stipulation that the house foundation had to be in prior to construction of accessory building. She further stated if that is still allowed by staff, then the Petitioner does not need anything from the Board as the proposed pole building is not larger than the primary residence and it would be an accessory to the house. So she suggested that possibly a commitment that the Board is now able to accept could substitute for the issuance of the building permit. However, she indicated she is unsure if the staff still allows that. But the Board has to make a decision on this request. Mr. Mabry indicated that the Building Department still continues in the way that Mrs. Wolgamood described. Mr. Burrow further indicated that staff has not had a direction change regarding that guideline.

Mrs. Wolgamood requested the Petitioner and the contractor come back up for a question. She asked if they both understood what she said, and they both indicated they did. She stated if they can do that and want to proceed that way, all they would need to do is get their building permits and go about their business. She stated the Board could accept a withdrawal of the petition here. Mr. Kolbus mentioned that they would have to have a site plan in order to pull the permits. Mr. Howard said the house plans would have to be firmed up if they were pulling both permits.

Mr. Homan stated if the house and accessory building were built concurrently the way it was described, he is okay with it and these variances are mute.

Mrs. Wolgamood indicated the Board and Petitioner have three options. They can deny the request as the staff has recommended, approve it with the commitment that both permits will be pulled at the same time and Petitioner will have 15 months to complete the house, too, or Mr. Campanello stated the Board can deny the request and the Petitioner can still go ahead with the plan as explained by Mrs. Wolgamood that is normal code for the Building Department.

Mr. Homan stated the Board has been here many times before as this is a very common request and discussion. He stated the Use Variance criteria are the most difficult and highest standard set to have an approval on. Mr. Howard mentioned that the Board has to be totally reliant that they will do what they say they are going to do. Mr. Kolbus stated this petition, however, is beyond anyone's control because it is based on the sale of their home.

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 Use Variance to allow for the construction of an accessory structure prior to construction of the primary structure (residence) be denied. A roll call vote was taken and the motion was carried with Mr. Miller voting in opposition.

It should be noted that Mrs. Wolgamood steps down at this time.

16. The application of ***Faus Groom and Room, LLC*** for an Amendment to a Special Use for an existing animal boarding facility to allow for a mobile home to be used for dog training purposes on property located on the West side of CR 11, 187 ft. South of Indiana Toll Road, North of CR 6, being Lot 2 in Windsong Minor Subdivision, common address of 52677 CR 11 in Osolo Township, zoned A-1, came on to be heard.

Mr. Mabry indicated this is a Petition that was before the Board in May which was tabled so the applicant could resubmit a better/more clear and detailed site plan. Since that time but before today, the County Commission amended the zoning ordinance regulating kennels which put a twist on this request. He stated staff had not brought that into consideration in enough time to let the Petitioner fairly address that in regard to lot size. He said basically it ends up that this kennel is no longer a Special Use in an A-1 zoning district. So the idea of a kennel approval as a Special Use goes off the table as it is an allowed use subject to limitations related to setbacks and lot size.

Mr. Mabry stated there is still the issue of the mobile home being on the property and that does require as a structure a Special Use permit. He reported the petitioner could not be present today anyway so all things have pointed to one more tabling for this item so that staff can make sure they have addressed the needed variances. Mr. Mabry indicated the Petitioner will still need Developmental Variances related to the size of the property and setbacks if he is to do what he is proposing. Staff recommended tabling this item until the August meeting. Mr. Mabry stated he has spoken with the Petitioner who agreed with tabling this item today.

It should be noted that Mrs. Wolgamood returns at this time.

Mr. Campanello inquired if this was a travel trailer sitting there on wheels, would the Board still have this petition. Mrs. Wolgamood and Mr. Hesser indicated the issue would still be the "use".

Mr. Miller asked if a one month tabling would grant sufficient time to take care of the issues to which Mr. Mabry indicated yes. He further stated he just needs to work with the Petitioner to nail down the Developmental Variances he needs to request to make his property potentially work to be able to do this as he is wanting. Mr. Mabry also added that the Special Use for the mobile home structure itself will also still be part of the request.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the Board table this request for an Amendment to a Special Use for an existing animal boarding facility to allow for a mobile home to be used for dog training purposes be tabled until the August 16, 2012, Board of Zoning Appeals meeting in order to work with the petitioner on applying for the appropriate Developmental Variances. A roll call vote was taken and the motion was carried unanimously.

17. The application of ***Robert W. & Amy C. Martin*** for a Use Variance to allow for the construction of an accessory structure prior to construction of a residence and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage of the primary structure (residence) on property located on the Northeast

side of CR 129, 300 ft. Southeast of CR 31, common address of 15933 CR 129 in Middlebury and York Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 129-120619-1*.

There were 21 neighboring property owners notified of this request.

Tim Miller of Fireside Homes, 21920 CR 45, Goshen, was present on behalf of this request. He submitted at this time one copy of building plans *[attached to file as Petitioner Exhibit #1]*. He stated he is present representing Bob and Amy Martin. He stated Mr. Martin is a very prominent member of the Middlebury community and the President of Thor Industries. He stated the Martins plan on being at this location a long time. Mr. Miller stated he has built three homes for the Martins and is hoping to build a fourth on this property. To give some background for this request, he stated they currently live in Sylvan Woods and have elementary and middle school children. He stated frankly they want to get out into the country to give the kids some space, and they are planning on using this as their residence and will probably be the last home that they will live in here in Elkhart County. He further stated they plan to use this strictly for their family. Currently, he indicated they are designing a very nice home for the Martins.

He then submitted a plot plan *[attached to file as Petitioner Exhibit #2]*. Mrs. Wolgamood indicated the Board was provided a copy of same in their packets. He indicated they have already constructed the stone driveway coming in off of County Road 129 there. They are planning on a building a home with a walk-out basement that will open up to the pond on the front of the property, and driving on past the house to the open meadow in the back is where they are planning on building the barn.

Regarding their purpose for requesting this variance, Mr. Miller indicated the Martins were unaware that they could not build an out-building or a barn before you construct a house. Further he stated the Martins are planning on using this building for an indoor gym for their kids. He stated they purchased this property about four or five months ago and had planned on starting right away. They want to use it as soon as possible. Mr. Miller stated they are hoping to start the home in the next 60 days and it will probably take over a year to build the house. The Petitioners would like to build the barn to use this winter and have the indoor gym completed. The builder of the pole barn is ready to begin construction. This request would give them the ability to use the barn through the winter.

Mr. Miller indicated the contour of the property does not show well on the aerial photo. He stated the circle on the photo shows the hill and you virtually cannot see any homes from that point of the property. It is shielded by woods from the front (CR 129), and you cannot see it from CR 131. He indicated there are no houses visible from that spot. He indicated you can see a small building from the north and the house on the very far north piece of property on the aerial photo. However, it is a couple thousand feet away. He stated he cannot imagine that a quarter of a million dollar building would be injurious to the property values of the neighboring properties. He further stated that he would respectfully disagree with the Staff Analysis that it is injurious to the public health, safety, morals, and general welfare of the community. He believes even if the house was never built it would not be injurious to the community, and he stated it absolutely will not hurt the value of any adjoining properties to put a \$250,000.00 building on top of a hill on a parcel that is not visible from the road.

In response to the staff finding that this would not constitute an unnecessary hardship, he indicated that is a bit subjective in that the Martins purchased this property with the intent of using this property as soon as possible. They certainly wanted to use it this winter. Mr. Miller stated he anticipates pulling a building permit in the next 60 to 90 days for the home. However, the Martins wish to get started on the pole building right away.

Mr. Miller stated he understands that this request is out of order by the way things are normally done, but he would like the Board to consider that the family is going to be in Middlebury. They are planning on building a home that is not contingent upon the sale of their current home or anything like that. They are ready to start as soon as the plans are finalized. Mr. Miller further stated the plans are with the architect at this time in the conceptual stage of the home plans. He said with certainty that it is going to happen, and he would like that taken into consideration as the decision is made.

Mr. Campanello asked if the foundation plans were ready at this time. Mr. Miller stated it was going to be at least another month and a half before they have the working construction drawings.

Mr. Doug Miller asked for clarification that no home has to be sold. Mr. Miller stated he has a verbal contract with the Martins, and they cannot wait to get started.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello does not think he can approve this without being a hypocrite. If there was a commitment with a foundation started, he stated he could approve this.

Tim Miller indicated he has enough in plans that he could pull both permits at the same time. He stated he cannot begin construction and actually put the foundation in, but he would be more than willing to pull both permits at the same time. He gave his word that they would continue and build a house. Mr. Campanello stated his word is great, however, everyone's else word would have to be approved in the future as well. He said the Board is setting a precedent that way.

Mrs. Wolgamood made a comment that again, these requests are the toughest. She stated when she looks at the front elevation, it looks like a house with an accessory attached. She also stated she knows that 12,944 square feet is a big building. She indicated the Board also know of and can probably count on both hands the number of these that are around the county for the identical purpose. She also recalls a couple of permits having been issued and this type of building constructed, but those did not come to this Board. She stated of all the people that she knows, Mr. Miller is one of the most trustworthy people she has ever known and would never doubt his word.

Mr. Doug Miller stated to his mind's eye, this set of circumstances, when trying to look at this objectively, is that the Board could impose conditions on a commitment with respect to his public testimony with respect to that. But he stated the thing that stands out to him in this specific instance is probably the quality of his buyer. He further stated this is not contingent upon the sale of a home or financing. It is a simple fact that this family wants to achieve a goal, they are spending a sizeable sum of money, and they have a very nice house designed. Of all the requests in his three years on the Board that he has heard for accessory structures prior to a primary residence, Mr. Doug Miller stated this is probably the one that he could support because

from a logical sequence of events, he would say this one is going to happen based on the presentation.

Mrs. Wolgamood also mentioned the property is 61 plus acres, and it cannot be seen by anyone. She stated regardless of the petitioner's professional status, this is still a request before the Board.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board approve the requests for a Use Variance to allow for the construction of an accessory structure prior to construction of a residence and a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage of the primary structure (residence) based on the following Findings and Conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following commitment was imposed by the Board:

1. Both building permits (primary residence and accessory structure) to be obtained simultaneously with construction of the primary residence to begin within six (6) months.

A roll call vote was taken and the motion was carried with Mr. Campanello voting in opposition.

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

19. The staff item for The Farmhouse was presented by Brian Mabry who indicated they ran into a bit of an issue with how to provide a septic system with the proposed restrooms that they would like to add. They need more time to consider this as they originally wanted to have holding tanks, but the Health Department needs a septic system. He indicated The Farmhouse may or may not be on the August agenda as a Staff Item depending on how it works out financially for them. Therefore, there will be no action at this time.

20. The next staff item of Review of Zoning Ordinance Amendment Packets was presented by Mr. Burrow. He presented Page 3 containing Specification D to replace that page which was previously in the packet to be placed in the Zoning Ordinance. On the previous copy, Items 35 and 36 were cut off the bottom of the page. Regarding the packet that was previously distributed, Mr. Burrow indicated some were replacement sections and some were replacement pages.

21. The last staff items regarding BZA volunteer for Zoning Committee was presented by Chris Godlewski. He explained this is for the Zoning Ordinance rewrite. He stated there is one person needed on the Policy Committee which is community representatives and another person needed on the Technical Committee which is mainly staff but there is representation both from the Plan Commission and Board of Zoning Appeals. The Technical Committee is to support the Policy Committee and Plan Commission with the technical aspects.

Tony Campanello and Doug Miller represent the Plan Commission with Mr. Miller on the Policy Committee and Mr. Campanello to serve on the Technical Committee. Mr. Godlewski said this can be approached one of two ways: either enact two additional people to serve as representatives on each of those committees or possibly Mr. Miller and Mr. Campanello can serve dual roles and report back to the respective Boards so there would not have to be two members on each committee.

Mrs. Wolgamood asked what would happen if the BZA wanted to appoint one of those two to be on the opposite committee. Mr. Campanello indicated that would be a lot of work. Mr. Miller explained that they are each on one committee as Mrs. Wolgamood thought that one of them was on both committees. Mr. Godlewski stated Mr. Miller and Mr. Campanello serve dual representation right now being on both boards and suggested that might be an easier way and easier on the Board members as a whole. Mr. Miller confirmed that they can serve in the capacity they are serving but they can represent both the Plan Commission and the BZA. Mr. Godlewski agreed that he thinks that would be the best approach. Mrs. Wolgamood indicated she is not interested in serving on the committees. Mr. Godlewski mentioned that Mr. Campanello's and Mr. Miller's offers to volunteer are very much appreciated.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that Doug Miller and Tony Campanello represent both the Plan Commission and the Board of Zoning Appeals on their respective committees. A roll call vote was taken and the motion was carried unanimously.

22. The meeting was adjourned at 12:21 p.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary