

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 16<sup>TH</sup> DAY OF JUNE 2011 AT 8:30 A.M.**  
**MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING**  
**4230 ELKHART ROAD, GOSHEN, INDIANA**

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

2. A motion was made and seconded (*Wolgamood/Lantz*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16<sup>th</sup> day of December be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Homan*) that the legal advertisements, having been published on the 8<sup>th</sup> day of January 2011 in the Goshen News and on the 8<sup>th</sup> day of January 2011 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

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

5. There were no postponements of business items.

6. The application of ***Brian & Beth Housand*** for a 4 ft. Developmental Variance to allow for the construction of an attached garage and addition to residence 116 ft. from the centerline of the right-of-way of East Jackson Blvd. (SR 120) (Ordinance requires 120 ft.) on property located on the North side of E. Jackson Blvd. (SR 120), 560 ft. West of CR 15, common address of 4040 E. Jackson Street in Concord Township, zoned R-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #4040EJacksonBlvd-110518-1*.

There were 6 neighboring property owners notified of this request.

Brian Housand, 4040 East Jackson, Elkhart, was present on behalf of this request. They are looking to add a two car garage located on the northwest corner of the property. It will be placed back as far as they can go in relation to the existing home, so that they will eventually be able to make an attached garage onto the back of the home. The petitioner explained they will be encroaching four feet into the 120 foot required setback. They tried to design it as such so they could get back as far as they possibly could and still tie it into the home.

Mrs. Wolgamood asked if it's being tied to home by way of a breezeway and the petitioner indicated that is correct.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said the driveway is close to the lot line, which is peculiar. He indicated that he was unaware that the side setback did not apply to driveway.

Mrs. Prough said only structures.

Mrs. Wolgamood said proposal is quite a bit farther back from where the existing structure is, keeping in line with existing house as it's so pretty.

Petitioner said that is their intention, to make it as close to period correct as they can, it will be a very nice garage. That is high on his priority list.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 4 ft. Developmental Variance to allow for the construction of an attached garage and addition to residence 116 ft. from the centerline of the right-of-way of East Jackson Blvd. (SR 120) (Ordinance requires 120 ft.) be approved in accordance with the site plan submitted and as represented in the petitioners' application. After a unanimous roll call vote was taken, the motion was carried.

7. The application of **Harry M. Burnstine** for a Developmental Variance to allow the total square footage of accessory structure to exceed the total square footage in the primary structure on property located on the East side of SR 15, 1,000 ft. North of US 20, common address of 56860 SR 15 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #56860SR 15-110523*.

There were 5 neighboring property owners notified of this request.

Harry Burnstine, 56860 SR 15 S, Goshen, was present on behalf of this request. Mr. Burnstine explained he sold his business and is storing his race car and trailer on site. The existing building is 40 feet deep and the trailer is 40 feet long. Mr. Burnstine would like to put the trailer inside the building rather than having it outside.

Mr. Hesser asked if his property is located north of US 20 and the petitioner indicated yes.

Mr. Burnstine had a letter from his neighbor, which he submitted to the Board at this time *[attached to file as Petitioner Exhibit #1]*.

Mrs. Wolgamood asked where that person lives, which he pointed out on the aerial photo.

Mr. Miller asked if it would be pole style building and the petitioner indicated it would be a steel building with open trusses.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Developmental Variance to allow the total square footage of accessory structure to exceed the total square footage in the primary structure approved in accordance with the site plan submitted and as represented in the petitioners' application with the 10 ft. x 14 ft. accessory building to be removed prior to the occupancy of the new addition. After a unanimous roll call vote was taken, the motion was carried.

8. The application of *Olen & Anna Miller* for a Special Use for a home workshop/business for repairing saddles (Specifications F - #45), a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, and a Developmental Variance from the number of required parking spaces on property located on the West side of East County Line Road, 2,240 ft. South of CR 32, common address of 61925 E. County Line Road in Clinton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #61925ECOUNTY LINE ROAD-110512-1*.

There were 5 neighboring property owners notified of this request.

Mrs. Wolgamood inquired about the required parking spaces. Mrs. Prough indicated that the petitioner is providing four spaces; however, ten spaces are required.

Paul Hochstetler, 63458 CR 31, Goshen, was present representing the petitioners. He works for Freedom Builders and would be building the structure, if approved. The petitioner would like to have his own workshop in the existing building. He has a full time job at Dutchman RV. He works in his workshop in the afternoon and on weekends, servicing an average of one to two vehicles per day. He wishes to use the accessory building for personal storage, as well as for church and other gatherings. In addressing the parking Variance, he stated that there would be no more than a couple of vehicles at any time.

Mrs. Wolgamood questioned the parking requirements for horse and buggy customers. Mr. Hochstetler stated that they normally park out in the field.

Mrs. Wolgamood inquired how long Mr. Olen Miller had been providing this service. Mr. Hochstetler stated that he was uncertain, but believed he had been doing it for several years.

Mrs. Wolgamood then asked if the work had been performed from the building, to which Mr. Hochstetler replied in the affirmative.

Mr. Hesser asked if someone had completed a total calculation for the Developmental Variance. Mrs. Wolgamood responded that it is 1,680 sq. ft., as noted in the questionnaire.

Mr. Homan stated that it is his understanding that Mr. Olen Miller operates a saddle repair shop only, and not a full tack shop or buggy repair business. Mr. Hochstetler responded that he believes there are no retail sales, just saddle repair.

There were no remonstrators present.

Mr. Hesser asked if there is a statement of concern about hours of operation. Mrs. Wolgamood acknowledged that she is always concerned about hours of operation, but realizes that neighbors police the hours if it becomes an issue.

Mr. Doug Miller said this operation seems pretty low impact and Mr. Hesser agreed.

Mr. Doug Miller noted that it would be more of a concern if there was a lot of machinery involved.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for repairing saddles (Specifications F - #45) be approved for the owner/occupant of the residence on site, in accordance with the site plan submitted and as represented in the petitioners' application. A unanimous roll call vote was taken and the motion was carried.

A motion was then made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved in accordance with the site plan submitted and as represented in the petitioners' application. After a unanimous roll call vote was taken, the motion was carried.

Lastly, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Developmental Variance from the number of required parking spaces be approved in accordance with the site plan submitted and as represented in the petitioners' application provided the accessory building is for personal use and personal storage only. The motion was carried after a unanimous roll call vote was taken.

9. Mr. Nemeth presented the staff item regarding *Yoder and Sons Fencing* at this time. They were granted a fencing operation in May, under certain conditions. At this time there is a request to adjust the hours of operation for the months of April through October. The request is to change the hours of operation from 5pm to 8pm, allowing them to work past five during the busy summer months. Secondly, he would like to move the outside storage lot that is on the site plan from the west side to north side; the reason is because they have calves in the far west barn and would like to use the intended storage area for calf pasture. Included in the information provided to the board were two maps and a site plan. As noted there is a gravel pit to the east, with tires along the gravel pit. Property to the east is now being used for business. The two impacted properties are the gravel pit to the east and the woods.

Mrs. Wolgamood indicated that Mr. Nemeth had answered her question about what was going on to the east and the subsequent impact.

Mr. Kolbus asked if hours were based on his application. Mr. Nemeth indicated that he was not certain at this time.

Mrs. Wolgamood remarked that she is trying to determine if the change requested is major or minor.

Mr. Kolbus stated that a minor change could be approved immediately. However, a major change requires a public hearing.

Mr. Homan said that normally he would be concerned about a site plan change, but in this case, the location of property is far removed from everything. Therefore, he does not see it as a significant change.

Mr. Nemeth indicated that the hours were not specified in the application.

Mrs. Prough read an excerpt from the minutes regarding hours of operation.

A motion was made and seconded (*Hesser/Wolgamood*) that the request of extension of hours from April to October, 5:00 p.m. to 8:00 p.m. be considered a minor change and be approved. After a unanimous roll call vote was taken, the motion was carried.

Secondly, a motion was made and seconded (*Hesser/Miller*) that the request to move the location of the building as represented on the original site plan to the location on the revised site plan be considered a minor change. After a unanimous roll call vote was taken, the motion was carried.

10. The application of *Holly Company, LLC (Leasor) and 3 Cross Ministries (lessee)* for a Special Use for a church (Specifications F - #48) on property located on the North side of CR 6, 450 ft. East of John Weaver Parkway, being Lot 3 of Gun Club Industrial Park, common address of 28735 CR 6 in Cleveland Township, zoned M-1 PUD, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #28735CR 6-110321-2*.

There were 6 neighboring property owners notified of this request.

Larry Hochstetler, 231 North Drive, Elkhart, was present representing the church and Holly Company. Mr. Hochstetler indicated that the staff report contained nearly all of the information he wished to share. He noted that the operation of the church will not be in conflict with manufacturing traffic, as church will be held on Sunday mornings and weekends.

Mr. Hesser asked how long the property has been vacant. Mr. Hochstetler stated that he thought it had been vacant for two years. The adjacent buildings to the west are owned by the same property owners. There is an arrangement for the church to lease that space. Mr. Hochstetler stated that the PUD, originating from the time the building was originally zoned, reflected the stipulation that the building be used for manufacturing. He explained that they are only seeking a Special Use for the building to be used as a church, which is outlined in the specifications of the Zoning Ordinance.

Mr. Homan asked if this is an existing church or a newly formed church. Mr. Hochstetler indicated that while it is a new start up a large number of the congregants will consist of members presently attending church on County Road 4.

Mr. Hesser asked about the duration of the lease. Mr. Hochstetler indicated that he was unsure about the specifics of the lease. He noted that the person operating the business to the west of the property is a board member of the church.

Mrs. Wolgamood asked what portion of the building the church would occupy. Mr. Hochstetler indicated that the church would use about 2/3 of the space.

Mrs. Wolgamood sought clarification regarding the proposed daycare. Mr. Hochstetler stated that they plan to establish a daycare for approximately 25 kids, operating Monday through Friday.

He indicated that the rear portion of the property is fenced. He went on to say that due to the high water table, the back half of the property is unbuildable. There is no intention, at this point, to expand.

Mrs. Wolgamood asked about city services. Mr. Hochstetler explained that originally, the property utilized a septic system. When improvements were made on C.R. 6, the city damaged the septic system. In lieu of trying to replace the system, the property was connected to municipal services, although the property is still serviced by a well.

There were no remonstrators present.

Mr. Hesser asked if substantial renovation would need to occur inside the existing building. Mr. Hochstetler explained that at this time, the building is just a shell. He stated that the plan is to construct some interior classrooms and renovate the three restrooms. One of the restrooms will be converted to a unisex handicapped bathroom. The other two will accommodate the congregation. He indicated that a church office will be built. He noted that currently, there is an area in the southeast corner of the building that is being used for the office.

A restroom is located in that area. They plan to convert that area to a kitchen. The adjacent room, currently the restroom, will be converted to a handicapped bathroom.

Mr. Homan asked the need to rezone this from M-1 PUD to M-1. Mrs. Prough explained that the PUD has restrictions. Anytime there is a deviation from the restrictions, the PUD must be amended. Mr. Burrow thought it would be best to remove the PUD and have a straight rezoning, which would avoid it being tied to a specific use. Special Uses are required for churches in any zones.

Mr. Hochstetler said it was his understanding from Mr. Burrow that the Board can implement the PUD, should the church vacate. A decision was made not to pursue re-zoning, so it was left at M-1.

The public hearing was closed at this time.

Mrs. Wolgamood asked if there were any issues with the daycare. Mrs. Prough indicated that it is considered an accessory use to the church. Had the petitioner not represented their desire to have a daycare, they would be required to amend their request.

Mr. Hesser expressed some concern with the fact that the property will be different use, coupled with a lease situation. He suggested implementing a review or conditions that when the property is no longer used as a church, the use is terminated.

Mr. Kolbus stated that it possible to impose reasonable conditions on a Special Use permit. There can be a time limit connected to the end of use. A change in usage would require another petition. Mr. Hesser stated that he was just a little concerned that it was a Special Use as well as a lease.

Mr. Homan stated that he wasn't too concerned about the Special Use/lease situation. However, he was somewhat intrigued by the daycare. He said even though the actual church activity happens on the weekend, daycare happens throughout the week. It is entirely credible that daycare might become a more thriving part of the church. He wondered if staff should review the situation in a couple of years to determine if the daycare has become a more intense activity of the church. He commented that the church, and consequently the daycare, would be located on a busy, four-lane road.

Mrs. Wolgamood commented that she believes this is a prime location for the church and daycare, with residential to the west and north, as well as nearby industry. She feels the use could become primary. She did express some concern about having a fenced in area for the daycare. She suggested that if approved for the church and daycare, with daycare secondary, as the staff has indicated, a staff review should be conducted in three to five years to determine the level of intensity, concerning the daycare. Mr. Homan stated that operating a daycare from 9am until 4pm for church members may be great. He speculated, however, that it is possible that there may be more activity than anticipated and the daycare hours could be changed, for instance from 6am until 6pm. Mrs. Wolgamood noted that Mr. Hochstetler indicated that he was not entirely familiar with some aspects of what the church had planned, and felt that a review might be a good idea.

Mr. Kolbus expressed concern about defining primary use and defining objective criteria to weigh it against. He indicated that there has been a concerted effort to steer away from staff reviews, choosing instead to enact a time limit at which point it is brought before the Board. He acknowledged that the concern is valid.

Mrs. Wolgamood agreed, but commented that the staff has already indicated that the daycare is secondary use, making the church the primary use.

Mrs. Prough agreed with Mr. Kolbus that some criteria must be defined.

Mr. Homan questioned if there were any concerns about allowing a Special Use for 3 Cross Ministries. If they moved out, he wondered if the Special Use terminates with them or continues on indefinitely. Mr. Kolbus indicated that the Special Use is tied to a church.

Mr. Hesser proposed a time period of two years

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a church (Specifications F - #48) be approved in accordance with the site plan submitted and as represented in the petitioner's application and provided the property is rezoned to M-1. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – yes, and Hesser – no.

11. The application of *Steven M. & Kristina R. Komon* for a Special Use for warehousing and storing of commercial trailers in an A-1 district (Specifications F - #44) on property located on the South side of CR 46, 348 ft. West of CR 9, being Lot 1 of County Road Nine Addition, common address of 26070 CR 46 in Union Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #26070CR 46-110520-1*. The staff did do an on-site yesterday and the trailer has been removed, which was shown in staff photos.

There were 6 neighboring property owners notified of this request.

Steve Komon, 69029 CR 9, was present on behalf of this request. Mr. Komon stated that the trailers are usually gone on the road. Recently he hired two drivers to pull those trailers and anticipated one being moved immediately. He indicated that the trailers were only parked there due to health issues within the family. He noted that he has owned the trailers for years and they have never been parked on the property on a regular basis. He explained that someone did not like them in the right-of-way which necessitated him applying for a Special Use permit. He said that if the Board does not want the trailers there he will move them, although he has tried to be compliant.

Mr. Homan asked Mr. Komon if he owns all three lots. Mr. Komon explained that he owns three lots and intended to put a house up on each lot, one for each of his three children. If he doesn't give each of his children a piece of property he can always put them back together. He stated that the property is worth more money split up, and would allow him to construct two more homes.

Mr. Homan asked about the trailer use. Mr. Komon said the trailers are used to haul freight. He owns his own trucking company and said they have resided there for nearly seventeen years. He explained that they have been responsible for many improvements, including a six foot privacy fence all around the land and landscaping.

Mrs. Wolgamood asked if he still has a lawn service or horses. Mr. Komon indicated that he no longer had either. He stated that he was a custodian for the shopping center in town and his mother-in-law owned the lawn service. When she passed away they gave it to someone else. He indicated that he worked there for twelve years

Mr. Homan asked where the trailers are being parked. The petitioner stated that the wanted to park the trailers behind the barn, however, he did not move them there since he did not

have the permit. He indicated that they are located in the middle of the east side of the property line, with one in front of the gate. Mr. Hesser asked about the accessory building that was approved in 2009 for a warehouse and storage. The petitioner indicated that it was a 30x50 foot building on lot one. He explained that in order for him to legally inspect his own vehicles he has to be able to get them inside by the DOT regulations. He explained that he is asking to be outside within the area indicated on the site plan.

Mr. Homan asked if the vehicles could be stored inside the building. The petitioner indicated that he could get the trailers inside, although it would take him a little bit of time to clean them up. He stated that he has just hired two drivers and once he resolves these issues they will usually be gone most of the week. He explained that if they are sitting out because they need brakes, they will go inside for repairs before going back out on the road. The petitioner stated that they are not eyesores, as they are brand new trailers and not rusty.

Mrs. Wolgamood asked the petitioner what he transports. Mr. Komon stated that he transports farm machinery, lumber, and occasionally his own personal vehicles. He noted that he has to follow DOT regulations. He can pull inoperable cars to the junkyard, however, that rarely happens. He explained that the eaves are 13 ft., so even when they are loaded, they can put them inside the buildings.

Mrs. Wolgamood said when she drove by the location she couldn't see anything due to the fence. However, she was able to see something above the fence. Mr. Komon explained that it was his own personal vehicle. Mrs. Wolgamood confirmed with the petitioner that the only thing outside of the fence is the tractor.

Mr. Miller asked the petitioner about the amount of time the trailers sit unloaded. The petitioner responded that due to health issues the last several months, the trailers have been sitting there 24/7. He explained that when things are running smoothly, they sit there for an hour or two if there is some type of repair problem. If there is a driver vacation the trailer may sit in the drive for a short amount of time.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan commented that he does not believe the operation conforms to the original Special Use of warehousing and construction. He noted that the intent, in 2003, was that all equipment be stored inside. It appears that the petitioner is unable to do that with these particular trailers.

The petitioner noted that there is less traffic now without his mowing service located there.

Mr. Homan said because it is a complaint and not in line with the original conditions of the Special Use, his motion would be to adopt the staff analysis as the findings of the board and deny the request to store commercial vehicles outside of an A-1 zone.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for warehousing and storing of commercial trailers in an A-1 district (Specifications F - #44) be denied with the trailers to be relocated to a proper zoning district within thirty (30) days. The motion was carried with the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – no, and Hesser – yes.



12. The application of **Linda L. Everson (owner) and Megan Everson (business operator)** for a Special Use for a home workshop/business for a dog grooming business (Specifications F - #45) on property located on the West side of CR 117, 1,775 ft. South of CR 18 (Hively Avenue), common address of 57855 CR 117 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #57855CR 117-110523-1*.

There were 3 neighboring property owners notified of this request.

Linda Everson, 57811 CR 117, Goshen, was present on behalf of this request. Ms. Everson also owns the home located at 57855 C.R. 117. She is requesting a Special Use permit to operate a dog grooming business at this location. Megan Everson, Linda's daughter, resides at 57811 C.R. 117. However, she will relocate to 58755 CR 117 if the Special Use request is approved. Megan Everson stated that she would like to operate a dog grooming facility, which would include bathing and trimming. She plans to use half of the garage for the business.

Mrs. Wolgamood asked what steps would be necessary to convert a portion of the garage for the business. Mrs. Everson stated that they will put in a partition, with an access door coming off the driveway. One stall of the garage would still be used. When the garage door is opened, the inside of the garage will appear to be a one stall garage and a separate room with windows and a separate entry.

Mrs. Wolgamood asked the petitioner when they anticipated opening the business. Mrs. Everson stated that she currently has renters; however, she intends to give them 60 days notice upon approval of the Special Use permit. They hope to be open for business in September or October.

Mr. Homan asked how many dogs they estimate having at one time, and if the dogs will be contained within cages. Megan Everson indicated that the cages will be contained within the garage, with no boarding. She responded that the breed size will determine how many dogs she will have at one time, but anticipated having three or four dogs at a time.

Mrs. Wolgamood confirmed that Megan Everson would be the only employee.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked if the petitioners would have to comply with any building regulations. Mrs. Prough suggested that they speak with the Building Commissioner, and stated that they may be required to obtain an interior remodeling permit, but was uncertain if anything would need to be submitted to the State.

Mrs. Wolgamood noted the owner/occupant reference and commented that Megan Everson is not the current owner. Mrs. Linda Everson explained that she intends to sell the home to Megan once the renters have vacated the home.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a dog grooming business (Specifications F - #45) be approved for the owner/occupant of the residence on site, in accordance with the site plan submitted, as represented in the petitioners' application and also as represented at today's hearing. A roll call vote was taken and the motion was unanimously carried.

13. The application of *Scott & Karrie Clark* for an amendment to a site plan and conditions of an existing Special Use permit for the extraction of gravel, sand and other raw materials in an A-1 zoning district (Specifications F - #10) on property located on the South side of CR 36, 1,540 ft. East of CR 11, common address of 24600 CR 36 in Harrison Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #24600CR 36-110516-1*. She also submitted a revised Staff Report to the Board at this time, which includes some additional conditions.

Mrs. Wolgamood clarified that the additional conditions were reflected on page 13B, items #15, #16, and #17. Mrs. Prough noted that those conditions were self-imposed and offered by the petitioner in his application. Mrs. Wolgamood asked Mrs. Prough about condition #2, asking for 20 additional years. Mrs. Prough responded that the original request, granted in 1997 was for twenty years. At this time they are seeking an additional 20 years.

There were 22 neighboring property owners notified of this request.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the petitioners. Also present with him was the petitioner, Scott Clark, 24600 CR 36, Goshen. Also in attendance was Karrie Clark, petitioner, and John Bowers from the Elkhart County Highway Department.

Mr. Doriot explained that when roads are built, aggregates and fill material are required, which involves mining. He stated that Indiana is a right-to-mine State, and noted that mining operations are conducted in such a manner as to have the least impact possible. He said that when Mr. Clark received a large product for fill material from Overburden and inappropriate material to crush for product, he talked to Mr. Bowers at the Highway Department about an easement. Mr. Bowers visited the site and determined the safest spot for entry/exit to the site, which he pointed out on the aerial photo. The exit/entry will keep trucks from coming down part of the road. However, they will have to slow and brake coming down the hill. Trucks will come up the hill at the high point. They will be able to slow down turn into the site with better visibility. Additionally, stacking trucks will not be exiting the site, which allows for better flow of traffic.

Mr. Doriot said that the petitioners have an operation which they have maintained with few problems. They would like it to remain a safe operation. They will cease using the driveway when, or possibly before, the temporary permit expires.

He asked the Board if they have a letter from the Highway Department. Mrs. Wolgamood indicated that they had a copy in their packets.

John Bowers, Elkhart County Highway, 610 Steury Avenue, Goshen, was present on behalf of the petitioners.

Mrs. Wolgamood asked if the permit was issued as a blanket permit for exit and entrance. Mr. Bowers responded that it was a blanket permit for one year. Mrs. Wolgamood asked Mr. Bowers if he had given any thought to eliminating the driveway to the east, if he thought the current entrance/exit was a better solution. Mr. Bowers acknowledged that when the petition was filed there was discussion about better locations. While he didn't recall with 100% clarity why they chose the location they did, he thought there may have been some difficulty with remonstrators.

Mrs. Wolgamood asked if Mr. Clark lives in the house. Mr. Doriot said yes, and pointed it out on the aerial photo. She noted that the curb cut services his house and conveyed her understanding of why he would want to keep that curb cut.

She asked Mr. Clark if they've thought about eliminating that driveway. He stated that he had thought about eliminating it and had planned to go through the top of the hill. However, the neighbors fought it, so they didn't pursue it. They just started using the driveway they had, which appeared to be agreeable with the Highway Department.

Mr. Clark stated that it is a temporary drive intended, primarily, for 200 trucks per day. He noted that there have been 200, and up to 300 trucks a day in the past. While this number is not greater than they have had in the past, it is going to be steady. He felt that it only made sense to do this as it will make the situation safer.

Mr. Hesser noted that a couple of changes from original conditions. He noticed that the concrete had been omitted but has now been added back with asphalt. Mr. Doriot said the petitioner recycles cement concrete and asphalt concrete. Mr. Clark noted that they have never crushed it. It has been stockpiled. He feels it is better for the environment and remarked that they try to recycle everything possible. While they have not yet crushed, they are permitted to do so. Mr. Hesser stated that the crushing is the same, and explained that he was referring to the difference in stockpiling. Mr. Doriot felt that it was just a matter of clarification. Mr. Hesser asked about interior traffic signs. He wondered if they were eliminated because they were no longer necessary. Mr. Doriot explained that he did not find them necessary due to the fact that when a truck is going south they will be directed that way. Otherwise they will be directed to the closest State Road.

Mr. Doriot pointed out a steep grade on the aerial photo and noted that it is a dangerous situation, and was the site of a fatality in recent years. He said that the steep grade may be one of the factors involved in wanting trucks to go the other direction. He explained that someone going south down that hill could not adequately brake. However, they are working on turning that into a four way stop.

Mr. Homan asked why the request for a driveway is only for 12 months, when the petitioner has indicated that adding the driveway and directing the trucks around through a loop will result in a safer traffic flow. Mrs. Prough commented that the original permit was granted in conjunction with the gravel pit to the west. At that time the petitioner was told he could not have an entrance to the gravel pit on his property. He was told he needed to use access on neighboring property. Sometime thereafter an issue arose and his access was cut off. This resulted in the petitioner seeking access to his property, in 2005. The petitioner was denied the permit and was instructed by the Board to use the existing driveway. However, since that access was cut off the petitioner no longer had a way to use his pit on his property. Mrs. Prough noted that among the documents detailing the history of the permit, there was a letter drafted by the County attorney stating that access to the property could not be denied. Therefore, the petitioner was granted administrative approval to use the existing driveway which services his house. The petitioner created a new driveway; however, we recently received a complaint. He was instructed by staff to clean up the permit, amend the permit to be focused on his property and not on the neighboring property. He was asked to amend his site plans and conditions. Mr. Clark offered self-imposed conditions, and requested another 20 years.

Mr. Homan asked for clarification concerning the 12 month request for the driveway. Mrs. Prough explained that the request pertains to a temporary, large job. Mrs. Wolgamood said

he has contracted with Bayer. Mr. Clark stated that his contract is with the trucking company and it involves a large number of trucks for a one year period.

Mr. Clark noted that there have been no issues over the last four or five years. He acknowledged that safety is the paramount concern for the temporary drive. He stated that there will be fifteen to twenty trucks per hour, which would have a profound impact if they are all at the bottom of the hill.

Mr. Doriot indicated that the 20 year request was based on the previous request. He stated that while they would prefer approval for at least ten years, they would be open to a varied period of time.

Kerri Gessinger, 24747 CR 36, Goshen. Ms. Gessinger indicated that she resides directly across from the new entrance. She expressed concern about safety, noting a fatal accident that occurred several years ago, involving the ejection of a woman from a vehicle. She is worried about the safety of her kids who may be playing in the yard, if an accident should occur. She also stated that a school bus stop is located at the entrance. She noted that she previously voiced her opposition; however, it is already there. She said that the road has already sustained some damage.

Jerry Burt, 24699 CR 36, Goshen, was present in opposition. He lives just east of the Gessinger's property. Mr. Doriot pointed out his property on the aerial photo at this time. He stated that he has spoken to Burnett Weaver who indicated that the most they ever had in the Yellow Creek pit is 160 trucks. He noted that he has lived at his residence for seven years and has certainly never seen 300 trucks. He stated that there have been fatalities at C.R. 13 and C.R. 36, as well as C.R. 11 and C.R. 36, in addition to the previously mentioned fatality. He expressed concern that the entrance compounds the safety hazard. He asked why the Zoning Board and Highway Department do not work in conjunction with each other, noting that the Zoning Board denied the request in 2006, however, the Highway Department issued a permit.

Peggy Johnson, 24904 CR 36, Goshen, was also present in opposition to this request. Mr. Doriot pointed out her residence on the aerial photo. She submitted a petition dated May 19, 2005 *[attached to file as Remonstrator Exhibit #1]*. Ms. Johnson indicated that the petition stated "that the Zoning Board said that the hill was not safe to have a drive there." She stated that additional homes have been constructed in the community since that time. She noted that a road study done in 2003 reflected a traffic count of 759 over a 48 hour period. However, due to the increased number of homes, she is confident that the traffic count has increased.

Dennis Pynaert, 24921 CR 36, Goshen. Mr. Pynaert lives west of the pit, on the south side of C.R. 36. Mr. Doriot pointed out the residence on the aerial photo. He noted that the traffic of 300 trucks in a 12 hour period would result in one truck passing by his residence every 2.4 minutes, which he has never seen. He stated that he would like to share some information about how everything began. He noted that he has resided in his home for 30 years. He said that when this land was sold, Beer & Slabaugh did some bore sampling, at which time they determined there was not enough gravel to make it a viable business venture. He commented that what appears to be happening is that there is no mining occurring; rather fill is being taken out of the land. He stated that the reason they had to join with the Weaver pit was due to truck traffic because they knew it was not viable to enter any type of road on C.R. 36. He said that partnerships are made to dissolve and believes that is exactly what happened. When that happened, he feels they should have recommended fixing or forgetting the business venture. He voiced frustration that he has appeared before the Board several times concerning this matter.

He feels this is a nuisance and not needed in the neighborhood. He noted that there are no less than 8 homes within  $\frac{3}{4}$  mile from where he lives. He stated that this is a business/commodity that can be found somewhere else and there is no need to inflict this hardship on the community.

Ryan Brisco, 24828 C.R. 36, Goshen. Mr. Brisco just moved to the area within the last month. His residence is located two driveways west of the property in question. He has a five year old daughter and another child on the way. He expressed concern about his children entering and exiting a school bus on the incline of the road. He noted that cars crest the hill at speeds of 55 mph or 60 mph. He is concerned about a tandem axle truck, hauling tons, which would do a loop before coming back up the hill before starting to go down an 18 foot decline in the hill right past his driveway. If something happens, he questioned how a truck, or in fact any car, could stop. He believes the speed limit should be reduced as well, noting that vehicles fly over that hill constantly.

David Johnson, 24904 CR 36, Goshen. Mr. Johnson acknowledged that safety and road traffic are concerns. However, he expressed concern about the remedial possibilities of this pit when he is done. He wondered if the petitioner has the financial resources to repair the pit as well as road damage. He stated he does not wish to put Mr. Clark out of business, and in fact, hopes he stays in business. However, he is upset that a driveway was put in before he went to the zoning board. Mr. Johnson stated that the petitioner could still use the lower drive, which reflects the decision the Board previously made. He also voiced his concern about possible well contamination when he brings material into the pit. He noted that the petitioner has hauled in piles of concrete, which he says he is not going to grind. He suggested that a bond should be in place for the remediation for road damage and the recovery of the pit. He said that the Weaver's have already started to recover their pit.

In rebuttal, Mr. Doriot expressed regret that aggregate fill and material is needed to build homes, driveways, roads, etc. He stated that the petitioner will close his pit as required by mining standards. He has gone to the Highway Department in pursuit of a safer spot for his entrance, which is on top of the hill. He noted that a loaded truck traveling less than 600 feet to the crest of the hill would have a hard time reaching 30 mph, let alone 40 mph. He stated that slowing down while going up the hill will result in less wear and tear on the highway. He said that the requirements to obtain a CDL have become tougher. He noted that individuals are getting out of the business due to the requirements, citing vehicle maintenance and drug and alcohol restrictions. He stated that trucking has become much safer over the last few years with DOT inspections becoming more stringent. Regarding school bus safety, he said that the drivers are aware of school bus issues. He pointed out that trucks sit six to six feet higher than a normal passenger vehicle, which allows them to see what's happening further ahead. He addressed the concerns about crushing concrete by noting that it appeared in the original permit. He explained that they wish to retain it, and simply attempted to clarify the definition of concrete. He noted that the reclaiming will be done according to what the petitioner is stating and keeping with mining requirements.

Mr. Doriot acknowledged that the petitioner made a business decision to mine there. He recognized that Beer & Slabaugh did not feel it was a viable business opportunity. He respectfully requested that the Board approve the request.

Mr. Clark said he does not wish to hurt the community in any way. He stated that the drive was temporary for safety, which is why the Highway Department permitted a temporary drive. He expressed his desire to make the situation safe for everyone involved. He noted that

two of the remonstrators built houses after the gravel pit was operational. He acknowledged that the truck traffic would still be there, since the dirt is going to be hauled out. Mr. Hesser asked if the law that requires that mining and gravel also applies to dirt. Mr. Kolbus stated that anything beneath the ground is covered. He noted that dirt is a mineral and is covered by the law.

Mr. Hesser also questioned the guidelines concerning 25 houses within 1/8 of a square mile.

Mr. Kolbus stated that the guidelines do apply since part of the pit is in an urban area, while part of it is not. He indicated there is case law disallowing action that would prohibit the complete use and alienation of the mineral resources. He cited an example involving a 30 ton limit, in an urban area on C.R. 36. The owner of the gravel pit complained about it because he had 50 ton trucks. The court ruled that it is not prohibiting the use; it is only requiring that smaller trucks be utilized. It would be a different situation if there were no trucks allowed on C.R. 36 because then they couldn't alienate the minerals at all. There must be some access, however, there can be reasonable conditions established, as long as mining is not prohibited.

Mrs. Wolgamood stated that she visited the site and felt that she could have easily turned west at that location in her vehicle. While she acknowledged the angle, she stated that she could have turned in and wondered how this will be kept as right-in only. Mr. Doriot replied that things could be designed to fit a truck; however, small vehicles could make the turn. He stated that he could instruct Mr. Clark to advise truck drivers not to enter that way, directing them to the main entrance.

Mrs. Wolgamood asked if they could use some signage. Mr. Clark said they would have to put it on the other side of the road because trucks come from the west.

Mr. Homan stated that he is concerned about the school bus unloading across from the temporary drive. He wondered who is responsible for alerting the school district about a possible safety issue. Mr. Doriot noted that the location is at the top of a hill, and falls in a striped no-passing zone. He offered to talk to the Highway Department and the Sheriff's Department to encourage them to look at the location.

Mr. Clark believes it is striped from CR 11 due to the hills in that area. He stated that there will always be buses. Mr. Homan acknowledged that there will be buses; however, he is concerned that the temporary condition will add traffic. He questioned if the Highway Department had considered trying to slow traffic in that stretch, since there is going to be higher intensity resulting in public safety issues.

The public hearing was closed at this time.

Mr. Hesser stated that having an entrance may actually slow things down. A vehicle traveling behind the truck would be forced to slow down if the truck turned into the entrance.

Mr. Homan expressed concern about kids entering and exiting a school bus directly across from the entrance.

Mr. Miller noted that to obtain a driveway permit from County Highway there are specific guidelines with respect to elevation changes, access point entering a piece of property, etc., He stated that County doesn't take it lightly when they are issuing a residential driveway permit. He is also concerned about the student unloading/loading. He acknowledged that he is comfortable with the location since it appears to be a safer location, with a right turn in and an exit at the other driveway.

Mrs. Wolgamood shared that while she has no experience as trucker, when she drove the route she was surprised to see the driveway to the east because she felt much safer at the

proposed temporary driveway at the crest of the hill. She further stated that the property owner in between does not oppose the proposal, as noted in the letter contained within the Board's packet.

Mrs. Wolgamood said she can understand Ms. Gessinger's concerns because her driveway is located directly across from the petitioner's driveway. Mrs. Wolgamood stated that she drove by the location heading south, turned around and passed the location a second time. She estimated that it took her approximately three minutes, during which time she saw two dump trucks heading east to this particular property. She commented that she doesn't agree with the actions of the Highway Department when they issued a permit without Board approval. However, she noted that things like that happen, although Mr. Clark knew that he had been previously denied. Mr. Clark chose to go to the Highway Department instead of appearing before the Board to obtain the driveway permit. She went on to say that she does feel that the proposed location is the safest location for the driveway

Mr. Lantz asked if there was signage to indicate truck traffic. Mrs. Wolgamood stated that there appears to be a highway sign, indicating trucks entering and exiting, to the west of the existing driveway. Mr. Clark indicated that it is something he erected to make cars aware of the truck traffic, although it is not permanent.

Mr. Lantz feel there should be some signage to let people know there are one or two, driveways. He acknowledged that drivers also bear responsibility for their own safety. Mrs. Wolgamood stated that she was glad she visited the site to gain a better perspective of the conditions.

Mr. Hesser addressed the remonstrators and stated that he is sympathetic, as he has lived down the road from a couple of gravel pits that produced very intense traffic. He noted that Mr. Doriot stated it is something that is needed and the legislature mining wins in those cases.

He feels this temporary driveway makes much more sense and appears safer. His sole concern is the requested time extension of 20 years. He is concerned that they may be done well before the 20 year extension ends. He cited changing issues in traffic as one of the reasons he would prefer not to extend the original request. He suggested that if they are not finished at the end of 2017, they can seek a renewal. If it gets to the end of 20 years and they still need to mine there will be no choice but to extend it under the appropriate conditions. Mrs. Wolgamood noted that the conditions submitted indicate the temporary driveway will be closed. March 13, 2012.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the revised Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for an amendment to a site plan and conditions of an existing Special Use permit for the extraction of gravel, sand and other raw materials in an A-1 zoning district (Specifications F - #10) be approved with the following conditions imposed:

1. Hours of operation to be 6:00 a.m. to 6:00 p.m., six (6) days per week (Monday through Saturday). All times to be prevailing local time and provided, further, that nothing shall require said use to remain open during those hours. All gravel loading or equipment producing noise shall be eliminated after 6:00 p.m.
2. The duration of the Special Use permit shall be until May 15, 2017.
3. Exterior lighting for said premises, if any, shall be restricted to security rural dusk to dawn night guard-type lighting.
4. No exterior loud speakers shall be allowed on the premises.

5. Permanent buildings constructed on the site shall be constructed in accordance with plans and specifications approved by appropriate governmental authority with building permits issued by the Elkhart County Building Department.
6. The mining operation shall be conducted in compliance with all federal laws, rules and regulations imposed from time to time and administered by the United States Bureau of Mines.
7. All interior access roads to and from the site shall be dust controlled and maintained with crushed stone to prevent mud from being carried onto the highway.
8. Excavation areas shall be graded in such a manner as to prevent the collection of stagnant water.
9. The following setback lines shall be applicable to the gravel mining operation for materials storage and stockpiling, storage of equipment, excavations and the construction of permanent buildings:  
Fifty (50) feet from all adjoining properties to the north, east and south, except for access point.
10. The Special Use permit shall be confined to the site plan submitted.
11. Sign per specifications, mounted at existing drive. No sign at temporary drive.
12. The operator of the mining business shall be responsible for security of the property and maintaining the existing farm fence, along with the mounds on the east and south property line.
13. No asphalt or concrete shall be manufactured on the site without prior consent of the Elkhart County Board of Zoning Appeals after public hearing upon notice to interested parties as required by ordinance.
14. Only one (1) stockpile of concrete and one (1) stockpile of asphalt permitted for recycling in the gravel pit.
15. Upon closure of the mining operation, all ponds and/or lakes created by the operation shall be banked and sloped leading to the water's edge, with a slope not greater than three (3) to one (1) and seeded with perennial grasses at the time of grading.
16. Petitioner permitted to crush concrete on-site four (4) weeks out of every four (4) years.
17. The temporary driveway should be managed as a right turn-in only and is to be closed on March 23, 2012.
18. The petitioner is to write a letter to the Northwood Transportation Superintendent explaining this situation to them and the new temporary driveway. A copy of that letter is to be provided for the Special Use file.

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

14. The application of *Calvin S. & Ruby Wingard* for a Use Variance to allow for a second residence on one zoning lot and a 10 ft. Developmental Variance to allow for the construction of a second residence 65 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) on property located on the North side of CR 131, 1,200 ft. West of CR 33, common address of 15471 CR 131 in Clinton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #15471CR 131-110519-1*.

There were 7 neighboring property owners notified of this request.



Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the petitioners. Mr. Doriot said he feels the staff is completely wrong. He expressed appreciation for the due diligence of the staff. He submitted a petition in favor of the request at this time *[attached to file as Petitioner's Exhibit 1]*.

Mr. Doriot submitted an aerial photo to the Board *[attached to file as Petitioner's Exhibit #2]*. He pointed out the location on the aerial photo where the petitioners would like to put the dawdy house, which would be situated behind the existing house. He pointed out the location of the neighbors on the aerial photo who are in favor of this request.

Mr. Doriot shared with the Board the definition of the word "community", defined as: A social group of any size whose members reside in a specific locality. He noted that the surrounding neighbors, all of whom signed the petition, meet the criteria for a community. He voiced his opinion that the request would not be injurious to the public health. He noted that the owner has soil borings that show ample areas for new and reserve septic systems, allowing proper well separation. In addressing safety concerns, as indicated in item #1 of the Staff Report, Mr. Doriot stated that the construction of the home will not be a safety hazard, as no additional entrance will be requested at the home. Furthermore, the home will be set back further than the existing farmhouse, which predates the ordinance. He explained that granting the request would not affect the community in immoral manner, since farming and taking care of family from the start of life to its end is of the highest moral grounds.

He stated that a family member taking care of the elderly reduces the load on the public nursing homes, thereby, helping the general welfare of the community.

In addressing the issue of reduced property value, Mr. Doriot explained that the proposed home will be stick built and attached to an existing stick built structure. It will be finished to blend with the rural character. Also, at a later date, it is possible that this site could be split off, with one Variance, which would be a side yard Variance. However, his client is willing to file a commitment to the Board that it will be only used for family with no rental purposes. Mr. Wingard is 62 and he plans to be here as long as he can.

Mr. Doriot explained that an attached home addition could not be built to the north as it would interfere with the flow of the farm. Building to the east would block the view of the petitioners' son of the existing farm buildings and the area where the children play. There is no room to the west. These combined factors contribute to the unique character of the site. They are unable to go east because the property drops off. They cannot build to the south because they would not want to be on that side of the duck barns.

He stated that this is the only viable location for the house. If the request is not granted, the petitioners will be required to leave the farm they built for their family and endure the hardship of living away from their son as they grow older. Unfortunately, should they move, they may be required to move from home to home as their children care for them. Approving this request would allow them to remain autonomous by having a house close, but separate. Should their children wish to visit, it is a 60 ft. walk. He proposed that this follows Goal II of the Comprehensive Plan, a sense of community and rural character. Mr. Wingard would be in a position to live on his farm and work in a lesser capacity, part-time, until full retirement. The addition to an existing building will not impact rural vistas and will fit the rural character.

He noted that the community is in favor of this request. He stated that he has successfully addressed the five staff findings. He indicated that the petitioners, in addition to neighbors in support of the request, are present.

Mrs. Wolgamood noted that the site plan reflects a lot line that indicates that if it was required to split at a later date a 5 foot Variance between buildings would need to be granted. Mr. Doriot explained that after re-measuring, he determined it would be 3 feet on either side.

She asked why that couldn't be done now. Mr. Doriot explained that the goal is not to have a neighbor there at some point, which is why the petitioner is willing to commit that the home would be for family only. If the property is for rental or sale, they would have to come in for a subdivision. They will have to share a driveway.

There were no remonstrators present.

Mr. Lantz asked if any of the new legislation affects any of this. Mr. Kolbus stated that it did not, and went on to say that there have been commitments for the Board of Zoning Appeals which clarify certain issues.

The public hearing was closed at this time.

Mr. Hesser stated he is often concerned with the five grounds for denial in the Staff Report when there is a recommendation to deny a Use Variance. He does not feel that they are all applicable and convey a worse scenario than actually exists. He thought that the petition and the proposed commitment offer satisfactorily addresses the community issue, however, he is not convinced it solves the problem. He noted that when petitioners seek approval for these types of requests, their thoughts center around current residents and not what may happen down the road. He expressed concern that allowing these types of situations could cause issues in the future. He feels that this issue needs to be addressed in the Zoning Ordinance to allow these. The way it stands right now, a Use Variance is required, meaning the Board has to go through those findings. Mr. Hesser noted that he gets stuck on staff findings #3 and #4. He feels Mr. Doriot's comments had to do more with the location of the house on the premises rather than the need for a second residence on the property. He does not feel there is anything unique about this property which warrants the need for a second residence.

Mr. Doriot explained that the uniqueness he referenced is that he is able to build to the attached main house under the Zoning Ordinance. However, an addition would not function anywhere on the property.

Mr. Lantz questioned what commitment was being proposed. Mr. Doriot stated that the home will only be used for family. They are willing to provide a written commitment, as well as restricting the deed.

Mr. Miller stated that his roots are in a similar community, although in a different state. He said that what the petitioner is seeking is common practice in the state he grew up in. He noted that he has no issue with staff findings #3 and #4. He agrees with Mr. Doriot that this is the best option for this particular situation. He believes that the individuals from the community who are requesting this may have a different moral character than residents of other communities. He stated that he is comfortable with the request.

Mr. Homan said he feels the current Zoning Ordinance is lacking with regard to this issue, particularly, the subject of 'dowdy haus'. He feels it needs to be reviewed and the proposed changes of the Zoning Ordinance had some provisions for that, but it seems to be stalled at the moment. This is a future conversation that needs to happen sooner rather than later. The Board has made accommodations in certain circumstances to allow for a secondary residence on a lot, however; he is concerned about the Board setting precedence. When this type of request is approved or disapproved, he would like to see a commitment that the occupant of the second residence be restricted to parents. If this request is approved, Mr. Homan indicated he would

like to see it extremely restricted. He would feel better if there were a commitment stating that the occupant of the second residence be limited to parents with the property reverting to a non-residential use after the parents are no longer occupying the space.

Mr. Hesser noted they can't impose the restriction that it be limited to particular individuals on a Use Variance.

Mr. Kolbus acknowledged that Mr. Hesser is correct. He explained that if the petitioner wants to offer that condition then it is a different scenario. The Board usually limits occupants to a class, such as family, owner/occupant, etc.

Mr. Doriot said that the petitioners are willing to offer the restriction that when the petitioners pass away, the residential use of the building will cease. At that time, if they want to do anything with it they would have to appear before the Board.

The Board examined said request, and after due consideration and deliberation, a motion was made (*Lantz*) that this request for a Use Variance to allow for a second residence on one zoning lot and a 10 ft. Developmental Variance to allow for the construction of a second residence 65 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) be approved with a commitment that when the petitioners pass away, the residential use of the building will cease. The motion died due to lack of a second.

Mrs. Wolgamood questioned if the commitment he is referring to is only in regards to the occupancy of the residence. Mr. Lantz said that is correct. She noted that Mr. Doriot offered a lot of other commitments which she felt should be included as presented by the petitioner's representative.

Mr. Doriot asked the Board if they would like him to itemize the commitments and they indicated yes.

Mr. Doriot said this will be a stick built structure attached to an existing stick built structure. The petitioners will agree to a commitment that this is approved for Calvin and Ruby Wingard until they pass away. The son will then inherit an empty residence and it will either have to be sold and proceed through the Subdivision Control Ordinance (in effect at that time) or it will remain empty. He indicated they also agree to any other statements on the face of the petition. They will commit to using the existing driveway as well.

Mrs. Wolgamood noted that Attachment 'A', which was submitted by the applicant, summarizes the findings as represented by Mr. Doriot.

Mr. Doriot said the building would be built to the sense of the rural character of the community.

Mr. Hesser indicated he appreciates the commitments the petitioners are offering, but he doesn't feel he can support the request.

A motion was then made and seconded (*Lantz/Miller*) that this request for a Use Variance to allow for a second residence on one zoning lot be approved based on the following findings:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community. The owner has had soil borings that show ample areas for new and reserve septic systems while allowing proper well separation. This will not cause a safety hazard as no additional entrance will be requested and the home will be set back further than the farmhouse. This will not affect morals as farming and taking care of your family from the start of life to its end is of the highest moral grounds. Lastly, taking care of the elderly by a family will reduce the load on a publicly supported nursing home, thereby helping the general welfare of the community.

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. The stick built home will be attached to an existing stick built structure and will be finished to blend in with the rural farm character. Also, the site could be split off as a separate lot with one side setback Variance being granted.
3. A need for the Variance does arise from a condition that is peculiar to the property involved. An attached home addition could not be built because it would conflict with the existing farm buildings if built to the north and west. If built to the east, it would block the view of the farming operation and the only area where Mr. Wingard's grandchildren play, which would cause a potential safety hazard to children.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property. This is the only viable location for a dawdy haus. If not approved, it would require the Wingard's to move from the farm they built for their family and endure the hardship of living away from their son as they grow old. Denial of the petition may also cause the petitioners to be passed around from child to child if the end of life requires nursing home care.
5. The Variance does not interfere substantially with the Elkhart County Comprehensive Plan. This request will follow Goal II of the Comprehensive Plan, titled "A Sense of Community and Rural Character". This will allow Mr. Wingard to live on his farm and work in a lesser capacity part-time until full retirement with an addition to an existing building that will not impact the rural vistas and fit with the rural character.

The request is approved based on the following verbal commitments:

1. This will be a stick built structure attached to an existing stick built structure and will be finished to blend in with the rural farm character.
2. Approved for Calvin and Ruby Wingard until they pass away, at which time the residential use of the building will cease; then the building will either have to be sold and gone through the Subdivision Control Ordinance (in effect at that time) or it will remain unoccupied.
3. The existing driveway will be used for the second residence.
4. Approved in accordance with all information listed in the petition and stated at today's hearing.

The motion was carried with the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – yes, and Hesser – no

Secondly, a motion was made and seconded (*Lantz/Wolgamood*) that the request for a 10 ft. Developmental Variance to allow for the construction of a second residence 65 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) be approved with the petitioners being given 120 days to obtain their building permit. After a unanimous roll call vote was taken, the motion was carried.

15. The application of *Harvest Community Church* for an amendment to a site plan and an existing Special Use for a church (Specifications F - #48) to allow for the construction of additions to the church, the construction of an accessory building, and additional parking on property located on the North side of CR 34, 2,900 ft. West of CR 29, common address of 17285 CR 34 in Elkhart Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #17285CR 34-110520-1*.

There were 6 neighboring property owners notified of this request.

Enos Yoder, DJ Construction, 57594 Heritage Way, Goshen, was present on behalf of this request. The church, formerly known as Zion Chapel, has had several Special Use Variances since its inception in 1982. The most recent Special Use Variance from 2006 was obtained for a multipurpose facility that was not built. He noted that the multipurpose facility is still part of church's long term master plan. He explained that there are several projects that take greater priority, such as improving the entry foyer and separating the adult meeting spaces from the children's area, with an addition to the north. Future plans include further improvement and expansion of foyer along with additional storage areas. The only planned parking addition would allow for additional administrative staff parking along the administrative entrance in the north. He noted that the church has 370 parking spaces, which is more than needed to support this change and far exceeds any code requirements. He stated that the plans meet setback requirements and permits will be obtained for construction.

Steve Chupp, pastor of Harvest Community Church, was present on behalf of the request. He said that the church has been at this site for a long time. He explained that the church carries a lot of concern for the community. He stated that in the early 1990s they bought the old Post Office and Goshen theater. Those properties were renovated for use for community service and outreach. The church also has a lot of on-site activity taking place including children's ministry, ministry to young mothers, Celebrate Recovery, a strong outreach to the jail and work release. He said that they have really tried to use the facility to serve the community. Recently the name of the church was changed in an effort to better connect with the community. He indicated that they have a stable congregation, with the same pastor presiding for over 30 years. He shared that the building and grounds are well maintained. They would like to separate the children's space from the adult's space, since security is of utmost importance. Surrounding churches have visited their recently renovated children's space inside to view the changes. He stated that they are extremely happy at that site and he feels that they have a good relationship with what is going on in the community.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to a site plan and an existing Special Use for a church (Specifications F - #48) to allow for the construction of additions to the church, the construction of an accessory building, and additional parking be approved as represented in the petitioner's application and as per site plan submitted. A roll call vote was taken and the motion was carried unanimously.

16. The application of **Jeffrey W. Drake** for a Use Variance to allow for an accessory structure without a primary residence on property located on the South side of 4th Street, 255 ft. Southwest of Heaton Visa, being Lots 39 & 40 of Heaton Park, common address of 23082 4th Street in Osolo Township, zoned R-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #230824thSt-110516-1*. She also submitted two letters in support of this request from neighboring property owners *[attached to file as Staff Exhibits #2 & #3]*.

There were 21 neighboring property owners notified of this request.

Jeffrey Drake, 23039 Heaton Vista, Elkhart, was present on behalf of his request. He stated that he would like to erect a 38x40 pole barn on the two lots located across from his residence. He stated that he has the support of several neighbors. He is seeking permission to combine lots 39 and 40 and place the pole barn in the center, east to west, staying within his boundaries. He feels that he has plenty of room to do so if the two lots are combined. He noted that he lives on lot 28, situated on the lake front.

Mr. Hesser questioned if the property is vacant. Mr. Drake explained that there are vehicles on the property, including boats and snowmobiles.

Mr. Hesser asked if there are a number of other accessory buildings along that road. The petitioner stated that there is a next door neighbor on each side of the property. He stated that he has boats and snowmobile and trailer that he would like to get out of sight and out of the weather.

Mrs. Wolgamood noted that there were two letters sent in support of the petition. One resident lives immediately to the west of the property in question. She wondered where the Culps resided. He explained that they live directly next door to his home on the lake, to the west.

Robbie Drake, Jeff Drake's son, was also present.

Mrs. Wolgamood noted that 4<sup>th</sup> Street is a paved road which is maintained by the County. Mr. Lantz noted that combining the lots would result in a lot 100' in width and 150' in depth.

Mrs. Wolgamood asked why this request was previously denied. Mrs. Prough said the neighbors were concerned he was going to operate an auto repair business.

Robbie Drake said no mechanical work will be taking place in the pole barn because there would not be any electric service. The pole barn will be used only for storage.

Mr. Hesser asked if there were other lots along the road or in the area where there are just accessory buildings. Robbie Drake noted that he used to own property on 3<sup>rd</sup> Street, which contains a pole barn. Mrs. Wolgamood asked if there was a residence on the property where the pole building was located. Robbie Drake responded that a new home had just been built, as his old home on that location was destroyed in a fire. He explained that they would like to get the boats and snowmobile trailer inside to clean up the property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller said that when approval has been granted in the past, the property has usually been located directly across the street. In respect to that, the property directly across the street has houses on them, and this may be a little bit of a stretch. Mrs. Wolgamood noted that there is also a nearby park.

Mr. Miller noted that there are houses immediately to the west, as well as on 3<sup>rd</sup> Street area. He feels that the property in question is a location where someone could certainly build a home in the future. It is a nice double lot, but with the location of the barn it wouldn't allow for a house to be built there in the future.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the Staff Analysis as the Findings

of the Board, and based upon these Findings, this request for a Use Variance to allow for an accessory structure without a primary residence be denied with no additional conditions imposed. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – yes, and Hesser – yes.

17. The application of *Charles E. & Gail A. Matrau* for a Use Variance to allow for the illumination of an existing sign (billboard) in an A-1 zone on property located on the East side of US 33, 1,250 ft. South of CR 138, being Lot 8 of Skyline Estates 3rd, common address of 65680 US 33 E in Elkhart Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #65680US Highway 33-110512-1*. She submitted a revised Staff Report at this time as additional information regarding electric to the sign was received after the initial staff recommendation was made.

There were 13 neighboring property owners notified of this request.

Charles Matreau, 65680 US 33 E, was present on behalf of this request. Mr. Matreau stated that he has lived at his current residence for nearly 15 years. He stated that he has no issue with the sign being lit. He noted that when he bought the residence there was an old light bulb on the sign, which subsequently burned out. He explained that the sign has not been lit for quite some time.

Steve Snyder, 200 W. Main St., Syracuse, representing Perma Advertising, was present on behalf of this request. Mr. Snyder stated that Perma Advertising is the current tenant. He explained that the power to the sign has been on since 1989 when a permit was issued by the County. The last tenant of the sign did not need the sign illuminated; therefore, the electricity was disconnected, although not removed, on January 4, 2010. The current tenant would like the sign to once again be illuminated. He said that the request is within the 18 month period of discontinuance of a non-conforming use. He noted that this was permitted by the County in 1989 for illuminated signs and by the State in 1993 for an illuminated sign.

Mrs. Wolgamood asked for some clarification concerning the request, and the need to reappear before the Board since it appears to be non-confirming and it has not been suspended for more than 18 months. Mrs. Prough acknowledged that the situation is somewhat confusing. She went on to say that when the application was submitted, a staff member was asked if it was permissible to illuminate the sign. Due to the fact that the current Zoning Ordinance does not allow billboard-type signs in eight districts, the staff determined it would not be permissible to run electricity to the sign since the result would be considered an intensification of the initial use. She went on to explain that as the staff investigated further, no building permit was found for the existing sign installed in 1967, which was prior to the issuance of permits. There was a record of a permit from 1989 which allowed electric to be run to the sign. In 1989 it was permissible to have a large billboard sign in an A-1 zone. However, the ordinance read that the sign had to be set back the same distance as a house, which it was not. Staff determined that when the permit was issued in 1989, it was determined that it was a legal non-conforming sign. Staff discovered that the sign had been illuminated up until a year ago. Additionally, upon inspection, the staff found a meter at the location which indicated that there was never intent to abandon the sign. Mrs. Wolgamood asked if the sign had been illuminated, or if there was power but no illumination. Mrs. Prough stated that there was a light, as reflected in the picture provided to the

Board. She explained that they made a decision to run the request through the process so that there would be record that the illumination was approved. There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the revised Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for the illumination of an existing sign (billboard) in an A-1 zone be approved with no additional conditions imposed. A roll call vote was taken and the motion was unanimously carried.

18. The application of *Sugar Grove Church, Inc.* for an amendment to an existing Special Use to allow for an addition, additional proposed storage, expansion of the parking lot and addition of baseball diamonds (Specifications F - #48) on property located on the East side of Old CR 17, 250 ft. South of CR 118, common address of 58512 Old CR 17 in Concord Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff [*attached to file as Staff Exhibit #1 & #3*].

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #58512Old CR 17Rd-110425-1*. Mrs. Prough acknowledged that a site plan was received and has been included in the Board's packet of information. The revised site plan addresses the temporary restrooms, future parking, current and future parking regulations and exceeds the requirements of the Zoning Ordinance. She noted that the site plans show the dimensions of the softball diamonds. Staff has reviewed the revised site plan and all areas appear to be in compliance.

Mrs. Wolgamood noted that the revised site plan would have addressed most of their questions, had it been submitted in lieu of the original site plan.

Mr. Hesser stated that the PA system appears to vary slightly. He stated that he assumes that when referring to "speakers", it is not intended to mean hand-held speakers. He wondered if that would present a concern. Mrs. Wolgamood questioned how it would be policed. Mr. Hesser noted that it would be fairly easy to ascertain if a PA system had been in place. He said that he would like to see the speakers angled east and southeast, away from the homes. He stated that the plan indicates no lighting, which was one of his concerns. It seems probable, when discussing hours of use, that it will be used for more than what is stated. It would be relatively easy to see if lights were on, which would limit the hours of use. He acknowledged that the field, which is large, was most likely purchased with the intent of using it in various capacities.

Mr. Kolbus indicated that the public hearing would need to be opened to accept the revised site plan and photographs. Mr. Hesser noted that comments from the public could be heard at that time. Mr. Kolbus cautioned that the public would only be allowed to comment on the revised site plan and the photographs. A motion was made and seconded (*Hesser/Homan*) to reopen the public hearing. A roll call vote was taken and the motion was carried unanimously.

Mrs. Prough submitted letters in opposition from Mr. Hosea Jump [*attached to file as Staff Exhibit #2*], Gloria Fawley [*attached to file as Staff Exhibit #4*], Terry and Dale Price [*attached to file as Staff Exhibit #5.*], and Ronald Brooks [*attached to file as Staff Exhibit #6*]. Mrs. Prough made petitioner's representative aware of these letters.



There were 35 neighboring property owners notified of this request.

Mr. Hesser questioned the location of the temporary restrooms on the revised site plan. Mrs. Prough noted that the temporary restroom facilities are located on the north side.

Leo Fawley, 22288 CR 118, Goshen, was present in opposition to this request. He owns property across Old CR 17 from Sugar Grove Church. He noted that at the last meeting, all of those individuals in favor of this request were not residents of the area. Therefore, they will not be substantially impacted by any ball games or any other changes being proposed. The supporters of the request do not have to be present at these activities and will not be subject to the resulting noise. He stated that he is opposed to the request and encourages the Board to deny the petition. He explained that while neighboring property owners would have little choice other than to tolerate the changes, supporters of the petition do not live in the area, and therefore, will not be subject to the ongoing residual effects.

Enos Yoder, DJ Construction, appeared on behalf of the Sugar Grove Church. He stated that they worked with the staff on revising the staff plan. He noted that they tried to be mindful of all of the issues and concerns brought up by the remonstrators. They worked very hard on keeping the proposed changes from being offensive, in any manner, to the neighborhood. The baseball diamonds are located as far back to the four lane highway as possible. The concerns about the PA system were addressed. He explained that the baseball events will be small and with spectators generally being parents, grandparents and/or girlfriends. The venues are intended to be small and should have minimal noise. He noted that Mr. Fawley is not within the line of sight of Sugar Grove Church. There is a property situated between Mr. Fawley's home and the church. He assured Mr. Fawley that he would be far more likely to hear traffic from the four way highway, than from the ball diamond. With 30 acres, they did their best to buffer neighboring properties and to create a family friendly environment. They attempted to be aware of the concerns of the neighborhood and feels that this is a good use of their property and would not be injurious to neighboring property.

The public hearing was closed.

Mr. Hesser questioned the need for a PA system. He acknowledged that while the other issues had been addressed, the PA system was left open. The proposed solution is to include a PA system with the speakers pointing in the opposite direction of the housing. He noted that there are only two fields and wondered if there was a need for a PA system.

Mrs. Wolgamood stated that the PA system would likely be the most disruptive aspect to the neighbors. She said that while she agrees with Mr. Yoder about the noise from the four lane highway, she would be much more comfortable if the PA system, and lighting, were denied. She explained that she would be willing to accept all of the other proposed conditions as reflected on the site plan.

Mr. Hesser clarified that all of the parking will be on the paved surface, with no parking intended for the fields.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use to allow for an addition, additional proposed storage, expansion of the parking lot and addition of baseball diamonds (Specifications F - #48) be approved as represented in the petitioner's application with the following conditions imposed:

1. Approved per the revised site plan submitted to the staff on June 3, 2011, excluding the PA system.
2. No outdoor lighting of the baseball/softball diamonds or the proposed outdoor recreational area.
3. No PA system permitted.
4. No parking outside of the paved parking lot.

After a unanimous roll call vote was taken, the motion was carried.

19. The application of **Mervin Burkholder** for a Special Use renewal for an agri-business for a farm repair shop (Specifications F - #45) and for an amendment to allow for retail sales and a larger sign on property located on the Northwest corner of CR 42 & SR 119, common address of 26253 CR 42 in Harrison Township, zoned A-1, came on to be heard.

There were 6 neighboring property owners notified of this request.

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

Mr. Nemeth explained that five years ago, there were conditions set for this petition and Mr. Burkholder understood that his attorney was going to handle the conditions. Last month, the Board tabled the request until this month so the petitioner could comply with the previously set conditions. The first condition that had not been met was that no machinery waiting to be repaired or tractor machinery was to be stored to the south of the building. Mr. Nemeth was on site yesterday and verified that none of the farm equipment is south of the building. Another condition that had not been met was that a visual barrier was to be provided on the west side of the property with a revised site plan to be submitted to the staff. The photographs submitted by the staff show the trees have been planted. Some were planted immediately after the meeting and some were planted earlier this year. The petitioner also has a revised site plan, which was submitted on June 8<sup>th</sup>, showing the landscaping on the west side of the property.

Another condition was that the tool rental business is limited to agricultural uses. It is not to be expanded beyond the pieces of equipment currently being used as a customer convenience, with a letter identifying the current pieces of equipment submitted to the staff for the file. Mr. Nemeth noted that letter was submitted to the staff on June 8<sup>th</sup> detailing the equipment. The last requirement was the submission of a recorded commitment indicating that the conditions had been recorded. The petitioner has not yet done that, as he is requesting two changes. He is seeking permission for 200 square feet of retail space in the southwest portion of the existing building, in the shop. The petitioner is also requesting the approval of an existing double-faced sign, 7 ft x 3ft, at the right of way line, located near the road. Mr. Nemeth provided the Board with a photograph containing the sign. The petitioner applied for those changes last month and will record the commitments once they are approved by the Board.

When the revised site plan was submitted on June 8<sup>th</sup>, there was one change the petitioner wished to request. Mr. Nemeth was unsure whether the Board could act on it at this time. Mr. Burkholder is seeking permission to build an 18 ft. x 30 ft. addition, which would allow him to install a larger door to allow. This would enable him to get the dual wheel tractor away from the road and inside the shop. Mr. Nemeth said he informed the petitioner that if the Board was unable to act on that request, he would need to reapply for an amendment. He informed the Board that he provided them with a list of the revised conditions as they currently stand, including the two aforementioned requests.

Mr. Hesser asked if the addition would be for agricultural or business use. If the petitioner is using the structure for his own agricultural storage he wouldn't need Board approval. However, if the accessory structure is for business it does require approval.

Mervin Burkholder, 26253 CR 42, Goshen, was present on behalf of his request. He stated that the business would not be expanded. The addition, with the larger door would be for farm equipment repair. It was then clarified that the request for an addition would require an amendment to the Special Use. An advertisement would need to be placed for this Special Use hearing, and therefore, could not be voted on at this time.

A motion was made and seconded (*Hesser/Homan*) that the public hearing be reopened. After a unanimous roll call vote was taken, the motion was carried. The statements and comments that had already been made by the petitioner were accepted at this time.

Mrs. Wolgamood sought clarification concerning the request for the 200 square feet of retail space. Mr. Nemeth explained that the original conditions set in 2006 indicated that there were to be no retail sales.

Mr. Kolbus questioned the absence of a time limit on the request, if approved. Mrs. Prough stated that the staff is still recommending denial.

The public hearing was closed.

Mr. Hesser noted that the change from the previous request is to add the retail space and to change from the previously approved 2' x 2' sign to a 7' x 3' foot double-faced, unlit sign. Mr. Hesser stated that he has a concern that the petitioner did not do any of the follow up that should have been done until threatened with the denial of a renewal. He understands that occasionally, things slip through the cracks. However, the petitioner has now addressed all of the issues. He feels they should review the petitioner in a year if it is approved.

Mrs. Wolgamood feels if the request is approved, all of the conditions need to be in place. She noted that the sign is down the road, and confirmed that it is located on Mr. Burkholder's property. She felt that it should be reviewed by the Board in one year, or have a board renewal. Mr. Homan and Mr. Lantz agreed.

Mrs. Prough indicated that a written commitment may not be necessary if the petitioner is going to appear before the Board in a year. The staff can review the request in six months. A report can be written up at that time which would become part of the staff report in one year when the request is due for a renewal.

Mr. Kolbus suggested having the petitioner record the conditions on a written commitment in a year to make sure he is in compliance. If he doesn't comply, then the Board won't be approving the request in one year, so Mr. Kolbus doesn't feel a commitment is necessary until that point.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that this request for a Special Use renewal for an agri-business for a farm repair shop (Specifications F - #45) and for an amendment to allow for retail sales and a larger sign be approved based on the following findings:

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

The following conditions were imposed:

1. No more than two employees that live outside the residence on site.

2. Hours of operation to be Monday through Friday, 8:00 a.m. to 6:00 p.m.
3. Approved for 200 sq. ft. of retail space as requested.
4. No machinery waiting to be repaired or tractor or machinery parts to be stored south of the building.
5. One (1) sign permitted no larger than 7 ft. x 3 ft., double faced and unlighted.
6. No salvage done from the site.
7. No junked out vehicles or farm equipment stock piled on site.
8. Approved for a period of one (1) year with a renewal before the Board of Zoning Appeals.
9. Tool rental business limited to agricultural uses and is not be expanded beyond the pieces of equipment currently being used as a customer convenience.

A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – yes, and Hesser – yes.

20. The application of **Timothy Michael** for a Special Use for warehousing and storing of commercial vehicles for a transport business (Specifications F - #44) on property located on the Southwest corner of CR 44 & SR 13, common address of 12046 CR 44 in Benton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #12046CR 44-110322-1*. She also read and submitted two (2) letters in opposition to this request *[attached to file as Staff Exhibit # 2 & 3]*.

There were 8 neighboring property owners notified of this request.

Mr. Hesser briefly explained the history of what happened at the previous hearing.

Mr. Miller stated that he had the opportunity to review the minutes and listen to the recording. He said that there is a great deal of information concerning this matter and indicated that he would like to discuss the request.

He commented that if the petitioner is asking the Board to accept the motion, it needs to be considered at the current face value of the request. While the petitioner applied for one thing, but during the hearing stated he wanted to do something else, he feels that the Board is responsible for making a decision based on the current petition.

Mr. Hesser clarified that he was attempting to provide the petitioner an opportunity to do something on a smaller scale than what he initially presented. He felt that part of the objection was that the petitioner is asking for a significantly different plan. Therefore, re-advertising would be necessary, as well as proceeding through the entire process. At the time it was presented, with the big scale, he indicated that he would vote against it. The motion to continue met with objection due to the fact that modifying the petition, to the extent that the petitioner proposed, would essentially constitute a new plan, and therefore, should be submitted as such. He noted that he was trying to prevent the petitioner from having to reapply or endure a six month waiting period. Although, it appears that the petitioner will have to reapply. However, if the most recently proposed use is significantly different than the original request, then it would not be subject to the six month prohibition.

Mr. Kolbus said the Board determines whether it's substantially different. If it is, there is no six month period that applies. The six month timer period can also be waived.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for warehousing and storing of commercial vehicles for a transport business (Specifications F - #44) be denied with the business to be relocated within thirty (30) days. After a unanimous roll call vote was taken, the motion was carried.

21. Mr. Nemeth presented the staff item concerning the approved Special Use request previously submitted by petitioners *Boback Acres and Insite Re, Inc.* The petitioner received approval to erect a cell tower 150 feet high, located on the south side of the County. The approval was granted for 71 feet from the east property line. However, since that time the cell tower company has been in contact with the County concerning their desire to amend the approval to 195 feet. The increase in height is necessary to allow the collocation on the existing tower. The petitioner states that granting this amendment would result in a reduced number of cell towers in the area. The petitioner provided a notarized letter from the neighbor to the east. The letter indicates that the neighbors have no objections to the increased height.

Mr. Hesser commented that during previous discussion, the main concern focused on the height. While the petitioner has requested to increase the height of the tower, the reason for the increase centers around collocation, which serves a mutually satisfactory purpose.

Mrs. Wolgamood questioned if this change would be considered major or minor. Mr. Kolbus noted that the petition concerned many aspects, not just the height.

Mr. Miller stated that he was not troubled by the request. Mrs. Wolgamood concurred stating that it is unlikely that the Board would object to the request.

A motion was made and seconded (*Wolgamood/Miller*) that the Board consider the requested amendment to be a minor change. After a unanimous roll call vote was taken, the motion was carried.

22. Mrs. Prough presented the staff item concerning the approved Use Variance to construct a second residence on the property of *Daniel & Diana Pysch* located at 10970 S.R. 120. One of the conditions of the approval was that the petitioners submit a commitment stating that the construction of the second residential facility on the real estate is acknowledged by the grantor to be initially a second residence for the grantor's parents, but also ask that when the grantor's parents no longer reside in the structure of the building that it be brought into conformity with the definition of a guest house. This means, basically, removing the kitchen. The notarized commitment has been reviewed by the County attorney. It does meet the requirements the Board put forth. At this time, Staff would ask that the Board accept the commitment.

Mr. Kolbus noted that there are some typographical errors in the document, but the substance of the commitment does satisfy what the Board required.

Mrs. Prough indicated that the staff worked with the petitioners to repair the commitment. However, it was not prepared in accordance with the motion that was made. Since that time, the staff has met with the Attorney, who has now asked to review all commitments.

Mr. Kolbus clarified that the previously mentioned errors have been corrected.

A motion was made and seconded (*Hesser/Lantz*) that the Board approve the commitment. After a unanimous roll call vote was taken, the motion was carried.

23. At this time, Mr. Kolbus presented the *changes to the Board of Zoning Appeals Rules of Procedure* due revisions of the state law. He stated that 90 percent of it applies to the Plan Commission and staff. There are a few items that pertain to the Board of Zoning Appeals which he wished to share with the Board. Additionally, there are proposed rule changes, based on the changes in State law, that impact the Board. He provided the Board with information concerning changes to the Rules of Procedure.

He shared with the Board the criteria which must be met for BZA members. One of the following criteria must be met: residency of the jurisdictional BZA is required; residency of the county and owner of real property located in whole or in part of the jurisdictional area of the BZA. It is no longer necessary, to some degree, to be a resident of the County. There is a limitation stating that the majority of the citizen members appointed must be residents.

Mr. Hesser asked if a resident of the city would meet the requirements to be on the Board of the BZA. Mr. Kolbus confirmed that residents of the city could be BZA members, since they do live in the county; however, they must own land in the jurisdictional area of the BZA, which is outside of the city limits. Mr. Kolbus noted that there was one thing he did not address in the rules which he wished to discuss at some point. It is now the responsibility of the BZA to determine if member meet the residency requirements, in accordance with the rules prescribed by the BZA. He stated that a rule must be enacted to verify the residency requirements. He explained that there had been some discussion about filing an affidavit or getting the staff to verify the location of the homestead exemption. He indicated that he wished to obtain some feedback from the Board to determine how strict they wish to be.

Mrs. Wolgamood presented the scenario of someone who resides six months of the year on their property in Florida, while also maintaining a residence in Elkhart County where they reside the remaining six months of the year. Mr. Kolbus stated that the residency requirements are that they either own land within the jurisdictional area or they reside in the jurisdictional area. He noted that State law now mandates that the Board has to verify residency, so the question remains how to adequately verify residency. He explained that the staff could verify, the individual could sign an affidavit, or real estate records could be searched. He stated that while he did not need the Board to determine, at this time, how they wanted to verify residency he would need an answer in the near future.

Mr. Kolbus provided information concerning the appointment of an alternate. An appointing member may appoint an alternate if they are disqualified under Section 909. He explained that while this is similar to what was previously in place, additional criteria has been added. Along with disqualification, a second reason for appointing an alternate is if the member is otherwise unavailable to participate in the hearing or decision. Effective July 1, 2011 if the appointing authority knows in advance of a member's intended absence they can appoint an alternate for the hearing. This would allow a full Board to be kept at all times, if desired. He stated that he was unable to ascertain if an individual may be appointed as an alternate for a year duration, as is done with the Hearing Officer, or, if the appointment is done on a meeting by meeting basis. The statute implies that the appointment is meeting by meeting. He hopes that a seminar will be held at some point so that he can get clarification on this matter. If a Board member is unavailable due to a conflict of interest, it is possible that the alternate may have the same conflict of interest. Mr. Hesser noted that during his tenure on the Board, an alternate has only been appointed once or twice. Mr. Kolbus explained that the alternate would have been selected by the appointing authority.

Mr. Kolbus stated a member who misses three consecutive regular meetings may be treated as resigned by the appointing authority. This is a change to the current law. He suggested to the members that if commitments arose that would prevent them from attending three consecutive hearings they may wish to engage in conversation with the Commissioners to avoid possible misunderstandings. He shared another change with the Board involving Section 909. The old law pertained to having a direct or indirect financial interest in matters, which has now been changed slightly to "outcome of the decision". He feels that this change means that if disqualification occurs it is a more direct conflict. Additionally, members are disqualified if they are biased, prejudiced or otherwise unable to be impartial. He cautioned the Board to be careful about the comments made during hearings, as things could be misconstrued. He acknowledged that the Board already does a good job of policing their comments, but noted that comments could be grounds for appeals.

He explained some changes dealing with "Authority." The Board may impose reasonable conditions on approval of a Developmental Variance. Prior to this change, the law stated that reasonable conditions could be imposed only for Special Use and Use Variance. This means that when there is a setback issue the Board can impose reasonable conditions. Another change, which doesn't seem to make sense, states that the Plan Commission or Plat Committee may grant a waiver of standards fixed in a subdivision control ordinance. In essence, only the Plan Commission can vary standards in the subdivision control ordinance. The plat must still meet all applicable standards of the zoning ordinance, unless varied by the BZA. He understands it to mean that if there are standards in the subdivision ordinance that mirror the standards in the zoning ordinance, only the BZA can grant a waiver. If they are independent standards then the Plan Commission can grant the waiver. Mr. Hesser asked if that meant petitioners had to appear before both boards. Mr. Kolbus responded affirmatively. He stated that he didn't know how useful this change was going to be because when doing the zoning ordinance, most places just adopt by reference.

He informed Mrs. Wolgamood that there has been a change involving the Hearing Officer. The old law stated that the appeal must happen in 14 days. This has been reduced to five days. Regarding commitments, he noted that the commitment law was amended. Effective July 1, the adoption of a Special Use or Variance the Board is now authorized to require a commitment. This is a change from the old law that stated the Board was allowed to accept commitments, whereas now they can require commitments. Interestingly, while this does not apply to the BZA, the Plan Commission can now require commitments as part of a rezoning request. He explained that requiring a commitment does not obligate the Board to approve the proposal or application.

The judicial review of a zoning decision previously consisted of three or four sections under the old law to about nine sections under the new law. While that does not apply directly to the BZA, it is a concern for staff and Mr. Kolbus, concerning when an appeal would be filed. Another item to note is the allowance of a review of non-final decision if the person establishes immediate and irreparable harm and no adequate remedy at law exists. The old law stated that a final decision was required before an appeal could be requested. He stated that this probably pertains more to the Plan Commission, although he could see a scenario where somewhere in the process someone might claim they didn't get notice and object. At that point they could file an appeal, prior to a final decision being made. Of note is the fact that individuals who appeal a decision now must post a minimum bond of \$500. The reviewing court can remand a case that

should have been BZA for further proceedings, or they can compel a decision that has been unreasonably delayed or unlawfully withheld. He noted that he has been part of the process for about 23 years and could not think of a case where the court has made a decision for the Board. When errors were found the Court usually remanded it back to the Board to reconsider and make a decision in light of the Court's guidelines. Now they are authorizing the Court, in effect, to make the decision. If the Board's actions are found to be unlawful they could order the petition to be granted. He has a copy of this information he will provide to the Board for their review.

Mr. Kolbus explained that there are a few changes to the Rules of Procedure. Basically the changes involve incorporating the changes in State law into the rules and revising the commitment form based on the changes. Mrs. Wolgamood asked if the attached commitment form was the form Mr. Kolbus would like attached to the new Rules of Procedure. He replied in the affirmative.

A motion was made and seconded (*Miller/Wolgamood*) that the Board approve and pass the laws. After a unanimous roll call vote was taken, the motion was carried.

Mrs. Wolgamood inquired about the date of the seminar. Mr. Kolbus stated he was uncertain of when it would take place, but noted that he would make sure the Board was notified of the date. He also asked the Board to give some thought to the residency rule, and how they wish to verify residency. Mr. Hesser recommended affidavits for residency verification purposes.

24. Mrs. Wolgamood addressed the *Use Variance Discussion* at this time. She stated that she feels that the Board has reached a point where some discussion and guidance can take place with the staff to determine if requests can be handled as Special Use with a list of standards. She said that she thought the staff would be willing to work together on this as it would reduce the number of Use Variances. She mentioned the use of commitments. Mr. Hesser believes that this is a good idea, as long as both are done. He is concerned about past Use Variances being granted on an irrational or arbitrary basis. That approach just reinforces the "good old boy" perception held by some members of the public. He noted that there are more and more requests for second residences to deal with an aging parent situation. He stated that he is sympathetic to the situation, but is concerned about who might be living in the second residence in ten years. Neighbors could be shooting bb guns at each other and killing each other's cats because they are right on top of each other and too close. He proposes outlining rules where there is not just a blanket approval, as that only solves half of the problem. It should be clear that there are rules and procedures that must be followed. As long as the rules and procedures are fair and reasonable it is appropriate to take a hard line stating that a second residence is permissible. While approval may be granted, it is not permissible for the petitioner to subsequently decide to sell it as a second home. Mr. Kolbus commented that an additional benefit of a commitment is that it will be acknowledged in the chain of title as a second residence that will have to be removed at some point. Mr. Hesser noted that as it stands now, the Board could be in a position where a petitioner could return in ten years stating that the aged parent is gone and they would now like to make changes since the residence is already there and they do not want to see it destroyed. Mr. Homan questioned why a second residence request is considered a Use Variance. Mr. Kolbus explained that a single residence is a permitted use; therefore, to vary that use by adding a second residence, it must be a Use Variance, not a Developmental Variance. Mr. Homan asked how the subject could be migrated to a Special Use. Mr. Kolbus explained that it



was done through the BZA ordinance. The BZA determined in the ordinance what is permitted, what was accessory, what was special, etc. For example home workshops are deemed to be Special Use. A second residence would be something similar to that. Mr. Homan asked if it would go through the Plan Commissioners, to which Mr. Kolbus responded affirmatively. Mr. Homan noted that it would be a revision to the current ordinance. Mrs. Wolgamood noted that the process has to start somewhere. She estimated that 90 percent of the people on the Plan Commission have no idea how many second residence requests are received by the BZA. She believes that if the staff makes a presentation to the Plan Commission for an ordinance change, the Plan Commission will approve it. Mr. Kolbus stated that an ordinance change should be pre-approved, with specific conditions listed. Mr. Lantz noted that they have looked at mobile home permits where someone is brought in and eventually the home is pulled, which is somewhat different than adding on to something or building a separate building. He questioned if they let something stay there, tying it to the title, or it should be something that is in and out. Mrs. Wolgamood said that she took the same position as Mr. Hesser, if the BZA is going to continue to hear requests for second residences. Mr. Lantz stated that in the township they have people coming in all the time, with double, or sometimes triple the families living in one house. In most cases it is either a job issue or an aging parent situation. Mr. Homan acknowledged that the issue seems to be that the community needs to be able to respond to the needs of aging baby boomers. The economic impact on the community is going to be severe. He thinks it is not unreasonable to address this in the ordinance, as it is a growing problem. He commented that his perception of a second residence is a second house a family could live in. If there is going to be a reinterpretation of the Use Variance criteria there needs to be some direction. For example, a floor plan that reflects a single bedroom, living area, kitchen and one bathroom will probably never be a family home. Mrs. Wolgamood agreed that there are a lot of criteria that may be involved, such as square footage, family relationship, and single story versus two story. Mr. Miller noted that several states presently allow it as permitted uses, especially on the west coast. Mrs. Wolgamood speculated that the Plan Commission and County Commissioners may approve a similar measure. Mr. Homan expressed concern that there is too much gray area. What if someone requested a second residence on their lot for their health care provider. He wondered where the line would be drawn. Mrs. Prough asked if the Board had any suggestions for the staff in terms of what direction to go. She questioned if it needed to be in certain zoning districts, certain property sizes, etc. It was noted that Mr. Miller would furnish some information to the staff. Mrs. Wolgamood stated that a second residence would not be permitted in an R-1 single family residential, 15,000 square foot lot. She felt that a good starting point would be four or five acres. Mrs. Prough asked about a time frame. Mrs. Wolgamood, noting that this has been an issue every month for a lot of months, asked if they could have information for the Board within 60 days. Mr. Lantz explained that it may take six months to get it done, from the initial starting point. Mrs. Wolgamood stated that they can recommend that the Plan Commission look at the proposed changes. Mrs. Prough said that she would like to do a count of how many requests the BZA is receiving and when the increase in requests began. She felt that 60 days was an appropriate amount of time to do so. Mr. Kolbus asked if it would be possible to determine into what zones the second residences were being placed. For instance, 90% were A-1 zones. Mr. Homan stated he would like to see a record of how the requests were handled. Mrs. Prough stated that she could provide the number of requests granted and denied.

25. Mrs. Wolgamood brought up the subject of *fish hatcheries in manufacturing zoning districts*, noting that there was an item on the May agenda concerning allowing a fish farm in a manufactured zone. It was a Special Use allowing for farming or agricultural use. After reviewing everything submitted by the petitioner she thought there was no better place than a manufacturing zone. She noted that she tried to a little bit of research about the subject. She attended a workshop where this subject was brought up. At the time of the workshop it was her understanding that the staff was somewhat divisive. Some staff thought it was best handled through Special Use, while others felt it needed to be in a manufactured zone. There really was not much discussion on the part of the Board regarding that subject. Mr. Lantz confirmed that the building was vacant, although they desired to put up some type of small structure. He noted that often the availability of water, or lack of, is a determining factor concerning the viability of the project. Mrs. Wolgamood stated that she was aware of a fish farm that was approved in the City of Goshen, through some type of special permit. Mr. Homan asked if it was in an agricultural zone. Mrs. Wolgamood noted that currently, there is nothing in the ordinance stating that they cannot be allowed. Mr. Homan acknowledged that he had limited knowledge of fish, but he did know that fish do not care for chlorinated water. Given that information, he wondered why they would be placed in a city environment. He questioned the difference between growing fish in a building or growing a chicken in a building. Why isn't the fish farm just naturally an A-1 use? Mrs. Wolgamood noted that a chick hatchery is a permitted use in a manufacturing zone. Mr. Lantz stated that with all of the Brownfield issues there are a lot of empty buildings that could be put to good use. It makes sense to use the available buildings instead of starting something else out in the country. Mr. Homan said that was uncertain what the impact is in terms of water, and not just filling the tanks. He noted that the testimony of the petitioner last month caused him to wonder if water was going to be continually drawn from the town of Bristol. Also, if a fish farm is located in an A-1 district with the water being continually poured out of the aquifer, what will become of the water? Is it being put back in polluted, or is it being put into a stream or a field? Mr. Hesser noted that manufactured businesses do it all the time. There are some businesses that use a ton of water. Mr. Homan pointed out that typically the water is processed through a treatment facility as opposed to how water is handled in an A-1 zone. The water usage and the waste is somewhat questionable, although the growing aspect of fish farms seems to be less complex. He said that fish can be placed in a building, what is the difference. Raising fish has never come up in Elkhart County before and he feels there needs to be some place for it, whether it is A-1 or manufacturing. Mrs. Wolgamood proposed that the recommended zoning for fish farms might be another issue for the staff to address. If it was considered a Special Use, is there a valid reason why it could or could not be in an agricultural zone? Mr. Hesser agreed that it makes sense to give the topic some thought now, as things are starting out and likened it to what happened with VIM. Mr. Kolbus explained that the State defines this type of endeavor as commercial aquaculture. In regards to commercial aquaculture, the state zoning statute talks about agricultural non-conforming uses. It gives a definition of agricultural use, which could apply if there is no definition in local zoning ordinances. The statute referenced addresses the production of livestock, livestock products, and commercial aquaculture. He noted that while the State allows the board to define it, if they do not, then the state defines it as an agricultural use. The Board does not have to take that position and is able to define it however they would like. He felt that currently, the Board's definition of agriculture is very limited. Mrs. Prough said that the current definition of agriculture is the raising and

keeping of small or large livestock. It does not address crops. She acknowledged that the staff encountered issues concerning how to handle it. After reviewing and discussing a memo from Mrs. Wolgamood the staff agreed that it needs to be addressed in an ordinance. The staff felt that it should be permitted in a manufacturing M-1 or M-2 zoning district. Mr. Hesser asked if they were thinking in terms of a straight permitted use. Mrs. Prough replied that due to the increased truck traffic, employees, and other incidentals, they thought that a manufacturing district was a better location than the agricultural community. They felt that it was a better fit in the manufacturing zone and the best way to handle it is with a definition and a text amendment to allow it as a permitted use. Mr. Kolbus asked if it would be allowed in an agricultural zone with a variance. Mrs. Prough stated that they did discuss allowing it as a Special use in an agricultural zone. The consensus was that it needed to be kept commercial. Mr. Lantz felt that this could be upset dairy farmers at some point, since they already have the plumbing and water, which is required to farm fish. Mrs. Prough stated that it is something they could consider as a Special Use once there is a definition. Mr. Homan pointed out that water and waste issues would have to be looked at, in terms of an agricultural zone. Mr. Hesser asked if it should be required to be a Special Use at the very least, with the possibility of being a Use Variance. Mr. Kolbus said that the Use Variance has the same criteria. Mrs. Wolgamood asked if there was a consensus among the board or if they would like to continue to think about it, while the staff moves forward. The staff could take it to the Plan Commission and County Commissioners who have the ultimate say. Mr. Kolbus asked the Board if they would like the staff to return with a formal proposal for their review. Mr. Lantz felt it was better to review it as a Board before sending it to the Plan Commission. Mrs. Wolgamood indicated that they would place it on the agenda in 60 days and asked Mrs. Prough if they would have something to review prior to that time. Mrs. Prough indicated that she could do so. Mrs. Wolgamood commented that she wanted the staff to know that they can approach the Board with issues any time they feel they are at a standstill or are uncertain about how to proceed.

26. There were no items transferred from the Hearing Officer.
27. There were no audience items.
28. There were no Staff/Board items.
29. The meeting was adjourned at 1:14 p.m.

Respectfully submitted,

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Teresa McLain, Transcriber

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Kate A. Keil, Recording Secretary

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Randy Hesser, Chairman

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Tom Lantz, Secretary