

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15th DAY OF OCTOBER 2009 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, Robert Homan, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Mike Gard, Building Commissioner; Ronnie Weiss, Code Enforcement Investigator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Homan/Hesser*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of September 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 3rd day of October 2009 in the Goshen News and on the 5th day of October 2009 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 and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Miller/Wolgamood*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.
6. There were no postponements of business items.
7. The application of **Larry & Ann Flora** for a Special Use for a wind turbine (Specifications F - #31.50) on property located on the Southwest corner of CR 11 & CR 44, common address of 68357 CR 11 in Union 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 #68357CountyRoad11-090918-1*.

There were 11 neighboring property owners notified of this request.

Ron Williams, Take Action Solar & Wind, 2809 Emerson Drive, Elkhart, was present representing the petitioners. Mr. Williams explained the petitioner would like to put up a wind turbine for their personal use. The property is 160 acres and the wind turbine would not adversely affect the neighboring properties. He feels it would serve the good of the community by reducing annual carbon outputs, greenhouse gases, nitrogen oxide, sulfur dioxide, and mercury. The wind turbine would wipe out the petitioner's electric bill.

Mr. Hesser asked if they own the whole parcel and Mr. Williams indicated yes.

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 (*Homan/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 wind turbine (Specifications F - #31.50) be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted.
 2. All required permits and inspections to be obtained.
- A roll call vote was taken and the motion was unanimously carried.

8. The application of ***Osolo Township Volunteer Fire Department, Inc.*** for an amendment to an existing Special Use for a fire station to allow for the construction of an addition onto the fire station on property located on the South side of Buddy Street, 160 ft. East of CR 11, common address of 24936 Buddy Street in Osolo 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 #24936BuddySt-090921-1*.

There were 30 neighboring property owners notified of this request.

Mel Cramer, Anchor Construction, 4085 Meghan Beeler Court, South Bend, was present representing Osolo Township Volunteer Fire Department, Inc. Mr. Cramer explained they are asking for permission to add onto the existing fire station. A smaller addition had previously been constructed, but they would like to demolish that and add a larger addition. The addition won't require any additional curb cuts. He feels this would allow the fire station to better serve the community. Mr. Cramer also indicated he is in agreement with the Staff Analysis.

Mrs. Wolgamood asked if the proposal for additional pavement would require a permit from the Elkhart County Highway Department. Mrs. Prough said yes and indicated the Highway Department would need to sign off before the permit is issued.

Mr. Homan asked if the Fire Department has people on site 24/7 or is it strictly volunteers. The petitioner indicated they do have some personnel on site, but the addition will be used just for storage of the equipment.

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 (*Homan/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 an existing Special Use for a fire station to allow for the construction of an addition onto the fire station be approved in accordance with the site plan submitted with all required permits and inspections to be obtained. After a unanimous roll call vote was taken, the motion was carried.

9. The application of ***Tracy S. Silvers (buyer) and Renee Levin (seller)*** for a Special Use for a bed and breakfast homestay (Specifications F - #12.75) on property located on the Southwest corner of CR 1 & CR 22, common address of 58599 CR 1 in Baugo 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 #20092092*.

Mrs. Wolgamood questioned some of the buildings in the photos and Mrs. Prough clarified what those buildings are.

There were 25 neighboring property owners notified of this request.

Tracy Silvers, 1644 Spyglass Lane, Mishawaka, was present on behalf of this request. At this time, Ms. Silvers submitted a packet of information including a letter from the petitioner and a map showing the proposed location of the driving range *[attached to file as Petitioner Exhibit #1]*. The petitioner pointed out the proposed location of the driving range on the aerial photo. There would be poles along each side with lighting and nets on the driving range.

The petitioner explained she would be living on site and this operation would be within the definition of a bed and breakfast. Ms. Silvers said they will have only six guests at a time and they won't stay past 15 days. There are adequate parking spaces for everyone, which she pointed out on the aerial photo.

Mr. Homan asked if they will have guests in both buildings and Ms. Silvers indicated yes. He also questioned which building she would be residing in and Ms. Silvers said the main house.

Mr. Homan asked if the employees would be distributed between the two buildings. The petitioner said they wouldn't be living on site, but the housekeepers would be divided up between the two buildings. The cook would only be working in the main house.

When Mrs. Wolgamood asked where the swimming pool is, Ms. Silvers said it will be inside the building of the main house in the northwest corner of the building. The exercise room will be in the main house and the game room is in the guesthouse.

Mr. Homan questioned what her future plans will be for additional employees. The petitioner said she may need an extra person for cleaning or cooking during busier times of the year.

Mrs. Wolgamood asked if she is proposing no signs and the petitioner indicated there is an existing sign on the gate which she will be using. When asked the size of the sign, Ms. Silvers indicated she was unsure.

When Mr. Homan asked the staff if they have a concern about lighting, Mrs. Prough said they would want to know the location first. Secondly, the staff would ask that the lighting be directed away from any residences to the north. If the lighting is used at night, Mrs. Prough suggested the Board put some restricted hours on it.

Mr. Homan said there are residential parcels to the east of the proposed property as well. Mrs. Prough then suggested that the petitioner use no illumination and only use the driving range during the daytime.

James E. Fortner, 58554 CR 1 South, Elkhart, was present in opposition to this request. Mr. Fortner lives across the street from the proposed property. He feels that locating a bed and breakfast in this location is questionable because within two to three miles of this location is a Holiday Inn Express and a Comfort Suites which have never been filled. Police have been called to this location on several occasions due to vandalism, which he feels would increase the risk of possible vandalism or theft to others in the area.

Mr. Homan asked if the house was occupied during the times when there were acts of vandalism or theft. Mr. Fortner said no and indicated the house has been unoccupied.

Liz Personett, 58849 CR 1 S, Elkhart, was present to voice some concerns. Ms. Personett explained she has lived in this area her entire life and she has no objections to the bed and breakfast. She would like to know when they are thinking of starting the business because knowing the home has been unoccupied, it is a mess.

Ms. Personett would also like to know if the driving range is going to be open to the public or if it is just for the occupants of the bed and breakfast. She would prefer that the driving range be only for the guests of the bed and breakfast. She said the area where they are proposing to put the driving range is a definite flood area.

In rebuttal, Ms. Silvers said the property has been vacant for five years. When the bed and breakfast is operating, she will be living on site and will monitor the property. The funding will be government grant funding and it will take a year before that is completed.

In regards to the issue about other hotels in the area, Ms. Silvers said this is not like a hotel. This would be a bed and breakfast, which would be a more homely type situation. Lastly, the petitioner explained the driving range would be only for guests of the bed and breakfast.

Mr. Homan asked what the improvements would entail on the property and Ms. Silvers said most of the improvements will be made to the main house and guesthouse. The work that needs to be completed includes roofing, siding, painting, and general upkeep.

Mrs. Wolgamood asked if the petitioner has any objections to the driving range not being lighted and Ms. Silvers said no.

The public hearing was closed at this time.

Mr. Homan indicated this property is surrounded by wooded areas on both sides. He likes the idea of the driving range not being lighted.

Mrs. Wolgamood suggested adding to the conditions that the driving range be limited to the occupants of the bed and breakfast.

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 amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a bed and breakfast homestay (Specifications F - #12.75) be approved with the following conditions imposed:

1. Owner/occupant of the residence on site.
2. Bed and breakfast to be operated in accordance with the definition of a bed and breakfast homestay.
3. Approved as represented in the petitioner's application.
4. The proposed golf range location is to be reviewed by the staff.
5. No lighting permitted on the golf range.
6. The golf range is only to be used by the occupants of the bed and breakfast.

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

** * (Mr. Hesser stepped down from the Board at this time due to a potential conflict of interest).*

10. The application of **Concord Community Schools (East Side Elementary)** for an amendment to an existing Special Use site plan for a school (Specifications F - #38) to allow for renovations to existing parking and drop-off area along CR 13 on property located on the East side of CR 13, 2,000 ft. North of CR 18, common address of 57156 CR 13 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 #57156CR 13-090921-1*. At this time, Mrs. Prough submitted a revised site plan of the property to the Board *[attached to file as Staff Exhibit #2]*.

There were 20 neighboring property owners notified of this request.

Andy Bearman, Engineer with Foresight Consulting, 3810 New Vision Drive, Fort Wayne, was present representing Concord Community Schools. Mr. Bearman explained the project is intended to improve the functionality and the safety of the bus drop off area and the visitor parking area. The project will also provide five more additional spaces for visitor parking and overflow for events. The sidewalk will be increased to provide more area for the students to gather and they will also provide a concrete curbed island in between that lane and the one-way car lane to separate the traffic. The drive will now be one-way instead of two-ways to make sure there isn't conflicting traffic. There isn't currently any lighting planned, but if there were to be, it would be cut off fixtures to make sure no light leaves the property.

Mr. Homan questioned the retention and Mr. Bearman said there will be underground and above ground retention with landscaping slightly above that.

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 (*Homan/Wolgamood*) 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 site plan for a school (Specifications F - #38) to allow for renovations to existing parking and drop-off area along CR 13 be approved in accordance with the revised site plan submitted and a landscape buffer (similar to the existing landscape buffer) be installed along the west side of the new parking area. A unanimous roll call vote was taken and the motion was carried.

* * (*Mr. Hesser returned to the Board at this time*).

11. The application of ***Poon and Pun, LLC*** for a Special Use for a wind turbine (Specifications F - #31.50) on property located on the East side of SR 13, 1,400 ft. North of CR 2, common address of 50530 SR 13 in York Township, zoned M-2 CIUD, 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 #50530State Road13-090918-1*.

There were 7 neighboring property owners notified of this request.

Ron Williams, Take Action Solar & Wind, 2809 Emerson Drive, Elkhart, was present representing Pool and Pun, LLC. Mr. Williams explained this request is for a ten acre retail/wholesale manufacturing property just south of the Michigan state line on SR 13. He feels renewable energy including wind would be in the spirit, purpose, and intent of the Zoning Ordinance. The request would not interfere with neighboring property owners. The wind turbine would provide environmental pollutant reductions of greenhouse gases, nitrogen oxide, and sulfur dioxide. This wind turbine would be for use of the business and would take care of approximately one half of the current consumption being used.

Mr. Hesser asked what the noise factor would be for the wind turbine and Mr. Williams said 34 decibels or under, which would be equivalent to a whisper. At the proposed height of this tower, he indicated there is no way you could hear it.

Mrs. Wolgamood asked what all the structures are to the rear of the property and Mr. Williams said they are mobile container buildings which contain fireworks.

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 (*Homan/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 wind turbine (Specifications F - #31.50) be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted.
2. All required permits and inspections to be obtained.

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

12. At this time, Mr. Watkins gave an update on Elkhart County Planning and Development Planner, Mark Kanney. He explained that Mr. Kanney has moved from the hospital to a rehab center. Mr. Kanney still has a long way to go, but he is at a point where he can have visitors.

13. Mr. Watkins explained Mr. Nemeth has been working on a wind turbine policy which has been incorporated into the Zoning Ordinance review.

14. Mr. Watkins also indicated a new set of 'Rules of Procedure' are currently being worked on. He hopes to have a revised copy to the Board before next month's meeting for discussion and consideration.

15. At this time, Mr. Burrow presented the Commitment Form agreement for Greg and Elisabeth Flora, Case #20092078. The request was for an Appeal to allow for a second residence on a single zoning lot. The commitment form is to verify that the first house be torn down when the second residence is completed. A motion was then made and seconded (*Hesser/Wolgamood*) that any officer be authorized to sign the form. After a unanimous roll call vote, the motion was carried. Mr. Homan then signed both commitment forms.

16. Mr. Watkins indicated he has one more update regarding the Zoning Ordinance review. The Steering Committee is moving through the new Ordinance and they have gone through chapters one through four. They are currently on chapter five which are the standards and they are about a third of the way through. Once they have had a complete review of the standards, then they will move onto Draft 'B', which will be the public version.

Mrs. Wolgamood indicated she feels the consultant is doing a great job.

17. The application of **Rudy Bontrager** for a Special Use for a sawmill and timber frame preparations (Specifications F - #37) and a Developmental Variance to allow for the total square footage of accessory structures (5,200) to exceed the total square footage in the primary structure (2,400), a difference of 2,800 sq. ft., on property located on the East side of CR 37, 1,215 ft. North of CR 46 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 #68276CR 37-090828-1*. She then submitted a revised questionnaire and a site plan to the Board *[attached to file as Staff Exhibit #2]*.

There were 10 neighboring property owners notified of this request.

Rudy Bontrager, 68276 CR 37, Millersburg, was present on behalf of this request. At this time, Mr. Rudy Bontrager submitted a revised site plan to the Board *[attached to file as Petitioner Exhibit #1]*.

Mr. Hesser asked if the staff has seen the site plan that was just submitted by Mr. Rudy Bontrager and Mrs. Prough said she is just now reviewing it.

Under normal circumstances when the Board receives revised information, they prefer to review the information before coming to the meeting.

Mr. Homan indicated he would prefer to have the staff look at the new site plan.

Mrs. Prough pointed out that the new site plan received from Mr. Bontrager today is lacking a lot of information.

Mr. Rudy Bontrager explained his dad has been in the sawmill for 30 years and he was hoping to take over the business. This operation would be in business approximately six days per month.

David Bontrager, 10054 CR 18, Middlebury, was present in favor of this request. Mr. David Bontrager explained the mill is used as the timbers are needed. The timbers and lumber will be on the outside and the farmers will take the sawdust. He indicated this is not like an every day sawmill.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Hesser*) 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 a Special Use for a sawmill and timber frame preparations (Specifications F - #37) and a Developmental Variance to allow for the total square footage of accessory structures (5,200) to exceed the total square footage in the primary structure (2,400), a difference of 2,800 sq. ft., be tabled to allow the petitioner to work with the staff and submit a detailed site plan addressing the following issues:

1. The location of the storage of finished and unfinished wood.
2. The location of the storage of equipment related to the business.
3. The number of logs to be stored on site and the type of storage surface.
4. The location of the storage of by-products, sawdust and slab wood.
5. Show floodplain on site plan.
6. Detail of ingress/egress and traffic patterns.

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

18. The application of **David & Michele Muir** for a Special Use for a home workshop/business for winery, wine tasting, and retail sales (Specifications F - #45) and a Developmental Variance to allow the total square footage of accessory structures (3,664) to exceed the total square footage in the primary structure (2,188), a difference of 1,476 sq. ft., on property located on the West side of SR 15, 190 ft. South of CR 112, common address of 55535 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 #55535State Road 15-090921-1*.

There were 8 neighboring property owners notified of this request.

David Muir, 55535 SR 15, Bristol, was present on behalf of this request. Mr. Muir explained he and his wife live on and operate the last remaining producing orchard in the historic Bristol fruit hills. The orchard is not large enough to provide sufficient revenue to live on. Until March of 2009, he had a good job in Goshen that had enabled him to operate the orchard as a hobby. His family has lived on the property they currently farm since 1852 and Judson Fruit Farm was started in 1898.

With the loss of his job and very limited prospects for another in the near future, they have been forced to provide alternative income with the resources they possess. Mr. Muir has been making wine in his home for himself and friends for a number of years. After doing some research, he has decided that having a winery on the farm could provide the alternative income needed.

After visiting a number of wineries in Michigan and Indiana, he hopes they have a good idea of what will be required to do this. They don't currently have a building suitable for this endeavor, so they need a building which will function as the production area and a tasting room/retail area. They need some wine production equipment which will consist primarily of some stainless steel tanks.

The petitioner indicated they will need a more extensive driveway entrance since they are located on a state highway. The price tag for all of this has turned out to be a complete shock, but by utilizing his retirement account and borrowing a substantial sum of money, they are hopeful they can build a successful small business. This is a business that can help attract tourist dollars to Elkhart County by providing another tourist destination. This business would provide excise tax dollars to Elkhart County and would increase the property tax base in Elkhart County. Mr. Muir also indicated the business would provide employment to build the building and construct the driveway and would eventually provide employment for others in Elkhart County.

Elkhart County does not currently have a provision in the Zoning Ordinance for farm wineries. The new Zoning Ordinance that is currently being drafted does include a provision for a farm winery in an A-1 zone. The earliest he can plan on opening up is June of next year and he feels that may be optimistic considering the multitude of hurdles they have to overcome.

Mr. Muir said the alternatives to obtaining this Variance would be to either spend between \$15,000 to \$22,000 to obtain a Planned Unit Development or give up the whole idea. Ironically, the end result would be the same building on the same site with the same driveway and septic system, which has already been approved by the Indiana State Department of Health.

The staff is recommending denial because of the projected traffic flow which seem to exceed the success that a home based workshop should be allowed to expect. As part of the business plan, Mr. Muir is using a financial spreadsheet he obtained from the Small Business Development Center. After putting in all of their financial projections, they will need to sell 42 bottles of wine per day, six days a week, during the first year to break even. He's unsure as to how many cars it will take to achieve this. There may be days in January where they sell nothing and he hopes they have days in July where they sell 300 bottles of wine. This traffic may or may not exceed the definition of a home based workshop/business, but the fact that a farm winery is not currently defined in an agriculturally based business in the current Zoning Ordinance should not preclude favorable treatment of someone wishing to establish one in this county. In

conclusion, the petitioner asked the Board to favorably consider his request and devote support to small businesses and agriculture in Elkhart County.

Mrs. Wolgamood asked what zoning classification is currently required for a winery with retail sales. Mrs. Prough indicated it is not defined in the Zoning Ordinance and a tavern is the closest she could come to, which is required to be in a B-2 zoning district. The new Zoning Ordinance does define a winery as a permitted use in an AB (Agricultural Business) or AG (Agricultural General) zoning district.

Mr. Homan asked if they plan on trucking grapes in from off-site and Mr. Muir said they plan on purchasing some grapes and planting some grapes. They are planning on producing apple wine, peach wine, and cherry wine. The expense of establishing a vineyard is in excess of \$5,000 an acre and there is no way they can factor that in at this time. He owns 60 acres of land and he does have room to put in grapes, so they will plant a small amount. It will take three to five years for them to grow as well.

Mr. Homan asked about the truck traffic for the grape deliveries. Mr. Muir said they plan to use grapes from Indiana or southwest Michigan. He would probably take his pick-up truck to pick them up and bring them back to the site.

Mrs. Wolgamood questioned the history on the Staff Analysis. When the petitioner was denied the petition for the roadside stand in 1995, it was based on the fact that county approval might create a dangerous traffic situation. She asked if anything has changed since then as far as SR 15. Mr. Muir said SR 15 has changed substantially, and that is one of the reasons they felt they could establish this business. The highway has been changed drastically and there is an extensive long line of sight in both directions from where the proposed driveway would be. The state has already given the petitioner tentative approval for the driveway, so he doesn't feel the same situation exists now that existed in 1995.

William Baxter, 55561 SR 15, Bristol, was present in favor of this request. Mr. Baxter explained he lives just south of the petitioner's property, which he pointed out on the aerial photo. He feels it would be great to have this business in the area.

Mr. Hesser indicated the petition summary has different sizes than what is indicated on the site plan. Mrs. Prough clarified the petitioner is asking for a difference of 1,476 sq. ft.

Mr. Hesser asked if the traffic is the biggest issue with the staff and Mrs. Prough said yes. The staff is also concerned that a home workshop/business has so many restrictions regarding employees and signage. The petitioner has a lot of long-term plans and would be investing a lot of money in this, so the staff is concerned that it would be difficult for him to operate as a home workshop/business with those limitations. Mrs. Prough said she knows the petitioner is willing to do what he has to do, but applying for a Planned Unit Development is too expensive for him.

Mr. Hesser said he is also concerned about those issues because he feels 75 vehicles per day is not a home workshop/business. He doesn't feel this use is at all unreasonable in this area, but at this level, it is not a home workshop. The petitioner could operate within the current home workshop/business regulations until the new Zoning Ordinance standards have been completed.

Mr. Muir explained if the business level is as good as he hopes it will be, then making further changes won't be an issue because he would be able to afford it. His current problem is that he doesn't want to spend a substantial amount of money and then have it not get him anywhere.

Mr. Hesser said if this is approved as a home workshop/business, then he would be limited in the amount of employees he could have, size of signage, etc. If that part of the Zoning

Ordinance change didn't occur, then he would be stuck with having to follow the current regulations.

The petitioner said if the business doesn't grow to what their expectations would be, then it wouldn't be an issue for them because this would be a home workshop based business. If the business does grow like he hopes it will to provide his retirement, then it would be financial feasible for him to spend the \$15,000 to apply for a Planned Unit Development. He's hoping the new Zoning Ordinance regulations will take farm winery into consideration so he can re-zone the property and meet those standards.

Mr. Homan questioned the projected amount of gallons of fruit for the business. The petitioner explained a ton of grapes produces 150 gallons of wine. There are five bottles of wine in a gallon. The apples he grows are strictly a matter of taking his fruit over to the cider mill in Middlebury with a bulk container and then putting it in tanks. They are projecting to produce 2,200 gallons to 2,500 gallons.

Mr. Homan asked if they would be pressing fruit at his farm and Mr. Muir said the grapes they would crush and press because that can be done with fairly small equipment. It would require using an 80 gallon press and a small crusher. Mr. Homan said the reason he asked is because the Board has strict regulations on having no outside storage. Mr. Muir explained the grapes will be processed immediately and put into tanks within the building.

Mrs. Prough then indicated the request was advertised incorrectly because the square footage of difference between living space and storage space was incorrect.

Mr. Hesser asked if they would be limited to acting on what was requested. Mr. Kolbus said it would be the Board's discretion as to whether or not to allow the request to go forward today. If the Board feels it is a very significant difference, then they could only grant what was advertised. Mr. Hesser said the size of the building is not really the focus of the issue.

The public hearing was closed at this time.

Mr. Hesser explained his concern is the size due to the amount of traffic because that would exceed a home workshop/business. Due to the circumstances that exist now and the fact that the Zoning Ordinance might change to address that, Mr. Hesser wouldn't be opposed to this knowing that it's on a smaller scale and would have to comply with home workshop/business regulations. He also doesn't have an issue with the request knowing that the traffic issue on SR 15 has been resolved.

Mr. Miller feels wineries are low impact with respect to noise. He doesn't see this business growing that rapidly and he has no problems with this request.

Mr. Homan feels the amount of traffic is speculative and he would like to review this in the future.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that this request for a Special Use for a home workshop/business for winery, wine tasting, and retail sales (Specifications F - #45) be approved based on the following findings:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance. The issues regarding the traffic flow on SR 15 has dramatically changed and there won't be any safety issues as long as the petitioner complies with the state driveway requirements.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring properties as one neighbor has indicated he has no problem with what is being suggested.
3. Will substantially serve the public convenience and welfare.

The following conditions were imposed:

1. Approved for a period of two (2) years with a renewal before the Board of Zoning Appeals.
2. Approved for the owner/occupant of the residence on site.
3. The Special Use is required to conform to the definition of a home workshop/business with an emphasis of no outside storage being allowed.
4. All state and local permits are to be obtained.
5. Approved based on the representations made in the questionnaire.
6. The petitioner is to comply with all of the standards in the Elkhart County Zoning Ordinance including parking.
7. Approved as per site plan submitted.

The motion further reflects that the Board approve the Developmental Variance to allow the total square footage of accessory structures (3,664) to exceed the total square footage in the primary structure (2,188), a difference of 1,476, be approved with no additional conditions imposed. After a unanimous roll call vote was taken, the motion was carried.

19. The application of ***Zion Evangelical Lutheran Church*** for a Special Use for a church (Specifications F - #48) and a Variance to allow an electronic message board sign to be located within 300 ft. of existing residences (Ordinance requires 300 ft.) on property located on the Northeast corner of CR 6 & CR 19 in Washington 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 #CR 6-090921-1*.

There were 22 neighboring property owners notified of this request.

Pete Garber with DJ Construction, 3414 Elkhart Road, Goshen, was present representing Zion Evangelical Lutheran Church. Mr. Garber explained the Chairperson of the Building Assessment Team, Bonnie Boscon, and a representative from the signage company, Lyle Ryman, are present in today's audience.

Zion Evangelical Lutheran Church is planning to construct a new 10,800 sq. ft. church that will have the seating capacity of approximately 160 people. Approximately seven acres of the 30 acre parcel on the northeast corner of CR 6 and CR 19 will be developed. They plan to leave 20 to 30 existing trees there to create a nice atmosphere instead of turning it into a field. The master plan calls for future additions to the sanctuary and educational wings with a possible softball field, soccer field, pavilion, serenity garden, walking path, and a playground. Mr. Garber said it is the church's intention to keep these outside facilities open and available for the community because there are a number of neighborhoods close by that could use the soccer fields or walking path for their pleasure and use.

The construction of the church and associated facilities will be consistent with the spirit, purpose, and intent of the Zoning Ordinance because it will allow for the develop of a new church in a residential/agricultural setting. The church will not substantially and permanently injure the neighboring properties because it will enhance the northern view of CR 6 and the eastern view of CR 9. He feels this will give the area a park-like setting with slightly rolling grass mounds. The church building itself will be approximately 245 ft. back off of both of the county roads. This request will serve the public convenience and welfare by providing a new opportunity for worship and future recreation.

Mr. Hesser asked what the church plans to do with the current building. Mr. Garber said he believes they are planning to tear it down, but he doesn't think they have made a 100 percent commitment to doing that. Tearing down the existing church would make more room for the cemetery because they are landlocked.

Mr. Garber explained the church is also asking for a Variance to locate the electronic message board sign closer to existing residences than the Ordinance allows. The sign will vary from 115 ft. to 299 ft. from the four residences that are south of the proposed property. The existing sign is located at the southwest corner of CR 6 and CR 19. They plan to re-locate the existing sign 525 ft. east of CR 19, which would place the sign on the east side of the driveway that comes in off of CR 6.

The electronic message board NIT level, which is the brightness of the sign, is only currently at one half of the acceptable allowance of brightness at night. The message board will comply with all of the other county ordinances, such as breaking and not flashing, but the only thing it doesn't meet is the distance to the residential areas. The lights are amber in color, which is less invasive than the normal red lights. The sign sits perpendicular to CR 6 which will allow the sign to shine east and west and it will be much more visible to cars.

The sign will not substantially or permanently injure the neighborhood as the light will not be directed towards their homes on the south side of CR 6. The sign's location will substantially serve the public convenience and welfare by conveying service times, upcoming special events, and by providing uplifting messages.

Lyle Ryman, 1617 Cassopolis Street, Elkhart, was present in favor of this request. Mr. Ryman said he originally installed this sign at the church about two years ago. When he was working on the proposed electronic message board Ordinance with the staff and Plan Commission, they talked about how the spread of light goes from the LED's. This particular sign has more of a directional diode because it is an older model. The light from this diode will be more focused in a straight line and it is set for half of the minimum of the code. The reason for that is because of the area, which is more wooded and doesn't require the light to be as bright as it would need to be in the city. Not only can someone coming by read the message, but in a particular area like this, it is a good safety and security light. When the weather is bad, the light is there and can help with seeing the road. The sign does have the technology to be dimmed even further if it is too bright.

If there is any opposition to this, Mr. Ryman explained he would be more than happy to meet with anyone because he has a demonstration unit he can set on-site so people can see exactly what it would be like. Sometimes there is a misconception with a lot of the digital signs around because some people think they will be very bright, but that is not always the case.

Mr. Homan questioned how the illuminations are measured. Mr. Ryman explained the NIT is a number of the brightness of particles of light.

Richard J. Blough, 20597 CR 6, Bristol, was present in favor of this request. Mr. Blough explained he lives two properties east of the proposed property and he has no objection to this request.

When Mr. Hesser asked whether he lives north of south of CR 6, Mr. Blough indicated north of CR 6.

Jesse Rex, 20884 CR 6, Bristol, was present in opposition to this request. Mr. Rex pointed out his property on the aerial photo, which is on the south side of CR 6. His main concern is that the driveway will be right in front of his house, so there will be lights shining in.

JoAnn Miller, 20860 CR 6, Bristol, was also present in opposition to this request. Ms. Miller explained she lives south across the street from the proposed property. She is also concerned about the lights shining into her house at night. If the sign is put up without the electronic message board, then she wouldn't have a problem with it. She feels the electronic portion of the sign is very bright right now and she doesn't want the blinking.

Mrs. Wolgamood asked if the sign currently flashes and Ms. Miller indicated yes.

In rebuttal, the petitioner's representative explained he has met with the Elkhart County Highway Department and the church has gotten preliminary approval from them that they will not need a passing blister on CR 6. The church won't be taking any of the neighbor's property on the south side of the road.

Mr. Hesser asked if there is any plan for lighting other than the sign. Mr. Garber said they have a total of four exterior lights. Two of them will be back in the parking lot, which is northeast of the church. There will be one light right at the intersection of the driveway and the parking lot, which will be well back off of the road. The fourth light will be located halfway between CR 6 and the parking lot. Mr. Graber then pointed out the proposed location of the lights on the site plan.

In regards to the concern about the car lights shining into homes, Mr. Garber said the driveway is centered between two homes, so that won't be an issue. When people turn out of the driveway, the homeowners may get some light in their house.

Mrs. Wolgamood asked why the driveway couldn't be moved to the east and Mr. Garber said the only reason is because of expense since it would make the driveway longer.

Mr. Burrow indicated CR 19 is more arterial than CR 6, which may cause an issue if the driveway was located off of CR 19. The traffic pattern is north and south in this area, so the Elkhart County Highway Department would like a passing blister to be added due to the Bristol Fire Department re-locating on CR 19.

The public hearing was closed at this time.

Mrs. Wolgamood explained the athletic fields were not addressed in the questionnaire. Mr. Garber had talked about future lighting on the property and also who would use the athletic fields. It was stated that the athletic fields would be open to the public and she feels that is a concern because it's different than only being utilized by members of the church. She feels the sign issue between the neighboring property owners and the church can be rectified. She doesn't have an issue with where the driveway will be located if it can be moved to the east on CR 6 so that the exiting vehicles would not be shining their headlights in the neighbors' houses.

Mr. Hesser said the athletic fields would be required to come back for an amendment. Mr. Kolbus pointed out they are showing the fields on the site plan. Mrs. Wolgamood indicated the staff included the athletic fields in their recommendation for approval. She doesn't have a problem at all with the church being constructed there, but she does have a problem with the athletic fields being open to the public. They have had problems in the past regarding parking, dust control, etc.

In regards to the car lights coming out onto CR 6, Mr. Garber said they do not have a Sunday evening service. If there are cars coming out after dark, it will be very minimal.

With the number of trees being removed, Mr. Homan said the neighbors across the street will be impacted no matter what. He feels that moving the driveway to CR 19 will not benefit anyone.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis (as amended by the Board) 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 with the following conditions imposed:

1. Approved in accordance with the site plan submitted.
2. The proposed two (2) athletic fields be brought back to the Board of Zoning Appeals prior to them being constructed.
3. No illumination permitted for the athletic fields.
4. All required state and local permits and inspections to be obtained.
5. The sign illumination is to be dialed down as much as possible during the night.
6. The sign is not to be operated above the 250 NIT illumination rating.

A motion was then made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, the request for a Variance to allow an electronic message board sign to be located within 300 ft. of existing residences (Ordinance requires 300 ft.) be approved with no additional conditions imposed.

20. The application of **Edward & Deborah Knight** for an Appeal to allow for the construction of an accessory structure without a primary residence on property located on the East side of Conrad Street, 140 ft. South of Ernest Street, being Lot 24 of Berry's 2nd Subdivision in Osolo 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 #Conrad Street-090902-1*.

There were 3 neighboring property owners notified of this request.

Doug Webb, 25767 Coolidge Avenue, Elkhart, was present representing the petitioners. Mr. Webb explained the petitioner has a total of seven vehicles and he has a couple of small boats. The building will be used for storage of those vehicles and will allow Mr. & Mrs. Knight to get them out of the weather. The petitioner will need to have gas and electric inside the building as well.

Mrs. Wolgamood questioned where the petitioner lives and Mr. Webb pointed it out on the aerial photo.

Three letters in favor of this request from neighboring property owners were submitted to the Board at this time from neighboring property owners *[attached to file as Petitioner Exhibits #1, #2, & #3]*.

Mr. Hesser questioned the staff report because it states that denial of the Appeal would not allow the petitioner to make structural improvements on the lot. He asked if there is a reason why a house can't be built on this property and Mrs. Prough said no, but the staff was referring to the garage when talking about structural improvements in the staff report.

There were no remonstrators present.

Mr. Homan asked if the petitioner would be building the structure himself. Mr. Webb said no, he will hire someone to do it and he plans to use corrugated metal.

The public hearing was closed at this time.

Mr. Homan indicated he is unsure about having larger buildings such as this one in R-1 zoning districts.

Mrs. Wolgamood agreed and indicated this could open the door for more accessory buildings in the area. On the other hand, she explained this immediate area has a high water table and these lots have been here since approximately the 1950's. The area to the east of Conrad Street hasn't been developed at all.

Of the three letters in favor of this request that were submitted to the Board, Mrs. Wolgamood asked if any of them were from the landowner directly across the street from the proposed property. Mr. Webb said yes and indicated Elaine and DeWayne Quick live directly across the street.

Mrs. Wolgamood asked the staff if Towne Fire and Water Damage Restoration to the north is under a Special Use or PUD. Mrs. Prough indicated the property is under a DPUD called "Towne DPUD B-2 Phase One." Since there is a commercial zone to the north, Mrs. Wolgamood indicated she doesn't have a major issue with this request if the petitioner can comply with the 25 ft. front yard setback.

Mr. Hesser indicated he is not in favor of this request, but he asked Mr. Homan what his inclination is. Mr. Homan said he is conflicted with this request, but he would feel more comfortable having the full board vote on the petition.

Mr. Kolbus said they could table it and have the absent Board members review the minutes and information from today's hearing.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that this request for an Appeal to allow for the construction of an accessory structure without a primary residence be tabled until the November 19, 2009, Board of Zoning Appeals meeting to allow the absent Board members to listen to the recording of the proceedings, review the minutes, and review the materials presented at today's hearing. A roll call vote was taken and the motion was carried unanimously.

21. The application of **Craig L. Stahly** for an Appeal to allow for an existing accessory structure prior to the construction of a residence on property located on the South side of Stonecreek Court, 550 ft. South of Stonecreek Drive, East of CR 19, South of CR 18, common address of 57930 Stonecreek Court 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 #57930StonecreekCt-090921-1*. She explained she received a call from Mr. Stahly not long after the application was submitted and he has sold his house, so hopefully it won't take him three years to get his new house built.

There were 9 neighboring property owners notified of this request.

Mr. Hesser asked if this was approved in May and Mrs. Prough explained the neighboring property owner to the east was granted five years to build an accessory structure back in 2007. Mr. Stahly was granted an Appeal, but he had a time limit in which he had to have the new house built, but that hasn't been done, which is why he is here today. Mrs. Prough explained she wanted to point out that Mr. Stahly was given two years and the property next door was given five years.

Craig Stahly, 18935 Ford Drive, Goshen, was present on behalf of this request. Mr. Stahly explained he signed a purchase agreement on Tuesday, so they are on their way. He asked for three years because he didn't know his house was going to sell that quickly. He closes

on the house sale a week from today. He would like to get everything framed by wintertime. He is asking for an extension because he doesn't want to have to tear down his accessory building.

Mr. Hesser asked if he will be done within one year and Mr. Stahly said yes. His goal is to be done around June or July.

Charles Lamb, 57946 Blue Heron Drive, Elkhart, was present to voice some concerns. Mr. Lamb indicated he came to this hearing with a different understanding than what the petitioner is asking for. He does want to make sure the house gets completed within one year because Mr. Stahly has already been given two years, but he does understand exceptional circumstances. The usage of the building was initially supposed to be for storage of equipment and supplies needed to build the proposed residence. Mr. Lamb indicated he appears to be running a business out of this building. He explained this seems like a distribution center because there are other trucks from sub-contractors going to and from the building on site. A lot of the neighbors with young children are very concerned because they don't know who is coming and going.

Kimberly & Myron Moreland, 57907 Stonecreek Court, Goshen, were also present to voice some concerns regarding this request. Mrs. Moreland explained she is an adjoining property owner and she shares an easement with the petitioner. She pointed out the location of their property on the aerial photo at this time. Initially, Mrs. Moreland indicated they weren't sure what was going on because there is a large barn on site. Mr. Stahly hasn't really spoken to them about what is going on and she wants to be told what is actually going on. She and several of the neighbors all have small children and she is concerned about the amount of traffic in and out of the site when there has been no construction or very little construction going on. She would like to know if this is going to be a small business and if people are going to be coming in and out during the day.

Rod Gawthrop, 57907 Wingham Court, Goshen, was present to voice a concern. Mr. Gawthrop explained he lives northeast of the petitioner, which he pointed out on the aerial photo at this time. He indicated he has no problem with the petitioner building his house on this property, but he is concerned about the current building on site. He has two small children and he is worried about their safety with the vehicles coming in and out.

Mr. Stahly then explained he understands the concerns of the neighboring property owners. He has talked to each one of the neighbors, but not in length because he doesn't live out there. He apologized that he hasn't communicated with the neighbors. He does have a small business with two employees. Mr. Stahly said he has monitored the traffic in and out because the employees have two vans they take home. Some weeks, both of the employees are on site twice and other times they are there four times per week. He has been to the site a lot in the last month moving stuff, but he does understand the neighbors' concerns. He wants to do his best and he didn't intend to run a business from this location.

Mr. Hesser explained this was approved specifically for personal storage.

The public hearing was closed at this time.

The Board indicated the business use has to stop. If it continues, then someone could very well file a complaint about that issue.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) 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 Appeal to allow for an existing accessory structure prior to the construction of a residence be

approved provided the new residence is constructed within one (1) year and the existing accessory structure is to be used for personal domestic storage only. After a unanimous roll call vote was taken, the motion was carried.

22. The application of **James and Chris Ulery** for an Appeal to allow for the construction of an accessory structure on property without a residence on property located on the East side of Maplewood Drive, 1,375 ft. North of Lake Drive, being Lot 2 of Byrd Minor 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 #-090916-1*.

There were 5 neighboring property owners notified of this request.

James Ulery, 51205 Maplewood Drive, Elkhart, was present on behalf of this request. Mr. Ulery explained there are four lots to the north that have accessory buildings and one lot to the south. He is proposing to build a 30 ft. x 40 ft. building with 12 ft. high walls. He would like to use the building for storage and he would like to have electrical in the building. The lot is currently vacant and Mr. Ulery explained he works as a contractor.

Mr. Ulery pointed his property out on the aerial photo at this time. He also pointed out the other lots in the area that have accessory buildings on them.

Mr. Hesser then asked the petitioner to point out the houses in the area and Mr. Ulery did so.

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/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of an accessory structure on property without a residence be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted.
2. All required permits and inspections to be obtained.
3. Accessory structure to be used for personal domestic storage only.

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

23. The application of **Glen & Leona Miller** for a Special Use for a sawmill (Specifications F - #37) on property located on the South side of CR 18, 500 ft. East of CR 33 North, common address of 15162 CR 18 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #090806-15162CountyRoad 18-1*.

There were 8 neighboring property owners notified of this request.

A motion was made and seconded (*Hesser/Homan*) that the public hearing be re-opened. The motion was carried with a unanimous roll call vote.

At this time, Mrs. Prough submitted a copy of a revised site plan along with a layout of the inside of the shop building *[attached to file as Staff Exhibit #1]*.

Mrs. Prough also submitted a copy of a petition in support of this request containing three signatures from the adjoining landowners to the north, south, and west *[attached to file as Staff Exhibit #2]*.

Mr. Hesser questioned why the east adjoining landowner didn't sign the petition in favor of this request and Glen Miller, 15162 CR 18, Middlebury, indicated he is present in the audience today.

When asked by the Board if he has any further information to add, Mr. Glen Miller explained he has a purchase agreement signed to obtain some additional acreage. He expects to close on the sale tomorrow, which would increase his acreage substantially.

Mr. Glen Miller said the only issue he didn't address completely was the base for the log storage. He had indicated sand would be used, but he would like to use top soil. If he adds rock, then he will be picking rocks up along with the logs, hauling them into the shop building, and cutting into them. He explained if you cut into a rock with this type of equipment, then it would ruin the blade.

The petitioner said he has a 13 year old son and an 11 year old son who would be helping out, but this is a one man sawmill that will not grow very big. He has operated the sawmill for about three months at a different site and he has never worn ear plugs or dusk masks. He doesn't feel the business is very loud and the traffic is very minimal. Most of the work is done over the phone and he estimated approximately one vehicle per day. This is a very small scale business, but Mr. Glen Miller explained it is very labor intensive.

The petitioner indicated he works one day a week and cuts around 1,000 board feet per day. To put that number into perspective, Mr. Glen Miller said he called Indiana Wood this morning to ask them how many board feet they cut per day and he was told 20,000. Therefore, he feels this business will be very small.

Mr. Glen Miller feels this will be consistent with the spirit, purpose, and intent of the Zoning Ordinance because this is an agricultural area. He also doesn't feel this will cause substantial or permanent injury to the use of the neighboring properties. The petitioner said he tried to call the staff several times to discuss the staff report, but he was unable to reach anyone.

Lastly, the petitioner said he is concerned that the staff is worried about employees. In the fifteen years he has had home workshop/businesses, he has never had an employee and he doesn't want one. This is his home and he would like it to remain peaceful and quiet.

David Farmwald, 9645 W. SR 120, Shipshewana, was present in favor of this request. Mr. Farmwald explained he started this small business at a different location seven years ago. The petitioner has been operating the business for about three months and he has only accumulated about three pick-up loads of sawdust so far.

James Miller, 56322 CR 35, Middlebury, was also present in favor of this request. Mr. James Miller explained he has a small business himself and makes a lot of horse stalls. He would like having the sawmill in the area because it would help with his horse stall business.

Stephen Billey, 15132 CR 18, Goshen, was present in opposition to this request. Mr. Billey feels that having this sawmill in the area would tremendously affect the property values. He has talked to two people in regards to what this would do to his property value and he was told it would decrease the value by about 20 percent. Another person he spoke to indicated it would be devastating to have a sawmill next door.

Mr. Billey feels the petitioner is a great neighbor and very industrious. He indicated the petitioner does tax preparations, has a florist shop, and he repairs furniture. The petitioner doesn't have much traffic right now, but he's worried that it will increase if this request is approved. Mr. Billey is also concerned about dust.

On Labor Day, Mr. Billey went to VIM to investigate and talked to 17 people. Not one of the residents said they would like to have an operation such as this in the neighborhood. The odor was horrible and he feels it was caused by decomposed sawdust on the ground, which may pose a health risk to the area neighbors. Mr. Billey indicated there were several houses in the area for sale as well.

When Mr. Hesser questioned where the petitioner resides, Mr. Billey pointed out his property on the aerial photo.

A petition in remonstrance to this request was submitted to the Board at this time containing nine signatures *[attached to file as Remonstrator Exhibit #1]*.

Mr. Glen Miller said he hopes the Board will realize this isn't anywhere close to the VIM operation. He tried to go speak to Mr. Billey about the sawmill, but he didn't feel he wanted to listen. The petitioner offered to work with the Mr. Billey regarding the dust, but he was unable to get through to him. Mr. Glen Miller also offered to have Mr. Billey come onto his property to look at the sawmill, but Mr. Billey indicated he didn't have time. The petitioner said he wants the neighborhood to remain quiet and he does not want any outside employees or semi trucks. All of his products will be transported onto the site using personal vehicles.

Mr. Hesser asked what time he would like to start in the morning and the petitioner said he is willing to work with the Board. He can easily operate the sawmill anytime the Board would prefer.

Mr. Homan asked if the furniture repair is done inside of the shop building and the petitioner indicated yes.

Mrs. Wolgamood pointed out that the tax preparation is only operated during certain times of the year. When she questioned the florist shop, Mr. Glen Miller indicated his wife planted a lot of flowers in their garden and she was selling them in the Middlebury Farmer's Market. The flowers were grown on site, but they were taken off site to be sold.

The public hearing was closed at this time.

Mr. Hesser said he doesn't have an issue with this request since there will be no semis and limited hours as represented in the petition.

Mr. Homan asked if the Board can define intensity in the conditions and Mr. Kolbus said yes, the Board can approve the request as represented. He also indicated it helps to pull information out of the questionnaire.

Mrs. Wolgamood said the Board was previously concerned about all three businesses being inside one building. Mr. Hesser indicated he is not concerned about that because all of the businesses are small.

Mr. Homan asked the staff if there is something specific regarding safety the Board needs to be aware of. Mrs. Prough said the staff was concerned because they weren't sure how the dust will be handled and if it will go beyond the premises. The staff is also concerned about fire and noise, but the petitioner has addressed the noise issue.

The Board then asked the petitioner how much dust would be produced and how it would be removed. In 1,000 board feet, Mr. Glen Miller said he can probably fill a wheelbarrow. As far as removal, the petitioner indicated he will keep some for his personal use and the rest will be sold or given to farmers.

Mr. Farmwald indicated removing the sawdust isn't an issue. At the current location, he has people stopping in wanting a load of sawdust and it all gets used up.

Mr. Billey explained he is concerned about fire because the site plan didn't show any fire suppression system or plumbing. He is also concerned that the petitioner doesn't have approval from the state to run this operation.

Mrs. Wolgamood said she knows this wouldn't compare to a VIM operation, so that is not even a part of her consideration. The petitioner does have two other Special Uses on the site and fire and dust are a concern.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that this request for a Special Use for a sawmill (Specifications F - #37) be tabled until the November 19, 2009, Board of Zoning Appeals meeting to allow the absent Board members to listen to the recording of the proceedings, review the minutes, and review the materials presented at today's hearing. A unanimous roll call vote was taken and the motion was carried.

Mr. Hesser then explained that the public hearing may or may not be re-opened depending on what the other Board members want to do. He also explained in order to approve or deny a request, there needs to be three of the same votes.

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

25. There were no audience items.

26. The meeting was adjourned at 12:02 P.M.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary