

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF DECEMBER 2010 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, Doug Miller, and Robert Homan. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Wolgamood/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of November 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 4th day of December 2010 in the Goshen News and on the 6th day of December 2010 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 (*Wolgamood/Miller*) 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 ***Benjamin D. Miller*** for a 4 ft. Developmental Variance to allow for the placement of an existing storage building 1 ft. from the West side property line (Ordinance requires 5 ft.) on property located on the South side of Manor Lane, 180 ft. East of CR 13, being Lot 15 of Manor Estates Section 2, common address of 23965 Manor Lane in Osolo Township, zoned R-1 GPUD, 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 #23965Manor Lane-101112-1*.

There were 6 neighboring property owners notified of this request.

Benjamin Miller, 23954 Manor Lane, Elkhart, was present on behalf of this request. Mr. Benjamin Miller explained the aerial photo does not represent the current location of the shed. At the time when the complaint was filed on October 4, 2010, the shed had already been moved because the neighbor had requested that it be moved off of his property. The shed was moved within one foot of the property line.

If the neighbor wanted to construct a fence on his property, he could do so with the shed current located. This shed was constructed before the petitioner lived at the property. The house to the west was moved into in 2006 and the neighbor didn't say anything until four years later. He also indicated the shed is very difficult to move because it is heavy, large, and tall.

Mr. Doug Miller asked the size of the shed and the petitioner said 12 ft. x 10 ft. with 8 ft. side walls.

Mrs. Wolgamood asked where the septic system is located and Mr. Benjamin Miller pointed it out on the aerial photo at this time, which is to the southeast side of the property.

Mr. Hesser asked what the shed is built on and the petitioner said 2 ft. x 4 ft. studs and it is also anchored down to the ground.

Mr. Hesser then asked how they moved the shed and the petitioner said they dug some holes under the shed and they used the neighbor's tractor to transport it.

When Mr. Doug Miller asked if they would be blocking the septic system or any utility easements if the shed were moved back further, the petitioner said no.

Mike Fahlbeck, 23976 Manor Lane, Elkhart, was present in opposition to this request. Mr. Fahlbeck said when he bought the property, he was told they had an encroachment. He immediately went next door and asked the petitioner if he could move his shed. A certificate of survey was submitted to the Board at this time *[attached to file as Remonstrator Exhibit #1]* and a subdivision plat *[attached to file as Remonstrator Exhibit #2]*.

Mr. Fahlbeck then submitted a picture showing the location of the shed *[attached to file as Remonstrator Exhibit #3]* and a picture showing the location of the fence *[attached to file as Remonstrator Exhibit #4]*. A copy of the subdivision covenants were also submitted *[attached to file as Remonstrator Exhibit #5]* and a picture showing the location of the property stake *[attached to file as Remonstrator Exhibit #6]*.

The subdivision covenants indicate that buildings in the back should be at least 10 ft. from the property line. Mr. Fahlbeck asked that the Board deny the request and have the petitioner follow the restrictive covenants of Manor Estates.

In rebuttal, Mr. Benjamin Miller indicated Mr. Fahlbeck never asked him to move the shed until July of 2010. If he would've asked to move it four years ago, the petitioner noted he would've complied at that time.

The public hearing was closed at this time.

Mr. Doug Miller said as a contractor, it is always very important to check the location of property lines and setback regulations. He is highly concerned about the shed sitting on a utility easement.

Mrs. Wolgamood pointed out that the subdivision plat submitted by Mr. Fahlbeck does not show lot #14.

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 4 ft. Developmental Variance to allow for the placement of an existing storage building 1 ft. from the West side property line (Ordinance requires 5 ft.) be denied with the building to be removed or relocated to the required setback of 5 ft. within thirty (30) days. A roll call vote was taken with the following roll call vote results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – yes; and Hesser – yes.

8. The application of ***Elkhart East Christian Church*** for an amendment to a Special Use for an existing church (Specifications F - #48) on property located on the North side of CR 4,

2,630 ft. West of the new CR 17, common address of 21851 CR 4 in Washington Township, zoned A-1, came on to be heard.

One photo of the property was 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 #21851CR 4-101119-1*.

There were 7 neighboring property owners notified of this request.

Sam Angus, Premiere Signs, 400 N. Main Street, Goshen, was present on behalf of this request. Mr. Angus explained there is a temporary sign on site now and if this request is approved, that one will be taken down when the new one is placed. The new sign would meet all of the setback requirements and height requirements. They are requesting a Variance because they need a 40 sq. ft. sign instead of the 20 sq. ft. that the Ordinance allows. He also noted the sign would be lighted, but there won't be any LED lights.

Mrs. Wolgamood asked if they have a date for the removal of the existing sign and Mr. Angus said they would remove it when the new sign goes in, which will probably be a couple of months.

Mrs. Wolgamood also asked if the new sign is going in the exact same place as the old sign and Mr. Angus said it would sit back further.

Mr. Miller asked the height of the sign from ground level to the top of the sign once it's installed and Mr. Angus said 12 ft.

Mr. Miller asked if the sign would be visible from CR 17 and Mr. Angus said yes.

Paul Windbigler, President of Elkhart East Christian Church, 21851 CR 4, Elkhart, was present on behalf of this request. Mr. Windbigler said they would like the sign to be visible to the traffic heading north into Michigan.

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 Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to a Special Use for an existing church (Specifications F - #48) be approved with the following conditions imposed:

1. Approved as per site plan submitted and as represented in the petitioner's application with all required permits to be obtained.
2. Once the new sign is installed, the old one is to be removed immediately.

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

9. The application of ***Daniel H. & Ruth E. Schmucker*** for a Special Use for the keeping of horses, goats, and chickens on a tract of land containing less than three acres (Specifications F - #1) on property located on the East side of CR 3, 1,900 ft. South of CR 42, common address of 67352 CR 3 in Locke 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 #67352CR 3-101115-1*.

There were 4 neighboring property owners notified of this request.

Daniel Schmucker, 67352 CR 3, Wakarusa, was present on behalf of this request. Mr. Schmucker indicated they use the goats for milk and the females sometimes have twins, which

would result in more than what the staff is recommending. Mrs. Prough said when the staff made their recommendation, the petitioner represented three goats and the staff was in agreement with that. The staff came up with the number of chickens by reviewing the animal standards in the new Zoning Ordinance. They felt the petitioner was at his maximum with ten chickens considering the size of the property. Mrs. Prough doesn't feel the staff will have an issue with the petitioner having the kid goats.

Mrs. Wolgamood asked if all three of the adult goats are female and Mr. Schmucker said yes.

Mr. Miller asked if they are using some adjacent property for their horses and Mr. Schmucker said yes. The landowners on both sides of his property have permitted him to dispose of his manure on their farm land.

Mrs. Wolgamood noted that the questionnaire states they are currently renting pasture across the road to supply more grazing. She asked if that is for the two horses and the petitioner said yes. She asked if they have enough room to keep the horses on site and let them graze along with the goats and chickens. Mr. Schmucker said yes, but he was unsure how much area would be required to graze the horses year round and not run out. He rents that pasture land so he doesn't have to feed them as much hay.

When Mrs. Wolgamood asked if the horses are used for transportation, the petitioner said yes.

Mr. Homan asked if they would be able to house 20 chickens in the space they have now and the petitioner said it would be tight.

Mrs. Wolgamood questioned the size of the barn and Mr. Schmucker said 25 ft. x 75 ft. She asked if that is where they will keep the horses and Mr. Schmucker said yes, one end of the building is the barn area and the other end is for the shop/storage.

When the petitioner was asked where the goats are kept, he said one side of the barn has two stalls for the horses and the other side has an area for goats as well.

Mrs. Wolgamood asked if any other buildings need to be constructed for the purpose of keeping these animals and the petitioner said no.

She also asked if there are other horses, goats or chickens in the neighborhood and the petitioner said yes. There are horses and his neighbor has some chickens about half a mile down the road.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller indicated he doesn't have any issues with the request.

Mr. Lantz doesn't feel that a few more chickens would be an issue.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 the keeping of horses, goats, and chickens on a tract of land containing less than three acres (Specifications F - #1) be approved for two (2) horses, three (3) adult goats and twenty (20) chickens as per site plan submitted and as represented in the petitioner's application and testimony. A roll call vote was taken and the motion was unanimously carried.

10. The application of **Marvin L. & Laverda Miller** for a Special Use for a home workshop/business for a harness shop (Specifications F - #45) on property located on the North

side of CR 18, 1,163 ft. East of CR 31, common address of 15773 CR 18 in Middlebury 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 #15773CR 18-101116-1*.

There were 8 neighboring property owners notified of this request.

Marvin Miller, 15773 CR 18, Goshen, was present on behalf of this request. Mr. Marvin Miller explained they would like to start up a harness shop to be a service to the public around them. The closest harness shop from their home is about six miles away. They would make harnesses for buggy horses, draft horses and do repairs.

Mr. Lantz asked if they plan on doing any retail sales and the petitioner said yes, they will be doing small sales on site. He doesn't have a lot of room in his shop for retail space, but there will be a little bit.

When Mr. Lantz asked if most of the traffic will be buggy traffic, the petitioner said yes. Deliveries were also questioned by the Board and Mr. Marvin Miller said most of them will be from the mailman or a pick-up truck, with an occasional UPS truck. There won't be any semi deliveries to the site.

Mrs. Wolgamood asked if having this business in the corner of the existing barn would leave enough room for their other agricultural purposes and the petitioner said yes.

The questionnaire states that there will be one north exit and one south exit and Mrs. Wolgamood asked if he was talking about the building or the driveway. Mr. Marvin Miller said those are the doorways to his shop.

Mr. Doug Miller asked if the signs are in compliance with the Zoning Ordinance and the petitioner said yes.

Glen Miller, 15162 CR 18, Goshen, was present in favor of this request. He explained that it is currently a 30 minute drive with a buggy to the nearest harness shop. He encouraged the Board to approve this request because they need him in the neighborhood.

Mrs. Wolgamood asked the petitioner if he's currently doing this now and Mr. Marvin Miller said he just bought the business and he's waiting for approval from the Board.

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/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 harness shop (Specifications F - #45) be approved as per site plan submitted and as represented in the petitioner's application with the business to be operated by the owner/occupant of the residence on site. After a unanimous roll call vote was taken, the motion was carried.

11. The application of ***New Creation Fellowship Church*** for an amendment to an existing Special Use for a church (Specifications F - #48) for the construction of a pavilion and splash pad on property located on the Southwest side of CR 10, 686 ft. West of CR 1, common address of 30190 CR 10 in Cleveland 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 #30190County 22Rd-101101-1*.

There were 20 neighboring property owners notified of this request.

Jim Christophel, 510 Parkwood Court, Goshen, was present on behalf of this request. Mr. Christophel explained they are proposing to put a pavilion and a splash pad on the back side of the school. The property has woods on both sides, so it won't be visible from the road. This would be very useful in the summertime for the daycare and the church.

Mrs. Wolgamood asked if the school is still there and Mr. Christophel said yes, but it is not currently operating. When she asked if they have plans to re-open it soon, the petitioner's representative said he was unsure.

Mr. Lantz asked if the splash pad unit is self contained and Mr. Christophel said it will set separate from the pavilion. He explained the water shoots up and sprinkles the kids.

Arnie Clarr, Associate Minister at New Creation Fellowship, 30190 CR 10, Elkhart, indicated they have no plans at this time to re-open the school.

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 an existing Special Use for a church (Specifications F - #48) for the construction of a pavilion and splash pad be approved as per site plan submitted and as represented in the petitioner's application. All required permits and inspections are to be obtained. A unanimous roll call vote was taken and the motion was carried.

12. The staff item for the *Agreement of Legal Services for 2011* was presented by Mrs. Prough at this time. A motion was then made and seconded (*Wolgamood/Lantz*) that the contract for legal services be accepted. After a unanimous roll call vote was taken, the motion was carried.

13. The application of *Glen E. & Leona F. Miller* for a Special Use renewal for an existing 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.

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 #15162CR 18-101118-1*.

There were 6 neighboring property owners notified of this request.

Glen Miller, 15162 CR 18, Goshen, was present on behalf of this request. Mr. Glen Miller explained there are only two changes from when he was before the Board last time. He originally had his driveway coming in off the road and circling around, but he discovered that his inside radius was way too tight. Therefore, he converted his driveway to go around the house and back out to the road. He indicated this has been working very well. Secondly, he indicated the log yard was way too big. The log yard currently goes to the south of the building and 40 ft. east, and then back up to the building. He has had plenty of room in the log yard, so that is all the space he needs. The log yard is being decreased in size from what had originally been requested.

As far as volume, the petitioner said he has cut about 49,720 board feet this year. He cuts about 1,000 board feet per week. He has been busy and can't do much more than that. He has

one child coming out of school at the end of this year who will help with the business. The volume will increase a little bit at that time, but it won't go up much.

In the previous meetings, there were some concerns about the tax preparation business. Mr. Glen Miller said one of the reasons he likes this business is because he can do it in the winter when it is cold outside. Last year, his tax preparation business had a gross income of \$1,800, so it is not a large business.

The petitioner also indicated the sawdust goes to landscapers in the summer and it is used for horse bedding in the winter.

Mr. Homan questioned the traffic pattern and Mr. Glen Miller said they unload the logs during the daytime. He explained that in the past year, he had two truck and trailer deliveries out of Centreville, Michigan, three local truck deliveries, and a couple deliveries from people who had logs they didn't need. The total for the year is about ten incoming trucks.

Mr. Glen Miller explained he is currently involved with a retailer in Shipshewana who was buying lumber and wanted to change his assembly area into a showroom. The retailer asked him if he wanted to assemble and the petitioner said yes. This consists of assembling hay feeder floors, shoeing stocks, mangers, pulling sleds, etc. Mr. Glen Miller indicated he could cut 1,000 board feet per day, but 800 would be realistic.

Mrs. Wolgamood asked how his time is divided between sawing and assembly. The petitioner said yesterday morning, he started two hay feeders at 7:00 in the morning. He was cutting until about 11:00 a.m. and then he got done with the assembling at 5:30 p.m. She asked if he cuts the material to assemble the mangers and hay feeders and the petitioner said yes.

Mr. Homan asked if he's still working by himself and the petitioner said yes.

Mr. Homan asked if any equipment has been added to the business since the last hearing and Mr. Glen Miller said no.

When Mrs. Wolgamood asked if any of the assembled items are stored outside, the petitioner said everything that is done usually goes outside. He does not build until he has an order. The outside storage is usually only for a day. He said there isn't really any outside storage of items on a regular basis.

Mrs. Wolgamood asked the petitioner if he still has a furniture repair business and the petitioner said yes, but it is not full-time.

Marvin Miller, 15773 CR 18, Goshen, was present in favor of this request. Mr. Marvin Miller explained a lot of farmers and people that have horses need rough lumber.

Steve Billey, 15132 CR 18, Goshen, was present in opposition to this request. Mr. Billey pointed out his property on the aerial photo at this time. He explained he represents 30 to 50 people in the neighborhood. He is concerned about the business being located here because this road is curvy and there have been accidents. A folder including a letter from Mr. Billey, photos of the property in question and surrounding properties was submitted to the Board at this time *[attached to file as Remonstrator Exhibit #1]*. He then submitted more information including two photos and a letter *[attached to file as Remonstrator Exhibit #2]*. A petition in opposition to this request including 15 signatures was submitted to the Board at this time *[attached to file as Remonstrator Exhibit #3]*.

Mr. Billey feels this is a bad location for a sawmill and he feels the petitioner should look at other possible locations for his business. He is concerned about the affect this will have on the property values. Mr. Billey is also Mr. Billey is also concerned about the petitioner using lead based paint with his antique furniture business as it will affect the groundwater. Lastly, Mr.

Billey expressed his concern regarding the pollutants in the air and on the ground from the sawmill dust.

Mrs. Wolgamood asked if the submitted pictures were taken in the last year and Mr. Billey said yes.

John Regan, 58132 CR 33, Goshen, was also present in opposition to this request. Mr. Regan explained he is friends with the petitioner and he respects him and his family very much. Mr. Glen Miller had asked him to sign the petition and Mr. Regan did so without knowing all of the information. Mr. Regan wasn't aware that all of the other neighbors were against it and if he would have known that, he wouldn't have signed the petition in favor of the request.

There was four acres of land between the petitioner's property and Mr. Regan's property, but someone bought it to build a house. That person later decided it wasn't a good investment and did not build the house. The person who purchased that property came out and dug a trench and put the pooling water onto Mr. Regan's land. He has a concern about the groundwater coming onto his property.

Mr. Homan asked Mr. Regan to point out his property on the aerial photo and he did so at this time. He also gave the Board an estimated perspective of where the ditch starts and ends.

Mr. Lantz asked if the tile was replaced, then would it take care of the drainage issue. Mr. Regan said it might take care of the fact that you don't visibly see the surface water, but his bigger concern is what pollutants are going into the tile.

In rebuttal, Mr. Glen Miller said he knows nothing about VIM. He felt there were a lot of untrue statements made. In response to Mr. Billey's concern regarding traffic, he explained there was a child that was killed at the nearby intersection who slid on loose gravel. That was the last fatality he is aware of, which was over 14 years ago.

Mr. Hesser asked if there is a curve sign on his property and the petitioner said it's on the property across from his land.

Mr. Glen Miller then presented the Mother Earth News magazine to the Board. He explained there is an article in the magazine about building up your soil with sawdust. He indicated that sawdust has no nutrient value, but it creates an environment in the soil where plant matter and worms can function. He also noted that the tile appears to run southeast.

The petitioner said he has been inspected quite heavily. He had inspections from IDEM (Indiana Department of Environmental Management) last summer who found no violations, Code Enforcement, and Tara Still from the Health Department, who found a few violations. The violations she found were two issues of secondary containment on chemicals, a drain that looked like it was contaminated, and also a denial. He will get a re-inspection around January 22, 2011.

Mr. Homan asked if the sawdust is contained within the building and the petitioner said yes.

When Mr. Homan asked what the petitioner uses for finishing, he explained he has about 100 gallons of stripper. The Health Department addressed that because he needs secondary containment in it. He also has varnish and lacquer, which were all in compliance. Those are all utilized with the furniture business.

Mr. Homan asked how he disposes of the chemicals and Mr. Glen Miller said the stripper evaporates and the sludge is dried out and then goes to the Elkhart County Landfill. It stays within the building.

Mr. Homan asked what quantity the chemicals come in and Mr. Glen Miller said the stripper comes in 55 gallon drums and the varnish comes in 5 gallon cans.

The public hearing was closed at this time.

Mrs. Wolgamood asked if there is a subdivision in the area or if most of the houses are on larger tracts of land. Mrs. Prough said there are a lot of larger tracts in this area with large homes on them. Mr. Billey referred to a subdivision, but she was unsure where exactly that was located. She noted there is a subdivision further west and to the south on CR 29.

Mr. Homan said some of the concerns such as drainage and chemicals due to the furniture repair business are not directly related to this sawmill request.

Mr. Hesser feels this operation is a little more intense than the neighbors had anticipated.

Mrs. Wolgamood is concerned about the petitioner doing assembling and fabricating on-site because that was not a part of the previous request. She also is concerned about the amount of outside storage. She doesn't have an issue with the continuation of the sawmill, but she does have an issue with him assembling items and storing them outside.

She also indicated she read the minutes from when Mr. Glen Miller got his initial approval and she doesn't recall that the curve in the road even being discussed before. The Board talked about making sure he had a turnaround in case he was to have semi deliveries. There are also 15 neighbors who have lived with this for a year and are very unhappy with what the petitioner has done.

Mr. Lantz doesn't feel that green sawdust is an issue, but he feels the petitioner got a little carried away with the outside storage.

Mr. Doug Miller said he doesn't struggle with the sawmill, but he feels the petitioner could have been a better neighbor.

Mr. Homan is concerned about the intensity of the sawmill and neighbors' concerns.

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 a Special Use renewal for an existing sawmill (Specifications F - #37) be approved with the following conditions imposed:

1. Approved as per site plan submitted and as represented in the petitioner's application.
2. Sawmill to be operated by the owner/occupant of the residence on site.
3. The day and hours of operation are to be Monday through Saturday with the sawing operations to be limited to 6:00 a.m. to 8:00 p.m.
4. No outside employees.
5. Approved for a period of three (3) years with a renewal before the Board of Zoning Appeals unless a valid complaint is received by Code Enforcement.
6. No outside storage other than the log storage area shown on the site plan and no assembly of products.

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

14. The application of **Larry A. & Marlene J. Burkholder** for an amendment to an existing Special Use for a home workshop/business for a dry goods/fabric store to allow for the construction of an addition onto an existing building (Specifications F - #45), for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, for a 10 ft. Developmental Variance to allow for parking 25 ft. from centerline of right-of-way of CR 56 (Ordinance requires 35 ft.), for a 8 sq. ft. Developmental Variance to allow for a 12 sq. ft. existing double-faced sign (Ordinance allows 4

sq. ft. per side) and for a Variance from the developmental standards for parking (Ordinance requires 22 spaces) on property located on the North side of CR 56, ½ mile West of CR 101, common address of 29999 CR 56 in Locke 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 #29999CR 56-101122-1*.

There were 13 neighboring property owners notified of this request.

Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee, was present representing the petitioners. A petition in favor of this request was submitted to the Board at this time *[attached to file as Petitioner Exhibit #1]*. The original Special Use was granted in 2001 for a dry goods store with retail sales. He pointed out the location of the store on the aerial photo and explained this is located on the west side of Nappanee. Mr. Sloat noted this particular area is zoned A-1 and it's located in between manufacturing zoning districts. There are several Amish businesses along this road including casket sales, a candle shop, a harness shop, a small engine repair shop, bird feed sales, and the Burkholder Country Store.

During the ten years the petitioner has been conducting this business, there have been no complaints filed. Fourteen people in the area have signed the petition in favor of this request. The reason for the expansion is to accommodate the customers. Their intention is not to increase the business, the intensity of the business, or the traffic coming to the site. Twice a year, once in the spring and once in the fall, they have a tent sale outside. The tent is only up temporarily until the sale is over. The new building will be attached to the rear of the existing building and they are proposing to build it 50 ft. x 80 ft.

Mr. Sloat feels the staff's primary objection is that the primary purpose of the parcel has become more commercial than residential. He reassured the Board that the petitioners intend to keep their residence at this location. The petitioner's need the expansion because the aisle width in the shop makes it hard for two customers to pass each other. Mr. and Mrs. Burkholder would like their customers to have mini shopping carts to put their products in as they go through the store. The petitioners' location is easy to get to because it is south of US 6 and customers aren't required to go across the railroad tracks. A large segment of the Amish community lives south US 6, so they can easily get to the property.

On a typical day, the petitioner may have five or six cars, five to seven buggy customers, and a few bicycle customers. It has been determined that approximately 17 parking spaces would be required for this site. Mr. Sloat pointed out the location of one buggy tie rack on the site, which will accommodate six to eight buggies. He also pointed two more buggy tie racks that will accommodate three to four buggies. There is also parking by the barn to provide for additional vehicular traffic if they get really busy.

With regards to the parking setback, they are currently 25 ft. to the centerline of the road, so they need a 10 ft. Developmental Variance to comply with the Zoning Ordinance. For the number of parking spaces required, Mr. Sloat indicated they have more than the required 17 spaces if you could the buggy spaces. The Zoning Ordinance does not distinguish between cars and buggies, so he wasn't sure whether they needed a Variance for that.

Mrs. Wolgamood asked if the setback only entails one parking space and Mr. Sloat indicated two parking spaces are within the setback distance.

Mr. Homan asked if there is a sign on site and Mr. Sloat said yes. They are asking for a Variance for the sign due to the size. It is currently 3 ft. x 4 ft. instead of the allowed 2 ft. x 2 ft. He displayed pictures of the sign for the Board at this time.

Mr. Sloat said the need for the Variance is driven by success and to try and be more accommodating to the customers. If the request is denied, then it will not encourage the petitioners to move their business to a commercially zoned area. Mr. Sloat doesn't feel that having the store a little bit bigger than it is now would have less of an emphasis on the primary purpose of the property.

Mr. Sloat felt the request would be in compliance with the intent of the Zoning Ordinance because a home workshop/business is permitted in an A-1 zone. Given the fact that this A-1 zone is between two manufacturing zones, he also felt it was consistent with the spirit, purpose and intent of the Zoning Ordinance. He didn't feel this would cause substantial or permanent injury to the use of neighboring properties as there are several other small businesses along this road. This would certainly serve the public convenience and welfare because there is a need for Amish dry goods and products. Seventy percent of the customer mix is Amish and the other thirty percent is English, so Mr. Sloat indicated they are primarily accommodating the needs of the Amish community.

Mrs. Wolgamood asked if the business was originally started in an existing building. Mr. Sloat said no, the business was started in a new building that the petitioners constructed.

Mr. Homan asked if the land to the west is a separate parcel and Mr. Sloat said yes, the petitioner's mother lives there.

At this time, Mr. Sloat went through the conditions that the petitioner is proposing.

Mrs. Wolgamood questioned the number of part-time employees. Mr. Sloat said there are some people who come in a couple hours a week, but the total number of hours that those people work doesn't constitute two employees. He noted sometimes they don't even come in at all.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan feels this is consistent with the use of the land, but he has concerns that it is exceeding the boundaries of a home workshop/business. He feels this is more intense than the home workshop/businesses they normally grant.

Mrs. Wolgamood agreed and said she doesn't have an issue with the expansion of the building, but the petitioner is asking for four Variances along with that. She is concerned about the location of the two parking spaces that are within the setback and she felt the petitioners should find somewhere else on the 3.5 acres to place those two spaces. She is also concerned about the size of the sign because the petitioner has been in violation for ten years with the current size. The only Variance she would go along with would be to allow the total square footage of accessory structures to exceed the total square footage in the primary structure.

Mr. Hesser also felt the parking spaces should be modified to eliminate the intensity of the business. He also felt that there shouldn't be more than two outside employees. He also reminded the Board and petitioner's representative that the comments made at today's presentation are part of the conditions if the request is approved. He doesn't have an issue with the expansion of the building, but he does feel it should be limited to two outside employees.

From a public safety standpoint, Mr. Miller felt it would make sense to have the extra square footage in the building. He agrees that this could still be operated as a home workshop/business even if the building was expanded.

Mr. Homan asked how the number of required parking spaces is determined. Mrs. Prough explained it is based on the square footage of the building. Mr. Sloat calculated the 17 parking spaces based on the retail space. The Zoning Ordinance also requires you to count for wholesale/office space, which is how they came up with the 23 parking spaces. The staff calculated everything related to the business. Mr. Homan said some of the customers will not be driving automobiles, so he feels that is peculiar when it comes to the number of parking spaces. Mrs. Prough said the Zoning Ordinance indicates that a parking space has to be 9 ft. x 18 ft. regardless whether it is for an automobile or a buggy.

Mrs. Wolgamood felt the Board should keep in mind that the Zoning Ordinance doesn't differentiate between English or Amish communities.

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 home workshop/business for a dry goods/fabric store to allow for the construction of an addition onto an existing building (Specifications F - #45), for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, for a 10 ft. Developmental Variance to allow for parking 25 ft. from centerline of right-of-way of CR 56 (Ordinance requires 35 ft.), for a 8 sq. ft. Developmental Variance to allow for a 12 sq. ft. existing double-faced sign (Ordinance allows 4 sq. ft. per side) and for a Variance from the developmental standards for parking (Ordinance requires 22 spaces) be denied in accordance with the Staff Analysis. A roll call vote was taken and the motion did not pass due to the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – no; and Hesser – no.

After further discussion a motion was then made and seconded (*Hesser/Miller*) that this request for an amendment to an existing Special Use for a home workshop/business for a dry goods/fabric store to allow for the construction of an addition onto an existing building (Specifications F - #45) be approved as represented in the petitioner's application based on the following findings:

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

The following conditions were imposed:

1. Approved as per the revised site plan to be submitted showing 23 parking spaces that comply with the Zoning Ordinance.
2. The sign is to be four (4) sq. ft. per side.
3. No more than two (2) employees.
4. No expansion without Board of Zoning Appeals approval.
5. Hours of operation are to be 8:00 a.m. to 5:00 p.m., Monday through Friday and 8:00 a.m. to 3:00 p.m. on Saturday.

6. The petitioner is to come back before the Board if a valid complaint is received by Code Enforcement.

The motion further reflected that the request for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be approved based on the following findings:

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

The following condition was imposed:

1. A revised site plan is to be submitted within sixty (60) days showing 23 parking spaces that comply with the Zoning Ordinance.

Lastly, the requests for a 10 ft. Developmental Variance to allow for parking 25 ft. from centerline of right-of-way of CR 56 (Ordinance requires 35 ft.), for a 8 sq. ft. Developmental Variance to allow for a 12 sq. ft. existing double-faced sign (Ordinance allows 4 sq. ft. per side) and for a Variance from the developmental standards for parking (Ordinance requires 22 spaces) be denied with the existing sign to be removed within sixty (60) days and the two existing parking spaces that are within the setback are to be removed within sixty (60) days. The motion was carried with the following roll call vote results: Homan – no; Wolgamood – yes; Lantz – yes; Miller – yes; and Hesser – yes.

15. The application of *Manolo Dosal* for a Use Variance to allow for an existing accessory structure on property without a residence on property located on the East side of SR 19, 450 ft. South of CR 36, common address of 64084 SR 19 in Harrison Township, zoned A-1, came on to be heard.

One photo of the property was 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 #64084SR 19-101122-1*.

There were 5 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat explained that on November 9, 2010, a letter was sent to Mr. Dosal advising him that he would need to apply for a Use Variance since construction had not been started on the new house. In November of 2009, an Appeal was approved for one year to allow for an accessory structure without a primary structure. The petitioner has not been able to sell his property in Nappanee. It is listed for sale with Hahn Realty and the realtor is here today to talk to the Board about efforts to sell the house.

At the time when the garage was constructed, there was a permit issued simultaneously for a freestanding garage and a residence. The economy started going down when the petitioner built the garage and he, unfortunately, has not been able to sell his house in Nappanee. Mr. Dosal works in masonry and he built an outdoor kitchen outside of the garage. The structure is located back 1,100 ft. from SR 19 and the petitioner intends to build a home as soon as he can sell his house.

Mr. Sloat feels the request will not be injurious to the public health, safety, or general welfare of the community because the use is compatible with the area. There is nothing that will cause any injury to the neighboring property owners.

The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. This has not caused a negative effect on any neighbor. The need arises from a condition that is peculiar to the property involved because the petitioner built the garage based on a permit that was issued by the Building Department. He has not been able to construct his new home because he can't sell his existing home. A strict application of the Zoning Ordinance would constitute an unnecessary hardship if applied because Mr. Dosal would have to tear his garage down. He feels they are caught in an economy that doesn't enable them to go forward with what they want to do. The approval does not interfere with the Elkhart County Comprehensive Plan because this is an agricultural area with residences around. He asked that the Use Variance be approved based on those five findings.

Mr. Hesser asked why the staff wanted the petitioner to apply for a Use Variance because that would allow him to have the accessory building there forever without the primary residence. Mrs. Prough explained the staff had a policy change within the last year that they were no longer accepting uses that were not permitted as Appeals. They are now going to be Use Variances. The only time they will be accepting Appeals is when it is from an interpretation of a decision.

Mr. Hesser asked if the Use Variance can be conditioned and Mr. Kolbus said yes.

Laura Sumpter, the petitioner's real estate agent, 71732 CR 7, Nappanee, was present on behalf of this request. Ms. Sumpter explained the property has been actively for sale for the past year and a half. When they first started, the economy was just starting to slide down a little. She feels the petitioner's home is beautiful and it is currently listed at a fair price. There have been several showings, but this home will sell in a higher market because it is a nice home. The people who are looking to buy a home in the higher market usually have to sell their own home first, which is where they run into problems. There are a lot of foreclosures in Nappanee and several short sales. People are purchasing those instead of the houses in the normal market. She indicated the petitioner is a good neighbor where he is now and he will be a good neighbor when the new house is built. There was no way to know that their current house wasn't going to sell. Hopefully things will pick up in the spring and they will be back on track. She indicated they plan to do a price reduction in the spring and want to bring in as many prospective buyers as they can.

Mr. Homan asked if the listing agreement is indefinite and Ms. Sumpter said they do a six month agreement and then extend it from there. Mr. Dosal's agreement is up at the end of January and then they will re-evaluate and do a price reduction if needed.

Sandy Kreps, 27870 CR 36, Goshen, was present in opposition to this request. Ms. Kreps indicated the petitioner stores his business equipment in the garage. She has six pages of documentation of what has been going on at the property. She also noted the petitioner just bought a new truck. She then submitted documentation of the activity that has been happening on site *[attached to file as Remonstrator Exhibit #1]* and photos *[attached to file as Remonstrator Exhibit #2]*.

Ms. Kreps explained that the petitioner has been cutting stone at his property and he has been storing supplies and equipment in the garage. The petitioner has been parking trailers and trucks inside and outside of the accessory building. Mr. Dosal has used the front end loader to unload equipment at Tim Martin's barn.

Mr. Sloat viewed the photos submitted by the remonstrator at this time.

Mr. Homan then asked to see the minutes from the original Appeal hearing.

In rebuttal, Mr. Sloat said the photo dated October 26th was of the neighbor's property to the east. The petitioner is in business and he comes and goes to this site, but he's not running his business out of his structure. Some of the pictures may have been taken when he was doing construction work on his outdoor kitchen. Mr. Sloat doesn't feel the petitioner is abusing the neighborhood.

Ms. Sumpter said she feels the petitioner has improved the look of the area.

Ms. Kreps said the pictures show that the petitioner has been storing stuff for the business inside the building. She sees the semi's go back there and unload equipment and supplies. The area is zoned for agriculture and not for business. When the petitioner was approved for the Appeal, he was told not to store his business items in the building. She indicated he has stored his business items there since the day after being approved for the Appeal.

The public hearing was closed at this time.

Mr. Homan feels there is some business storage happening in this structure, but he felt that making the petitioner tear down the building would be pretty harsh. Stopping the traffic and requiring the petitioner to start construction on the house within the next year regardless of the sale of the other home would be more appropriate.

Mrs. Wolgamood agreed. A number of photographs and documentation have been submitted by the remonstrator and she feels the petitioner has overextended what was originally granted. She doesn't feel anything has been demonstrated to allow her to support a Use Variance.

Mr. Hesser feels this situation is unique because the standards have changed and the request has been changed from an Appeal to a Use Variance. He suggested having a time limit placed on the request. He's inclined to make the time limit a shorter term instead of a longer term due to the disputed use issues.

Mr. Homan doesn't feel there is a need to let the petitioner continue to use the building for business storage. If they were to accommodate a Use Variance on this property, then he asked if the Board could place a condition on the approval that the petitioner vacates the building until construction of the residence has begun. Mr. Kolbus said he was unsure whether it would be appropriate for this Board to do that.

Mr. Homan asked the petitioner's representative how Mr. Dosal will remedy this problem. Mr. Sloat said he didn't represent the petitioner a year ago, but what Mr. Dosal has represented to him is that a business is not being operated from this location. As he goes back and forth to the property, he may have a trailer attached to his truck. His vehicle may have a business logo on the side, but that doesn't mean he is running a business there.

Mrs. Prough noted the staff did receive complaints, but the petitioner always represented to the Code Enforcement Investigator that the building wasn't being used for business purposes. This is the first time she was aware of the number trips going back and forth. If the building is used for personal domestic storage, she asked why the petitioner has to go back and forth all the time. The staff didn't realize the magnitude of trips prior to today's hearing.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) this request for a Use Variance to allow for an existing accessory structure on property without a residence be denied based on the following findings:

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

The following condition was imposed:

1. The building be removed or vacated from the property within six (6) months unless construction of the residence has been started.

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

16. The application of *Amerco Real Estate Company C/o U-Haul of Northern Indiana* for a Use Variance to allow for the placement of truck beds to be used for storage on property located on the North side of US 33, 500 ft. West of CR 3, being Lots 7, 8, 9, 10 & 11 of Highway Gardens Subdivision, common address of 29057 US 33 in Baugo Township, zoned M-2, came on to be heard.

There were 10 neighboring property owners notified of this request.

Mr. Hesser explained that this request was tabled last month due to a tie vote, and to allow Mr. Lantz to review the minutes, recording and exhibits. Mr. Lantz was hospitalized and he has not gotten a chance to do that. He will review all of the documents for next month's meeting and Mr. Hesser recommended having the request tabled until that time.

Mrs. Wolgamood said they talked about foundations at last month's hearing and she asked the petitioner if that had been discussed with Mike Gard, Building Commissioner. Craig Wilson, U-Haul Company of Northern Indiana, 1861 US Route 41, Schererville, Indiana, was present on behalf of this request and indicated he discussed that with Mr. Gard. He read some information from U-Haul's Sustainable Modular Storage Program at this time.

Mr. Kolbus asked whether or not Mr. Gard indicated they would need state approvals or local approvals to not put foundations in. He also asked whether Mr. Gard indicated foundations are required under state or local code.

Leon Welch, U-Haul, 29057 US 33, Elkhart, was also present on behalf of this request. He indicated Mr. Gard gave him some options of foundations that were possible, but there was nothing that was absolutely necessary. His concerns were more along the lines of the structural integrity of the units themselves such as the sturdiness, roof strength, etc.

Mrs. Wolgamood asked if he indicated whether they would need state approval for the location of the units and Mr. Welch said no.

Mike Gard, Building Commissioner, explained he understood the petitioner was going to get him the manufacturing specifications so he could determine whether they would meet the building codes, but he has not received anything yet.

Mr. Homan asked if storage in a standard semi trailer would be an approved land use in an M-2 zone and Mrs. Prough said no. The Zoning Ordinance doesn't allow you to use any vehicle part that was originally designed for transportation as a storage structure.

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/Homan*) that this request for a Use Variance to allow for the placement of truck beds to be used for storage be tabled until the January 20, 2011 Board of Zoning Appeals meeting. A roll call vote was taken and the motion the unanimously carried.

17. The application of **William & Penny Feeney** for a 45 ft. Developmental Variance to allow for the construction of a manufacturing business 30 ft. from the centerline of the right-of-way of Railroad Street (Ordinance requires 75 ft.) and for a 15 ft. Developmental Variance to allow for the construction of a manufacturing building 35 ft. from a residential zoning district (Ordinance requires 50 ft.) on property located on the South end of Railroad Street, 265 ft. east of SR 15, common address of 68640 Railroad Street in Jackson Township, zoned M-1, came on to be heard.

There were 6 neighboring property owners notified of this request.

A motion was made and seconded (*Hesser/Wolgamood*) that the public hearing be re-opened. After a unanimous roll call vote was taken, the motion was carried.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the petitioner. A copy of a survey was submitted to the Board at this time *[attached to file as Petitioner Exhibit #1]*. Mr. Doriot explained the properties to the south are served by an easement. There is a 15 ft. recorded easement that extends north and then east onto CR 23. It appears that over time, the individuals were driving through the end of Railroad Street. The only way an easement by prescription can be enforced is if there is court action. The petitioners do have an ample open easement north and east of this property that was deeded to the south adjoiners. The parcel in question still can't access Railroad Street because it is adjacent or congruent with the north property line.

Mrs. Wolgamood asked if the building to the south will no longer be able to use the driveway and Mr. Doriot said that is correct. They will no longer be able to trespass across the property to the north. There is an existing driveway that is used from the east and it goes across the northern part of the Spurlock property. He did talk to Mr. Spurlock while he was out on the site and he is aware of it.

Karl Graber, Pacemaker Buildings, 101 Acorn Street, Syracuse, explains there are no overhead doors on the structure. The building will be ten feet away from the easement.

Mr. Hesser asked the staff if their recommendation has changed after seeing the survey. Mrs. Prough said the staff reviewed the survey and as long as the petitioners can meet all of the other developmental standards for drainage, parking and number of employees, then they would be supportive of the Variances.

Mr. Doriot said the petitioners are allowing for approximately 35,000 cubic feet of retention in the drainage easement.

Mr. Hesser asked how many parking spaces they are required to have on this site and Mrs. Prough said it is based on the number of employees for manufacturing. They are required to have one space per employee. They are showing five employees, so she feels the parking is adequate.

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 this request for a 45 ft. Developmental Variance to allow for the construction of a manufacturing business 30 ft. from the centerline of the right-of-way of Railroad Street (Ordinance requires 75 ft.) and for a 15 ft. Developmental Variance to allow for the construction of a manufacturing building 35 ft. from a residential zoning district (Ordinance requires 50 ft.) be approved as requested and in accordance with the survey submitted by the petitioner. After a unanimous roll call vote was taken, the motion was carried.

** * The agenda was amended at this time to reverse the two following tabled items.*

18. The application of **Mark Osler** for a Special Use for the extraction of gravel, sand or other raw materials (Specifications F - #10.00) on property located on the East side of CR 101, 2,300 ft. North of CR 28, common address of 60550 CR 101 in Baugo Township, zoned A-1, came on to be heard.

There were 8 neighboring property owners notified of this request.

Mrs. Wolgamood asked if the neighboring property owners were re-notified and Mrs. Prough said yes.

Michael Schmitt, 4101 Edison Lakes Parkway, Suite 100, Mishawaka, was present representing the petitioner. Mr. Schmitt explained that they recently found out that the engineering firm has not completed the requested documents. He had checked in with them about a week earlier and they were anticipating getting them done, but they are requesting to have the request tabled again because they don't have the documents to proceed with the hearing. Mr. Schmitt also offered having the petition withdrawn and they can re-file at a later date.

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 (*Wolgamood/Miller*) that this request for a Special Use for the extraction of gravel, sand or other raw materials (Specifications F - #10.00) be dismissed without prejudice. After a unanimous roll call vote was taken, the motion was carried.

19. The application of **Owen L. & Marietta C. Yoder** for a Special Use for a saw mill in an A-1 district (Specifications F - #37) on property located on the Southeast corner of CR 34 & SR 13, common address of 11950 CR 34 in Clinton 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 indicated site plan was received and after review, the staff kept their recommendation for denial.

There were 6 neighboring property owners notified of this request.

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

Owen Yoder, 11950 CR 34, Goshen, was present on behalf of this request.

Mrs. Wolgamood indicated he has changed some of the answers on the questionnaire form. The site plan has been revised to add a truck turnaround. She noted that the log storage area on the site plan was out of context as far as the size.

Mrs. Wolgamood questioned item #3 on the Staff Analysis and Mrs. Prough said the log storage is considered outside storage.

When Mr. Homan asked if the sawmill is in operation, the petitioner said yes and indicated he operates an average of 20 hours per week.

He then asked how often the logs are brought in and the petitioner said he was unsure, but indicated the logs are hauled in on car trailers.

Mrs. Wolgamood explained that one of the Board's concerns is the difference between operating the sawmill alone one or two days a week versus having lots of employees and operating five or six days a week. The petitioner has indicated that is not what he does.

Mr. Hesser feels he has clearly reduced the intensity of his operation.

When Mr. Hesser asked the staff if their main concern was intensity, Mrs. Prough said yes and noted the staff feels this use is too intense for the property.

Mr. Lantz asked the petitioner how much he is sawing and Mr. Yoder said it averages 1,000 to 2,000 feet per month.

Mrs. Wolgamood asked if he currently has any employees and the petitioner indicated no.

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 (*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 saw mill in an A-1 district (Specifications F - #37) be denied. The motion died due to lack of a second.

A motion was then made and seconded (*Hesser/Lantz*) that this request 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 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 outside employees.
2. No log storage to the west of the building.
3. A revised site plan is to be submitted showing storage to the east of the building as the current site plan is not drawn to scale.

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.

20. The application of *Ceja Consuelo* for a Special Use for an existing church (Specifications F - #48) on property located on the South side of Modrell Avenue, 400 ft. West of Independence Street, being Lot 57 of Rose Lawn Subdivision, common address of 25404 Modrell Avenue 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].

There were 19 neighboring property owners notified of this request.

There was no one present for this request.

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 (*Wolgamood/Homan*) that this request for a Special Use for an existing church (Specifications F - #48) be tabled until the January 20, 2011 Board of Zoning Appeals

meeting. If no information has been received by that time, then the request will be dismissed. After a unanimous roll call vote was taken, the motion was carried.

21. There were no items transferred from the Hearing Officer.
22. There were no audience items.
23. See Page 6, item #12 for the staff item regarding *Agreement of Legal Services for 2011*.
24. The meeting was adjourned at 1:13 p.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary