

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21st DAY OF JANUARY 2010 AT 8:45 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 Vice Chairman, Robert Homan, with the following board members present: Meg Wolgamood, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Kathy Wilson, Zoning Administrator; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Miller/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of December be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Wolgamood/Miller*) that the legal advertisements, having been published on the 9th day of January 2010 in the Goshen News and on the 11th day of January 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 (*Miller/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.

** * Mr. Hesser arrived to the meeting at this time.*

7. The application of *Ferman & Luetta Miller (buyers), Marvin & Erma Miller (sellers), Lynn & Mabel Miller (sellers), and Lamar & Nancy Schlabach (sellers)* for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on property located on the South side of CR 22, 1,650 ft. East of CR 35 in Middlebury 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 #CR 22-091221-1.

There were 18 neighboring property owners notified of this request.

Ronnie Justice, Advanced Land Surveying, 17120 CR 46, New Paris, was present representing the petitioners. The proposed house would be situated on the south part of the property. They feel it is a good location as he has looked at the soils with a soil scientist and it is pretty suitable. The water table is more than six feet, so that portion of the property is suitable

for being built on. The reason for having multiple sellers for this request is because they have to be able to get access back to the property.

One of the reasons they chose this area is because it won't interfere with the farming. Secondly, this is a major arterial road and it is very difficult to get a curb cut through the Elkhart County Highway Department. They could utilize the existing driveway and just add to it, so they would not need to create a new curb cut.

As far as the acquisition of the area, Mr. Justice explained there are three different sellers in this situation. The north part is the petitioner's father's property and he would have to acquire 35 ft. of frontage. The other 65 ft. to make up the 100 ft. would come from Mr. Schlabach, who is a neighboring farmer in the area. The petitioner's brother is the one who owns the property where the house would be situated.

Mrs. Wolgamood asked if the red line shown on the aerial photo is the west line of the petitioner's father's property. Mr. Justice indicated that is platted wrong on the county maps and the red line is the east property line of the father's property.

Mr. Homan asked if the red area shown on the aerial would be 100 ft. and Mr. Justice indicated yes. The yellow line shown on the aerial should be disregarded.

Mr. Hesser asked if this is an existing parcel and Mr. Justice said no, it is proposed at this time.

When Mrs. Wolgamood asked who owns the parcel to the west, Mr. Justice indicated the petitioner's brother.

Mr. Miller asked if the proposed new tract were sold off, is the first section of driveway coming in off of CR 22 to the south will be a deeded easement that will always go with that land in case it were ever sold off. Mr. Justice said yes, it would have to be a deeded easement. The three acre parcel where the house is would still have 114 ft. of road frontage.

Mr. Homan asked if there is an alternative to accessing the area where they are proposing to build a new house. Mr. Justice said the only other access would be to the north, but it would interfere with the farming.

** * Mr. Lantz arrived to the meeting at this time. * **

Ferman Miller, 13893 CR 22, Middlebury, was also present on behalf of this request. Mr. Ferman Miller explained the reason he would like to do this is because they currently live on a one and three quarter acre property, which they have had for 13 years. They have outgrown the place with five children, so they are looking for something a little bigger. His father went from 150 cows down to 45 cows, so the land where the proposed house would be built has not been used for the past year.

Another reason they would like to do this is because they have a son with cerebral palsy. He is eight years old and has to be in a wheelchair. His main caregiver outside of the immediate family is his grandmother, who lives close to the proposed property.

Mr. Ferman Miller indicated that during the past year, agricultural milk prices have been really low. The farm had some real struggles and if they get money on their markets, it will reduce their payments by about \$1,500. He has been in this area since 1987 and he feels the area has a great church and school system. He prefers to keep his family in the area if possible.

Mr. Homan asked who owns the pasture land outlined in red and the petitioner said Mr. Schlabach owns that land. They would basically be exchanging land for purposes of accessibility.

Mr. Hesser asked the total acreage of the parcel and Mr. Justice indicated about 12 acres.

Lamar Schlabach, 13393 CR 22, Middlebury, was present on behalf of this request as well. Mr. Schlabach explained he lives to the east of the property in question and he also owns the 1.75 acre lot where they are asking for an easement. He indicated he is in support of this request.

The public hearing was closed at this time.

Mr. Homan said this is a peculiar shaped lot. He then asked the staff about the comments in the Staff Analysis regarding the 3 to 1 depth to width ratio Variance.

Mrs. Prough said the main reason for that Zoning Ordinance change was to eliminate driveways being close. They wanted to get away from driveways within 50 ft. to 100 ft. of each other. The staff didn't say that at this point because they were going to be sharing a driveway.

Mrs. Wolgamood said she can understand the petitioner's reasoning for wanting to be in this location and she also feels Mr. Justice has done the best he can do with what has been offered. She thinks that the configuration of the parcel is questionable.

She doesn't have an issue with the sharing of the driveway because the petitioner and his father would both have road frontage. If worse came to worse, they could put in another driveway. She indicated she agrees with the staff's recommendation.

Mr. Lantz said if the curb cuts are possible and they could have a long driveway, he feels they could make it happen. He indicated he would be in favor of this request.

Mr. Homan asked if the parent's lot would still have 100 ft. of road frontage and Mr. Justice indicated they would have 114 ft.

Mr. Doug Miller explained this is an agricultural area and the land can be farmed. He struggles with the idea of having a common driveway, but he's empathetic to the needs that the petitioner has. He indicated he is on the fence at this point.

Mr. Hesser indicated he has trouble getting over Staff Analysis finding #3 because there is not a problem with the existing parcel.

Mrs. Wolgamood indicated if this is granted, it will create more of a 3 to 1 problem on the petitioner's father's parcel.

Mrs. Wolgamood asked how much total frontage said the petitioner's father own and Mr. Justice said at present, he has 149 ft.

Mrs. Wolgamood asked if this has to go through subdivision regulations and Mrs. Prough indicated yes. This is just the first step in that process.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence be denied. The motion was then carried with the following roll call vote results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – no, and Hesser – yes.

8. The application of **Gregory & Susan Olgee** for a Use Variance to allow for a second residence on a single zoning lot, a 4 ft. Variance from the east side property line (Ordinance Requires 10 ft.), a 5 ft. Variance from the rear property line (Ordinance requires 25 ft.) and a 100

sq. ft. ground floor area Variance (Ordinance requires 900 sq. ft.) for an existing structure to be converted into a residence on property located on the North side of 6th Street, 800 ft. East of Division Street, common address of 13184 SR 120 in Jackson 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 #188496thSt-091130-1*.

There were 21 neighboring property owners notified of this request.

Richard Mel, Attorney, 222 N. Main Street, Goshen, was present representing the petitioners. When there was a petition back in August of 2008 to build the detached storage building on the property, they never thought they would be here today asking for this request. He explained that Rich Olgee passed away in April of 2009 and his wife, Jane, is now living on Milwaukee Avenue in Elkhart. With her current bills, Jane Olgee is unable to pay the mortgage on her current house. The house is for sale, but they have not had any luck selling it yet. Mr. Gregory Olgee thought he could convert the pole barn on his property into living space for his mother, which is why they are here today. They have no intentions of renting this out to anyone else.

The petitioner had always intended on converting the pole barn into an office area, but he had never gotten around to it. Now it has become a priority since his mother needs a place to stay. If the Board approves this request, it will take the petitioner 60 to 90 days to get the structure finished. Mrs. Jane Olgee and Mr. Mel have been working with First Source Bank so they won't foreclose on the house. They have given her some time to see if her house sells, but the foreclosure day is coming sooner rather than later.

Overall, they feel this is a family hardship and this would be the best possibility for the petitioner's mother as she would like to stay close to the family. He explained this is not intended to be a rental unit and they would accept any restrictions that this would be only for Mrs. Jane Olgee to reside there.

Mrs. Wolgamood asked if this is in the New Paris Conservancy District and the petitioner's representative said yes.

She then questioned what type of manufacturing behind is behind the property in question. Greg Olgee, 18849 E. 6th Street, New Paris, indicated it is a boat factory. He then explained he had submitted a letter to the staff from the neighboring property owner to the east indicating they are in favor of the request. This letter was then submitted to the Board by Mrs. Prough *[attached to file as Staff Exhibit #2]*.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked if they have explored the option of a subordinate dwelling.

Mr. Homan said they are looking for the most economical way.

Mr. Hesser said the arguments have to do with the family argument and not the land use.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for a second residence on a single zoning lot, a 4 ft. Variance from the east side property line (Ordinance Requires 10 ft.), a 5 ft. Variance from the rear property line (Ordinance requires 25 ft.) and a 100 sq. ft. ground floor area Variance (Ordinance requires 900 sq. ft.) for an existing

structure to be converted into a residence be denied. A roll call vote was taken and the motion was carried unanimously.

Mrs. Wolgamood indicated that a subordinate dwelling in R-1 zone requires Special Use.

9. The application of **Robert & Shirley Tapp** for a Use Variance to allow for a second residence on a single zoning lot on property located on the South side of SR 120, 1,640 ft. East of CR 35, common address of 13184 SR 120 in York 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 #13184SR 120-091217-1*.

There were 18 neighboring property owners notified of this request.

Robert Tapp, 13184 SR 120, Middlebury, was present on behalf of this request. Mr. Tapp explained he would like to put another house on his property for his granddaughter. His granddaughter and her husband got a divorce and she has four young children. She is living in Florida right now with her mom, but she will have to move out due to some problems. He has 14.7 acres and he can place the house anywhere on the property. He is proposing to place it on the southwest side of the property, which he pointed out on the aerial photo at this time.

When Mr. Homan asked how much road frontage the property has, the petitioner indicated around 280 ft.

Mr. Homan asked if the request is for a modular home and the petitioner said yes. When Mr. Homan asked if there would be a permanent foundation, Mr. Tapp indicated there would be. He will either have a foundation or a basement, but he has to talk to the person who works with the concrete. The water table goes down about eight to nine feet.

Shirley Tapp, 13184 SR 120, Middlebury, was also present on behalf of this request. She doesn't understand see how the findings would affect this particular situation since it would only be family.

Mr. Homan explained that Elkhart County has a Zoning Ordinance and it is the law for development in the county. Part of that Zoning Ordinance clearly states that there cannot be two residences on one parcel. There are exceptions for certain hardships, but it is very tightly defined. The standard which a request like this has to meet is fairly high.

Mrs. Tapp then expressed some of her concerns with the current zoning regulations.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lantz indicated there are several parcels in the area that have an odd shape to them.

Mr. Hesser said his understanding of the Staff Report is that there are a lot of alternative ways you can go in situation without having two residences on the same parcel.

Mrs. Wolgamood said when the staff indicated in #3 that the petitioner could subdivide the property which would allow for construction of a second residence, she questions whether that could be done without a number of Variances. She's sure they would have to have some 3 to 1 depth to width ratio Variances, so they will be right back before the Board to request that.

Secondly, when the staff talks about subdividing, she asked if this would be considered a minor subdivision, a major subdivision, or whether it could be an administrative subdivision. Mr. Nemeth then explained for the creation of a new lot, it would probably be a minor subdivision and possibly an administrative subdivision.

Mrs. Wolgamood questioned whether a subordinate dwelling is allowed in an A-1 zoning district and Mrs. Prough said yes. Mrs. Prough then indicated the petitioner's could think about having a mobile home or a double-wide mobile home, which would be under a Special Use permit. They could also consider an addition onto the existing residence for a double dwelling.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for a second residence on a single zoning lot be denied. After a unanimous roll call vote was taken, the motion was carried.

10. The application of **Henry Jr. & Mary E. Schlabach** for a Use Variance for a billboard in an A-1 district on property located on the South side of SR 4, 2,190 ft. East of CR 35, common address of 13542 SR 4 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 presented the Staff Report/Staff Analysis, which is attached for review as *Case #13542SR 4-091210-1*.

There were 18 neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465, New Paris, was present representing the petitioners. Mr. Doriot then submitted two photos of where the sign will be located *[attached to file as Petitioner Exhibit #1]*. Mr. Doriot indicated the petitioners are asking for a 5 ft. by 10 ft. sign. They have well over 1,000 ft. of road frontage, which he pointed out on the aerial photo. In the submitted photos, the tarp shown on the wagon is where the sign will be as the tarp is 5 ft. by 10 ft. The petitioners have two places of business which are the Old Bag Factory and the old Schmucker Drug Company building in Middlebury.

Mr. Schlabach took a few petitions around to the surrounding properties. The first petition is signed by all of the members of the Middlebury Chamber of Commerce and the second petition is signed by the neighbors. Both of the petitions were submitted to the Board at this time *[attached to file as Petitioner Exhibit #2]*. Mr. Doriot indicated he doesn't feel any attractive low key signage would be out of order.

Tim Schlabach, 13754 SR 4, Goshen, was also present on behalf of this request. Mr. Schlabach explained that Mr. Henry Schlabach is his father and he is an authorized executive for taking care of things. He indicated that Middlebury had a farmer's market last year in this very building and they are trying to promote that again this year. They have had comments from a lot of different people asking if they can come back in with the farmer's market. They would like to try and keep that there and their goal is to provide more business in downtown Middlebury.

Also present on behalf of this request was Henry Schlabach Jr., 13542 SR 4, Goshen. Mr. Henry Schlabach Jr. explained that the furniture they have is locally made furniture and they are trying to support all of Elkhart County.

Mrs. Wolgamood then asked if Michiana Oak is a retail operation and Mr. Henry Schlabach Jr. indicated yes.

She then asked if there will be multiple advertisements and the petitioner said no. One side will advertise Michiana Oak since it's heading towards Middlebury and the other side will advertise the Old Bag Factory in Goshen.

Mr. Doriot explained that the wagon shown in the photo with the tarp only represents where the sign will be located and how big it will be. This will be a small, conventional, and unlighted sign.

Mr. Miller asked if the request is for a 5 ft. x 10 ft. sign or a 6 ft. x 12 ft. sign as indicated in the questionnaire. The petitioner indicated they are requesting a 5 ft. x 10 ft. sign.

When questioned by Mr. Miller if the wagon is sitting 75 ft. back from the centerline of the road, Mr. Doriot indicated the wagon is sitting behind the right-of-way fence at about 50 ft. Mrs. Prough then pointed out that they would be required to be 55 ft. back from the centerline of the road. Mr. Doriot indicated they could move it back five feet.

Mr. Miller questioned whether there are vertical height limits for the sign and Mrs. Prough said no. Mr. Doriot indicated the sign wouldn't be any higher than represented in the photos.

Mr. Hesser questioned why this is a request for a billboard and Mr. Kolbus explained a billboard is not a permitted use in an A-1 zone.

When asked where billboards are a permitted use, Mrs. Prough indicated business and manufacturing zoning districts.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller pointed out that this has been downsized from the original request.

Mr. Hesser indicated he has a hard time getting over the requirements for a Use Variance.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for a billboard in an A-1 district be approved based on the following findings:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
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 arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Variance does not interfere substantially with the Elkhart County Comprehensive Plan as there are other billboards present throughout Elkhart County.

The following conditions were imposed:

1. The billboard must be a minimum of 55 ft. from the centerline of SR 4.
2. The billboard is not to exceed 5 ft. x 10 ft. as represented by the petitioner.
3. The vertical height of the billboard must not exceed 14 ft. off the existing ground.
4. The billboard is to be unlighted.

The motion was not carried due to the following roll call vote result: Homan – no; Wolgamood – no; Lantz – yes; Miller – yes; and Hesser – no.

A motion was then made and seconded (*Homan/Wolgamood*) that this request for a Use

Variance for a billboard in an A-1 district be denied. The motion was then carried with the following roll call vote result: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – no; and Hesser – yes.

11. The application of **Timothy Irons (LC Purchaser) and Dorothy Landon (LC Holder)** for a Use Variance to allow for two residences on one parcel on property located on the West side of SR 15 (Mottville Road), 905 ft. Southwest of Commerce Drive, common address of 905 SR 15 (Mottville Road) in Washington 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 #905SR 15-091218-1*.

There were 14 neighboring property owners notified of this request.

Timothy Irons, 905 Mottville Road, Bristol, was present on behalf of this request. Mr. Irons explained he is purchasing this property from his grandmother and he bought it about four years ago. He has been fixing the house up, but he hasn't actually lived in the house yet. A couple of years back, he split up with his ex-wife, so the income has been reduced. At the time, he also owned a mobile home, but he couldn't afford to pay the bills on both places. He gave the mobile home away and he put living quarters in the garage on the property in question. He ended up getting a red tag on his door stating that he was in violation of the Zoning Ordinance. The staff advised him that he needed to apply for the Use Variance.

Mr. Miller noticed that a building permit was pulled for the two-story home to do work on the porch and upgrade the electrical entrance. According to the staff report, the interior of the home has been gutted. Mr. Irons indicated he has gone through and knocked out most of the plaster and replaced it with drywall. He has bought new hardwood floors, but they haven't been installed yet due to financial issues. He has also put on new siding, installed new windows, and put on a new roof.

When Mr. Miller asked if any of that work has been inspected, Mr. Irons said he pulled the permits for the electrical and to add on the porch. He never finished things up, so he was never able to get inspections.

Mrs. Wolgamood asked how long it has been since he ceased work on the house and the petitioner said two years.

Mr. Miller asked what his intentions are when the two-story house is completed. The petitioner indicated he is going to move into the home. When asked what will happen with the garage he is currently living in, Mr. Irons said it will be converted back to much needed garage space.

Mr. Hesser asked if the Board can approve this contingent on the fact that when the house is occupied, the use of living space in the garage would terminate. Mrs. Prough said the Board could put conditions on it. The Board could give him a certain amount of time to complete the two-story residence and allow him to live in the garage. They could then place a condition that upon 60 days of completion and occupancy of the residence, then the garage is to be converted back to accessory space with the living quarters being removed.

Given what Mrs. Prough has said, Mrs. Wolgamood asked the petitioner for an approximate time frame as to how long this might take. He feels the Board should consider allowing him to continue to live there. As far as a time frame on completing the house, he would

probably have to go with lower end materials and he wouldn't be able to do everything he originally wanted to do.

Mr. Hesser indicated the Board is looking for an estimate of approximately when he would be able to move in. He explained the Board is asking for a good faith estimate of when it might be done. Mr. Irons said one year or two years would be a safe estimate. There are no loans involved in this and he is just using the money he earns from working. The labor is not an issue because he feels he could get a lot done in a little amount of time. He indicated he is unsure of what type of time frame he's allowed to ask for.

Thomas Nickel, 1001 SR 15, Bristol, was present to voice a concern. Mr. Nickel indicated that Mr. Irons has been a very good neighbor. He feels the petitioner is very quiet and a lot has been done to improve the property. When he got the letter in the mail, he didn't realize it was against the Zoning Ordinance to have a second residence on his parcel. He came to the meeting today to get information and to indicate that Mr. Irons has been a good neighbor. His only concern is that if the petitioner moves into the primary residence on site, then he doesn't want to see the second residence become a rental. Mr. Nickel then pointed out his property on the aerial photo.

Mr. Irons then indicated he has no intentions to rent the building out to anyone.

The public hearing was closed at this time.

Mr. Hesser said once these type of requests are approved, there is the possibility for a problem later on down the road. In this particular situation, he doesn't feel there would be a problem if there were a motion stating that once the primary residence was completed and occupied, then the second residence on site is to be converted back to accessory space. He feels this would be a positive impact for the neighborhood.

Mrs. Wolgamood agreed with Mr. Hesser. If the Board is looking to say yes to this request, she requested that it be approved for a period of two years and a condition be placed on it that it is not to be rented or sold separately under any circumstances. She also suggested having another condition stating that after the Certificate of Occupancy is issued, then the petitioner has 60 days to convert the second residence back to accessory space with an inspection for verification.

Mr. Homan asked if the second residence is connected into the septic system for the house. The petitioner indicated the property is on city services.

When Mr. Homan questioned whether the sewer hook-up should be removed when the second residence is converted back to accessory space, Mrs. Prough said the kitchen and bathroom should be removed.

Mrs. Prough asked if there was plumbing in the garage when he moved in and Mr. Irons said there was a water spigot that came from the house. She then explained that some people do have bathrooms in accessory buildings if they have a hobby shop or similar type of use.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for two residences on one parcel be approved with the following conditions imposed:

1. Approved for a period of two (2) years while the petitioner completes the construction/renovation of the primary residence on site.
2. All permits and inspections are to be obtained and a Certificate of Occupancy is to be issued upon completion.

3. After the Certificate of Occupancy is issued, the petitioner has sixty (60) days to return the existing garage back to an accessory structure.
4. The accessory building is not to be rented or sold.

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

12. The application of **Myron L. Yoder** for a Special Use for warehousing and storing of construction equipment in an A-1 district on property located on the North side of CR 38, 1,530 ft. East of CR 33, common address of 14695 CR 38 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 presented the Staff Report/Staff Analysis, which is attached for review as *Case #14695CR 38-091210-1*.

There were 7 neighboring property owners notified of this request.

Myron Yoder, 14695 CR 38, Goshen, was present on behalf of this request. Mr. Yoder explained he would like approval to store trailers and concrete forms outside to the north of the detached garage. There is no manufacturing done on site. Mr. Yoder indicated the trucks are parked there during the night and the next morning, they get the trucks and leave the site. He planted a row of trees from the road all the way around his property to block the view of any of the neighboring properties.

Mr. Hesser said one of the staff photos shows the fuel tanks and the concrete forms outside. Mrs. Prough then indicated the petitioner has to keep those in containment and the Elkhart County Health Department will have to make an inspection to make sure he is in compliance. She believes he has them resting on the ground now without a containment area. She said the petitioner needs to register with Groundwater Protection.

When Mr. Homan asked about the staff's recommendation of no outside storage of materials and Mrs. Prough indicated they were referring to the concrete forms. Mr. Yoder said the concrete forms have a retaining wall behind them and there are trees on the sides. He explained there is not room in the shop for everything.

Mr. Homan asked if there is a rack on the truck where the concrete forms go on and the petitioner said yes, he has a truck for that. When asked if the truck pulls into the shop, the petitioner indicated yes.

Mr. Hesser asked if it would be possible to store everything inside and Mr. Yoder said yes, but there would be no room to walk.

Mrs. Wolgamood questioned how tall the retaining wall is and the petitioner said six feet. There are a row of trees on the sides which blocks the area in.

When Mrs. Wolgamood asked how long the business has been on site, the petitioner indicated three years. He explained he doesn't run the business out of the shop, it is just storage for his business.

Mr. Lantz doesn't feel that this would be a big issue.

Mr. Homan feels if they are going to allow outside storage, then it should be precisely defined.

When Mr. Kolbus asked how big the existing cement pad is to the north of the building, Mr. Yoder said it's about 22 ft. by approximately 60 ft. wide. The petitioner indicated he keeps his property cleaned up all the time.

The public hearing was closed at this time.

Mr. Hesser said he is inclined to approve this and allow some outside storage, but he doesn't want to give it a blanket. He would like to see a better site plan showing where the outside storage would be so they have some limitations on that.

Mr. Kolbus said a detailed site plan could be brought back to the Board as a staff item for approval.

Mrs. Wolgamood said she doesn't have a big problem with the outside storage as long as the huge equipment is stored inside. She asked that if the Board grants this request, then a condition be placed stating that the staff review this in a couple years to verify compliance with outside storage. She also likes the idea of having a detailed site plan submitted to the Board.

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/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for warehousing and storing of construction equipment in an A-1 district be approved in accordance with the site plan submitted and as represented in the petitioner's application with the following conditions imposed:

1. Limited outside storage of concrete forms and funnel tanks will be permitted as represented by the petitioner.
2. A detailed site plan showing the location of outside storage, quantity of outside storage, and screening is to be submitted to the staff by February 10, 2010 and brought back to the Board for approval at the February 18, 2010 Board of Zoning Appeals meeting.
3. No sign.
4. All required permits and/or approvals to be obtained from the Elkhart County Health Department.
5. A staff review to verify compliance with the Special Use is to be completed in one (1) year.

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

13. The application of ***Middlebury KOA Campgrounds*** for an amendment to an existing Special Use for KOA Kampgrounds to allow for the construction of three new signs and to allow for two existing signs and a 21 ft. front yard Variance to allow for an existing sign 34 ft. from the centerline of SR 13 (Ordinance requires 55 ft.), and an 18 ft. Variance for an existing sign 37 ft. from the centerline of SR 13 (Ordinance requires 55 ft.) on property located on the Northwest corner of SR 13 and SR 120, common address of 52867 SR 13 in York 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 #52867SR 13-091216-1*.

There were 21 neighboring property owners notified of this request.

Hope Perkins, owner of Trails Adventure, Inc. d/b/a Middlebury KOA Campgrounds, 52867 SR 13, Middlebury, was present on behalf of this request. She explained they currently have two signs they are replacing. One of them is very close to falling down and is at the intersection of SR 13 and SR 120. The second sign they are replacing is approximately 30 ft. from the centerline of the road, so they are moving it back to the 55 ft. requirement. The third

sign which is located on SR 120 backs up to the woods on the property and it is greater than 55 ft. from the centerline of the road. That sign gives the customers an indication of where to turn when they are coming eastbound on SR 120. All of the signs will be approximately 4 ft. x 8 ft. and they will be professionally made by Banners Unlimited in Middlebury. Ms. Perkins then pointed out the sign locations on the aerial photo.

Mrs. Wolgamood then asked about the property immediately to the north and the petitioner indicated it is a small rental property in a residential zoning. She said it is a small apartment building with four or five apartments. Across the street, there is a furniture shop, gas station, fireworks stand, and a church.

Peter Hersey, 11539 Oak Hills Drive, Middlebury, was present in favor of this request. Mr. Hersey explained he lives just west of property in question in the Oak Hills Subdivision. He is in favor of the petitioner's request for placing new signs and replacing the existing signs.

Liselotte Hersey, 11539 Oak Hills Drive, Middlebury, also indicated she is in favor of this request. A letter was then submitted to the Board indicating Mr. and Mrs. Hersey have no issues with the request *[attached to file as Remonstrator Exhibit #1]*.

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/Lantz*) 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 KOA Kampgrounds to allow for the construction of three new signs and to allow for two existing signs and a 21 ft. front yard Variance to allow for an existing sign 34 ft. from the centerline of SR 13 (Ordinance requires 55 ft.), and an 18 ft. Variance for an existing sign 37 ft. from the centerline of SR 13 (Ordinance requires 55 ft.) be approved with all building permits to be obtained for the three new signs. After a unanimous roll call vote was taken, the motion was carried.

14. The application of **Milton J. Miller** for a Use Variance to allow for a hotel/apartments in an R-1 zone on property located on the East side of SR 15, 1,450 ft. North of Hackett Road, common address of 61168 SR 15 in Elkhart Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #61168SR 15-091217-1*.

There were 16 neighboring property owners notified of this request.

Milton Miller, 61168 SR 15, Goshen, was present on behalf of this request. Mr. Milton Miller explained he would like to run the building as apartments or a motel. The property across the street has been bought and is now zoned commercial. There are also five acres next to Oaklawn that will be used for restaurants and small businesses. Mr. Milton Miller explained the bed and breakfast was not used for that purpose for eight or nine years. He had spoke to Mr. Harrell at that time and indicated they were not doing breakfast, but he didn't feel Mr. Harrell had an issue with it. He doesn't see the problem with renting the rooms because telling people they could only stay for 30 days was a definite disadvantage. He felt it caused some severe hardships by doing that.

Mr. Hesser asked what the status is of most of the guests. The petitioner indicated he is approved for seven guests, but it is hard to get that many residents. He explained he has only had two or three residents at a time.

When asked by Mr. Hesser how long they normally stay, Mr. Milton Miller indicated two or three weeks with a few of them staying over one month.

Mr. Hesser asked if most of these people are on vacation and the petitioner said yes, most of them, but some of them are just people working in the area. He has had a few bad renters, but the police took care of them.

When the Board questioned what the normal procedure would be for someone putting up a small apartment unit, Mrs. Prough said the apartments would have to be located in the proper zoning district. She explained this property is in an R-1 zoning district and there is an R-4 zoning district adjacent which is part of a Planned Unit Development. Apartments would be permitted in an R-4 zoning district.

Dawn Deal, 61168 SR 15, Apt. 6, Goshen, was present in favor of this request. She explained she has stayed at this location for a little while and she has a mentally handicapped child who goes to Oaklawn. It is very convenient for her to go across the street and visit her son. Mr. Milton Miller has been a great landlord and there haven't been any problems that she can see with any of the other people who have been in and out of the building.

When Mrs. Wolgamood asked how long she has been staying there, Ms. Deal said she has been staying there for a couple of months.

David Brewer, 51946 Buckwillow Court, Elkhart, was also present in favor of this request. Mr. Brewer explained he has been associated with Mr. Milton Miller since his friend, Dawn, has lived there. The petitioner is handicapped and the "breakfast" part of a bed and breakfast is impossible for him to provide. He is legally blind and runs a very tight business. He makes a point to discuss how things are going with all of the different residents who are there. Many people use this as a temporary home while they look for a home or an apartment. Mr. Brewer indicated he doesn't understand the difference between a bed and breakfast and an extended stay type of motel. He feels there are very few problems here and it is a convenience for the community.

William Black, 61197 SR 15, Goshen, was present to voice a concern. Mr. Black explained he lives across the road to the next property south, which he pointed out on the aerial photo. He indicated Pete Liegl did purchase 195 acres of land behind the church. Mr. Black has questions on how this may impact him personally and how it will impact the neighborhood.

With the city boundary line coming closer and closer, he asked if there will be a requirement for the petitioner to purchase city services. If that were the case, then that would compel the petitioner to be annexed into the city.

Mr. Black indicated he is also concerned because he just put in a new driveway. The other commercial businesses in the area do require acceleration and deceleration lanes. Those types of lanes would require him to modify his driveway extensively, which would be a fairly great expense.

In rebuttal, Mr. Milton Miller said there would be no acceleration or deceleration problems because there are only seven rentals.

When Mr. Hesser questioned the property to the south, the petitioner explained it is a 15 person Amish rehab center. Mrs. Prough verified that is correct.

If the petitioner were to re-zone, Mr. Hesser asked if this would be a permissible use. Mrs. Prough said he would have to re-zone because apartments are permitted in R-4 zoning districts.

Mr. Homan asked if it is A-1 or R-1 towards the northeast and Mrs. Prough said she believes it is A-1. The Board then had further discussion about the zonings of the surrounding properties at this time.

Mrs. Wolgamood asked if the petitioner is on city sewer and Mr. Milton Miller indicated no. He will be in touch with them as soon as they run the lines in the area, but he's unsure as to when that will be. When she looks in the Zoning Ordinance, she's not sure the petitioner would qualify for an R-1 zoning classification because she's unsure as to how big each of the units is. Without city sewer, she wonders if an R-4 classification would be viable on that size of a piece of property.

The petitioner then explained if he doesn't get approved for this request, then he will have to give up the place because it will be repossessed.

In addition, Mr. Brewer indicated the sizes of the units are mostly one and two bedroom units with a bathroom. He doesn't believe any of them are over 400 sq. ft. and he feels the petitioner has done a lot of renovation on the sewage system for it to be in compliance.

The public hearing was closed at this time.

Mr. Hesser feels the petitioner should consider going through a re-zoning to R-4. Mrs. Wolgamood said the petitioner would have to ask for an R-4 DPUD before the Plan Commission and the County Commissioners, and then he would be back before the Board of Zoning Appeals asking for Variances.

Mrs. Prough then indicated Mrs. Wolgamood is correct. The petitioner would have to ask for a Planned Unit Development without coming back before the Board of Zoning Appeals asking for lot area Variances. If the proper was annexed and he had city sewer, he would be alright for lot area, but he still has an issue per unit because the Zoning Ordinance requires 900 sq. ft. She explained that the main issue is that people are staying more than 30 consecutive days.

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 Use Variance to allow for a hotel/apartments in an R-1 zone be denied. After a unanimous roll call vote was taken, the motion was carried.

15. The ***Election of Officers*** was discussed by the Board at this time. Mrs. Wolgamood suggested having Mr. Miller as an officer for 2010. A motion was then made and seconded (*Wolgamood/Homan*) that the 2010 Officers be approved as follows: Randy Hesser, Chairman; Doug Miller, Vice Chairman; and Tom Lantz, Secretary.

16. The staff item for ***David & Michele Muir*** was presented to the Board at this time by Mrs. Prough. She explained this was discussed at last month's meeting and it is now signed and notarized. She indicated the staff would like the Board to approve it and they need the Chairman's signature on it. Mr. Kolbus indicated a notary page needs to be added for Mr. Hesser's signature. A motion was then made and seconded (*Homan/Lantz*) that the Board approves the commitment form agreement with the addition of the notary page.

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

18. There were no audience items.
19. The meeting was adjourned at 11:23 a.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary