

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17TH DAY OF OCTOBER 2013 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; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

2. A motion was made and seconded (*Homan/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of September 2013 be approved as read. The motion was carried with Meg Wolgamood abstaining.

3. A motion was made and seconded (*Campanello/Miller*) that the legal advertisements, having been published on the 5th day of October 2013 in the Goshen News and on the 6th day of October 2013 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Miller/Campanello*) 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. The application of **Dennis L. Miller** for a Special Use to allow for an agricultural use (keeping of one horse) on property containing less than three acres (Specifications F - #1) on property located on the North side of CR 48, 2,500 ft. West of CR 7, common address of 27485 CR 48 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 #27485CR 48-130923-1*. He noted the property is near a regulated drain and stated the County Surveyor does not have an issue with the request. When Mrs. Wolgamood inquired if it needs to go to the County Drainage Board, he reported it did go to the Drainage Board and was approved for the variance for the distance to the drain.

There were five neighboring property owners notified of this request.

Dennis L. Miller, 27485 CR 48, was present on behalf of this request. He stated he purchased the property and is going to be joining the Amish church. He indicated he would like to put a 24 ft. addition on the existing pole barn for one horse to be used for transportation. When Mr. Hesser asked where he plans to pasture the horse, Mr. Miller said it would be by the shop going towards the ditch, but the fence will be away from the ditch.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for an agricultural use (keeping of one horse) on property containing less than three acres (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 imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a maximum of one horse.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

6. The application of *Diocese of Fort Wayne* for an amendment to an existing Special Use to amend the site plan for expansion of an existing offsite parking lot and placement of a Bell Tower for St. Mary of the Annunciation Catholic Church on property located on the Southeast corner of Vistula Street (SR 120) and Chestnut Street, common address of 411 W. Vistula Street in Washington Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #411WVistulaSt-130904-1*.

There were 27 neighboring property owners notified of this request.

Debra Hughes, 1711 Victoria Drive, Elkhart, was present representing the petition as a parishioner of the church. Also present was Father Robert Van Kempen, Tom Borger, Al Ludwig, Rich Collins, and Rob Leatherman, whom she indicated are all on the Building Committee. Using large site plan photo (in file), she pointed out the property and reported the church purchased property several years ago (5 yrs). She said it was previously used as a parking lot for an office across the street. She also indicated the church has been using it in its current form, but at this point there is a desire to expand and improve it. In addition, she indicated the house that is shown on the aerial with the hatching on it has been demolished and donated to the church so the parcel is enlarged. The site plan shows the proposed parking lot with access to Chestnut Street the same as the existing access and with an additional access to the south to Elkhart Street, opposite the alley. She said the access to the north to Vistula (SR 120) would be closed. She stated there is a drainage plan that has been developed as there is no formal drainage on this site so that is a part of the plan. When Mrs. Wolgamood inquired about two buildings shown on the aerial photo on the east lot, Ms. Hughes reported they are both gone.

There were no remonstrators present.

The public hearing was closed at this time.

If the Board is going to approve this request, Mrs. Wolgamood suggested they may want to consider Debra's letter in paragraph #2 that describes hours of use and bell ringing which she feels should be incorporated into the commitment.

When Mr. Hesser asked if they were willing to do that as part of the commitment, Ms. Hughes indicated they would and provided a document that would formalize the plan for the

ringing of the bell [attached to file as *Petitioner's Exhibit #1*]. Upon review, Attorney Kolbus and Mrs. Wolgamood said it addressed their concern.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use to amend the site plan for expansion of existing offsite parking lot and placement of a Bell Tower for St. Mary of the Annunciation Catholic Church 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 imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Bell ringing be limited per the proposal submitted at the hearing by the petitioner as follows:
 1. At the following Mass times:
 - a. 9:00 A.M. – Monday thru Saturday
 - b. 4:30 P.M. – Saturday
 - c. 8:30 A.M. & 11:00 A.M. – Sunday
 - d. 7:00 P.M. – Holy Days
 - e. Masses for Funerals, Weddings & Holidays – between 9:00 A.M. & 9:00 P.M. only
 2. Additional times:
 - a. Daily otherwise on the hour from 10:00 A.M. until 9:00 P.M.
 - b. Angelus – 12:00 NOON and 6:00 P.M. – Carillon style

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

7. The application of *Carl D. & Tonda L. Warble* for a Special Use for an agricultural use for the storage of farm equipment on a tract of land containing less than three acres on property located on the East side of CR 127, 1,847 ft. South of CR 44, common address of 68096 CR 127 in Jackson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68096CR 127-130919-1*.

There were three neighboring property owners notified of this request.

Thad Warble, 68096 CR 127, Goshen, was present on behalf of this petition and said he would like to put up a 40'x60' pole barn. He explained that he makes hay down at his parents' property and for a couple of other gentlemen down the road. He said he currently has hay in the barn. With the equipment he has and has purchased as far as wagons and a baler, he keeps his equipment at parents' property which is why there is no equipment sitting around on his property presently. He explained that everything that he does is off-site because of having less than three acres. He would like to get approval to construct a building to store hay and equipment. Mrs.

Wolgamood clarified that Carl is Thad's father. When she inquired about the location of his father's property at 68450 CR 127, Mr. Warble pointed out both properties on the aerial. He mentioned that between his equipment and his father's farming equipment, his father's equipment has to sit outside which they cover with tarps during the winter. She further asked about the other farm where he makes hay which Mr. Warble stated is down south further by the race track. He also noted a neighboring property belonging to Dave Hochstetler where he makes a couple of acres of hay (indicated on the aerial photo).

Mr. Warble reported he does not farm full time when Mrs. Wolgamood inquired and noted it supplements his income a bit. He added that he likes making hay, working outside, and working with equipment. Mrs. Wolgamood confirmed that he is currently storing hay at his parents' house. When she asked about the barn that is on his property, Mr. Warble said he has hay in there also but the excess which he doesn't have room for is stored at his dad's. Regarding the new building, Mr. Campanello asked if it will house his equipment to keep it out of the weather. Mr. Warble indicated that was correct, and hay will also be stored in there rather than in his parents' barn. He went on to say it will be a dirt floor, steel building. Mr. Hesser confirmed that the new building will include hay storage. Looking at the aerial photograph in the packet, Mr. Homan said it looks like there is a fair amount of material staged in the back. He questioned if Mr. Warble has another business at his house. Mr. Warble said he has accumulated a couple of things to put a Quonset down and cut the end out to back wagons into. He also has some building materials that he has accumulated for new building but found out a Special Use is needed prior to any construction.

Also present in favor of this request was Thad's father, Carl Warble, 68450 CR 127, Goshen. He reported he put up a 60'x80' building in 2000 which he thought was large enough at the time. With Thad having a baler, a couple of tractors, four wagons between them, and a hay-bine, Carl said it all ends up at his house. He stated they own the subject property but their son is in the process of purchasing it from them. With the property being surrounded by agricultural land, they did not feel the request was out of line. He indicated it would help him out a lot as he would be able to get his equipment back inside that currently sits outside. He noted wagons that sit outside don't last, and the sun is hard on tires. If it works out, he noted next year he would like to make a couple thousand bales of straw to possibly to sell locally to a store like Big R. Because of this, he said he doesn't have room for his son's equipment. When Mrs. Wolgamood asked if he owned the property around Thad's parcel, Mr. Warble said he does not, and indicated those land owners are unwilling to sell any.

Tonda Warble, 68450 CR 127, was also present in favor of the request. She indicated that neither her son nor husband had mentioned that Thad contacted the neighbors nearby, and no one had any problems.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked the size of the property which Thad indicated is 1.98 acres. He further questioned staff or Attorney Kolbus if Mr. Warble would be able to store the equipment outside if this was a three acre parcel. Mr. Mabry indicated yes, and Attorney Kolbus added that there would be no requirement of a building.

Mr. Miller mentioned that the Board has discussion after discussion every month about making sure things get stored inside as opposed to sitting outside. Although agriculture is a little

different, Mr. Miller noted Mr. Warble's desire to keep his property in order. With respect to the findings or proposed recommendations by the staff, Mr. Hesser said although Mr. Warble is not cutting hay on his property, he is cutting hay on surrounding properties which Mr. Hesser feels is an agricultural activity. If there is an interest in approving the request, he thinks those modifications could easily be made to the findings to delete that there is no agricultural activity in #1 and in #3 where there is no relationship between the request and service to the public. He added that the question to him is if they think the building is too intense for the size of the lot. Mr. Miller noted it is a total of 400 sq. ft. Mr. Hesser noted mindful of that, if this were three acres and these buildings were 100% agricultural use, it is not even something that would require permission. Attorney Kolbus added that size wouldn't matter if it was an agricultural building on three acres.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Doug Miller that this request for a Special Use for an agricultural use for the storage of farm equipment on a tract of land containing less than three acres be approved, based on the Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. Agricultural structures are allowed by Special Use Permit on properties less than three acres in size.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use 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 site plan submitted and as represented in the petitioner's application.
2. All equipment to be stored inside the building when not in use.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

8. The application of *Mark A. & Karen R. Miller (land contract purchasers) and AMMF Trustee Corporation, as Trustee for Amish Mutual Mortgage Fund, an Indiana Land Trust (land contract holder)* for a Special Use for an agricultural use (keeping of two horses) on property containing less than three acres (Specifications F - #1) on property located on the South side of CR 52, 525 ft. East of CR 1, common address of 29894 CR 52 in Locke Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #29894CR 52-130918-1*.

There were five neighboring property owners notified of this request.

Karen Miller, 29894 CR 52, Nappanee, was present on behalf of this request. She stated they would like to build a barn on less than three acres for their horses and noted some personal storage such as their buggy. She indicated the horses are their main transportation. Mrs. Wolgamood confirmed that the parcel is one acre. When Mrs. Wolgamood inquired about the personal storage other than buggy, Mrs. Miller said she thought her husband mentioned storing his tool chest in there but wasn't sure what else. When asked if they had just purchased the property, Mrs. Miller stated they bought it in July and just moved there. If approved, Mr. Hesser asked if the portion of accessory storage in this building and other accessory buildings are less than the primary structure. Mrs. Wolgamood stated that is what the petition indicates. When Wolgamood asked if the attached garage has remained a garage, Mrs. Miller reported it has.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Doug Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use (keeping of two horses) on property containing less than three acres (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 imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a maximum of two horses.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

9. The application of **Todd R. Hines** for a Special Use to allow for an agricultural use (keeping of five horses) on property zoned R-1 (Specifications F - #1) on property located on the South side of CR 18, 825 ft. East of CR 13, common address of 0 CR 18 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 #OCR 18-130919-1*. He submitted a letter from Joy Baker at this time *[attached to file as Staff Exhibit #1]*.

There were 23 neighboring property owners notified of this request.

Todd Hines, 23540 CR 18, was present on behalf of this request. He noted his house is on adjoining property to the east which he indicated on the aerial photo. When Mr. Miller asked the total acreage of this property, Mr. Hines reported 4.5 acres. He further questioned if the proposed structure will have a dirt floor, Mr. Hines indicated that was correct. He also said it will have no concrete, no electric, and no water. He went on to say that he has lived in his residence for 17 years and plans on this being his final residence. He reported he has two adopted children. Regarding the request for five horses, Mr. Miller asked if that is the quantity

of horses he has now or if that is for future horses. Mr. Hines explained they currently have horses housed at New Acre where they use an indoor arena for riding. His daughter, who is 11 years old, participates in 4-H and hopes to complete ten years. She is also currently enrolled in horse-related programs through Purdue University and her goal is to become a veterinarian or vet tech. He reported his son, who was born with cocaine addiction, has special needs and rides horses as well which is therapeutic. When Mr. Miller asked about possible plans to board horses for anyone else, Mr. Hines indicated this is strictly for his family's use. Mr. Hesser questioned that there will be no water to the barn. Mr. Hines said there is not currently water there now and his plan is to run an underground hose from the well at the house which is roughly 120 ft. long and will be buried 36 inches down so it isn't a frost issue. He expressed that approval of this petition would allow his son to ride all year long and would not be affected by inclement weather.

When Mr. Campanello mentioned neighbors' names listed in the application, Mr. Hines stated he had a signed petition that he took door-to-door to every house within 500 ft. of that property [attached to file as *Petitioner Exhibit #1*]. He noted a total of 36 signatures which includes every property on the west side of the parcel. He said they all signed in favor of the request and expressed it would be great to have horses in that area. He said most neighbors purchased their homes with the intent of it being a rural area, and they do not want the property to be subdivided or developed. In 1993 when the by-pass came through, Mr. Richard White owned that property and his goal was to subdivide it. The cul-de-sac was cut into that property by an agreement between Mr. White and the City, County, or State and was four feet deep all the way back and around. As a result of that, Mr. White donated the dirt for the by-pass right there by the river so they could get over the river. Since that time, the property was sold to Timer Meadows who was going to subdivide it which was approved in 2006. With the economy taking a bad turn in 2008, it never happened. Mr. Borkholder originally sold the property to Mr. Hines on land contract, but Mr. Hines refinanced the entire property including his residence in one mortgage. When Mr. Miller inquired if it is all one deed now, Mr. Hines stated they are still on two separate deeds because he was told to leave it as two separate parcels for tax purchases on the agricultural part. He said in the original proposal from Mr. Borkholder, he saw something that said agricultural vacant land so he assumed it was agricultural without investigating. He did not really think there was going to be opposition at all until his builder tried to pull a permit and was told it was a residential zone which was a surprise to them.

Regarding the letter submitted from Joy Baker, Mrs. Wolgamood noted that Ms. Baker has no objections, and Mrs. Wolgamood indicated she knows that Joy lives along the river. Mr. Hines indicated that Ms. Baker is present and intends to speak. Mr. Homan confirmed with staff that he recalled the Baker property has a Special Use for keeping horses which Mrs. Wolgamood said is correct. He also confirmed the zoning in the area of CR 13 to the river being R-1 which Mr. Hines said has been true for 30 years. Mr. Hines stated the Concord Fire Department uses the front half of the property for some of their special activities. They have given the fire department permission to park there, and they bring big spot lights out and do a Halloween thing. He reported since he has owned the property, he has actually brought in over 200 loads of dirt to fill the cul-de-sac back in and graded it back out so it is a nice smooth surface again. His main reason for doing this is because the property was unsafe as it had pieces of metal, steel, concrete, and re-bar sticking up out of the ground. He added that they also removed all of the saplings that

were in the middle of that and smoothed it out just to make it a safer place because kids from the neighborhood do go over there.

When Mr. Hesser asked if his plan is to keep these parcels together, Mr. Hines said yes and added when he passes on, it will be willed to his children.

Referring to the application, Mrs. Wolgamood noted there is existing fencing. Mr. Hines confirmed there is fencing on the west side from a previous owner and went on to say that there is fencing on the east side between his two parcels as well. She further asked if they are looking to use the entire parcel for pasture. Mr. Hines said the front portion will be grass that he will maintain, and the horses will not be adjacent to the street. The pasture and barn will be on the back portion of the property. He noted there is a double fence on the south side of the property because the State has a fence due to the by-pass, and there is an additional fence there as well. She asked if the proposed barn will be confined in the area of the fence which he said is correct. He stated the fence will come straight across from the existing fence on his other parcel which has a pasture as well because the previous owner had horses. When she asked if that was adequate pasture for five horses, Mr. Hines said it is. Regarding waste, Mr. Hines said the manure will be used for lawn fertilizer and people in the lawn care business are always asking for it. He noted he will not be stockpiling manure on site. Additionally, he said Bullard Farms has asked for manure donations. He indicated a normal horse has the ability to not have buildup if it is spread properly.

Joy Baker, 23488 CR 18, was also present in favor of this request. She reported owning adjacent property to the east of Todd Hines and has a Special Use permit to keep up to six horses. Regarding what he wants to do, she said she can't say enough good things about it. She said she has been to a couple of shows that his daughter has participated in and with her attitude and dedication, Ms. Baker sees a lot of potential. She added that it will also greatly help Mr. Hines' special needs son because horse and/or dog therapy is the best thing for a child. When Mrs. Wolgamood asked how long ago Ms. Baker got her Special Use permit, she said she started in 1989, came back 1990, and believes the last one was in 2006 or 2007 to keep up to six. Mr. Hesser asked if that was made permanent which Ms. Baker indicated yes. Mrs. Wolgamood further inquired about the number of horses Ms. Baker has presently which she reported is four. She went on to say that she has had at least three since 1989. When Mrs. Wolgamood questioned the amount of acreage, Ms. Baker said her property is 6 to 7 acres as she understands it. Additionally, she stated she was raised on that property when it was agricultural, and they have always had horses which she has ridden since she was four. Lastly, she reported she is not going anywhere.

There were no remonstrators present.

Mr. Hines said he believes Ms. Baker's property is 5.0 acres which he saw on the plot. On the aerial, he pointed out the areas of the neighborhood where he obtained signatures.

Mr. Hesser mentioned one concern he has about the request is that they are separate parcels. Although Mr. Hines has stated his intention to keep them together, he asked Mr. Hines if he would commit to being willing to keep the parcels together. When Mr. Hines questioned if that means adding to the parcels together, Mr. Hesser indicated he believed there are a couple of ways they can be kept together. Attorney Kolbus said he can agree to not transfer ownership of one without the other. If this were to be approved, Mr. Miller reiterated that the question is if he would be willing to add a commitment that if he sells one property, the other would sell with it.

Mr. Hines stated he absolutely would as his intent in purchasing the second parcel is for a barn and horses. He noted he even tried to purchase the property from the previous owner. He reiterated that he has no intention of separating the parcels as he does not want a subdivision there either as neighbors to the west also expressed. Mr. Campanello suggested another commitment saying the building is just for agricultural use for horses which Mr. Hines also indicated he would be willing to do as well.

The public hearing was closed at this time.

Mrs. Wolgamood noted that the Board saw where Mr. Hines is intending to place fencing, but it is not on the site plan. For future purposes, she suggested he needs to correct the existing site plan to show the proposed fencing to be approved by staff. Mr. Hesser noted another concern he had previously which he is not sure he still has, is possibly duration in isolation especially since he is not going to the capital expense of putting in concrete so he probably would have preferred a time limit to see how it works. Over the course of the hearing and having heard that the property to east already has horses, he said he is not so concerned about that. Mrs. Wolgamood indicated that she knows Ms. Baker came back a number of times to change her petition and for renewals but noted she thinks the Board has already established a use in that area. Mr. Hesser added that if this were in isolation, he would request that and having heard the other evidence, he is not as concerned. Mr. Homan said he doesn't see a point in the time limit and questioned if they would have him tear it down once the building is up. Mr. Hesser stated it would allow them to address issues if there were issues with manure storage and how that's managed and so forth.

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

Motion: Action: Approve, Moved by Doug Miller, Seconded by Tony Campanello that based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. The Special Use Permit will allow agricultural uses on the subject property;
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property as there are horses in the area on adjoining properties presently;
3. The Special Use will serve the public convenience and welfare by accommodating 4-H activities;

this request for a Special Use to allow for an agricultural use (keeping of five horses) on property zoned R-1 (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 imposed:

1. The subject Real Estate cannot be sold without parcel 20-06-14-327-036.000-009 where the petitioner's house is located.
2. Approved for a maximum of five horses.
3. Approved in accordance with the amended site plan dated 10/22/13 and as represented in the petitioner's application.
4. The building identified as the barn on the amended site plan dated 10/22/13 to be used for agricultural uses only.

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

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Robert Homan, Tony Campanello.

10. The application of **Steven A. & Waneta Lea Borkholder** for an amendment to an existing Special Use for a home workshop/business for a woodworking business to make furniture (Specifications F - #45) to allow for the construction of an addition to the woodworking facility and to allow for two outside employees; and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure and to allow for an existing sign larger than 4 sq. ft. per side on property located on the East side of CR 101, 1/2 mile South of CR 56, common address of 72990 CR 101 in Locke Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #72990CR 101-130916-1*. He clarified that a home/workshop business does allow two outside employees, but previous conditions on the property prohibited it. Mrs. Wolgamood questioned the acreage that the original Special Use was granted on. After referring to the file, Mr. Mabry indicated the original request was for five acres, and this request is also for five acres.

There were two neighboring property owners notified of this request.

Steve Borkholder, 72990 CR 101, Nappanee, was present on behalf of this request. He indicated he has been in the woodworking business for a number of years now and is in dire need of more space as they are doing a lot more larger jobs than they used to do. As people are building larger kitchens, they need more space to accommodate storage and workable space. They have to move carts around to get to the saw or vice versa, and they are not very efficient anymore which is why he is requesting the addition. He reported there are times when he has three or four kitchens sitting there waiting to be installed, but the homeowners or contractors are not quite ready. He stated he had obtained signatures from neighbors to the north and south which he submitted *[attached to file as Petitioner Exhibit #1]*. He pointed out that he is not increasing the production or adding any employees but just needs more space.

Noting he knows space is relative and based on what he heard Mr. Borkholder saying, Mr. Miller confirmed that in the scope of the work that Mr. Borkholder does, the jobs are increasing in size. Mr. Borkholder agreed and stated they did some huge jobs in Warsaw during the summer and their building was full and very crowded. Honestly, he said he would like to go a lot bigger but knows he can't. He tried to be reasonable with the addition. Regarding outside employees, Mr. Hesser questioned that Mr. Borkholder noted he did not want to add any employees, but the permit is approved for no outside employees right now. When Mr. Hesser asked if Mr. Borkholder had any outside employees presently, Mr. Borkholder said he was previously approved for two outside employees in the original request, and that is what he has now. When Mr. Hesser expressed his confusion, Mrs. Wolgamood pointed out this request is to allow for two outside employees. She questioned if the reason for that is because he previously was not allowed two outside employees. Mr. Mabry indicated yes and noted the 2001 approval was to not have any outside employees. He went on to say that normally a home workshop/business would allow, by default, two outside employees. However, for some reason in 2001, the approval for this particular property was for no outside employees.

Regarding the site plan that the Board has been given, Mrs. Wolgamood asked if Mr. Borkholder did it. Mr. Borkholder said he didn't personally do it as it was prepared by Bar

Design. She said this site plan shows dimensions of a larger parcel which she understands. Then someone gave dimensions of a smaller parcel of 726'x300' which is five acres. The entire larger parcel is approximately 12.5 acres. Mr. Borkholder explained that he does own the adjacent parcel to the north, and the building does go 15 ft. onto that property. There are two deeds which are currently in the process of being joined together as one by Attorney Loren Sloat. So instead of five acres, it is going to be 12.9 acres. Mrs. Wolgamood pointed out that is not part of this request. She went on to say that the addition is being constructed to the north of the existing building and this site plan shows the addition on the property line, if in fact that is his property line for the five acres which is what the aerial shows and what they have in front of them. She said they can't approve something that is on a property line. She noted that now Mr. Borkholder has indicated they are drawing up deeds, and he is adding more property. Mrs. Wolgamood stated she thinks they have an issue. When Mr. Campanello attempted to clarify that Mr. Borkholder owns the property to the north, Mrs. Wolgamood stated Mr. Borkholder did not say how much more he owns but did state that he owns the property to the north. Mr. Borkholder requested the large aerial photo to be shown and pointed out his property line, the existing shop, and indicated they are going into the north property. He stated he bought the north parcel separate in later years and just kept the deeds separate. He noted this issue came up with Planning staff which is why they are currently joining the two deeds. When Mrs. Wolgamood asked what the total acreage will be, Mr. Borkholder indicated it is five acres plus 7.9 acres. Mrs. Wolgamood noted that is the 12.9 acres that she calculated when she was reviewing the petition. Mr. Hesser reiterated that Mrs. Wolgamood's point is that the Special Use is on a parcel of five acres, and the expansion goes off of that parcel. Mrs. Wolgamood said she was looking at the actual site plan that was submitted and was confused about the figures and setbacks. Mr. Hesser and Mrs. Wolgamood suggested the request would have to be re-advertised. Attorney Kolbus noted there is no request to have a zero setback, and Mr. Hesser included that there is also no request to have the Special Use applied to the entire 12.9 acres. Mr. Kolbus recommended it would be wise to table the request to be properly advertised and to clear up the issue of the employees and everything else. Mrs. Wolgamood added that is to say they are looking to approve the request.

Mrs. Wolgamood asked Mr. Borkholder to address the issue of the two driveways. He said he wants to add another one because presently they are using the residential driveway. He reported occasionally trucks come in to unload and it is a smaller driveway. He said he has bought machinery that was delivered by semi, and it had to be unloaded right on the road which is near an S-curve. He is concerned about safety so they are adding a wider drive to accommodate trucks and infrequent semi trucks. He also noted the proposed driveway has been pre-approved by the Highway Department. Mr. Campanello asked about the possibility of the proposed drive tying into the existing to make a turn-around. Mr. Borkholder said he could run a driveway in front of the shop. Mr. Campanello further explained that because the drive is on a curve, he was thinking about backing out onto the street. Mr. Borkholder stated he will have an area where trucks can turn around on the proposed driveway.

David Raber of B & B Roofing, 645 12th Road, Bourbon, IN, was also present on behalf of this request. He explained he is with the contracting firm who is trying to get this together for Mr. Borkholder. He said he met with Bar Design who went on Google Maps and determined the Mr. Borkholder's property line which is the farthest north line that is shown on the site plan. He

stated the other line below that is simply a measurement line. Mr. Raber said he was not aware that the two parcels were not combined into one deed. He said he became aware when he was attempting to obtain the permit that the land was actually two different parcels and that the addition is over the line into the second parcel. At that point is when it was determined that they need to be reconciled into one deed which is in the process at this time. He agreed that there is a bit of confusion on the site plan because of the property lines but once they are combined, there will no longer be the confusion.

Freeman Bontrager, 72758 CR 101, Nappanee, was present in favor of this request. He stated he is a neighbor to the Borkholders. He indicated Mr. Borkholder has been a good neighbor, and it would not bother him a bit if this request were approved. When Mr. Homan asked the location of Mr. Bontrager's property, Mr. Bontrager pointed it out on the aerial and noted his property adjoins at the rear, to the north.

Also present in favor of this request was Gerald Barkman, 72910 CR 101, Nappanee, who said his property is adjacent to the Borkholders to the north at the road. He stated he gives full support of Mr. Borkholder as he has a nice, clean business with nothing standing out and no saw dust flying around. He has been a great neighbor.

There were no remonstrators present.

Regarding the aerial map, Mr. Homan questioned Mr. Borkholder about a paint/finishing shop (located two properties to the north). Mr. Borkholder reported it is finishing shop by another company and is not connected with their business. He went on to say that it has been there for at least ten years.

When Mr. Miller suggested they close the public hearing, Mr. Hesser questioned if they should at this point in light of the previous discussion. Mr. Miller then suggested the petition should be re-advertised. Attorney Kolbus said as proposed, the petition would need to be re-advertised to include the parcel to the north and east if in fact that is going to be his intent because the Board can't grant part of this on that building without it being advertised. Doing it now, you could go up to the property line but it was never advertised for a zero lot line either. Mr. Hesser asked if that would be an advertisement of an amended petition or if that would be a new proceeding completely. Mr. Kolbus said they have been handled both ways in the past. He suggested Mr. Borkholder could amend his application to include the entirety of the parcel and then re-advertise it. Mr. Homan asked Mr. Kolbus, if the Board were inclined to accept the staff report and deny this request, if the re-advertising of the corrected petition would make any difference. Mr. Kolbus said it would not be necessary at that point. Attorney Kolbus suggested they close the public hearing because it can always be reopened and debate what is here before them; and if it is going to be denied, then they could take the second step. Mr. Hesser pointed out that if it is re-advertised, they will have a new site plan, and the public hearing would have to be open to do that. Mr. Campanello questioned if re-advertising this will make the petition go for another hearing next month. Mr. Hesser said they have not voted on that. If they were to approve it, Mr. Campanello questioned that construction would be halted for another month. Attorney Kolbus pointed out that technically the Board cannot grant this petition as requested. While he understands that, Mr. Campanello asked how it got to this point and questioned the zero lot line. When Mr. Kolbus said he felt the one guy explained it, Mrs. Wolgamood added that staff told him that the parcels needed to be combined in order to do this. Mr. Hesser mentioned the possibility that they were thinking one property line instead of the other because

he owns the property, but they didn't realize the Special Use was restricted to the first parcel. Mr. Hesser also suggested it slipped through, and he doesn't think that is anyone's fault. If they would deny the request, Mr. Miller asked how long it would be before Mr. Borkholder could come back with everything corrected. Mrs. Wolgamood said six months unless it is a substantial change. Attorney Kolbus reiterated six months unless it is deemed a substantial change. Mr. Hesser explained that's why he would be inclined to let him amend and fix it rather than go through all of those hoops which Mr. Campanello agreed. If they do that, Mr. Hesser said it is with the idea that Mr. Borkholder is going to come in with an amended site plan anyway, and the public hearing will have to be reopened. Attorney Kolbus said Mr. Hesser is assuming there are the votes to table it. Mr. Hesser expressed that was true. Mr. Kolbus added that is why he thinks the public hearing should be closed and have someone make a motion because if there are three denials, it is done.

The public hearing was closed at this time.

As he has heard both ways, separate and apart from this legal procedure, Mr. Hesser noted a separate concern he has is a question of intensity. He noted it is doubling the facility. Mrs. Wolgamood added that he is exceeding the square footage in the primary structure by 4,300 sq. ft. By this testimony though, Mr. Miller pointed out that Mr. Borkholder is not increasing his business volume by doing more kitchens. Mr. Hesser noted that Mr. Borkholder has two employees that maybe he shouldn't have had. Mr. Homan expressed that this is an old discussion of the Board of when does a home workshop/business cross the line and become a commercial business which Mr. Hesser agreed is exactly the question. Mrs. Wolgamood pointed out it isn't really a commercial business but a manufacturing business that is just more intense. Not to add evidence, Mr. Homan stated this is a busy part of the county and intensity is something to consider. Even if Mr. Borkholder were to amend the petition to include the additional acreage, Mrs. Wolgamood said she believes he has outgrown his location and either needs to be somewhere else or possibly look into actually making the property a detailed planned unit development and getting the Commissioner's approval. Mr. Homan expressed agreement and noted Mr. Borkholder's representation of adding a driveway does not make him feel any better as it would be a short driveway with large trucks going in and out of properties on this narrow county road. He said he thinks it needs more consideration than just the Board thrashing the idea of a home workshop because it has gotten to be a bigger business than that.

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

Motion: Action: Denied, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a home workshop/business for a woodworking business to make furniture (Specifications F - #45) to allow for the construction of an addition to the woodworking facility and to allow for two outside employees be denied.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

Motion: Action: Denied, **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 Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be denied.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow for an existing sign larger than 4 sq. ft. per side be approved by the Board with the exception of Commitment #4 as two outside employees are permitted by right.

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. Woodworking business must be operated by the owner / occupant of the residence onsite.
2. No outside storage is permitted.
3. One unlighted sign is permitted a maximum of 30 inches by 48 inches per side.
4. If valid complaints are received by Code Enforcement, the permit shall be brought back to the Board of Zoning Appeals for reconsideration.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

11. The application of *Glen E. & Leona F. Miller* for a renewal of a Special Use for an existing sawmill (Specifications F - #37), and for a Special Use amendment for a sawmill to allow for the construction of an addition to an existing building used for the sawmill and antique restoration, and to allow for assembly of product related to the sawmill on property located on the South side of CR 18, 500 ft. East of CR 33 North, common address of 15162 CR 18 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 #15162CR 18-130913-1*. He indicated a correction under Staff Analysis #2, it should be four years instead of 10 years. He also noted no renewal was required as a condition in 2010, but it has been advertised as renewal and an addition to the existing sawmill. So, the commitments that he just read do not include a renewal recommendation at this time either so that would be something to consider if the Board wants to have another renewal period.

There were five neighboring property owners notified of this request.

Glen Miller, 15162 CR 18, Goshen, was present on behalf of this request. He presented a wood board with wooden models of the structures on the parcel as a site plan *[photo of same attached to file as Petitioner Exhibit #1]*. He explained the situation is that his furniture antique restoration is growing. He reported in February of 2009, he got laid off and moved the sawmill in to help fill the time. With the antique restoration continuing to grow, the sawmill is fun but he needs the shop back for the antique restoration which is crowding him. He is proposing to move the

sawmill to the south side of the existing shop and the upstairs will be personal. With his growing family, he has two sons who like hunting and fishing as a fun hobby. He said right now he has a boat and all the fishing equipment stays on the boat, but with the sun beating down on it, he is constantly buying new equipment which gets expensive. He would like to have some space upstairs for the hunting, fishing, and trapping equipment storage. He also reported he has two daughters with the oldest being 14 years of age. Generally, with Amish youth, the daughters host if the youth get together more so than the sons so he would like to make some room for youth gatherings on the second floor. He noted that most of the upstairs will be for the dry kiln, and the reason for that is money. He is currently selling all of his lumber for 0.75 cents a board foot. If he goes to another place and buys lumber, he is paying about five times that. So, he would like to dry his own lumber. He said he does make some projects such as wall shelves, and he is trying to give all of his nieces and nephews a church bench as a wedding gift and is five benches behind right now. He is just not getting things done that he needs to do which is due in part to the shop being full. He would like to remedy that with the addition.

Mrs. Wolgamood asked Mr. Miller for an explanation about a dry kiln. He indicated wood will be placed up there to dry as lumber coming out of a log is approximately 30% moisture. To sell it retail or to use it to make furniture safely so it doesn't crack, it needs to be anywhere from 8-12% moisture. Therefore, you cannot take the wood right out of the log and use it for furniture as it would be a piece of junk a year later. It has to be dried. He went on to say that he has been putting wood down in the barn which takes a year for a one inch thick piece of lumber. He has some lumber in the barn which he uses if he needs it for his antique restoration. But it is inconvenient, and it gets dirty. It works okay because of the small time operation that he has, but it doesn't work good. By doing this, he will be adding the heat off the engine where his electricity is made, and he is hoping to get the wet to dry time down to six months, at least. Mrs. Wolgamood reiterated that somehow or another from the engine he is going to be blowing some dry heat or exhaust into this area which he confirmed.

She questioned the saw dust bin which is 8'x8'. He said presently the saw dust is just falling on ground, and it is messy. He would like to collect it on second floor so he can get truck below it when he needs to empty it. She noted everything else will be done on the lower level such as the band saw and restroom. He will still be working out of the existing building and will be moving part of the existing building equipment into the lower level of the proposed addition which Mr. Miller confirmed. She questioned the inside fuel storage. Mr. Miller suggested it is a bit of a conundrum because fuel storage has to be double contained for spills. Right now he has temporary containment underneath but if it is water proof, it fills with rain water so it needs a roof over it. He reported that his fire insurance says no fuel inside of the buildings so that is an area that he wants to line with drywall, make it fire proof, and put his fuel under a roof. Mrs. Wolgamood asked staff if this building needs to go to the state for approval. Mr. Mabry indicated that usually home workshop/businesses do. He deferred to Kevin Williams, Building Commissioner, who was present. When Mr. Williams inquired about the size of the building, Mr. Mabry said the existing building is 1,920 sq. ft. and the proposed addition would be a total of 3,024 sq. ft. When Mr. Williams asked about employees, Mr. Mabry reported it would be limited to maximum of two outside employees. Mr. Williams said a state release would be required.

Regarding the first drawing that follows the questionnaire in the packet, Mr. Hesser asked about a second area at the bottom of the page that indicates "proposed addition". Mr. Miller explained that is just a key for the proposed addition. Mrs. Wolgamood noted he has obviously been doing antique restoration for quite some time and is taking over the sawmill. She asked if he wants the restoration to be the major portion of his business. Mr. Miller said he does not really care which business is major as he just wants to stay busy. Because he has been doing the restoration for approximately 18 years and is getting customers from Fort Wayne, Three Rivers, or wherever, it is constant, steady, and a good business. He noted his sons have suggested he sell the sawmill, but Mr. Miller feels it is fun to turn an ugly old log and turning it into something beautiful. Mrs. Wolgamood noted the sawmill is more of a hobby. Referring to the questionnaire, she noted he is intending to have and has been doing retail sales but does not have a designated sales area. She asked if customers just come into the shop and look at the furniture. He confirmed that he does not have a designated area. She suggested if she came to the shop, she would just go in and look at the furniture. He explained that he does not build new furniture but restores pieces that are brought to him. She suggested that he does not go out and get furniture, restore it, and offer it for sale which he confirmed. Mrs. Wolgamood noted the questionnaire indicates that deliveries arrive by UPS for incoming supplies and by pickup truck. Mr. Miller indicated that outgoing products leave via truck. When she questioned products leaving by buggy as indicated on the questionnaire, Mr. Miller said they do not, and he did not intend to put that on the application. Specifically, she asked if semi trucks ever come to the property. Mr. Miller said at least once a year, he buys chemicals which come out of Vincennes. He also reported that some log trucks are semis but not too often. She questioned which driveway the semis use currently when they come. Mr. Miller said it works best for loading and unloading if trucks go in the residential drive and out the workshop drive.

Present with concerns was Andrew Yensco, 58152 CR 33, Goshen. He said his property is two properties to the south and west, behind the Glen Miller property. Mr. Yensco reported his property is a drainage property for the subject property as the water comes south down through CR 33 through the swamp land. He identified one of his concerns as being recently made aware that there was a Health Department test of the groundwater in that area, and it was reportedly found to be toxic. If that is the case, Mr. Yensco said Mr. Miller is or could potentially be contaminating his pond and well water. He pointed out the Mr. Miller stated he has semis of chemicals going onto his property which have not been identified as to what they are and suggested they could be very potentially detrimental. He identified the area as heavily residential although his property is zoned agricultural as are many of the neighboring properties. He said it is a mix of the two. But it is definitely not a commercial area.

He also expressed concern about truck traffic, and noted that Mr. Miller mentioned off-loading which Mr. Yensco has witnessed. He also reported quite often Mr. Miller unloads in the road in front of the business. He indicated the business operation area extends right down the driveway which is very close to the road and is occasionally in the road. He said he is not normally opposed to small businesses, but he definitely has some concerns. He reported also being made aware that there is an exhaust fan on the business, and generally sawmill operations are required to contain sawdust and any emissions from that, and these are not. In fact, Mr. Miller stated he is dumping them on the ground which would be another form of contamination.

Stephen Billey, 15132 CR 18, Goshen was present in opposition to this request. He owns the adjacent property to the east of Glen Miller. He said his main concern is pollution. He reported the BZA gave him permission for a sawmill, and he doesn't mind that. But there was never any inspection by any mechanical or electrical inspectors. He said he complained once, and the Building Commissioner went out there one time. Mr. Billey reported he got a letter from the Building Commissioner that included a couple of photos of the sawmill operation. He indicated the Building Commissioner was standing in one foot of sawdust and could not find anything wrong with that. Mr. Billey also noted the letter stated the Commissioner found nothing wrong with the sawmill. As an inspector for eight years or more for the city, county, and even some state inspections on air quality control, and knowing a little bit about inspections, he said there is no part of that building that will pass any inspection. He suggested the Board members probably had plans in front of them for the new addition crudely drawn on a scrap piece of paper with no dimensions and would never pass any inspector's inspection at all.

Mr. Billey also said Mr. Miller has a room on his plans for children to play in above the kiln. He mentioned that spontaneous combustion is one of the worst things you could have in a lumber mill. If that would ever happen, he suggested the kids could be trapped upstairs and would have to get downstairs, and this could lead to disaster.

He noted when Mr. Miller first started, it was a hobby, but it has grown out of hand. Mr. Billey said Mr. Miller indicated he would have 10-20 logs at the most but right now there are probably 60-80 logs scattered all over the back of the property. They are hidden well from view, but they are back there. He said Mr. Miller bought more property in the back so he could put more logs back there in the back. He reiterated that it has grown out of hand and is a huge operation now. He noted Mr. Miller now wants to triple the size area-wise and make a kiln/drying place. Mr. Billey stated that is completely uncalled for and should not be allowed in their residential neighborhood. He said the neighborhood was always real quiet and nice, and Mr. Miller kept a clean yard until this happened. Now they have all kinds of problems.

He reiterated that his main problem with this request is pollution and submitted a paper towel with residue that came from the windshield of his van *[attached to file as Remonstrator Exhibit #1]*. He noted there are two parts to it (A and B). He reported when he goes out in the morning, if he wants to use his van, first he needs to clean his windshield which he never had to clean until Mr. Miller started this operation. To make it worse, Mr. Billey said on top of Mr. Miller's building he has a huge exhaust fan that is emission control. He noted VIM's problems approximately a year ago and at the same time there's a sawmill just south of Middlebury that wanted a state approval for a year. He said all of the specifications were on file at the public library. He looked it up and for both of those sites, they said the parts per million of emissions that were allowed was approximately 17 parts per million which you can hardly see. Referring to his paper towel exhibit, he said you can see what is on his windshield every morning and most of it is little fibers. While he said he does not mind this on his window because he can get rid of it, this also goes all over the neighborhood. He reported in the VIM area the plum is five miles which goes from 33 to US 20 across the river, and it is all water pollution which is going down in our water. He noted the dust is from the woodworking part of Mr. Miller's request. Mr. Billey said Mr. Miller also does antique refinishing where most of the antiques are covered with lead based paint which Mr. Miller sands off, turns on the roof fans, and out it goes all over the neighborhood. That leads to lead all over the whole neighborhood which is his concern. At this time, he

submitted signed petitions *[attached to file as Remonstrator Exhibit #2]*. He pointed out their biggest concern is lead getting into the water. He noted the VIM area is supplied with potable water from Elkhart City who does not want to annex the area because the property values have dropped so much that they get nothing in taxes. He reported a year or so ago, Mr. Miller had a fire in that building. He recalled that it was raining when he was driving down the road and saw that the front of the building was all charred and the plastic was all melted off indicating he had a fire. Mr. Billey said he continued up town or wherever his mission was and on the way home, Mr. Miller was on a ladder in the rain replacing the siding so nobody could see it which Mr. Billey felt was very strange like Mr. Miller was trying to hide it. About a month later, he happened to remember it so he called the Fire Department and discovered they had no record of the fire.

In response to the concerns of the remonstrators, Mr. Miller said he wondered if anyone had seen a report from the Health Department about the pollution, and, if so, he needs to see it. He said the chemical he is using is methylene chloride methanol, and if they are finding that, he has a problem. If they are not, then they need to keep looking, but surely he would know about it if that were true. He also said it would seem to him, that he would be the first place they would come visit, and he has not heard anything. He reported he was inspected one time by Indiana Department of Environmental Management. He said they came out, looked, left, and sent him a letter saying no violations found. That is the only contact he has had with any government agency. When Mrs. Wolgamood asked if that inspection was for the sawmill operation or refinishing, he said it was a site inspection and is not sure that it was for one particular operation.

Addressing the number of logs which has exceeded, Mr. Miller reported that the emerald ash borer is the reason for increase in inventory. He reported the local farmers have had all the ash trees die, and they had a choice to either harvest or lose. They came by with a load of logs and asked him to buy the logs so his inventory did go up and is still up today. He believes that is about over as the ash harvest is about done so the number should go down which is what he desires because he has too many logs around that are in the way. As far as loading and unloading on the road, he said he thought maybe he unloaded once in the road in the 10 years he has been in business. He noted that was a top-heavy truck/trailer rig with horse stalls sitting on it. He said he asked them to use the circle driveway, but they wanted to load out on the road.

Referring to Mr. Billey's mention of a huge exhaust fan on the roof, Mr. Miller reported that is a sky light. He reported he did have a fire. He said he had saw dust on the floor, and there is a wood burner in there. He acknowledged that saw dust does burn and spontaneous combustion is a big deal especially in sawmills. In this case, he was working in the shop and his son used the air hose around the wood stove and blew sparks out. Mr. Miller stated he left the shop around 5 p.m. and no one was in the shop for any reason that evening which is very rare. A neighbor woke him at 4:00 a.m. and told him the shop was on fire. He indicated only two things saved his building that time which were that it was a dead calm night and the building is completely dry walled. With those two things combined, he reported having only \$260 worth of damage. But when he stepped out of the building, he saw flames at the peak of the roof because it burned through the wall and went straight up inside the wall. He noted he had a six foot section of wall that he had to change. Mr. Miller said he was trying to hide it because it was ugly and facing directly toward the road right behind the stove. To fix that, he stated he needs to do something about the saw dust.

As far as pollution, he questioned whether saw dust is or is not pollution. He said he does not think that it is. Saw dust is an organic matter that they put on the garden as mulch. He pointed out it can be pollution in your lungs. He would like to contain the saw dust for reasons of cleanliness more so than pollution. When Mrs. Wolgamood asked if the saw dust is outside, Mr. Miller indicated there is nothing outside as it falls inside on the ground right beside the saw mill. He said he shovels it up and either gives it to his neighbor, puts it in the stove, or dumps it in the log yard. Referring back to the exhaust fan, she confirmed that he reported it is not a fan but a sky light. He reported he has a 2'x2' fan in the wall that he runs when he is spraying varnish to remove varnish fumes, but it is a basic box fan that can be purchased at a hardware store. He said generally for sawing, he does not run a fan.

Mr. Homan indicated his only question goes back to the antique restoration which is a large part of the business. He asked if that was part of the original application or approval. Mr. Mabry said he did not believe it was included previously but is part of the new request. He noted it is not listed in the 12/16/10 BZA renewal of a Special Use for the sawmill which he would have included in the history if it had been part of the approval. Mr. Homan noted some of the concerns that were raised were about pollution. He expressed agreement with Mr. Miller that a tree, log, and sawdust are all pretty natural items. He noted he was interested in the comment about lead-based paint and what is involved in the restoration and refinishing process. He said lead-based paint has gotten a lot of press recently and lead in lead-based paint is dangerous particularly to small children. To an extent that you would be removing, stripping, and sanding, Mr. Homan asked Mr. Miller to characterize the exposure. Mr. Miller said that is a big part of the antique restoration business. He explained one of the reasons for having him do it is because he uses the methylene chloride methanol which is a wet strip, and there is no dust. He said there are always bits and pieces of paint such as in a corner that he would chip out. But the whole piece should be stripped chemically and then he strains the chemicals, reuses them, and puts the sludge into the Borden hopper which he is allowed to do if it is dry.

The public hearing was closed at this time.

Attorney Kolbus reminded the Board of the clarification by the staff that this is an amendment not a renewal so the existing operation can continue. For clarification, Mrs. Wolgamood asked if the existing operation is the sawmill which Mr. Kolbus indicated was correct. Mr. Campanello stated he believes Mr. Miller should be able to do furniture restoration as the approval from 1995 mentions furniture repair which Mr. Campanello believes falls under that. He also noted he would imagine if there was a problem with pollution, the Health Department would be on this right away to identify the source of the pollution. He pointed out the Board is here to look at what is in front of them and what Mr. Miller is requesting. He thinks the Health Department is more responsible to handle the pollution end of it. Mrs. Wolgamood stated she wouldn't disagree with that. She noted the Board has dealt a number of times with sawmills, and there is almost always the issue of some drifting off the site. She noted they are not really talking about the sawmill because it is there and going to stay there unless he is in violation which would be addressed by the Code Enforcement Department.

Mr. Hesser pointed out that this petition is an amendment to the use and noted two points that the Board should be focusing on to decide whether or not they are a problem which are physical expansion and adding the dry kiln which is an expansion of the use. As far as the size, he noted past concern has been expressed about the number of different things that Mr. Miller is

doing in the course of the Special Use. He said he has not had a problem with that because he believes they need to look at the totality of the use as opposed to looking at all of the different uses. Regarding the increase in size, he noted the Board gets to the issue of when does the business become something that should be relocated. He noted he didn't hear any of the complaints going to that issue that it was too big and feels that Mr. Miller is trying largely to organize and get things straightened out. Regarding the kiln, he said he does not know enough about it to have a thought. Mr. Homan stated without seeing the actual design, you don't know but Mr. Miller's characterization is that the only heat source for the kiln would be heat off of the generator motor. Noting what a truck motor would put out heat-wise, he indicated it's not like adding propane gas burner heat or electric resistance heat. A commercial kiln dries lumber much faster than six months so they are not talking about running up the temperature in a room to 200 degrees. Mrs. Wolgamood reminded members that the Building Commissioner who indicated that should this be approved, it would definitely have to go to the State for approval which Mr. Hesser noted would presumably deal with any safety issues. Mr. Homan suggested the possibility of an explosion might be an issue because sawdust is a continuing issue. Mrs. Wolgamood stated doubt that when Mr. Miller was first granted this sawmill because it went into an existing building that he didn't have any State approval and probably no County inspections.

Regarding the renewal, Mr. Mabry said there has been some confusion about it. He clarified that this is a renewal as in the 12/16/10 history in the staff report, he stopped at item #4 of no outside employees as far as conditions that were imposed with that approval. There were two others that do not show up on the history that were not transcribed over, being that it is approved for a period of three years with renewal before the BZA so it is accurate as shown in the petition description and as advertised that a renewal is due. Secondly, there was also a condition of no outside storage other than the log storage area shown on the site plan, and no assembly of products. He noted the new site plan shows a log storage area so that is something to be mindful of when making a motion to carry that over to include no outside storage other than the log storage area shown on the site plan and no assembly of products. It was approved with no assembly of products so that is the reason for the assembly of products related to the sawmill being in the petition description at the top of the staff report. Mr. Homan noted they never got to the assembly of products.

When Mrs. Wolgamood asked what assembly of products related to the sawmill meant, Mr. Miller explained that he is currently building a shoeing stock for people who shoe horses. He further said it is a cage built out of white oak that is mostly wood and has a bunch of steel brackets. He reported he used to build approximately 15 of them a year but that died down to nothing in 2008. He also makes feeder floors that he builds a 4'x6' skid base and a 1 ½ inch deck out of wood in requested sizes and then Shipshewana Farm Supply will put steel sides around it after they are purchased from Mr. Miller. He indicated he has been building those as he was not aware that no assembly was actually on the original approval until this application. He said he didn't realize until that point that he was in violation and requested it be corrected. For clarification, Mrs. Wolgamood stated there is a renewal of the Special Use for a sawmill, for a Special Use amendment for the sawmill to allow for the construction of an addition to an existing building used for the sawmill and antique restoration, and to allow for the assembly of products related to the sawmill. Mr. Mabry confirmed that was correct. She also noted staff recommendation for approval as well as several commitments.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a renewal of a Special Use for an existing sawmill (Specifications F - #37) be approved with the following condition:

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 site plan submitted and as represented in the petitioner's application.
2. Sawmill must be operated by the owner / occupant of the residence onsite.
3. The days and hours of operation are to be Monday through Saturday with the sawing operations to be limited to 6:00 a.m. to 8:00 p.m.
4. No outside employees are permitted.
5. Approved for a period of three years with renewal before the Advisory Board of Zoning Appeals.
6. No outside storage other than the log storage designated on the site plan.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

Motion: Action: Denied, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that the request for the Special Use amendment for a sawmill to allow for the construction of an addition to an existing building used for the sawmill and antique restoration be denied based on the following Findings and Conclusions of the Board:

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

Vote: Motion failed (**summary:** Yes = 2, No = 3, Abstain = 0).

Yes: Robert Homan, Meg Wolgamood.

No: Doug Miller, Tony Campanello, Randy Hesser.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for the Special Use amendment for a sawmill to allow for the construction of an addition to an existing building used for the sawmill and antique restoration, and to allow for assembly of product related to the sawmill be approved subject to the same condition and commitments.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Doug Miller, Tony Campanello, Randy Hesser.

No: Robert Homan, Meg Wolgamood.

*** It should be noted that Doug Miller and Tony Campanello step down at this time. ***

12. The application of **Harry Mishler & Amelia Mishler** for a Special Use for a home workshop/business for a general store (Specifications – F #45) and for a Developmental Variance for a sign to exceed 4 sq. ft. per side on property located on the West side of SR 13, 1,280 ft. North of CR 40, common address of 65730 SR 13 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 #65730SR 13-130923-1*.

There were seven neighboring property owners notified of this request.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the Mishlers who were also present. Due to the fact that there is not a full board, he respectfully requested this petition be tabled until the next meeting.

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

Motion: Action: Table, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that the request for a Special Use for a home workshop/business for a general store (Specifications – F #45) and for a Developmental Variance for a sign to exceed 4 sq. ft. per side be tabled until November 21, 2013, Elkhart County Advisory Board of Zoning Appeals meeting to allow the petition to be presented to a five member board as requested by the petitioner, with neighboring property owners to be renotified.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Robert Homan, Meg Wolgamood, Randy Hesser.

Absent: Doug Miller, Tony Campanello.

13. The application of **Gary Lambright (land contract purchaser) and Tri County Land Trustee Corp. (land contract holder)** for a Special Use for a home workshop/business for manufacturing of vent panels, agricultural doors, and general fabricating (Specifications F - #45) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the South side of CR 18, 2,800 ft. West of CR 43, common address of 11520 CR 18 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 #11520CR18-130920-1*.

There were eight neighboring property owners notified of this request.

Andrew Lambright, 14824 CR 108, Middlebury, was present on behalf of request.

In light of the peculiar situation of running late, two Board members having to leave, and having heard the staff's recommendation for denial, Mr. Homan stated it is their right if they wish to have this petition heard by the full board. If they would prefer to have this set aside until next month, they are allowed to do that.

Mr. Lambright indicated they appreciate that and would obviously prefer a full board but there are neighbors present to support this petition today, and Mr. Lambright felt they need to

recognize the fact that they wanted to take time off from work so they wish to proceed at this time.

Mr. Hesser also clarified that they should understand also for any decision to be made today, the vote has to be three to zero because it takes three affirmative votes to either approve or deny. If that does not occur, the petition would probably be continued.

Mr. Lambright submitted a packet of photos at this time *[attached to file as Petitioner Exhibit #1]* of some of the products that Gary Lambright makes. He indicated Page 1 is a photo of an overhead bi-fold door and the bottom picture is a cool cell door from a poultry barn. The second page is pictures of Gary's shop with the door open, and the third page is a finished entry door and little cart. He said basically three years ago Gary started working in his barn after hours making pet boxes. He put in a little lamination table because he wanted to insulate these boxes. Mr. Lambright said he is in construction, and he and Gary do some work for Pine Manor and a couple of egg companies in the area as well. They provide outside access for these chickens. He further explained that they started making doors to allow them to go in and out because they are certified organic. Long story short, Glen started making these little access doors for Mr. Lambright because he can do a better job with his jigs. Because he had the lamination table, it kind of mushroomed into other stuff. He pointed out that the overhead door that no longer fits on Gary's small lamination table. He said they bring those panels over from another shop on the little cart. Gary is putting those together in his barn, but he is running out of room in that barn. He expressed all of the neighbors are 100% in support.

Regarding traffic for the business, Mr. Lambright said the staff analysis is wrong in stating that it is not in spirit of the home workshop. He stated the fact that it is far removed from the residence on the property makes sense to him as woods would have been cleared to construct a new building near the residence. Besides that, he pointed out that any traffic would be running right past his front door which is dangerous for children, and this way the traffic is out by the road. Regarding the separate parcel, he reported that Gary Lambright attempted to combine the two parcels for tax purposes right after he purchased the property. Because it is two different quarter sections, Gary was told he cannot combine them. On the aerial, he indicated the parcel on the left was purchased at a later date. The original one was the long thin strip with the driveway on it. The third parcel could technically be combined with the first parcel. But he thinks the rear parcel with the house cannot be combined because it is in the different section. Mr. Hesser asked if Mr. Lambright would be willing to commit that the parcels would not be sold separately which Mr. Lambright said absolutely.

Regarding the comment in the staff report that the use is manufacturing in nature and is more suited to an industrially zoned property, he said right now it is just not that big. The staff report states that it has not evolved from a small-scale workshop but has been initiated on a larger-scale which Mr. Lambright argued by saying that this business started with a guy making dog boxes/houses which he had a lamination table for, and this is just an evolution of his laminating. With the larger cool cell panels that they are doing now out of his barn, Mr. Lambright reported they are in 20 ft. sections, and it takes a lot of room for the big 20 ft. panels. The square footage of the shop is fairly substantial, but it is not like his business is increasing rapidly. Right now there are a couple of neighbors helping as across the street, Lavern Bontrager's shop is used for some finished product storage. If Gary gets a project finished, rather than park it outside, he puts it in the neighbor's garage. They have no problem with that

arrangement, but it would just be nicer to put everything in one building. Referring to #2, substantial and permanent injury, he said they have notes from all the neighbors saying they disagree with that. Regarding #3, he said it is not a relatively intense business as they are talking about one or two trucks per week. When Mrs. Wolgamood inquired what type of trucks, he indicated straight trucks such as UPS and Fed Ex but reported no semis. He did add that the new driveway will have the capability for a semi to turn around in the 120 ft. square parking area. In the event that a semi would come, although they are not anticipating it, there will be no off-loading in the road and no backing in. He acknowledged that it is on a curve, but the sight distance is fine. He noted the one photo that showed corn planted right out to the road. If the building is approved, the corn would be gone, as it will be the parking area, and the sight distance will be fine.

He submitted a packet of letters from nearby neighbors *[attached to file as Petitioner Exhibit #2]*. He indicated the first letter is from Jessie Kauffman, the adjoining landowner to the west, who stated the business has been going for three years, and he feels it definitely falls into the home workshop. Mr. Lambright expressed agreement that it does because they had Code Enforcement Officer Ronnie Weiss out to look at the site, and he didn't recommend any changes. Mr. Lambright further read from Mr. Kauffman's letter that the report gives the impression of a high traffic/high impact noisy business, and he said at the most there are maybe two or three trucks per week which is consistent with their operation. Mr. Kauffman also indicated he would much rather have this operation there than a chicken or duck barn. Mr. Lambright agreed that would have a much more detrimental impact on adjoining property owners than what they are doing. He reported letter #2 is from Leon Wingard who owns the farm just to the west, and he stated that he has heard no negative feedback. Mr. Wingard indicated Gary has been a most conscientious neighbor, and they expect nothing but the same with his workshop. The third letter is from Marlin Schrock just stating that he does not agree with the staff analysis, and he is in support of this request. Letter #4 from Lavern and Sara Bontrager states they support the request, and traffic is no concern to them. Letter #5 is from Jerry and Melissa Otto who report they are not affected whatsoever by any traffic, noise, or disturbance, and the improvements will have no impact on them. Mr. Lambright said he agreed with them because they are right out by US 20, and what Gary is doing would not compare to the traffic they see off US 20. Letter #6 is from Chris and Nora Bontrager who are on the opposite side of the road, and again, they stated there is no disturbance, and they do not notice the traffic. Letter #7 is from Edna Bontrager who is directly across the street from the proposed shop, and she stated this is not going to be a factory operation. She also said she doesn't see any harm with the proposed location and doesn't feel that it would be a disturbance to the neighborhood at all. She also touched on the issue of the curve, but visibility both ways is fine. LaVern and Arlene Bontrager submitted letter #8 and are right across the street as well. They feel Gary needs more space to operate efficiently, and noted Gary is using their shop for his warehouse at this time. They also stated they do not feel this request will affect the neighbors in a negative way at all. To reiterate Jessie Kauffman, they said they would rather see this than an agricultural confined building such as a hog house or chicken barn. Letters 9 and 10 are from Wilbur Bontrager and Floyd Yoder. They reside southeast of the petitioners on one parcel which is a house and a dawdy house. They realize Gary wants to work at home and saw the request advertised in the Goshen News. They do not agree that Gary has a big business, and they do not think there is a problem with adjoining land

owners. Floyd stated that Gary has a couple of neighbors involved which is Lavern from across the street and Steve Mast on CR 43 which is where Gary's lamination table is presently located, approximately $\frac{3}{4}$ mile away. At present, there is no room in Gary's barn for the lamination table. Letter #11 is from Melvin and Esther Miller who stated concern that the staff analysis is not quite accurate and does not feel it was checked out as it should have been. Letter #12 from John & Sara Miller is similar in that they do not agree with the staff report and feel the site was not investigated. The last letter is from Omer Lambright whose property is adjoining on the back side of Gary Lambright's property, and he appreciates that Gary has a welder in his shop and does small repairs for the local farmers if needed.

Mr. Hesser inquired about the photos that Mr. Lambright previously submitted being of the current shop. Mr. Lambright indicated no. He stated the first page is finished product that Gary makes. When Mrs. Wolgamood asked how many different locations this business is being run out of, Mr. Lambright indicated three locations at this time as Gary does the assembly at home. The lamination table is at Steve Mast's, and Steve does the laminating. The third location is across the street, and nothing is done there except storage. So there are three separate locations at this time, and Mr. Lambright said if they were to be inspected as far as home workshop/businesses, they all look good as everything is stored inside. He added that you cannot see from the road that anybody has anything going on, and it just looks like residential stuff.

Regarding employees, when Mrs. Wolgamood said she didn't recall how many, Mr. Homan said they are requesting two outside employees. Mrs. Wolgamood inquired if Gary has two outside employees currently. Mr. Lambright reported Gary is full time now, and there are two part-time employees who do not live on the property.

From the aerial photo of the property lines, Mr. Homan asked if there are two or three parcels which Mr. Lambright reported there are three and indicated each one. When Mrs. Wolgamood asked how long ago the buildings were constructed, Mr. Lambright reported the buildings were built in 2005. Mr. Homan and Mrs. Wolgamood commented about no history on the site and previous building permits being obtained. Mr. Lambright reported there was a 3 to 1 depth to width ratio variance which Mrs. Wolgamood indicated must not have included Parcel A which Mr. Lambright indicated was correct. Mrs. Wolgamood said they probably addressed the whole issue of the parcels being in separated quarter sections at that time.

Gary Lambright, 11520 CR 18, was also present on behalf of this request. He reported he started this business three years ago and went full-time with it in May of 2013. He said he contacted Anthony to find out what he needed to do to make sure the County knows what he is doing at home because he wants to cover all legal standpoints with the County so there are not any surprises down the road. He reported Ronnie Weiss, Code Enforcement Investigator came out to take a look, and he reported finding no violations. Mr. Lambright said he requested the home workshop permit to be in compliance with County rules.

He reported the reason for the shop being out by the road is for safety reasons as they have children, and he would feel more comfortable if it were away from the home and children. Regarding the size of the shop, he noted it looks a little large but he is working with large panels and needs room to maneuver and store finished product in the same building. He said they have the two extra shops outside and across the street primarily so they do not have stuff sitting around outside. Regarding the driveway, he said if the shop is out by road, the corn will

disappear, and there will be adequate visibility both ways. He added that Pine Manor seems to be a pretty solid company, and as long as they update their buildings that they have and/or build new buildings, they will buy product whether it is local, four states away, or overseas. When Mr. Hesser asked who owns the triangle adjoining parcel to the east, Mr. Lambright said he didn't know, but he knew that Stanley Miller farms it. When Mr. Hesser further inquired about the field being planted with possibly corn and presenting a sight issue, Mr. Lambright said because it is such a sharp corner, they can't till all the way out to the corner so plantings are back 60-80 feet. He noted the goals for Silvercraft are basically to make a good, local product for local contractors and homeowners.

When Mr. Homan asked how the frequency of deliveries and truck traffic, Mr. Lambright said probably 80% or more is by pickup truck, but they do some delivery with flat bed behind a pickup truck. He stated that more days than not, there are no trucks at all because they are not doing a high volume. Sometimes he has two or three trucks a day but then it'll go a few days with nothing. Regarding the small trailer that he uses, he does that by himself with a horse and a cart. When Mr. Homan asked if CR 18 is paved there, Mr. Lambright indicated it is not so the traffic is slower.

Jessie Kauffman, 11614 CR 18, was present in favor of this request. He said Mr. Lambright is a great neighbor and keeps his business on the inside, out of sight. He stated he would expect more of the same.

Also present in favor of this request was LaVern Bontrager, 11511 CR 18, who lives across street to north, and his building is used for storage. He said he has no objections and supports Gary with what he is doing. He added that it is not that Gary's business is getting that much larger, but he just needs a larger building to get everything inside. Mr. Homan noted Mr. Bontrager and Mr. Lambright obviously have an understanding about this. He asked Mr. Bontrager if this were to be approved and Mr. Lambright constructs his building, if he would continue to store or need to store in his building. Mr. Bontrager said the idea of the larger building is for Mr. Lambright to have everything in his building.

Omar Lambright, 11711 CR 20, was also present in favor of this request. He stated he sold Gary that property at the back of his woods which was always a favorite picnic area. He said he approves of the business that Gary has going now and supports him 100% in his small business which allows him to work at home with his family. He noted Gary also does repair work for farmers around the neighborhood.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan posed the questions of how big is too big and how intense is too intense. Looking at the type of products Mr. Lambright is producing, he noted they have seen, in general, agricultural parts produced on a really large scale, but said that is not the presentation here. He expressed some concern about the location of the building out close to the road and issues of line of sight and safety on a curve. He noted testimony has been that it might not be as big of an issue as Mr. Homan thinks it is. He indicated that issue was not brought up by staff as their issue was the building being on a separate parcel and located far away from the residence. He referred to the importance of the petitioner agreeing to commitment that all three parcels must be sold together which Mr. Homan said he feels is a major component of even considering approval of the request. The future of his business is more a question than the current situation to Mr.

Homan. Mrs. Wolgamood stated she does not have a problem with the configuration of the lot, and noted Mr. Lambright has already received a 3 to 1 from this Board so they've said this lot is okay. She added that to her, it is all one parcel. Mr. Hesser noted one thing that is different is that according to the petition, Mr. Lambright owns one parcel and two he is buying on land contract. Mr. Homan questioned if the building sits on the line. Mr. Hesser said to him, it needs to be all three parcels because the first two parcels have to go together because of having access to the road. He said he feels the third one would have to be part of it because of the location of the building, and the fact that it is over the line. But he noted that could be done with a commitment. Attorney Kolbus clarified that part of the commitment could include all three parcels. Mr. Homan confirmed with Mr. Kolbus that the land contract doesn't bear any impact on the request.

Regarding the nature of the business in an A-1 district, Mr. Hesser said he isn't concerned about the type of business but the size is more of an issue for him as it is more than three times the size of the house. Size is part of the intensity and the other part is the number of employees. He noted that it is just Mr. Lambright and two part-time employees. Regarding the size of the structure, Mr. Hesser commented that Mr. Lambright is doing it so that everything goes inside. Mrs. Wolgamood also mentioned it is a gravel road, and although Mr. Lambright indicated only two vehicles making deliveries per day, semis have to get down the road even if it is only once or twice a year. Mr. Homan noted he was more concerned about high speed traffic around the curve at 50-60 MPH, but he thinks that would be less likely since it is an unpaved road.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Randy Hesser that this request for a Special Use for a home workshop/business for manufacturing of vent panels, agricultural doors, and general fabricating (Specifications F - #45) be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance which allows a home workshop / business as defined in the ordinance by the Board of Zoning Appeals.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare by providing agricultural products for the community as well as income for the resident / owner.

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 commitment was imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application and testimony.
2. In the event any of the Real Estate is sold, all three parcels shall be transferred together as three adjoining parcels in the same configuration as represented in the

petitioner's testimony to the Elkhart County Advisory Board of Zoning Appeals on October 17, 2013.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Robert Homan, Meg Wolgamood, Randy Hesser.

Absent: Doug Miller, Tony Campanello.

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Meg Wolgamood that the request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved as demonstrated on the site plan.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Robert Homan, Meg Wolgamood, Randy Hesser.

Absent: Doug Miller, Tony Campanello.

14. The application of *Mervin D. Hostetler & Iva H. Hostetler, Trustees, of the Mervin D. Hostetler & Iva H. Hostetler Joint Revocable Trust* for a Special Use renewal for an existing home workshop/business for a woodworking business (Specifications F - #45) and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the North side of CR 30, 850 ft. West of CR 41, 1,800 ft. East of SR 13, common address of 11641 CR 30 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 #11641CR 30-130923-1*. In addition, he noted he would recommend approval without renewal because the property is so extremely clean.

There were 10 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, was present representing Mr. Hostetler for the renewal of the existing Special Use permit that was granted for the shop building. Using a power point (included with petition in file), he reported in 2011, Mr. Hostetler was granted a Special Use permit for installation of a five access router. He said this petition is for renewal without the requirement of coming back for subsequent renewals every three years. He indicated it is a pretty mundane operation as far as the operation is concerned and its affect on the environment. He noted the building is not visible from CR 30, and it blends in well with the neighborhood. In addition, the request for a Developmental Variance is for a 10'x24' portable office building that Mr. Lambright constructed on skids rather than having an office in the shop with the router. Continuing with the power point, Mr. Sloat explained some of the process for the router and products produced by it. He noted the router does not make any noise and creates a small amount of saw dust.

Mrs. Wolgamood proposed commitment #9 for no expansion of facilities without BZA approval which was listed as #2 in the September 15, 2011, conditions. Mr. Homan noted he presumed the 10'x24' building puts it over for the Developmental Variance.

Mr. Homan stated it is a pretty straight forward request for renewal, and staff has recommended approval. Attorney Kolbus noted for the record that there is no one present in the audience.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board and based on the representations of the petitioner, and based upon these, further moved that this request for a Special Use renewal for an existing home workshop/business for a woodworking business (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 imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No more than two full time employees are permitted who do not live in the residence on site.
3. Hours of operation are 5:30 a.m. to 2:00 p.m., Monday through Friday.
4. No outside storage of product or inventory related to business is permitted.
5. No sign is permitted.
6. Woodworking business must be operated by the owner / occupant of the residence on site.
7. No retail sales are permitted.
8. Approved with no renewal required before the Board.
9. No expansion of the facilities without BZA approval.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Robert Homan, Meg Wolgamood, Randy Hesser.

Absent: Doug Miller, Tony Campanello.

Motion: Action: Approve, **Moved by** Robert Homan, **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 Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure with the following conditions:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. 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 = 3).

Yes: Robert Homan, Meg Wolgamood, Randy Hesser.

Absent: Doug Miller, Tony Campanello.

15. The application of *Jeremy R. Hoover & Linda J. Hoover* for a Use Variance to allow a residential use in an M-1 District on property located on the South side of CR 38, 700 ft. East of

SR 19, common address of 27802 CR 38 in Harrison Township, zoned M-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #27802CR 38-130923-1*. He noted this is before the Board as a Use Variance because the overall site is non-conforming in that it has the presence of a house on it.

There were four neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, was present representing Jeremy Hoover. He reported recently Mr. Hoover attempted to obtain a building permit for an addition to the auto repair shop. It was determined that the existing home on the parcel was not in compliance with the Zoning Ordinance because when the property was rezoned in A-1 to M-1 in 1975, there was no provision made in that rezoning to allow for the home to be there which has been there for years. As he is from that area, Mr. Sloat said the house has been there as long as he can remember, and it has been commercial use for approximately 60 years. He recalled truck caps used to be made in that same building when he was a youth. He reported the petition today is to clean up the use of the property that has been on-going and to allow Mr. Hoover to construct an addition to his auto mechanic shop. When Mr. Hesser inquired how long it has been a repair shop, Mr. Sloat indicated Mr. Hoover has been there approximately three years and before that he believes there was an excavator there. Mr. Hesser also questioned that the proposed expansion of the building is in connection with the auto repair shop which Mr. Sloat confirmed was correct. He further explained that the expansion of the auto repair shop goes without saying in an M-1 zone but the expansion of the M-1 use is not allowed until the property is in compliance by allowing the house to be there.

There was no one present in the audience.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert 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 Use Variance to allow a residential use in an M-1 District be approved with the following condition:

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 condition was 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 = 3).

Yes: Robert Homan, Meg Wolgamood, Randy Hesser.

Absent: Doug Miller, Tony Campanello.

At the conclusion of the public hearing, there was discussion between Board members regarding the need for the Use Variance in this particular situation.

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

17. The first staff item was presented by Chris Godlewski regarding the Zoning Ordinance update. He indicated the process is continuing on right now, and Brian is doing revisions on the first half of the document. Then each committee and the Plan Commission will review it and proceed forward. After that, they will commence the second half review of the Zoning Ordinance. He noted so far so good, and there has been a lot of discussion. If something substantial comes up, he said he will forward it on to the Plan Commission and this Board as well. Attorney Kolbus said once the revised draft is ready, if Board members want to review it, they should let Chris know.

18. The next staff item was also presented by Chris Godlewski regarding Board member pay. He said there was some email discussion. In short, he said there will be no changes for the current Board but just one addition to the budget for Alternate Board member pay starting in January of 2014. He indicated that will go through as budgeted so beginning in January if Lori is acceptable to it, she will just get that part-time pay every month because many times she does step in for a whole meeting or part of a meeting. He also noted this will be represented in the Rules of Procedure for the BZA. When Mr. Hesser asked if this will wait until approved by the Commissioner and County council before a proposed change to the by-laws is initiated, Mr. Godlewski said the budget was submitted in September and has already been approved.

19. The meeting was adjourned at 12:41 p.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary