

MINUTES

ELKHART COUNTY BOARD OF ZONING APPEALS MEETING

HELD ON THE 15TH DAY OF NOVEMBER 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. 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.

Roll Call.

Present: Bill Kuhns, Doug Miller, Meg Wolgamood, Randy Hesser.

Absent: Tony Campanello.

2. A motion was made and seconded that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of October 2012 be approved as read.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Randy Hesser.

Vote: Motion passed (**summary:** Yes = 3, No = 0, Abstain = 1).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser.

Abstain: Bill Kuhns.

3. A motion was made and seconded that the legal advertisements, having been published on the 3rd day of November 2012 in the Goshen News and on the 4th day of November 2012 in The Elkhart Truth, be approved as read.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood.

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

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

4. A motion was made and seconded that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record.

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Doug Miller.

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

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

5. There were no postponements of business items.

It should be noted Attorney Kolbus steps down at this time.

6. The application of *Patrice L. Havens (Land Contract Purchaser) and Weldon L. & Janice E. Reynolds (Land Contract Holders)* for a 17 ft. Developmental Variance to allow for the construction of a detached garage 33 ft. from centerline of the right-of-way (Ordinance

requires 50 ft.) on property located on the Northeast side of LaPlace Drive, 325 ft. East of CR 43, 1,800 ft. South of SR 120, being Lot 4 of Pismo Beach Haven Sub., common address of 53380 LaPlace Drive in York Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #53380LaPlaceDr-121019-1*.

There was one neighboring property owner notified of this request.

Pat Havens, 53380 LaPlace Drive, Middlebury, and Tony Companion, 21593 SR 120, Contractor, were present on behalf of this request. She stated there is not enough room to set the two stall garage to the side. Mr. Miller indicated he is looking at an alternative plot plan that shows the garage to the right of the existing residence close to the property line. Mr. Companion said it would have to be built right on the property line in that scenario. He added that in order to maintain the setback from the street, another alternative would be to allow them to go through the property line so they can build the garage further back.

Regarding the recommended denial based on backing out of neighboring properties, he stated he owns a 21 foot long pick-up truck and can still back up with two feet after the tentative new garage location. Therefore, he said he objects to the finding as he would have clear vision backing out into the street. Mr. Kuhns clarified that it is a detached garage. He asked if there was any reason the garage could not be located farther to the rear of the property and off-set a bit behind the house. Ms. Havens stated the property sits on pretty steep hill. Mr. Companion indicated on aerial photo that hill is at approximately the middle of the side yard. He said there are only 26 feet from the property line to the residence so they would have to build right on the line.

He added that the reason for the double stall garage is for personal storage as well as vehicle storage. He mentioned the option of building a shed behind the house for personal storage is not appealing because of blocking the view of the lake. She indicated most of her neighbors have two stall garages. Mr. Companion reported one of the immediate neighbors is a rental house owned by her father who has no objection to this request. He said the garage would not stop the southerly breeze in the summer time. As is typical with lake property, he said people hang out on the lake side of the residence with very little activity towards the roadway that would cause the garage to be a hindrance. She indicated the road is very quiet with no public access.

Mrs. Wolgamood asked about a residence and garage at bottom of aerial photo wondering the measurement from the centerline. Ms. Havens indicated she did not measure it. Mr. Companion indicated there are a few accessory structures that appear to be too close to the road than setbacks would allow. Mrs. Wolgamood confirmed that Ms. Havens would be driving straight in instead of driving in and turning. Mr. Companion said the septic system is in front of the house. He added that Ms. Havens is willing to remove existing driveway if needed for a future septic drain field.

Mr. Hesser commented that it appears with aerial photos that the property lines are a bit off. Mr. Companion indicated Ms. Havens' actual property line on the aerial. Mr. Hesser confirmed that the southern neighboring property residence does not encroach on Ms. Havens' property. Mr. Companion stated he has measured and that house is 10 feet from the property line.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said lake property is sometimes difficult. Mr. Kuhns expressed agreement. She did say she believes everyone deserves a garage. Mr. Kuhns asked if this is two stalls, side by side which Ms. Havens indicated is correct. He then suggested turning the garage with a 90 degree turn. Mr. Miller and Mrs. Wolgamood both pointed out the septic system is in the front yard which cannot be driven over. She said if the required side yard setback is five feet, with the required separation between the house and the proposed garage which makes 10 feet, they could only construct a 14 foot building at the proper setback of 50 feet from the centerline. Mr. Miller stated that was correct but suggested it could be two stalls deep. When Mrs. Wolgamood asked Mr. Companion what he was told by the Building Department, he indicated he was told three feet. He further stated that is why his site plan shows three feet between the house and the proposed garage. In this case, the measurement includes overhangs.

Mr. Miller pointed out a single stall garage to the south on the aerial that is much closer to the centerline. He said it helps to mitigate some of his issues.

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

Motion: Moved by Doug Miller, **Seconded by** Meg Wolgamood, that this request for a 17 ft. Developmental Variance to allow for the construction of a detached garage 33 ft. from centerline of the right-of-way (Ordinance requires 50 ft.) be approved based on the following Findings of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. There are other garages in the area that are as close as or closer than this.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. There are other garages in the area that are as close as this.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

Prior to voting on the motion, Mr. Hesser asked if there are any conditions or commitments the staff would suggest, but Mr. Mabry said nothing was discussed when preparing the Staff Report. He did say, however, that the standard commitment of approving the site plan submitted and as represented in the application.

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, Randy Hesser.

Action: Approve.

It should be noted Attorney Kolbus returns at this time.

7. The application of *Marsha D. Miller* for a 3,387 sq. ft. lot area Developmental Variance (Ordinance requires 24,000 sq. ft.) to convert an existing storage area into a third apartment on property located on the West side of SR 13, Southeast side of Sunrise Court, North of US 20,

common address of 501 S. Main Street in Middlebury Township, zoned B-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #501SMainSt-121019-1*.

There were five neighboring property owners notified of this request.

Daniel Miller, 56170 CR 33, Middlebury, was present on behalf of this request. Regarding the request being injurious to public health and safety, he stated he checked with the Water & Sewer Manager for the Middlebury area who had no objections to the request.

Addressing the parking areas, he indicated on the aerial photo where the existing parking areas and sidewalks are located. He also indicated the Pumpkin Vine property on the aerial which has been deeded back to them. He stated the front property line was moved back and is located very close to the front of the house. He also said the property lines on the aerial photo do not appear to be accurate and should actually be shifted north as his yard is shown outside the north property line.

He pointed out one of the apartments was formerly a beauty shop that they purchased with the rest of the property. He stated his wife ran the business and moved the shop into a portion of the larger building. The former beauty shop was then made into a one bedroom apartment. He stated the apartments are well-built with quality materials. He added that one of the apartments is totally handicap accessible. Mr. Miller indicated the main house has four bedrooms upstairs, and the house has been completely remodeled. He stated he previously worked for a building contractor, and he followed all building codes. He said he feels the parking is really not an issue and added that there is parking on north side of the one bedroom apartment of at least four spaces. He also pointed out that the area to the west and north of the larger building was parking for beauty shop, and there is still room to southwest and south side of larger building.

He indicated there is rental property to the north, to the south, and also behind to the west. Mr. Miller indicated there is a new four-unit rental across the street and commercial property farther south, so he does not see that it would interfere with neighboring properties.

When Mr. Doug Miller asked, Mr. Daniel Miller indicated the portion of the building to be converted into an apartment is a storage facility for his tools and building materials. Mr. Kuhns asked if the beauty shop is still there to which Mr. Miller indicated it is not. When Mr. Kuhns asked, Mr. Miller stated this is strictly an investment property and business opportunity at this time. However, he indicated they may sell their house in the country and move back into the main house to improve their financial situation.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood stated she did her own calculations and feels there is ample room for what they have there now. She said the driveway services two or three houses to the back. She added that she feels it is basically a driveway and doesn't believe it is a dedicated right-of-way. She explained that 15,000 sq. ft. is required for a single family residence in an R-1 zone, and she knows it is permitted in B-2 zone. Mrs. Wolgamood considered other factors such as city water and sewer, but she feels that four units on that property are too many. Mr. Doug Miller agreed that it seems intense. Mrs. Wolgamood suggested Mr. Hesser may be familiar with this area,

however, he indicated he is not. He said although it sounds like there are several rental properties in the area, he does not see anything about this property that demands or requires four units. Mr. Kuhns indicated he could argue it both ways. Mrs. Wolgamood said when she weighs this request, she considers the existing site, Mr. Hesser's comments, and the staff report.

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

Motion: 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 a 3,387 sq. ft. lot area Developmental Variance (Ordinance requires 24,000 sq. ft.) to convert an existing storage area into a third apartment be denied.

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

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

Action: Denied

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

8. The application of ***Roland L. & Elizabeth Ann 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. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68417County Road 15-121018-1*.

There were four neighboring property owners notified of this request.

Orpha Marie Martin, 68417 CR 15, New Paris, was present representing her parents, and she is the manager of the greenhouses. She stated they are requesting a permit to build a 30'x120' greenhouse and indicated the location of the proposed greenhouse on the aerial. She also pointed out the access to the proposed greenhouse and existing driveway. She said the business is a benefit to local gardeners in various ways in order to grow more of their own food. She indicated they also recycle thousands of flats and pots, and the new greenhouse will also be used for storage in the off-season. She stated this greenhouse will be wheelchair accessible like all of the other greenhouses on the property. She stated the five sisters hope this business can continue to grow and provide all of them with jobs at home, so they do not have to drive to work.

Mrs. Wolgamood indicated she has a number of questions. Regarding the questionnaire item #3 concerning the number of full-time and part-time employees, the response on the form says five full-time and five part-time employees. Also, she said item #4 is how many employees do not occupy the residence on site, and it says six. She asked if the part-time employees are seasonal to which Ms. Martin indicated the part-time employees are very seasonal and work only approximately two months out of the year. Ms. Martin stated the five full-time employees are the five sisters. She further stated two of the sisters live ½ mile to the north. Mrs. Wolgamood pointed out the commitments being suggested say, "one employee outside those who live in the residence on-site". She further stated the questionnaire and staff report have a conflict, and it needs to be rectified.

Also, regarding item #5 concerning days and hours of operation, she pointed out the petitioner's answer is only March through June, and the staff recommended approval under item H. says approval for the months of May through July which is another conflict. Ms. Martin indicated the greenhouse has always been open from March through June. Mrs. Wolgamood indicated the questionnaire states 8:00 a.m. to 5:30 p.m. and under G. on the commitments says 8:00 a.m. to 6:00 p.m. six days a week which she assumes is Monday through Saturday and closed on Sunday. She also pointed out the questionnaire item #8 talks about the entrance and exit signs, but the staff report item D. in recommended approval says one unlighted sign permitted being 4 sq. feet per side. She indicated #19 of the questionnaire says there is an existing sign measuring 4'x5' which is 20 sq. ft. But it is indicated that the sign is double faced which makes it 40 sq. feet. Mrs. Wolgamood said she is not saying all of these things are wrong, but she stated they are inconsistent between the questionnaire and the staff recommendation for approval.

She also pointed out in the staff recommendation #2, it says the conditions of the amendment to the original Special Use permit granted on August 20, 1998, and March 2003, are to be recorded as commitments, specifically under Commitment A. says approved as site plan submitted with proper parking, drainage, etc. She questioned which site plan is being used as there are site plans from 1998, 2003, and one submitted with this application.

When Mrs. Wolgamood asked the petitioner about the site plan submitted that indicates "redo store", Ms. Martin said she thought that her original request asked to remodel store, but then the staff report just talked about the greenhouses so she decided she would just request the greenhouse at this time. She further stated she will not be remodeling the store this year as she cannot do both projects. When Mrs. Wolgamood asked Attorney Kolbus about item C of the approval stating the permit is to be for Roland L. Martin, he stated it should be owner/occupant of residence on-site.

Mr. Kuhns stated he was involved with the Board's decisions in 1998 and 2003, and in reading the packet, questioned the months of operation from May through July as it does not allow much time. He suggested the possibility of a typographical error. Mrs. Wolgamood stated it would show in the original minutes which she did not have at this time. Mr. Kuhns also indicated that at the time other greenhouses were granted, they knew there would be additional greenhouses.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she is not against this request, but she has issues with what was submitted and the staff recommendations. She stated either the Board needs to figure it out or it needs to be tabled so staff can figure it out. Mr. Kuhns asked when construction of the greenhouse is planned to begin. Mr. Miller said he believes February was indicated. Mr. Kuhns stated he asked because he suggests tabling this request until next month so the request includes everything they need so it is not piecemeal and to correct the differences. Mrs. Wolgamood stated she would be in favor of same. Mr. Miller stated he believes staff needs to clean up the inconsistencies.

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

Motion: Moved by Doug Miller, **Seconded by** Meg Wolgamood, 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 tabled until the December 20, 2012, meeting of the Elkhart County Advisory Board of Zoning Appeals to allow the staff and the petitioner time to correct the inconsistencies between the application and current commitments.

Vote: Motion passed (**summary:** Yes = 3, No = 0, Absent = 1).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood.

Absent: Randy Hesser.

Action: Tabled

It should be noted Randy Hesser returns at this time.

9. The application of *Steven S. Kauffman (Lessor) and Verizon Wireless (Lessee)* for an amendment to an existing Special Use for a wireless communications facility (Specification F - #13.50) on property located on the 200 ft. South off of US 20, 1,441 ft. West of CR 33, common address of 15538 US 20 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 #15538US 20-121019-1*. For clarification, Mr. Mabry indicated that the tower does not exist, but the Special Use is existing.

There were two neighboring property owners notified of this request.

Ray Shinkle, 2210 Midwest Road, Suite 213, Oak Brook, IL, was present representing Verizon Wireless on behalf of this request. He stated Verizon is in discussion with a tower company for collocation, and it will attract more carriers if the tower is taller.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood thinks they thoroughly examined this request when it was originally before the Board, and stated she does not know the difference between 150 feet and 200 feet when she is driving down the road. She further pointed out that they have already determined that the site is okay so unless any other members have comments, she is prepared to make a motion.

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

Motion: 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 a wireless communications facility (Specification F - #13.50) 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 = 4).

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

Action: Approve

10. The application of *David A. & Ida J. Slabaugh* for a Special Use for a home workshop/business for a children's clothing resale store (Specifications F - #45) on property located on the East side of CR 31, ¼ mile North of CR 38, common address of 64730 CR 31 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 #64730CR 31-121019-1*.

There were seven neighboring property owners notified of this request.

Ida Slabaugh, 64730 CR 31, Goshen, was present on behalf of this request. She said she has five children, and she would like to be able to have a consignment shop for good used children's clothing, shoes, and boots. When asked by Mrs. Wolgamood what "etc." means on her application, Mrs. Slabaugh suggested possibly also including children's furniture. However, she indicated she would have no bicycles as there would not be enough room inside. When Mrs. Wolgamood asked her to be more specific about the four days a week, Mrs. Slabaugh reported she was looking at Monday, Tuesday, Thursday, and Friday. Being more exact about the eight hours per day, she said the hours would be from 8:00 a.m. to 5:00 p.m. Upon Mrs. Wolgamood inquiring about the storage in the building now, Mrs. Slabaugh stated it was her husband's workshop and storage for tools but it will be relocated to a lean-to on the barn.

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: 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 a Special Use for a home workshop/business for a children's clothing resale store (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:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Retail store limited to clothing, toys, children's shoes, boots, and furniture.
3. No outside storage or display related to the retail store is permitted.
4. Days and hours of operation to be Monday, Tuesday, Thursday, and Friday, 8:00 a.m. to 5:00 p.m.

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

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

Action: Approve

11. See Page 9, Item #13 for the application of *A One-Half Interest to the Trustees of the Leibert J. Maurer Revocable Living Trust and a One-Half Interest to the Trustees of the Rachel P. Maurer Revocable Living Trust.*

It should be noted that Mr. Hesser steps down at this time.

12. The application of *Duro Realty, Inc.* for a Special Use for a wireless communications facility (Specifications F - #31.50) and for a 10 ft. Developmental Variance to be 15 ft. from the rear property line (Ordinance requires 25 ft.) on property located on the Southwest side of CR 45, 2,408 ft. Northwest of Florence Avenue, common address of 24478 CR 45 in Concord Township, zoned M-2, came on to be heard.

Mr. Mabry submitted a letter of withdrawal *[attached to file as Staff Exhibit #1]*.

Motion: Moved by Meg Wolgamood, **Seconded** by Bill Kuhns, that the Advisory Board of Zoning Appeals accept the withdrawal of this request for a Special Use for a wireless communications facility (Specifications F - #31.50) and for a 10 ft. Developmental Variance to be 15 ft. from the rear property line (Ordinance requires 25 ft.).

Vote: Motion passed (**summary:** Yes = 3, No = 0, Absent = 1).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood.

Absent: Randy Hesser.

Action: Withdrawn

13. The application of *A One-Half Interest to the Trustees of the Leibert J. Maurer Revocable Living Trust and a One-Half Interest to the Trustees of the Rachel P. Maurer Revocable Living Trust* for a Special Use for a roadside stand to allow for the sale of firewood (Specifications F - #54) on property located on the Southeast corner of CR 38 and CR 11, common address of 24972 CR 38 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 #24972CR 38-121022-1*. He noted the packets include photos taken on the ground but the overhead does not.

There were nine neighboring property owners notified of this request.

Leibert Maurer and his wife Rachel, 24972 CR 38, Goshen, were present on behalf of this request. At this time, she submitted a packet of information including photos of damaged trees on their property, a letter from Life Action Ministries/One Cry, and detailed list of wood sales *[attached to file as Petitioner Exhibit #1]*. Mr. Maurer reported that a complaint was filed because they were selling firewood and a vehicle which they were not aware is not allowed on their property. In order to go through the proper process, they have submitted their application.

He said all firewood that is sold will come from their property. As indicated by photos in the exhibit, they have trees that need to be taken down due to damage. He noted the staff report includes photos showing orderly, neat, and covered wood piles on the property. He further added that they planted a row of arborvitae behind the wood rack as a buffer.

When a customer comes to purchase wood, he said they pull into the driveway next to the wood, load up, and leave. He stated this serves the public convenience and welfare as people will and have used the wood for campfires at campgrounds or at their private residences for

fireplaces, wood stoves, burners, or carvings. He also stated they have donated wood to their church for the annual father and son campout. He said selling the wood has allowed them to donate money for missions as indicated by the letter included in their exhibit. By granting this Special Use, he stated they would be providing a service to others and supporting missions, but it also allows them to dispose of the wood in a good and healthy manner. He stated the alternative would be to burn everything which causes smoke and toxic fumes to fill the neighborhood.

When Mrs. Wolgamood asked, they stated it is just the two of them doing the work. Mr. Hesser pointed out that he recalled the original complaint included additional items for sale besides the wood. Mr. Maurer stated originally they had some garage sale items that they had set out as they were unaware it was in violation of the Zoning Ordinance. He added that they have not set any other items out since they were cited. Mrs. Maurer stated it was a few miscellaneous items from time to time.

In response to Mrs. Wolgamood asking if the sign is existing now, Mr. Maurer indicated they removed the sign which was approximately 19"x36" after the complaint was filed.

Harley Brovont, 65132 CR 11, Goshen, was present in favor of this request. He said the Maurers are very good neighbors. He added that they keep their property neat and orderly, and Mr. Maurer allows him to burn branches on his burn pile.

Glen Martin, 65160 CR 11, Goshen, was also present in favor of this request. He stated he owns the adjoining property to the south of the Maurers. He stated he is in favor of this request being granted as he believes it would be a positive addition to the neighborhood, and he would rather have them sell the firewood than burn it. He added they are on good terms as neighbors, and the Maurers keep their property neat and tidy.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser questioned staff on the recommendation for approval without any conditions or commitments proposed. He said the petitioner has mentioned at least one that he can think of which is that they are limiting the wood sales to wood harvested on their own property. Mr. Mabry stated that by definition a road side stand has to be products of the property on which it is being sold so staff did not feel it was necessary as a condition/commitment. When Mr. Hesser asked, the Maurers indicated they understand their request is limited to wood produced on their property only.

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

Motion: Moved by Randy Hesser, **Seconded by** Bill Kuhns, 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 roadside stand to allow for the sale of firewood (Specifications F - #54) be approved with the following commitment 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, Randy Hesser.

Action: Approve

14. The application of *Raymond P. Statler, Jr. & Leslie A. Statler (Lessor) and Kimberly L. Benedict (Lessee)* for a Use Variance for warehousing and storing of construction equipment in an R-2 district on property located on the North side of Sunset Avenue, 306 ft. West of Independence Street, being Lot 54 of Rose Lawn, common address of 25355 Sunset Avenue in Osolo Township, came on to be heard.

Mr. Hesser stated his recollection of last month's hearing is that there were three Board members present with a 2-1 vote to approve the request. Since three affirmative votes are needed, they were not able to reach a decision, and the hearing was tabled until this month. He asked if Mrs. Wolgamood and Mr. Kuhns have had an opportunity to read the record, if they are comfortable with minutes as read, or if they want the public hearing reopened for additional evidence or presentation. Mrs. Wolgamood stated she read and reviewed the paperwork and minutes, although she did not look at the file as the minutes did not indicate any exhibits were filed. When a member of the audience asked if he could speak, Mr. Hesser indicated the Board would determine whether or not the public hearing would be reopened.

After reiterating that there was someone present wishing to speak in favor of the request, Mr. Hesser asked Mrs. Wolgamood and Mr. Kuhns if they wished to reopen the public hearing or if they were satisfied with the evidence and information they had. Mrs. Wolgamood said she felt like she had all of the evidence but added that she was not against reopening the public hearing. Mr. Hesser asked if there was any objection to reopening the public hearing. Mr. Kuhns stated he did not have any objection but questioned whether it was necessary.

Motion: Moved by Randy Hesser, **Seconded by** Meg Wolgamood, that the Board reopen the public hearing.

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

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

Action: Reopen the public hearing.

Dean Hupp, 1203 Kilbourn, Elkhart, was present representing SCORE which is a business counseling service in Elkhart County. He said Mrs. Benedict came to them as she is looking to buy a business. He stated as they got into the details, he raised the question of the zoning, and SCORE advised her to come before the Board. He stated SCORE is interested in promoting business. He added that they do not just go along with everything a client tells them but also look into the facts.

He stated the existing construction business that she wants to purchase is in the neighborhood, and the business will move approximately 1/4 mile. Mr. Hupp said the local roads already have the equipment traffic, primarily Independence Avenue and Bristol Street. He pointed out that the pole buildings are existing and total approximately 2,700 square feet which will provide adequate housing and security for what she wants to store. He also indicated she is the occupant of the residence in question. As she has stored equipment in those pole buildings for various people although not on a commercial basis, there has been equipment in and out of there for many years. He pointed out this request will make no discernible change in the neighborhood in terms of traffic and the type of traffic that is there.

Although he admitted he does not know the legalities, he suggested if the Board is inclined to grant this request that it be contingent on the purchase of the business or for her only and that the Special Use be discontinued if the business is sold by her. He added that the

individual who currently owns the business is in ill health and is going to have to shut down or sell the business. He indicated that Mr. and Mrs. Benedict are the only known buyers at the present time.

When Mrs. Wolgamood asked if they are entering and exiting from the current business location by way of Independence and Bristol Streets, Mr. Hupp said that is the main route as most of the business would be south. However, he added they are free to go in any direction as they are public roads. He also pointed out that one or two pieces of equipment are taken out for a job and left on a job site for a day or two, doing mainly sewer excavation for the cities of Elkhart and Goshen. As one pole building is 1,200 sq. ft. and the other is approximately 1,500 sq. ft. of storage, with one large piece of equipment taking up one building, he said these are not huge pieces of equipment. He further explained the equipment is small ditchers and pick-up trucks and not something like you would see on a big highway project.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted from the last hearing that all storage of equipment will be inside. Because this is a Use Variance, he said his concern is the hurdle of not seeing anything peculiar about the property that requires this. Mrs. Wolgamood stated she agrees and added that she knows the county has worked very hard to clean up that area over the years. She listed other factors as being zoned as residential, and Mrs. Bennett is the lessee and not the property owner. She added that she is not sure they should put a condition or commitment on this request that she buy the property. Mr. Hesser said that was not a concern of his and Mrs. Bennett made a good presentation, but his concern was the legal requirement of the uniqueness of the property. Mr. Kuhns expressed agreement with Mrs. Wolgamood that the county has been trying to improve the area for a number of years.

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

Motion: Moved by Randy Hesser, **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 Use Variance for warehousing and storing of construction equipment in an R-2 district be denied.

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

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

Action: Denied

15. The application of *Clarence S. & Dora Ann Wingard* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of CR 16, 335 ft. West of East County Line Road, common address of 10104 CR 16 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Hesser said this hearing was the same as the previous hearing except the vote was two in favor and one against. As the public hearing was previously closed, he asked Mrs. Wolgamood and Mr. Kuhns their preferences about re-opening the hearing. Mr. Kuhns asked for clarification whether or not this second dwelling is for a parent.

Blake Doriot, P.O. Box 465, New Paris, was present representing the petitioners. He said Mr. Wingard wants to build a house on the property he owns to live in with his son and family to

move into the main residence. He added that Mr. Wingard will get to keep the farm intact, and it will be passed down through the family. When Mrs. Wolgamood asked Mr. Kuhns if he got a copy of the petition and site plan, he stated that he did.

When Mr. Hesser asked about re-opening the public hearing, Mrs. Wolgamood stated she was comfortable with the information she has unless Mr. Doriot has anything new or different to present.

Mr. Doriot indicated he has two items of additional information he could add although it is not really different. He suggested he could be asked what those things are, and he could answer. Mr. Kuhns said he grew up in the Amish community so he is very familiar with the reasons why this is done and feels it is very admirable. He added that he knows this is part of how this religious organization operates. He questioned how is it different than adding it onto the house because it is off to the side and suggested adding a condition/commitment for a minor subdivision if this party passes on. Mrs. Wolgamood suggested if they would add on to the existing house, it would become a double dwelling in an agricultural zone with more than three acres, and no hearing would be required as it is a permitted use. She added that obviously is not what they wanted to do as it is not what they requested. As the Wingards have 73 acres, she pointed out it could be subdivided now. Mr. Kuhns questioned why the request did not come in that way. The Board members agreed that the public hearing needed to be reopened.

Motion: Moved by Randy Hesser, Seconded by Meg Wolgamood that the Board reopen the public hearing.

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

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

Action: Reopen public hearing.

Attorney Kolbus informed Mr. Hesser that Mr. Doriot indicated he had a couple of additional information items, and Mr. Kuhns raised at least one question as to why they do not want to do an addition to the existing residence so Mr. Doriot has at least one question to answer in addition to the new information. For clarification, Mr. Kuhns repeated his question concerning why this request did not come in as a minor subdivision or a duplex. Mr. Doriot said the major reason is that although Clarence and his wife love their grandchildren and want to stay on the farm, he wants to be far enough away that they can feel autonomous in their final years. Additionally, he indicated Mr. Wingard wants to maintain the family farm as one piece. If the property is subdivided, it is a free piece that could easily be sold if already separate.

Mr. Doriot submitted a petition in support of this request *[attached to file as Petitioner Exhibit #1]*. He indicated properties on his large aerial photo of those persons who signed the petition. He indicated their knowledge of the ability to subdivide the property and volunteered a commitment to subdivide if this second dwelling becomes occupied by a non-family member. He stated they will also include in the written commitment that they will make sure the area in front will not be damaged or altered in any way that would keep it from being subdivided. Mrs. Wolgamood asked Mr. Doriot to indicate that area on the aerial. He went on to say if subdivided, it makes another access allowed or required to the road which has a hill. He stated they do not want to cause any more access points, especially if it is Amish because they would be travelling by horse and buggy. He said they want to keep one safe access point as 4,200 cars travel the road per day. He explained sight distance is okay if travelling in an automobile but not in a buggy.

Mr. Doriot pointed out the Comprehensive Plan calls for sense of community, and he believes this fits in with the community. He added that one year ago, he was before the Board with Mr. Kauffman who lives one road over because he was requesting a shop house for him on his property. He stated one of the reasons that request was approved was because it could be subdivided.

Regarding rural character, Mr. Doriot said Mr. Wingard travelled up and down the road from Middlebury to Shipshewana, and he discovered every Amish farm along that stretch has a dawdy house except for two with Mr. Wingard's farm being one of them. Of the dawdy houses, he stated some are attached and some are detached. He also pointed out that dawdy houses are permitted two doors down in LaGrange County. Mrs. Wolgamood suggested that the ordinance should be changed. Mr. Doriot indicated they are working on changing the ordinance, and Mr. Godlewski said there is discussion in the Plan Commission that a dawdy house is a likely change in the ordinance. He questioned how it can be injurious to the health, safety, and morals of the community when 500 feet east, it is acceptable. Mr. Doriot also pointed out all the neighbors as indicated on his aerial photo who signed the petition are in favor of this request so he does not see it as injurious to them. He also stated he does not believe it can lower the value of adjacent properties when they are in support of the request.

He further added he does believe it will cause a hardship for the Wingards to put forward the family farm to attempt to keep it contiguous with each other in one tract and under one ownership. He stated when they put forth the Comprehensive Plan, one item that was discussed was the family farm. Mr. Doriot reiterated they are attempting to keep the family farm in one piece and will not damage the property and again stated that if a non-family member comes in, they will subdivide the property. He stated they will commit to those things. He repeated that this request is common to the area as 1 ½ mile east of this property, a similar request was approved a year ago on only on five acres.

Mr. Doriot believes this request meets the criteria for approval. Lastly, he stated he respectfully disagrees with staff and requests this petition be approved with the commitments they have offered and would consider other commitments if the Board has those.

Clarence Wingard, 10104 CR 16, Middlebury, was present on behalf of this request. In talking about the house not being connected, he indicated they are living in the basement of the house at this time which does not allow either family their privacy. He added that his grandkids come down in the basement any time they want to, and that is the main reason for not connecting the two households. He further stated that his wife needs privacy, and he wants his grandchildren's parents to be able to discipline the children on their own.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Kuhns commented that Amish Acres has the most popular dawdy in this area which is located in Elkhart County. Mr. Hesser said Mr. Doriot has done a very good job of addressing all of the points except the issue with respect to arising from the unique conditions of the property, and he still does not think the hurdle has been met. He also said he understands the arguments as to maybe why the Zoning Ordinance ought to be changed. Mr. Miller added that the people living on the land have an impact on how that land is used. Mr. Hesser indicated that is not a unique condition of the land which Mr. Miller stated he understands. Mr. Miller also

pointed out this property is surrounded by similar use. Mr. Kuhns said he knows over the years the Board has approved additional housing for farmers who have hired hands live on the farm. Mrs. Wolgamood argued that those are mobile homes with Special Use permits. Mr. Kuhns stated a mobile home is a home. Mr. Miller said that requests for this will continue. Although he indicated he is not saying whether right or wrong, Mr. Miller feels this is in keeping with the land uses around it.

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

Motion: Moved by Randy Hesser, **Seconded by** Meg Wolgamood, that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved based on the following Finding and Conclusion of the Board:

1. A need for the Use Variance does not arise from a condition that is peculiar to the property involved. The property could be platted without requiring a Use Variance in order to establish a dwelling in the proposed location. Strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the property. The petitioner can apply for a minor subdivision.

Vote: Motion did not pass (**summary:** Yes = 2, No = 2, Abstain = 0).

Yes: Meg Wolgamood, Randy Hesser.

No: Bill Kuhns, Doug Miller.

Motion: Moved 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 Use Variance to allow for the construction of a second dwelling on a parcel be denied.

The motion died for lack of a **Second**.

Motion: Moved by Doug Miller, **Seconded by** Bill Kuhns, that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved 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. The surrounding properties have similar uses, and excluding this would not be in keeping with that.
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.

Based on the testimony of Mr. Doriot, the following commitment was imposed:

1. If the property ever changes hands from a family member, the property will be subdivided.
2. The area in front of the property to remain open for that use with a single-access driveway.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Bill Kuhns, Doug Miller, Meg Wolgamood.

No: Randy Hesser.

Action: Approve

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

17. The staff item for Freeman Schrock(14155CR 36-120319-1) was presented by Brian Mabry. He stated copies were included in Board packets containing a memo from Mr. Mabry, a letter from the Schrocks, the staff report for the approval in 2012, and a site plan. He further stated Mr. Schrock would like to build a 20'x40' sales room in association with the greenhouses. Mr. Mabry noted his memo details the history for the request.

Referring to the site plan, Mr. Hesser asked what the 70'x90' building is. Mr. Mabry indicated that is a parking area, not a building. Mrs. Wolgamood asked if the sales room would interfere with the parking area or the turn-around. Mr. Mabry indicated he could not confidently answer that at this point. Mrs. Wolgamood pointed out that the greenhouses are not on aerial photo yet. Mr. Mabry indicated they were approved in April of this year. When Mr. Hesser asked if they were in operation this year, Mr. Mabry indicated he believed so. When Mrs. Wolgamood asked if the greenhouses are existing now, Mr. Mabry stated yes.

Mrs. Wolgamood stated if she recalls correctly from the minutes that no remonstrators were present at the previous hearing. Mr. Kolbus confirmed the same. Mr. Mabry pointed out a fact to consider is that there was just a formal hearing for adding a greenhouse (Roland Martin) earlier today. Mr. Hesser said he feels if they come in before the board, in all likelihood it would be approved; however, it is a new building. Attorney Kolbus stated it would not conflict with the commitments as he sees it and suggested if declared a minor change, approval should be with the new site plan dated 11/05/12.

Mr. Miller pointed out that it will not change the traffic any. Mr. Mabry indicated the sales are already happening on the property, but the new building will be a change to the approved site plan. Mr. Miller added this is simply relocating where the events are occurring. Mr. Hesser said he is leery of someone coming back and trying to slipping something else in after the neighbors have been informed of the initial request, although he pointed out he is not trying to accuse this person of anything. Mr. Miller added that this structure being 800 square feet is not big. Mr. Kuhns pointed out that probably no one would even notice the new building.

Motion: Moved by Doug Miller, **Seconded by** Bill Kuhns that the request by Freeman Schrock be considered a minor change.

Vote: Motion failed (**summary:** Yes = 2, No = 2, Abstain = 0).

Yes: Bill Kuhns, Doug Miller.

No: Meg Wolgamood, Randy Hesser.

Action: Approve

Motion: Moved by Randy Hesser, **Seconded by** Meg Wolgamood that the request be considered a major change.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Bill Kuhns, Meg Wolgamood, Randy Hesser.

No: Doug Miller.

Action: Approve

18. The next staff item for Chris Taylor(Carl L. & Mary H. Jones Trustees of Jones Rev Trust – 232141stSt-100218-1) was presented by Brian Mabry for a variance for a carport. He said the prior approval was in March 2010 and was specified for the use of Mary Jones due to her disability. He further stated Ms. Jones is no longer living at the property which was purchased by the Taylors who are both disabled. They have submitted a letter explaining their disabilities and are requesting they be able to use the car port. Mr. Mabry indicated his understanding is that this becomes a modification of the commitment B. in the approval. Attorney Kolbus read the requested change as “the carport is to be removed from the property when both Chris Taylor and Emillie Taylor no longer reside at this site.” Mrs. Wolgamood indicated they have done this before, they are back, and they will keep coming back. Mr. Hesser said he feels a new hearing is needed as they have made a good argument for keeping it but the neighbors need to be notified.

Motion: Moved by Randy Hesser, **Seconded by** Meg Wolgamood that the request by Chris and Emily Taylor be considered a major change.

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

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

Action: Approve

19. The staff item for Willie Yoder(20021368) was presented by Brian Mabry. He indicated Mr. Yoder has a home workshop/business that sells furniture which was approved in 2002. Similar to the last staff item, this was also tied specifically to Mr. Yoder. Mr. Mabry said Mr. Yoder has a person who would like to operate the business while Mr. Yoder remains the owner and resident of the property. This request would allow the other person to operate the furniture sales in Mr. Yoder’s place as he has an illness at the current time. Attorney Kolbus pointed out while looking at the approval that it is for the occupant of the residence being the owner/operator of the business on site which is the definition of a home workshop. He added when you no longer have that, you no longer meet the definition of home workshop. Further, he said his legal opinion is that it needs to come back as Use Variance because he would no longer be operating it if that is what is going to take place.

Motion: Moved by Randy Hesser, **Seconded by** Doug Miller that the request by Willie Yoder be considered a major change.

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

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

Action: Approve

20. The staff item of the 2013 Planning Calendar was presented by Duane Burrow and copies were handed out to the members. He stated the calendar was before the Plan Commission last week, and they reinserted the Major Subdivision Secondary Filing dates. He added that staff had proposed it to be removed, but it was reinserted. Mr. Burrow indicated nothing for the Board of Zoning Appeals has been modified. He noted the January filing deadline was moved for the Martin Luther King holiday to the Friday before.

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Doug Miller.

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

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

21. The last staff item was a Zoning Ordinance Update by Chris Godlewski. He indicated the timeline as being: Policy Committee meeting on November 20, 2012; on December 3, 2012, Mr. Mabry will go through Module 1 of the rewrite of the draft; and on December, 13, 2012, the Plan Commission will discuss the findings from the Policy Committee. He said they are trying to keep in a fluid time line. He also indicated the big discussion at the Policy Committee and the December 13th Plan Commission will hopefully be some final discussions about residential development and agriculture. He said if that is delayed a month then the 2nd Module will have to be delayed from February until March 2013. He indicated they are still in line and still working. They just need some final discussion from the Planning Commission. Mrs. Wolgamood highly recommended looking at dawdy houses. Mr. Godlewski pointed out that technically be a second dwelling.

22. The meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary