



MEETING RESULTS ZIONSVILLE BOARD OF ZONING APPEALS
Wednesday, September 6, 2023
6:30 PM (Local Time)

THIS PUBLIC MEETING WAS CONDUCTED ONSITE AT ZIONSVILLE TOWN HALL IN ROOM 105 (COUNCIL CHAMBERS), LOCATED AT 1100 WEST OAK STREET:

The following items were scheduled for consideration:

- I. Pledge of Allegiance
- II. Acknowledgement of new BZA Member – Jocelyn Hinshaw
- III. Attendance - **5 of 5 members attended. IN-PERSON: C. Lake, K. Postlethwait, J. Hinshaw, S. Mundy, L. Jones**
- IV. Approval of the [July 5](#) & [August 2](#), 2023, Minutes
- V. Continuance or Withdrawal Requests

Docket Number	Name	Address of Project	Item to be considered
			None at this time

VI. Continued Business

Docket Number	Name	Address of Project	Item to be considered
2023-11-DSV	M. Hollis	10550 Pete Dye Ridge Zionsville, IN 46077	Adoption of Findings Complete Adoption of Negative Findings of Fact confirming the Board of Zoning Appeals denial from the July 5, 2023, Meeting.
2023-18-DSV	J. Clarke	145 N. Main Street Zionsville, IN 46077	Approved as presented & filed w/ exhibits & per staff report. 3 in Favor, 2 Opposed - Lot Coverage 5 in Favor, 0 Opposed - Fence Petition for a Development Standards Variance to provide for: 1) An outdoor paver patio which exceeds the allowable lot coverage from 37 percent to 43.86 percent, 2) A fence that exceeds the maximum height of six (6) feet to 7'5" in the Urban Village Residential Zoning District (R-V).

2023-24-DSV	Zionsville Presbyterian Church	4775 W. 116 th Street Zionsville, IN 46077	Approved as presented & filed w/ exhibits & per staff report. 3 in Favor, 0 Opposed Petition for a Development Standards Variance to provide for two freestanding signs located within the 10-foot setback from proposed right-of-way in the Urban Office Business Zoning District (B-O) and in the Urban Michigan Road Overlay District (MRO).
2023-26-DSV	R. Strickland	4616 St John Circle Zionsville, IN 46077	Approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for a Development Standards Variance to provide for an in-ground swimming pool which exceeds the lot coverage from 20 percent to 30 percent in the Urban Single-Family Residential Zoning District (R-SF-2).
2023-29-SE	Altums	7645 E. 200 North Whitestown, IN 46075	Conditional Approval with three (3) year sunset clause, installation of curb cut and offloading area out of public right of way by April 1, 2024, complete submittal of Improvement Location Permit (ILP) for the "Hoop House", complaints forwarded to BZA to decide on action of sunset. 5 in Favor, 0 Opposed Petition for a Special Exception to provide for a landscape contracting business in the Rural General Agricultural Zoning District (AG).

VII. New Business

Docket Number	Name	Address of Project	Item to be considered
2023-30-DSV	A. Ott	5355 W. Old 106 th Street Zionsville, IN 46077	Approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for a Development Standards Variance to provide for a renovation and expansion of an existing single-family residence in which: 1) Deviates from the required side yard setback of 20-feet to 10'7" 2) Exceeds the allowable building height of 35-feet to 48-feet in the Urban Single family Residential Zoning District (R-SF-2). 3) Exceeds to allowable wall line linear footage
2023-31-UV	D. Stohler	5898 S. 700 East Whitestown, IN 46075	Approved as presented & filed w/ exhibits & per staff report, with three (3) year sunset clause. 5 in Favor, 0 Opposed Petition for a Use Variance to provide for an office for a home improvement company in the Rural Single Family Residential Zoning District (R-1).
2023-32-DSV	M. Humphrey	65 N. 700 East Whitestown, IN	Approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for Development Standards Variance to provide for an accessory structure which exceeds the permitted accessory square footage in the Rural Agricultural Zoning District (AG).

2023-33-DSV	Chase Bank	10701 E. 300 South Zionsville, IN 46077	Continued to the October 4, 2023, BZA Meeting. 5 in Favor, 0 Opposed Petition for Development Standards Variance to provide for additional signage which exceeds the maximum allowed of two (2) and proposed is ten (10) signs in the Rural General Business Zoning District (GB) and in the Rural Michigan Road Overlay District (MRO).
2023-34-DSV	Chase Bank	10701 E. 300 South Zionsville, IN 46077	Continued to the October 4, 2023, BZA Meeting. 5 in Favor, 0 Opposed Petition for Development Standards Variance which exceeds the permitted light level at the east property line in the Rural General Business Zoning District (GB) and in the Rural Michigan Road Overlay District (MRO).
2023-36-DSV	Culver's Restaurant	3263 S. US Highway 421 Zionsville, IN 46077	Approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for Development Standards Variance to provide for additional signage which exceeds the maximum allowed of three (3) and proposed is four (4) signs in the Rural General Business Zoning District (GB) and in the Rural Michigan Road Overlay District (MRO).
2023-37-DSV	T. Gottschalk	8802 Oak Street Zionsville, IN 46077	Conditional Approval: Accessory square footage to exceed that of the primary up to 6,189 total square feet. Removal of storage containers from property within 30 days (October 6, 2023). Complete submittal of Improvement Location Permit (ILP) for the "Lean To". 5 in Favor, 0 Opposed Petition for Development Standards Variance to provide for additional accessory structures which exceeds the permitted accessory square footage which also includes utilizing shipping containers in the Rural Single and Two-Family Residential Zoning District (R-2).

VIII. Other Matters to be considered:

Docket Number	Name	Address of Project	Item to be considered
			None at this time.

Please note that a quorum of the Zionsville Town Council may be in attendance at the meeting.

Respectfully Submitted: Mike Dale, AICP
 Director - Community and Economic Development Department
 Town of Zionsville

Zionsville Board of Zoning Appeals
September 6, 2023

In Attendance: Steve Mundy, Chris Lake, Kathi Postlethwait, Jocelyn Hinshaw, Larry Jones

Staff attending: Mike Dale, Chrissy Koenig, Owen Young, Kent Minnette, attorney

This is where audio started

All Pledge of Allegiance.

Mundy Thank you. The next item is acknowledgment of our new BZA member. This is, this is the first time for Jocelyn so Mr. Dale, could I ask you to give a formal introduction?

Dale Well, sure. Joceyln Hinshaw, welcome aboard, our newest Board member replacing Andy Pickell who is now serving at the Deputy Mayor during the, for the next few months until there's a change of Administration. So, we want to welcome and thank Jocelyn for joining the Board of Zoning Appeals.

Hinshaw Thank you.

Mundy Yes, welcome. Now, if we could have attendance taken Mr. Dale? Can you do that?

Dale Jocelyn Hinshaw?

Hinshaw I'm definitely still here.

Dale Larry Jones?

Jones Here.

Dale Chris Lake?

Lake Here.

Dale Steven Mundy?

Mundy Present.

Dale Kathi Postlethwait?

Postlethwait Present.

Dale We have a quorum.

Mundy Thank you. The next item is our approval of the July and August minutes of the BZA meetings. The July minutes are in your package as were the August. The July minutes were complete. As you all know, the, the August meeting was not because lack of quorum. So is there, if, those are both in your packet. There were only two of you here for that July meeting so let's tackle – oh, I'm sorry, for the August meeting so let's tackle first the July 5th meeting. Are there any questions,

comments or changes to those minutes? Hearing none, is there a motion to approve?

Lake So moved.

Mundy Thank you Mr. Lake. Is there a second?

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

They are approved.

The August minutes are there. Only two of you were present. There was no business conducted other than roll call and there was a lack of a quorum. So, the minutes are very brief but for the two of you who here there if there's no changes or corrections to what's there if you would, someone would motion to approve.

Lake So moved.

Mundy Thank you Mr. Lake. Is there a second?

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. Those in favor please indicate by saying aye.

All Aye.

Mundy Thank you. They are approved as well.

For those of you who are here again because of the cancellation of the August meeting, we apologize for that. Two of us knew that we could not be here that night. We thought we had all three chairs filled which would've provided a quorum and that didn't materialize. There was evidently something at the last minute that prevented that so we apologize for having you come once again. Are there any petitioners here tonight who wish to ask for a continuance or a withdrawal? Seeing none, we'll move on to the first item which is Docket Number 2023-11-DSV, M. Hollis at 10550 Pete Dye Ridge, Zionsville, Indiana. This was an Adoption of Negative Findings of Fact from the July meeting so if we have those Findings they can be passed down for signatures at this time. There's no reason for other discussion.

Dale Who has a set, I have a set of those – okay. Chrissy you got it? Thank you.

Mundy The next item on the agenda is Docket Number 2023-18-DSV, J. Clarke at 145 North Main Street, Zionsville, Indiana. This, too, has been continued. This will

be the third review of this petition. It's a Petition for Development Standard Variance to provide for an indoor [outdoor] paver patio which exceeds the allowable lot coverage from 37 to 43.86% and a fence that exceeds the maximum height of six (6) feet to 7 feet 5 inches in the Urban Village Residential Zoning District (R-V). Mr. Dale, could we have the staff report?

Dale Yeah, good evening everybody. This petition is a request to construct a 600 square foot outdoor paver patio in the rear yard of the property. These improvements, with the existing improvements, would bring the total lot coverage to 43.86%. The current zoning allows for up to 35% with a 2% bonus for a total of 37%. Therefore, the petitioner is requesting a, an increase in lot coverage from 37% to 43.86. The, there's already installed a wood fence, it's already installed and complies with the 6-foot height limitation on the property owner's side within the property boundary and conforms to the 6-foot height restriction. However, on the outside of that fence, there's a grade difference. There's a drop, there's a drop in grade resulting in a fence height between 7 and 7½ feet in total height. The petitioner has placed block base along the areas to help drainage runoff at the base of the fence and with the grade changes on the property, staff understands why they need this variance because it does conform to the 6 foot height restriction on the inside of the property but because of the change in grade there is a, a hardship or practical difficulty with meeting that 6 foot height limitation on the outside of the property boundary. So staff is supportive of this particular variance.

Mundy Thank you Mr. Dale. Are there questions for staff?

Dale And you may recall that the petitioner provided, I think, an engineering report for drainage to you, to the Board, at a previous meeting and a narrative regarding that the, the drainage for the site so that is a matter that had been addressed by the Board and subsequently followed up by the petitioner.

Mundy I think, I think or I'm hoping that we will hear that from the petitioner or her representative and I think that our concern through the first two reviews of this has been a concern with capture of water before it runs onto neighbors and we've heard that from some of the neighbors in their remonstrations. If there are no questions for the petitioner or for the staff, would we, could we hear from the petitioner, petitioner's representative?

Andreoli Thank you Mr. President. For the record, Mike Andreoli, 1393 West Oak Street. With me is Jane Clarke, the property owner. Also with us tonight is Chris Badger from Badger Engineering. We had asked him to go ahead and prepare a detailed drainage report for the particular site making sure that any suggestions that he had to to make sure the site is appropriately drained, not only for the neighbors but with regard to any concerns that the Town may have as well. He has prepared that report. He has acted in this capacity before for the church that was, that was approved by way of variance where they had an issue. Chris did the drainage report, full drainage report, for that. That was given approval by the Town after the drainage report was submitted.

As, as you'll recall, we had a better understanding of what the Board wanted and needed as far as a drainage report after the July meeting and we engaged Mr.

Badger to do that. He's here to answer any questions, explain the report but in, in full, it, it provides for water storage onsite. We're going to be moving some of the, some of the downspouts into a much larger well pit that will store the water and meter the water out which essentially will act as a retention system onsite. We think it really is a state of the art that will be implemented. As far as Ms. Clarke is concerned, any of the recommendations that Mr. Badger made pursuant to that report she accepts and will agree to, to install as a, as a condition of any approval here tonight. So, I know you have a big agenda. I'm not going to elaborate more because you've heard this several times. I'll just turn it over to the Board. If you have any questions or respond to anybody else in, in the community that may have some, some comments.

Mundy Questions for the petitioner's representative or engineering group? I have some and I assume this is your report, the report from Badger. There's not a page number on there but this is under point A Introductory and History.

Badger Yes.

Mundy You've indicated that the design will meet the stormwater standards held by the city of Zionsville. Has that, that has been affirmed by the department?

Badger By staff. Yes, what we, do you want me to explain real quick what we did?

Mundy I do but if you could answer –

Badger Yes, it has been.

Mundy It has been? All right. And the other is beneath that photograph there –

Badger Uh huh –

Mundy I don't understand this particular sentence. "The work would include replacing the existing dry well 2 foot."

Badger Oh, I'm sorry. They have a small dry well out there for, a lot of times when you have a sump in a basement –

Mundy Uh huh –

Badger You'll pump that out and instead of letting it just hit the ground and, and be a little bit of a nuisance, they put it in a small dry well. This dry well was about 2 foot in diameter and I think they just forgot the diameter. I apologize.

Mundy Okay, okay, right.

Badger It was about the size of a 50-gallon drum.

Andreoli And you're suggesting replacing that.

Badger Yeah, so we're replacing that. We're pulling that out and, and putting in a 4 foot in diameter concrete dry well and a dry well means that it has small holes in the

side of it and that we're not putting a bottom on it so we're letting it go into the ground and the, the soils in that area if you go down to 72 inches are conducive to being able to take, it's sand and gravel at that depth, so we also push the, the structure deeper than it was on the old one and so that would less affect anybody's basement in the area because we pushed it down even lower. So, I think that all the concerns that I've read in the report from the previous meeting I, I've addressed. So, but what we essentially did is took runoff from the roof which was already being captured and brought that into the dry well as well as the patio all into the dry well and so we made an equivalent area of the roof and put that in for the size of, of the patio but we still took the patio too so, essentially, we're about two times the area that we needed to cover so we've well over designed it but it picked up all that rain in the back – anything that was towards, any roof that was towards the patio area that she's talking about adding was picked up and that, that was like 9, 900 something square feet and I think our, our patio is 500 square feet so. But we are picking up the patio as well. We just thought that was a better way to handle it so that we're picking up some of the existing drainage as well. But if there's any other questions, I'd be happy to go over it.

Postlethwait I do have a question. It's not for the engineer, however, it's for the petitioner and, and my understanding is that you purchased this lot. It was, the previous house was already, had already been demolished at the time you purchased this lot?

Clarke Yes.

Postlethwait After you purchased it did you go into the Planning Office and talk with them about what the restrictions and the Ordinances were for this particular piece of property?

Clarke I had a builder that handled that for me.

Postlethwait So, do you know if your builder went in and, and talked with the folks in the Planning Office?

Clarke They're not here but yes, they told me they did.

Postlethwait Did you understand that the maximum lot coverage for that lot would be 35% at the time you started building?

Clarke I did with the 2% bonus –

Postlethwait Right.


Clarke And I was told by the builder and the architect that if I laid the pavers and sand and 4 feet of gravel that that wasn't counted toward lot coverage which made the overage which was news to me two weeks before I moved in.

Postlethwait So you –

Clarke So, no, I didn't plan it all. I didn't scheme to be here.

Postlethwait Excuse me. I'm not implying that you schemed.

- Clarke Well several people have so it was –
- Postlethwait Well that, I’m not implying that you schemed. I’m only trying to understand what your process was in, in understanding what the Ordinances were for that particular piece of property and –
- Clarke Yeah, my process was to avoid this and I thought I was within the 37%.
- Andreoli One other thing to note is that and to make clear and I think the Board already has a sense of this. The pavers that were put in not only on the driveway in the back but on the proposed patio, if approved, will all be, will all have a pervious texture to them. So, they’re, they’re not going to be impervious. They, they’ll actually have a drainage component to them that will allow the water on them to drain. Hence, I think in my discussions with Chris that’s why he felt like having a much bigger, much, much bigger well pit would be a much safer suggestion than having the well pit that’s currently installed which he had concerns as to whether that one actually and adequately captured the water and hold it without causing any runoff. So, even with the impervious nature, that water is going to get down there but with the small well put that we have, the concern was it really wasn’t going to hold it appropriately before it was metered out. So, that’s why the larger well pit – it will be installed in the area of the patio. That’s where you were going to put it –
- Badger Yes.
- Andreoli Back there so that’ll all come out, the gravel will come out, the, what’s there will come out and then assuming approval, we’ll reinstall the new structure at the appropriate depth and professionally done.
- Lake If I can clarify real quick – when you were referring to Chris for people that were not here before that is not me.
- Hinshaw I know –
- Lake That is Mr. Badger.
- Andreoli Excuse me –
- Lake So I just want, I want that for the record that –
- Andreoli I’m referring to Chris, Chris Badger –
- Lake So people are not confused.
- Postlethwait Right.
- Andreoli Not Chris Lake.
- Lake Thank you.

- Postlethwait I understand.
- Clarke I, I would add that by installing pavers everywhere the way we install them that I knew that would help drainage right there and it wasn't a solid surface and, I mean, I questioned Chris Badger about that. I mean, we even hosed down the pavers and watched it sink in. So, I don't think it takes care of every drainage issue to have those but I do think it's a lot better than concrete which is what most people would've done and, and I could've done. So I feel like I was a little ahead of the game anyway.
- Postlethwait I, I'm not sure that I agree with you but I appreciate your point of view.
- Mundy I have a question for Mr. Badger.
- Badger Yes –
- Mundy The, the dry well would be put in the southeast corner, near the southeast corner, is that correct?
- Badger That is correct and it's a 4-foot structure but it has 3 feet additional stone on the outside so if you looked at it – have you seen the image? The aerial or the . **21:04**
- Mundy I have. I've seen everything –
- Badger Okay.
- Mundy You provided so –
- Badger Well, it shows it in the backyard. It's almost the same size as the patio. So, we've got very large stone around the outside of that structure on all of those voids which are 30%. They, they give you a void ratio for that size stone and that allows all that water to fill in so it, it'll even handle quick storms as well as a long storm so and we're, we're saying I, I'm certifying that it'll take a 100-year storm or as long as she lives there, for that amount that's in there now.
- Mundy All right. I, I'm going to wait because I, we have some letters of remonstrations and particularly the neighbor to the south who has experienced water has sent us photographs of the water that has accumulated after mild rains.
- Badger Steve, may, may I speak to that real quick? We went out and looked at that space. I, I don't know them at all but the, the drainage came off the gutter above and hit the ground because you could see the splatter on the, on the siding. So it, it wasn't coming off a flat slope. It was coming off a roof edge and came down. I look pictures of it. I documented it and I'd be happy to tell you that that is not – the splatters and all that puddle area was there because of the drain, the, the gutter up top and it wasn't draining correctly.
- Mundy Okay, well –
- Badger It just looked, I mean, we went and looked at it.

Mundy Okay, all right. If the resident is here they can –

Badger Sure.

Mundy Can respond to that. Are there any other questions?

Lake I don't have any questions. I, I think my concerns, you know, lot coverage standards, in my opinion, are there for two reasons: They're there for scale which this doesn't apply, they're there for stormwater drainage and so this takes care of the stormwater drainage aspect. So I appreciate the extra effort that was done and Mr. Badger's diligence in his report. I think that satisfied the questions that I had.

Badger Thank you.

Mundy If there are no other questions, is there any, is there anyone here tonight who wishes to speak for or against this project?

Cohen Yes.

Mundy If you would state your name and address please for the record.

Cohen Yes. My name is Mervyn Cohen, 520 West Cedar Street in the Village. I am here to ask the Board respectfully to deny this petition. The petition does not meet the legal requirements for granting it. I would like to take a little bit of time to explain my statement.

My presentation will be based on facts and not driven by emotion. Let me start, if I may, with the staff report. Staff recommends approval of this petition. Staff's reason for this is that adjacent parcels enjoy deviations from current lot coverage standards, some being more than the petitioner's request. This statement actually proves what I will argue later that the hardship that the petitioner claims is not unique to the property and by stating that there are many other properties with similar hardships, staff is supporting which I will present to you later. Staff also completely ignores and does not comment on the answers provided on the Findings of Fact form submitted by the petitioner.

My concern tonight is not whether the petitioner gets approval for her patio or not, I'm rather here to ensure that all state and Zionsville laws are complied with. Indiana law requires a petitioner to complete a form called the Findings of Fact form and they must answer three questions. My concern tonight is with the answer provided by the petitioner to question 3 on the Findings of Fact form on page 11 of the petition. This question states: "Strict application of the terms of the Zoning Ordinance will result in unnecessary hardship in the use of the property because:." The petitioner is required to complete the sentence and provide evidence that they will suffer unnecessary hardship if the petition is denied by this Zoning Board. The petitioner needs to explain and provide evidence in her answer why she would suffer unnecessary hardship in the use of her property if the petition is denied. She does not provide this evidence. By law, the petitioner can only claim hardship if the hardship is unique to the property and does not apply to the neighborhood as well. Additionally, the hardship

cannot be a personal desire and nor can it be self-created. Your acceptance of the petitioner's answer to question 3 on the Findings of Fact form would violate state and Zionsville laws that require a valid answer.

The petitioner's answers do not meet the legal requirements for claiming the hardship if the petition is denied. Let me explain. Firstly, the petitioner's claim of hardship is not unique to her property. I've already talked about that. An example of what would qualify as a unique hardship might be a pond on the property requiring the home to be built closer to the boundary than permitted. The petitioner is also not permitted to complain the right to the variance if the hardship is being self-created or if the patio is a self-preference. The petitioner's answer to question 3 is: Strict application of the terms of the Zoning Ordinance will result in unnecessary hardship in the use of the property because: And I am reading her answer: "The driveway and patio were designed using the same pavers and applicants will have no rear patio use if not approved." The petitioner provides no argument for hardship. She claims that her hardship is no rear patio use if she is not granted permission to build a rear patio. The petitioner's claim for hardship is also completely self-created. By law, this is not a valid claim of hardship. To avoid the need for a variance, she could've built her house a little bit smaller providing space for the patio while still not exceeding the 35% lot coverage. Finally, the petitioner's claim of hardship is a personal desire and preference. This is not a valid legal claim for hardship.

I look forward to hearing your discussion tonight and reading your Board's written Findings of Fact that are the basis of your final decision. In the past 11 years, you've approved 72 requests for variance in the Village and denied 0. You have approved multiple variance petitions where the petitioner's claim of hardship does not meet legal requirements.

- Mundy Mr. Cohen – are you, if you would address this, this petition. We have a time limit of three minutes and we generally do not need to adhere to that –
- Cohen Oh –
- Mundy But if you would be succinct please. There may be others who wish and we have a long docket this evening.
- Cohen Yes, I respectfully acknowledge that. I believe from the Board of Zoning Appeals Rules that people, the opposition can take up to 15 minutes. I will be brief.
- Mundy That's for the entire opposition.
- Cohen Yes, is there anyone else here wishing to speak or can I have your time if you're here?
- Mundy I don't think we need 15 minutes of it, okay?
- Cohen I will not take 15 minutes with respect. As evidence I will submit the Findings of Fact from the last five variances that you granted. I will quickly read two. The hardship will be the new design of the home will not be achieved.

Zionsville Board of Zoning Appeals
September 6, 2023

- Mundy Mr. Cohen, is this relative to this petition?
- Cohen It is very relative, sir. Yes.
- Mundy You're talking about other petitions.
- Cohen Yes, but this Board has denied –
- Mundy We're talking about this petition, sir. If you would keep your, your focus on this petition.
- Cohen With respect I will sir.
- Mundy Thank you.
- Cohen The petitioner has provided no legal evidence that she will suffer unnecessary hardship if the variance is denied. Her claim of hardship is not unique to the property. The hardship is clearly a personal desire and it is self-created. It does not meet the legal requirements for hardship. Please do the right thing and deny the variance. You must do this.
- Mundy Thank you, sir. Are there any other parties here this evening that wish to speak for or against this petition? Yes ma'am –
- Cohen While the lady is coming up, I am going to distribute and submit for the record and for the minutes my reasons for claiming that the petition violates Indiana state law.
- Mundy If you would give us your name and address please.
- Keith I'm Marsha Keith, 7808 North Shilo Road, Unionville, Indiana. I'm the daughter of Juanita Keith who owns the home at 135 North Main and I've looked at the proposed changes and that sounds very good to me. I still have a bit of a question about where, I don't know that that will keep water from the back corner from the alley going around to mother's renter's garage. He has submitted pictures. I don't have them in front of me right now that shows the water that came up to the bottom of the garage door. His garage was closed so at that time water did not get in but that seems to be a function of the raised grade of maybe even really the alley in that back corner where they adjoin. So that's, that's my concern. I, you know, I like the fact that there's the big 4 foot by 8 foot what, whatever it's called, catchman of some sort.
- Mundy Uh and it, those pictures have been provided to us from your, the, the tenant there –
- Keith Yes.
- Mundy And I've been on property there twice now. I was hoping we'd get some rain today but it didn't happen so – but I've been there twice and there is a distinct change in level there. Did you hear Mr. Badger's comment about where the water was coming from that caused that problem?

Keith I think he was talking about midway through the narrow walkway not right at the back.

Mundy Uh huh –

Keith I think that was what he was referring to because I remember last time Ms. Clarke said that she had seen water coming off the roof and, you know, I don't know whether there's a backed-up gutter or something there but the water that was coming toward his garage was coming back further and from the alley area.

Mundy Uh huh –

Lake So, if I could comment on that – I, I think Mr. Jones at one point had mentioned, as did I, that it does appear that the alley grade was increased slightly in that area which I don't think necessarily pertains to this petition. I think it's a DPW issue to, to reach out and try and address because that's city property, the alley, but I think that is, I think you, there may be water coming around that way from the alley itself onto the property and so I would encourage you to reach out to D, DPW and have that conversation.

Keith Okay, I'll do that. Thank you.

Mundy I took pictures – the, the alley directly behind the Clarke residence is definitely new stone. For one thing there's no grass growing down through the center of it. It's new stone and it probably is a couple of inches higher than the rest of the alley –

Lake Yeah –

Mundy I don't know if that's the cause or not but it is definitely the, the properties themselves appear to be relatively the same height, although at that corner there's a distinct difference in the height of the properties. Is there anyone else here who wishes to speak for or against this petition? Nope? Seeing none – discussion among the Board? I will start by saying this is the, the – and, and I, I will make this first statement a much more general. It is not just about this petition but Mr. Cohen's comment about the stated Finding of Fact in question number 3 which is the undue hardship or unnecessary hardship if it is denied – is not answered well. I'm not picking on Mr. Andreoli because we have other petitions in here this evening which also are poorly addressing that question. That hardship has, has got to be one and it is not defined. We do not have a definition for a hardship for what we must consider but we have other, at least one more petition this evening we have a completely unacceptable response to that question and all of you were briefed by Dan Taylor, our regular attorney on the meeting that we had two weeks with the resident who raised objection to the approval of some of the petitions in the Village and that Finding of Fact did not represent a true hardship in the case of question number 3 and, and didn't, in some cases didn't adequately answer other questions as well.

We generally have three criteria that must be met for most requests and the petitioner who is perhaps filing their first and maybe only petition they'll ever

file have not answered the question and as a Board I think we need to take into account, and I believe that we do, we wrestle through that mentally ourselves and decide that they didn't do a good job of answering but, in fact, after you've heard the case presented, you know that it is met it's just that they did a poor job of providing us with an answer and so, as a Board, we need to be more attentive to that and counsel Taylor suggested that we incorporate into the motion that we file for approval or denial, that we have reviewed the point, the criteria that must be met and so state that in the motion. Now –

Cohen Mr. Mundy –

Mundy I'll, I – if you'll make this very brief Mr. Cohen.

Cohen Well said. You mentioned that we have no definition of hardship. That is true. Indiana as a state has not chosen to define hardship and Zionsville has not chosen to define hardship. However, there is a fairly universal definition within this country which 38:22. And within the State of Indiana, in the forms I've submitted to you, 13 counties or towns have defined hardship as I have stated and also in the documents I have given you there are 10 cases from the Indiana Supreme Court which all address the issue of hardship and all define it so although Zionsville has not defined it, we have a very clear Indiana State Supreme Court definition of hardship. Thank you.

Mundy Thank you. I, I –

Andreoli 38:51 inaudible off microphone

Mundy Just, just a moment.

Andreoli 38:54 inaudible off microphone

Mundy Just, just a moment Mr. Andreoli. First of all, let me, let me read for you what we've, has been suggested by our counsel with relevance to this fact. All relevant factors which taken together indicate the properly, properly, the property cannot reasonably put, put to conforming use because of limitations imposed by the Ordinance. We, there, we do not have in Boone County we do not have a more defined definition of undue hardship and as a Board I think we have typically looked at things that people expect in their home and are very common to other homes that have caused this person to ask for something that required a variance. That has not been, we have defined it no more than that and we don't have that, anymore definition than that. But, having said that, I will still say many of these are not answered in the Finding of Facts that we receive from the petitioners.

Postlethwait Mr. Mundy, if I could comment please?

Mundy Certainly.

Postlethwait I think this, this, in the last few months we have seen a, a predominance of petitions which are very much in the ilk of this particular one that we're discussing 40:15 which is property owners which have, who have started to build their property, suddenly they are, they are unaware of the setbacks or

they're unaware of the other rules and restrictions that apply to that piece of property and until they come up against it and then they come before the BZA hoping to get a variance so that they can continue it. This summer it's been Holliday Farms and swimming pools. We've had a number of those cases, petitions come to us.

In this particular petition, starting with the, with essentially what I would call a blank slate in the middle of the Village, this property owner had the opportunity to understand what the Ordinances were going to be and unappreciate that they were probably going to be a little bit more stringent in the heart of the Village than they might be in another area on an outlying place, part of Zionsville. I think that this hardship, if in fact not having a patio is deemed a hardship for this family, and I can understand why if you like to be outside, not being able to have a place to do that might be seen to be a hardship but that could've been taken into consideration at the time the house was planned and then there would've been no issue. So, I don't believe that ignorance or lack of diligence with regard to the Ordinances equals a hardship in my view and I think if we begin to, I don't want to say reward but excuse these particular, this lack of diligence then I think the Ordinances suddenly have no meaning because people will say well, I didn't know so, you know, please let me allow, give me a variance so I can do this. Well, the Ordinances need to have some teeth or the people that live, the neighbors, need to be able to rely that the Ordinances are going to be, are going to have some teeth I guess is what I'm trying to say. So I would not vote to approve this particular petition. I would, my vote would be to deny it on, on those grounds.

Mundy Thank you.

Jones A couple items – item one, and we're not really addressing it, is something that internally the Town needs to address with their inspections is this changing of grade. Last man in builds high on the hill. We haven't really addressed it and there's nothing in what is being presented that allows us to really address it but it is something the Town and the inspectors need to get on the front end as these projects are being done. The fence issue is really a, a site development issue in that they raised the site. They raised the sidewalk. We, as members of the BZA, and I was schooled on last meeting or the meeting before, are not allowed to actually go out and do our own private inspections of sites and make any of these statements as this Board operates. So it's off. But, what I think we can weigh in on is: 1) the Town of Zionsville was founded somewhere in the 1800s. So this 35%, the Zoning Code and all that kind of stuff is kind of basically arbitrarily created set and there was a certain date it was enacted and we work around it so this line about other residences in-house having similar overages of the 35% is something we take into effect. Secondly, what we're talking about in this specific case is not an overage on the mass or the scale of the residence but the amount of site development and even that we talk about the fact that the driveways don't get included, bah, bah, bah, bah, bah.

Specifically to this case, when it comes down to Finding of Fact #3, we are holding the homeowner to the strict application of the 35% lot coverage. We have no ability within, once again this staff and even in the Town rules, to, to weigh in on it but the fact that we have then requested the homeowner to go out

and invest in and install and have an engineer design a stormwater retention system and Zionsville, the Town of, I can't speak to the rest of it, benefits from, if you, once again, I'm not a soils engineer but I know enough that as I read through it, once you get down 6 to 8 feet you've hit a bed of gravel that'll take away about anything that ever hits it. My point is – this Findings of Fact #3 that Mr. Cohen is, is going on, doesn't apply to this variance because they are meeting the strict application of it but to exceed the lot coverage for their surface area, they are providing an offset in the form of the subsoil, subsurface retention, and it is not, the stuff that was in previously the little French drains down the side, weren't cutting it. This is a system designed to take not only on the water that would be, the drainage issues might be caused by additional patio area but it's also picking up additional water off the house so there's actually a, a net benefit to the house, the property and the area by the installation of this. So when it comes to whether or not we're meeting the Findings of Fact, yes, the homeowner has met the Findings of Fact because we have done a strict application of the 35% lot coverage and they have provided a means to offset their overage. Does that make any sense?

Mundy I believe so.

Jones Okay.

Postlewait I'm not sure.

Jones You're not sure?

Postlewait I'm not sure.

Jones Okay.

Mundy Yeah and I'll, I will voice my feelings about this and, and that is that Larry, much of what you said is the way I feel. I think that we have routinely approved overages on lot coverage and when there is a drainage issue it must be addressed and we have told the, the petitioner that they will have to address it and we've had several of these which have come in that have gone to extensive means much like this is being proposed to, to meet the requirement of the drainage which will be lost due to some additional coverage.

The other thing I, you know, this petitioner has put in, and I'm not sure it registered, but she has a paver driveway. It could be concrete because we don't count that so she gets no credit for that. She has a paver walk out to the sidewalk. She gets no – that could've been concrete. So, she has done some things in the construction of the home that have assisted in drainage to begin with. And the other is that while I do have the sense of why didn't you plan for this when you designed and built it – if this were a homeowner that purchased this house five years from now and came in we probably would've said doing what, what is planned now with this engineering to get rid of the water we probably would've easily said yes. So, the fact that it wasn't thought of during the time of design and build, I, I don't like that but I forgive it when it is satisfied in this way.

Jones And I think it's worth noting, the house, the old church that, where they wanted to add the pool and they added this as part of the overall plan, the net effect is the same. They addressed, our, our lot coverage ratio serves two things: The mass and scale and our Town drainage issues. So, the preference would be for the full package to come in one chunk and not by this process but –

Postlethwait In a perfect world, the, anyone who is planning to build on a, particularly on a lot which is, has no previous construction would take it upon himself or herself to be fully informed on what the Ordinances mandated for that particular piece of property – what the setbacks were, lot coverage and so on. And maybe lot coverage in the Village is going to go the way of all things and it will change over time, I don't know. But it seems to me that failing that as we've seen that there are cases of folks who don't truly understand that until suddenly they come up against it. Perhaps there's got to be a proactive way to be sure that people are fully informed before they break ground on something and that would save folks like the petitioner the angst and maybe something would've been done upstream so that we're not having to mandate all of these further steps for her.

Lake So, I would love to live in that perfect world –

Postlethwait I didn't mean . 49:30

Lake No, as, as a petitioner often myself as an architect, we will read through the Zoning Code and Zionsville's Zoning Code is as convoluted as they get because it's multiple jurisdictions pulled together under one code and you will not catch everything. You could read it word for word and you will not catch something. Somebody on your team will move a plant outside of some area that has to have X number of plants in it and it won't get caught. We have, we'll, we'll submit for a building code in Zionsville, we get it approved, they say everything on your drawings is fine. You go to do an inspection and they say well, wait a minute, this isn't per code. Well, Zionsville said everything was fine, they missed it. We thought everything was fine and we missed it. Those things do happen and I think part of the point of this committee is that when those things do happen, we make sure that they're first and foremost not injurious to anybody and in this case they're certainly not injurious to anybody and the thing that is of concern, to Larry's point, is scale or stormwater. Scale doesn't come into play and so they are remedying the situation as they would with a building code where the building code says this needs to be two-hour fire rated or hey, here's an exception. You can sprinkler the building instead of making it two-hour fire rated. It, that's kind of what we're, what the, the I guess thought process is, at least from Larry and I is that nobody's going to be perfect, nobody's going to catch everything and it's our job that when it's 98% done and they, they notice that something is inappropriate that we're able to say okay, it is, it's not injurious to anybody but here's the method to solve the problem that it would've caused anyway and I feel like that's what the Clarkes have done.

Postlethwait Fortunately, for most of us, we live in a much simpler world than that so this –

Lake Yeah –

Postlethwait That's a good –

- Lake And, and I think to Mr. Cohen's point too, I'm not an attorney. I'm an architect. I'm a citizen of Zionsville and I'm on my back porch, I've been on my back porch probably every day this summer that I've been in, in the state and that is a, an essential part of how most of us live is the ability to go out on our back porch and so does this create a financial hardship? No. Does, does it create a hardship to just simply enjoy your life? You know, I feel it does and so I can come down on the side of strict interpretation of somebody's interpretation, not even necessarily Zionsville's interpretation, or I can have a little bit of sympathy and leniency and so, I'm, I feel like I'm on the other side of that issue.
- Postlethwait If, in fact, in the future there continue to be drainage problems, will there be some way to stipulate that those would be, continue to be addressed if, if they are ongoing?
- Mundy That, that is a, a very question I heard Mr. Badger say he would certify and I, I don't know exactly what that means, Mr. Badger but I thought the same thing. What if the, the water that had accumulated at the neighbor, the, the south neighbor continued, what, what remedy is there in that for that neighbor?
- Lake Well, and –
- Mundy And if you would, if you'll address that at the podium please.
- Badger I carry a million dollars of liability, Badger Engineering does, so if there is something we've done wrong, we'll get it right. In terms of what you're talking about today, this is pretty simple stuff. I mean, all we're having is gravity-fed pipes that bring it to a structure that pushes it down into the sand and gravel at about 6 to 7 feet. It's pretty simple, pretty flawless but it's expensive. You have to dig out everything there. You have to come back, put a new dry well in, put all the stone back in, put in all the pipes, disconnect a couple of pipes that are draining to the south and to the neighbor that's, that's having the issue and we've pulled all that away and brought it to the dry well and by doing so I'm fairly certain it will remove anybody's drainage issues. If there's something upfront that's a drainage issue other than that one drain we talked about, I think that there's maybe a, a difference on how that drainage is getting there on the corner. I went out and I have pictures but I don't want to be taking up your time tonight to, to, to argue whether it's a splash or if it, if it comes down off the side so. I, I understand that their property is a little higher and they've raised it up and that's, that can be indifference and so I can't say that all the drainage issues will be gone but I can tell you the ones that we've addressed will be.
- Andreoli How about the ones in the southeast corner?
- Badger The southeast corner?
- Andreoli With the 54:29 because the structure –
- Badger Everything from the fence drains to that dry well now so there's nothing going to the south but there is a slight foot and a half of, of slope of where the height is

and that's why the, the measuring of the fence measured 7 foot on one side and 6 foot on the other because of that foot.

Jones So just to clarify – a portion of the water that was going into those perforated drain tiles down the edge of the property are now being directed back into the storm –

Badger In the –

Jones In the –

Badger Dry well.

Jones The dry well?

Lake Yeah.

Andreoli Mr. President, may I be given 30 seconds for some rebuttal since I was not allowed when Mr. Cohen raised his opposition for the first time?

Mundy The clock is ticking.

Andreoli Pardon?

Mundy The clock is ticking.

Andreoli I know the Board has struggled over the years. It's not just this Board over the years with how do you measure what a hardship is. I was here at the July meeting where you approved a variance up on Main Street for a patio for a young couple that did not offer any more information on a hardship than we had. In fact, the hardship that we were suggesting may or may not be self-induced but I think it was, it was well intended on my client that she listened to the builder and didn't believe the, the pervious pavers would count. Also, the fence was the appropriate height on her side and not the other. I'm still not sure whether that's a correct interpretation under the Ordinances and probably do not believe that they are but in an effort to try to resolve the thing since we needed a variance anyway, the wonderful thing about the variance process is if it's denied this well does not go in. Arguably, it's, it's a benefit to the property itself and it's a benefit to the, to the neighborhood. The, the variance process from development standards and anything before this Board allows you to vet those issues appropriately and require what you've required in this situation, a full and complete drainage plan with a solution that a certified engineer believes will work for the surrounding neighbors and for the property. That's a benefit to the Town of Zionsville because of the negotiating ability that you have when these petitions come before you. I'm not sure it answers the question with regard to hardship which is always a struggle but it and, and if our, if our Findings are not appropriate, the Findings can, can always be added or amended or changed at the next meeting.

Jones So here's a question –

Andreoli But I think the intent was there.

- Jones Do we want to have these Findings of Fact modified at this time as part of this presentation? Can they read into the minutes revised Findings of Fact?
- Mundy An excellent question. We had a little discussion of that with the, the counsel that we have this evening and if they are being changed, we either need to read those in, in a motion or defer the Finding of Facts for the month until they are put into a form which is legitimately addressing that point.
- Jones So the issue is the Findings of Fact for #3?
- Mundy Well, I, I, I believe that what Mr. Lake stated is what we have all used as some barometer of hardship in that the, having no back porch or no rear patio to go to is considered a hardship by some of us. Now, a hardship may be a, a stronger term for others but I, I think that we have worked through a number of things that in that very same way we're, we've all wrestled with it in our own minds in making our decision and finding that that does meet it.
- Jones I guess and where I'm going is on #3 so just say it is a strict application of the terms of the Zoning Ordinance will not result in an unnecessary hardship in the use of the property because, because they offset in the form of a dry well being provided –
- Mundy Oh, well, yeah, I, it, it would never use that. I think, again, that's part of our conclusion what we reach as a Board but it is not something to be written in the Findings of Fact.
- Postlethwait And I, I would just like to also submit that while we are discussing this, we have held the petitioner hostage apparently for, for something like the last two or three months, not able to do one thing or the other so, I think probably and the petitioner would be appreciative of –
- Mundy Of a conclusion?
- Postlethwait Us reaching a decision.
- Jones But do we clean up the Findings of Fact at the moment?
- Mundy Yeah, I –
- Jones And do we do it or does the petitioner do it?
- Minnette Yeah, the petitioner.
- Mundy I think that it is the petitioner's responsibility to provide us with a Finding of Fact that we can rely upon. When it comes to a denial, we do change though we write the Findings of Fact to support the decision we've made but when we approve we have relied upon the Findings of Fact from the petitioner.

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- Jones So in, in broad, general terms, if a, any petitioner provides an offset for the hardship that the strict application would create, do we then consider that as part of the?
- Mundy Well, again, we don't have a definition that we use –
- Jones Okay.
- Mundy So that could be our common go-to position.
- Jones All right.
- Lake And to your point too, I think the, the system they're putting in actually helps drainage on an adjacent property –
- Jones Uh huh.
- Lake That if they're denied, any water issue still exists.
- Jones So, back to #3 – we are holding them to a strict application –
- Lake Yeah.
- Jones But they are providing the offset.
- Lake Yeah.
- Mundy Yeah, we could probably beat this horse a little further –
- Jones Well –
- Lake I would, I would maybe ask Mr. Andreoli are there any words you want to add to or statements to amend your item #3 on the Findings of Fact or do you want to leave it as is?
- Andreoli Well, I think it's appropriate the way it is.
- Lake Microphone. Just to Larry's question – if it's, to make sure –
- Andreoli I think it's appropriate, I think it's appropriate the way it is and I think Larry had enunciated some thoughts that I happen to concur with and we don't always concur on things but I happen to concur with in this situation. The other thing is, these are not my Findings of Fact. These are the Board's Findings of Fact. If you want this to be approved, you can adopt a Findings of Fact in, in any manner you want to in order to get your approval. That's why it's so important in order to have these matters that you first do the right thing. What is the right thing? What's, what's the appropriate thing? What's the thing that's going to be best for the citizens of Zionsville? You can always tailor your Findings of Fact to those particular decisions and, and they're not my Findings, they're just proposed Findings just like the application was a proposed application that we filed and that we've changed. Again, this is really the first time we've, we've heard about

this after two meetings when we were talking about drainage and we went out and did what you asked us to do.

Jones Well –

Mundy Mr. Andreoli – your 30 seconds or your watch is running very, very slow but let me point out that the Findings of Fact here state that the driveway and patio were designed using the same pavers and applicant will have no rear patio if not approved. Now, I don't believe that staff nor the Board wrote that and now, now – can you make this brief?

Andreoli There are proposed, these are proposed Findings –

Mundy From you.

Andreoli Me?

Mundy From the petitioner.

Andreoli I understand but ultimately the Findings of Fact themselves are the Board's Findings.

Mundy If you bring us junk what are we going to do with it? You bring us a lousy Finding of Fact, you haven't stated it, we have to devise that ourselves and we, that's –

Andreoli Then I will, then I will try to revise that. I will be –

Mundy And it's, I'm not picking on you because we have more tonight –

Andreoli Sure.

Mundy That are the same way. So, find enough, let me – I'm going to respond to one more thing and that is –

Andreoli But I would, I would suggest –

Mundy The couple that you mentioned that we approved an expansion of their lot coverage, they had no drainage issue in that area. Therefore, we, we did not have to go through what we have with your petition so if there are, you're talking about chalk and cheese.

Andreoli Well what's been customary with the, with the –

Mundy You don't need to respond to that please. We, we've, we've spent enough time on this part of it, okay?

Andreoli Yes, sir.

Mundy Thank you.

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Jones So –

Mundy Mr. Cohen if you'll make this brief please.

Jones _____ 1:03:57 inaudible

Cohen I'll make it as brief as I can. I understand we've taken a lot of time.

Lake _____ 1:03:59 public comment.

Mundy Yeah.

Lake He's not a petitioner.

Mundy You've got 30 seconds and these are _____ 1:04:06 30 seconds.

Cohen According to your rules of procedure and operations published or revised in March 2023 I have 5 minutes to respond to his response.

Mundy You had your 5 minutes.

Cohen No, I'm, I'm allowed. I was originally allowed 15 minutes according to the –

Mundy No, I'm sorry, you didn't – you're not allowed and we were limiting this to this petition.

Cohen Okay. I will be very brief.

Lake Which _____ 1:04:26 public comment.

Cohen I would love the petitioner to get her patio. I would love anyone who wants a swimming pool to get a swimming pool. This Board is a legal entity appointed under the rules, not of Zionsville, the rules of the State of Indiana.

Mundy This is not about the petition Mr. Cohen.

Cohen Let me finish.

Mundy You better hurry it.

Cohen You have to obey the law. What Mr. Jones is saying let's be nice guys. Zionsville benefits from _____ 1:04:54 drainage –

Mundy That is not about this petition. Please seat –

Cohen If you cannot be nice guys –

Mundy Please take your seat.

Cohen You have to obey the law and be tough.

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- Mundy Mr. Cohen, please take your seat please. We've heard from you and you're not addressing this petition. Thank you.
- Cohen I am addressing the petition and I'm now responding to your desire to grant the petition because the drainage in Zionsville –
- Mundy Mr. Cohen, you are disrupting at this point –
- Cohen Is approved. That violates the law.
- Mundy Please take your seat.
- Jones All right, let's ask so –
- Cohen Please give a minute before that I was –
- Jones Mr. Cohen, please sit down.
- Mundy Mr. Cohen –
- Jones I've actually been sued to the State Supreme Court over my Findings of Fact on a historic property down, downtown Indianapolis and where the lawsuit went is I got approval by IHPC, there was a request for it to be appealed, that got turned down and then the lawsuit was against the Indianapolis Historical Preservation Commission because the person who was opposed to my project, their statement was, was that IHPC should not have approved the Findings of Fact because they were incorrect. Now they were the same Findings of Fact that I had written over and over and over for every other project I ever did but this is the one that got denoted. The point of all of this is – he's partially correct. They are, if, if we approve these Findings of Fact they are ours at that point – am I correct down there?
- Minnette Yes.
- Jones So the question is, do we allow the petitioner to refile some at a later date and move forward with whatever we're going to do with this variance or, because I don't really want to kick them down another month.
- Lake Yeah.
- Jones So, how do we, how do we –
- Mundy Any words of wisdom from counsel? My response would be that we, in the motion –
- Lake Modify them.
- Mundy We make a change to the Finding of Fact and in this case I would also say we make a motion to two of the Findings of Fact because of the, you know, what we have heard from the neighbor about encroaching water but I would say we do it with a motion but we should probably listen to our legal counsel on that.

- Jones Aren't you glad you showed up tonight?
- Minnette Yeah. I, I think the, Mr. Taylor's recommendation and my recommendation would be it's, it's what Mr. Andreoli was explaining – you, I think it's more in the, in the way that you make the motion that you say that you are, you, you state the, the three factors for a design variance standard and say that you're making a finding on those specific points. I don't think it's necessary to include all of the evidence that you are basing that on. That has all been covered in, in your discussion. It's, it's just your and the way you – I hope that make sense – but it's more in the way that you make the motion and that, I believe that conforms substantially to the, the Findings that are submitted but that you discuss the three factors that are in your Ordinance which are all statutory except for the third one differs for a design standard variance and make, and having it state that it will cause a, an unnecessary hardship where the statute only talks about practical difficulties.
- Mundy And we do sign those forms the night of when they are approved.
- Minnette Yes.
- Mundy And so we would need to, I mean, the written document that we sign has that included so I, I'm not certain I now understand what we need, would need to do other than approval with discussion in the motion but what we sign we'll read just as it was submitted.
- Minnette Correct.
- Mundy And that's satisfactory?
- Minnette Yes.
- Postlethwait So I'm, I'm just trying to, trying to understand the discussion because, ultimately, for this petitioner and this particular petition the hardship is actually that without the approval of this patio the family will not be able to have access to the outside to sit out in their backyard. I mean, that essentially is the hardship.
- Minnette It's your discretion to find that that is sufficient –
- Postlethwait Right.
- Minnette To satisfy that condition.
- Postlethwait And frequently that's the argument we get. If we, if we can't build a pool then it will be a hardship for our family to not have the pool. I mean that's frequently the argument that people use. For them it's perceived as a hardship because it's a lack of the possibility of having that thing that they want.
- Minnette But you're the decider and you heard –
- Postlethwait Right –

Minnette Mr. Mundy read that the, from the case law you can discern that all relevant factors taken together indicate that the property cannot reasonably put to a conforming use because of the limitation imposed by the Ordinance. That's what you, and since, that's what you're finding in and it's saying that you agree that the petitioner has met their burden on that factor.

Postlethwait So, it cannot be used in a way that conforms because of the Ordinance which prohibits that ability?

Minnette Yes.

Dale Kent, I thought you had said in the motion, for the motion that the Board can state basically reiterate the, the mandatory Findings. For example, I motion that the project is approved because the approval will not be injurious to the public health, safety and morals of the general welfare, the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner and the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property. Right?

Minnette Yes.

Dale And the, and the, and the conversation that the Boad had reflected in the minutes will support those Findings?

Minnette Yes.

Lake Yeah. So, I'm ready to make a motion.

Jones So as part of the motion, we read in the Findings –

Lake We have a lot of topics.

Jones So as part of the motion we do read in the Findings of Fact –

Dale Uh huh –

Jones The three, all right. So we'll do it.

Lake Not the answers.

Jones Got it. I gotcha. All right. I move that Docket 2023-18 – can we make a motion now? Is that all right?

Mundy Yes, go ahead please.

Jones All right. I move that Docket Number 2023-18-DSV, Development Standard Variance to provide for an increase in the lot coverage to 43.86% for a paver patio for the property located at 145 North Main Street in the Urban Residential Zoning District (R-V) be approved as presented and described based on the

Findings in the staff report and the staff recommendation, submitted Findings of Fact which, I wish I had those up there in front of me hang on –

Lake There, here. Pass these down.

Jones Thanks.

Lake Thank you.

Jones Which, in which the grant 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 included in the variance will not be affected in a substantially adverse manner; and 3) strict application of the terms of the Zoning Ordinance will not result in a hardship in the use of the property.

Dale I, I think that you need to state will result –

Lake Will result –

Mundy Will result.

Jones All right, sorry. Will result in an unnecessary hardship in the use of the property and then what's the last line we've got in there?

Postlethwait Substantial compliance.

Jones And substantial compliance, substantial compliance with the submitted site plans.

Mundy Mr. Jones, would you be amenable to including in that last statement there substantial compliance with the submitted site plans and engineering solution to drainage issues?

Jones Yes.

Mundy Thank you. We've got a motion. Is there a second?

Lake Second.

Mundy Thank you Mr. Lake. Any further discussion among the Board? Jocelyn, are you happy you could do a good job?

Hinshaw I do want to reiterate the importance of the 35%. It's not just drainage, right, that that has done to the Town and it's not just the scale of the buildings, right? It has made a big difference in the look and the feel and the character of the Town and resulted in, that's, that's a lot of green space. That's a lush landscape and it's determined that it might've been an arbitrary number when they first did it but it's driven it nonetheless since then. And so it's not a lightly taken percentage because it has been so integral to forming that urban fabric that we have in the Village that's, that everyone loves, right? That's what's creating value and that's why you want to move here, right and build your house here. And so, I think,

that's what a lot of us are weighing to so that is and visually understand it's complex so. That's it.

Mundy All right, thank you. Now, all right, we have a motion and a second. All those in favor please indicate –

Lake Do we need to a roll call or not?

Mundy That would be fine. Mr. Dale, would you do a roll call vote? If you would indicate with an aye for in favor of this motion, a nay if you are opposed to this motion of approval with the, the stated elements that Mr. Jones just made in his motion.

Dale Yes, Kathi Postlethwait?

Postlethwait Nay.

Dale Steve Mundy?

Mundy Aye.

Dale Chris Lake?

Lake Aye.

Dale Larry Jones?

Jones Aye.

Dale Jocelyn?

Hinshaw Hinshaw. Nay.

Dale Hinshaw, thank you.

Hinshaw Nay.

Dale Okay, nay.

Hinshaw Yes.

Dale So that's two nays and, and three –

Mundy No, it is 3-2 so the petition is approved.

Lake We've got variance #2.

Mundy And, yes, that's right. There is a second variance which is a fence that got very little discussion but we do need a motion on the second variance.

Lake Can I have my paper back?

Jones No.

Lake You got one in your packet from today by the way. All right, variance #2 – I move that Docket Number 2023-18-DSV, Development Standards Variance to provide for a deviation of the fence height to be a maximum of 7 foot 5 inches for the property located at 145 North Main Street in the Urban Residential Village Zoning District (R-V) be approved as presented and described based on the Findings in the staff report and staff recommendations, the submitted Findings of Fact which, in our opinion, this project will not be injurious to the public health, safety or general welfare of the community, that the use of the area adjacent to the property included in the variance will not be substantially adversely affected in any manner and that strict application of the zoning, terms of the Zoning Ordinance will result in unnecessary hardship in the property and I would note that by definition of grade in our Zoning Ordinance, I believe that this is not necessarily necessary, and then also that this is in substantial, this variance be in substantial compliance with the submitted site plans.

Mundy Thank you Mr. Lake. Is there a second?

Jones Second.

Mundy Thank you Mr. Jones. All those in favor – let's do a roll call as well if, if you would, roll call vote if you are in favor of approval for this variance, this motion indicate by aye. If you are opposed indicate by nay.

Dale Larry Jones?

Jones Aye.

Dale Chris Lake?

Lake Aye.

Dale Jocelyn Hinshaw?

Hinshaw Aye.

Dale Steve Mundy?

Mundy Aye.

Dale Kathi Postlethwait?

Postlethwait Aye.

Mundy The motion is passed 5-0. Best of luck with your project and having your backyard taken, changed entirely.

Show of hands – how many of you are happy you came this evening?

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- Hinshaw Mm hmm – that was a big one.
- Postlethwait Yeah, it was a big one.
- Hinshaw Right?
- Mundy The next item on the docket is Docket Number 2023-24-DSV, Zionsville Presbyterian Church, 4775 West 116th. This is a continuation from the August meeting. It's a Petition for Development Standard Variance to provide for two freestanding signs located within the 10-foot setback from proposed right-of-way in the Urban Office Business Zoning District (B-O) and in the Urban Michigan Overlay District (MRO) and I will recuse myself from this petition so Mr. Jones, if you would –
- Lake So, I have to recuse myself as well as they are a client of ours.
- Mundy Okay, well, Mr. –
- Lake So you and I get to go to the hallway.
- Mundy So Mr. Lake and myself will both recuse ourselves from this. It will require all three of you to agree.
- Jones You left me the notes that I read off of didn't you?
- Mundy I did not.
- Jones You didn't?
- Mundy No. Here, I'll give you [1:18:44](#).
- Jones So I think we just start off with –
- Dale Staff.
- Jones Staff presentation.
- Dale Right. Docket 2023-24-DSV is a request by Zionsville Presbyterian Church for a variance to provide for two freestanding signs within a 10-foot setback of the roadway frontage. They're proposing two freestanding signs each within the required 10-foot setback from the rights-of-way along the corner of Michigan Road and 116th Street which is also known as State Road 234. The first is an existing sign at that, along 116th Street which is just outside of the INDOT right-of-way. The second sign that is proposed is along North Michigan Road that's a proposed sign also to be located outside the INDOT right-of-way but placed on an existing retaining wall. So they're asking for two, two signs. A variance in the front setback variance requests for those two signs. Staff believes that because of the width of the rights-of-way along both U.S. 421 known as Michigan Road and 116th Street them having very large rights-of-way which prevent the placement of the signs and, and due to the existing structures, that being the, the retaining wall and the parking lot along 116th Street actually present a practical difficulty with

meeting the, the sign requirements for setting those signs further off the right-of-way so staff is supportive of this variance.

Jones Any Board questions?

Hinshaw Do you have a plan to see the distance?

Dale Um, yeah. Owen, could you pull, pull up the site plan? I think there was a site plan. There you go.

Hinshaw Yeah, okay.

Dale It's hard to see but I think that it might be in your packet as well.

Young Is that better?

Hinshaw Yeah –

Jones That one looks better.

Hinshaw That looks better.

Dale Thank you.

Jones So is the one on 116th a new sign? Is that right?

Dale No, that's the existing sign.

Jones On 116th?

Dale Correct. That's the pole sign you'll – I think that you have an exhibit there.

Jones And then the other sign is on the retainage wall alone?

Dale Along Michigan. That's correct.

Jones Okay.

Hinshaw Okay, and the top one is a parking wayfinding sign.

Dale Right. Here the north is to the right on the exhibit.

Hinshaw Uh huh –

Jones Okay. Would the petitioner like to go ahead with their presentation please?

Bias My name is Sallie Bias and I'm the Director of Communications at Zionsville Presbyterian Church and representing them tonight. We're located at 4775 West 116th Street. What would you like to know from me?

Jones Do we have any other remonstrators either online or in the audience?

- Dale Anybody in the audience to speak in favor or against this proposal? None.
- Jones None? Good. Do the rest of us have any other questions/concerns/comments?
- Hinshaw Do you want to explain why you feel you need those two signs? What was the thought process behind it?
- Bias We worked with Image 360 to come around and put signs, new signage around the building and they came and got actually got approval for the sign that went in on 116th Street initially and said we would need a variance for the one going on the retaining wall and so we started that process and then found out that the one that was on 116th Street actually also needed a variance so we made that request as well. Just that we, this, these signs are part of a large plan and so we would like to be able to put the name of our building on that retaining wall. I mean, the name of our church on that retaining wall so the community can find us and know who we are.
- Jones So I have a question – the site plan that you provided is different than the aerial. So are you going to modify the access to the parking lots?
- Bias No.
- Jones So which one is right?
- Bias The, is this the one that, that's the one that looks like we're modifying? Is that what you're saying? There was a plan at some point, maybe 10 years ago, to modify the access to the parking lot but that is no longer the plan.
- Jones But the exhibit you provided –
- Bias I'm sorry?
- Jones The exhibit you provided –
- Dale Right –
- Jones Doesn't really match the existing conditions.
- Dale That's a good observation.
- Jones And then because what I was going to ask – isn't there another sign down on the little parking entry a little farther on Michigan on that retaining wall as well?
- Bias There is, yes. It was existing and we just replaced it.
- Jones So, okay.
- Dale So I guess when we did the plan review we determined that that corner sign is conforming.

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- Jones So the one that I'm talking about is the one down –
- Dale Oh, down there, yeah.
- Jones That one is conforming –
- Dale I, I presume so since we didn't flag it as a, in fact, they're coming in to memorialize an existing sign makes me think that staff looked at all the signage and even though a permit was given for the north sign along with 116th Street, in the process of, of reviewing your request for a variance, we found that it also should've gotten a setback variance.
- Jones Oh, yeah. I'm not a fan of when the exhibits don't match what we're approving but it's fairly simple. There's an existing retaining wall out there that's getting a sign –
- Dale Correct.
- Jones And there, there's a wayfinding sign for the parking lot that so, all right.
- Dale Correct.
- Postlethwait Are you hoping for a motion?
- Jones Yes.
- Postlethwait Okay. I move that Docket Number 2023-24-DSV, Development Standards Variance for two freestanding signs located within the 10-foot setback from proposed right-of-way in, at the property located at 4775 West 116th Street, Zionsville in the Urban Office Business Zoning District (B-O) and in the Urban Michigan Road Overlay District (MRO) be approved as presented and described based on the Findings in the staff report and staff recommendations, submitted Finding of Fact which are: The grant will not be injurious to the public health, safety, morals and general welfare of the community; the use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; the need for the variance arises from some condition peculiar to the property involved and the condition is due to the general conditions of the neighborhood – am I reading the right thing? The strict application of the terms of the Zoning Ordinance does not, does constitute unusual and unnecessary hardship if applied to the property for which the variance is sought and substantial compliance with the submitted site plan. Is that good?
- Jones There we go. All right, should we do a roll call as usual? Just might as well.
- Minnette We need a second.
- Jones Oh, we need a second.
- Hinshaw Second.

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Dale Larry Jones?

Jones Aye.

Dale Jocelyn Hinshaw?

Hinshaw Aye.

Dale Kathi Postlethwait?

Postlethwait Aye.

Jones All right. All good. Call them back in.

Bias Thank you.

Dale Your petition has been approved. Thank you very much.

Jones Yeah, Steve, I'd run a meeting, we got to it real quick.

Mundy I take it there was a decision on the Zionsville Presbyterian Church?

Dale Yes, the petition was granted by a unanimous decision.

Mundy It would have to be, right? The next item on the agenda is Docket 2023-26-DSV, staff report, oh – R. Strickland at 4616 St. John Circle, Zionsville, Indiana. This, too, was automatically continued from the August meeting. It is a Petition for Development Standard Variance to provide for an in-ground pool which exceeds the lot coverage from 20% to 30% in the Urban Single-Family Residential Zone District (R-SF-2). Could we have the staff report please, Mr. Dale?

Dale Yes. Yes. Mr. Mundy and Board, the petitioner is requesting this variance for an in-ground pool and concrete pool deck which would bring the lot coverage to just under 30% in this case. The current improvements onsite are noncompliant with the lot coverage of 24 so there's already 24% lot coverage. The encroachment, it should be noted that the petitioner did get approval for an encroachment agreement which allows the proposed concrete pool deck and existing structures to encroach into the 25-foot drainage and utility easement located in the rear yard. So you'll notice that there is a 25-foot drainage and utility easement located in the rear yard and encroaching into that, that easement but they have obtained an approval to encroach. That's a process we have internally. That's done administratively where we get sign offs from those entities that have an interest in that easement. As pools are an accessory structure, this allows, qualifies as an accessory structure – pools qualify as an accessory structure which allows a 5-foot rear yard setback and a 12-foot side yard setback. So in this case, staff is supportive of this petition.

Mundy Thank you Mr. Dale. Are there any questions for staff?

Postlethwait I have a question. How is it that this house was noncompliant when it was constructed? Was there a variance requested at that time or do we know that?

Dale I don't know the answer to that question.

Strickland Can I answer that question?

Mundy Well, you can in just a moment.

Strickland Okay.

Mundy Will you save that question Mrs. Postlethwait?

Postlethwait I'll save it and ask it again.

Mundy Thank you. Any other questions for staff? Hearing none, could the petitioner then answer that question and perhaps others and give us their description on what they're proposing to do here?

Strickland Absolutely. Rob Strickland, 4616 St. John Circle. Thanks for hearing me. It'll be very short unlike the first one. Very simply, been here 16 years and in Zionsville this is my second house. And to answer your question – that was my question when we bought this house. After purchasing this house we received a document after purchasing it that when this neighborhood was built that this neighborhood was built and it was in the Boone County and not in Zionsville County so after doing extensive research – I'm on the HOA Board which has already been approved, we have our own Architectural Review Committee which has already been approved, come to find out and to answer someone, I think it was Larry's question earlier on – when you move to Zionsville you don't get anything that says you have a lot ratio. Again, this is my second house in Zionsville and you either ask for permission or you are here with the rest of us. So, I'm doing the latter so when moving into this house we found out that the house, most houses in Buttondown Farm were built at capacity, come to find out. But the previous gal who used to work here do, her last day was last month when the meeting was over and so, come to find out that as you can see on the screen here, when we moved in that there was a 25-foot setback so I went before the Board and asked for a, a variance to have what was already built. Nothing that we have done and all aerial approval, all aerial pictures can prove that we have done nothing to the house so everything was done prior to us moving in. So it was the burden of the current homeowner to get this stuff approved. So, when asking for the pool and to Larry's point, about the reason of why – I have five kids so I have 15 years of kids asking me why we can't have a pool. That is my argument of, I don't know a good answer so I'm, I'm sure I was that person that didn't know a good answer for #3 on filling this document out, so I apologize for that.

So, as you can see, we're wanting to put it – this is reversed so that is the northwest corner. If you were to go back to the previous screen real fast, sorry – yep, thank you. Dan Lueders owns 7.5 acres behind me and there is a 400-foot ravine of pure woods so there is no runoff. You and this Board has already approved my next door neighbor to the direct west which is the driveway you see on the left side of your screen, approved at 28% and I understand and I'm sorry – in the document it says 30%, we're asking for 29.9. I do not want to encroach on to 30% because I know once we hit 30 we will have neighbors that will want to

take liberties and go above and beyond that so being the Vice President of our Homeowners, we're keeping that at 29.9.

Mundy Okay. Thank you.

Strickland Are there any other questions?

Mundy Yeah, I, I have a question and a comment. The question is on your submission, you had indicated we showed two options – the pool installer showed two options. I only saw one.

Strickland There, there should've only been one. We had multiple renderings going through so when we went through, there was, when we found out we had to go through the appeal process for the existing structure because it was in the 25-foot setback right there so, as you can see, there's already a patio that we found out and part of our deck so when the house was built, again, liberties were taken by the builder when this was taken and it was not approved by Zionsville so when we had that done the first rendering we did not have the pool in there and it was informed to me if you were going to ask for a variance to ask for a concrete patio and part of your deck already in the 25-foot easement, you might as well ask for your pool so I wouldn't have to have this closest to my house.

Mundy Okay, all right.

Strickland So – I apologize if there is any – the rendering you see here is the correct rendering.

Mundy Okay. That's the only one we've got.

Strickland That is the one and only.

Mundy Yeah, okay. All right. The other – the comment is that I live in a development that was the same way. It was developed under Boone County and I was lucky enough to be on the Homeowners Board when it was first formed and we had a neighbor that wished to put in a pool and we found out we had the same problem. The, the, the Town actually kind of helped us with that saying that is probably not a zoning that they would use and they changed it but it was the same thing. It was 20% coverage was the lot coverage at –

Strickland Yeah.

Mundy At that time. So, I, and the County does not care about that – at least not to that extent.

Strickland Yeah. And so we have, behind it, that 25-foot easement there is a steep grade going down and where you see the 257, that is going back to the back of Buttondown Farms. Dan Leuders owns, again, there's an acre behind me that jets down to the old rail line that Abraham Lincoln went on which is the power lines. From there it drops an additional 50 feet and there's a creek back there so if there's any concerns in regards to drainage, there is none.

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- Mundy All right, thank you. Any other questions for the petitioner?
- Postlethwait I think we have a new definition for hardship –
- Strickland If, if this gets denied –
- Mundy Not everyone has five kids.
- Strickland You’ll have five kids at your houses.
- Mundy All right, thank you. Is there anyone here who wishes to speak for or against this petition? Seeing none, any further questions from the Board?
- Lake I would just note that the shape of the lot in particular makes it challenging as well so there’s a, there is a, a legitimate hardship based on the, the shape and configuration of the property. It is very atypical.
- Dale Thank you. That’s very helpful.
- Mundy Do we have – I, I failed to ask – but do, is there anyone online who, who wishes to participate in this? No? Do we have anyone online?
- Young There’s nobody.
- Mundy Okay, all right.
- Koenig There are people online but no one has their hand raised.
- Young Megan Gayde.
- Mundy There’s one person online or there’s one person who has a question or a comment?
- Dale There is one person online. They do not have their hand raised –
- Mundy Oh.
- Dale So they, they don’t need to speak.
- IT inaudible off microphone. 1:37:45
- Mundy Okay, thank you.
- Strickland Can we invoke the 30 seconds?
- Young Megan, you have your mic muted. If you could unmute.
- Lake I’ll just go ahead and make a motion.
- Mundy Are we certain that they wish to have their raised?

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- Young They had their hand raised.
- Mundy They did have?
- Young But I believe Megan, you can't figure out the mic situation. We'll give you a minute but if you can't figure it out, we are going to unpromote you from panelist. Oh, never mind, she was just saying she was online.
- Postlethwait Oh.
- Lake In that case –
- Young Thanks Megan.
- Dale Let's move on.
- Lake Can I make a motion?
- Dale Yes.
- Mundy Is there a motion?
- Lake I move that Docket Number 2023-26-DSV, Development Standards Variance to provide for an increase in lot coverage to 29.99% for an in-ground swimming pool and concrete pool deck at 4616 St. John Circle in the Urban Single-Family Residential Zoning District (R-SF-2) be approved as presented and described based on the Findings in the staff report and staff recommendation, submitted Findings of Fact to which we do not believe this project to be injurious to the public health, safety, morals or general welfare of the community; we do not believe that the use or value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner; and we believe that the strict application of the zoning, terms of the Zoning Ordinance will result in unnecessary hardship in the use of the property and then also substantial compliance with the submitted site plans.
- Mundy Thank you Mr. Lake. Is there a second?
- Postlethwait Second.
- Mundy Thank you Mrs. Postlethwait. All those in favor please indicate by saying aye.
- All Aye.
- Mundy Opposed same sign.
[No response]
- Motion carries. Thank you.
- Strickland Thank you.

Mundy Next item on the agenda is Docket Number 2023-29-SE, Altum's located at 7645 East 200 North, Whitestown. This is a continuance from August 2nd. Petition for a Special Exception to provide for a landscape contracting business in the Rural General Agricultural District (AG). Could we have the staff report please?

Dale Yes, regarding Docket 2023-29, a request for a Special Exception for a contracting business. About six months ago, to our knowledge, the petitioner relocated. He had a landscape contractor business to this current location. It was brought to the, the, my department's attention, the Department of Community & Economic Development by way of a complaint. So we received a complaint which triggered this process and then we notified the petitioner that the Ordinance requires a Special Exception to operate a business at this location and then the petitioner complied and has filed this petition for the Board tonight.

The petitioner is now operating an online and over-the-phone retail garden center with delivery to customers. The site is used to store plant materials. They also provide services of landscape consult, consultations and installations and tree and shrub planting at the customers' homes. Within their application they indicate several aspects of their operation. I'll, I'll mention a few of them. I can go into further detail if you wish but, in general, they're not open to the public according to their petition. They have six full-time employees and two part-time employees. Their hours of operation are Monday through Friday 9 to 5 and Saturday and Sunday 9 to 3. They offer a number of deliveries to the site and they indicate those hours of operation for deliveries from, from their site. Altum's is using existing barns on the property for storing plants and outdoor and they're also using outdoor areas for plant storage. They are using two existing driveway cuts and driveways for deliveries and, and receiving materials. There is an existing gravel area on the site that is used to accommodate employee parking. The petitioner has since constructed and installed a hoophouse and three small sheds since acquiring the property but has not, but they have not yet received permits for those structures.

Based on the petitioner's operation plan, they, they intend to perpetuate an established use on the property that represents a limited presence of residential, commercial and agricultural development at this location. The purpose of the AG Zoning District is to encourage agricultural operations while buffering between medium and high intensity land uses and low intensity residential uses. General agricultural uses are not intended to include intensive agricultural uses such as confined feeding so this zoning district is not intended for more, more intensive agricultural uses such as confined feeding. Further, given the seasonal operation and low intensity pattern of the use, the proposed request is a, is similar, is, is similar and complimentary to the AG Zoning District.

Staff's position is conditionally favorable subject to the following three items: 1) The filing of a development plan because this is a commercial use then our Zoning Ordinance would require, would require a development plan approval by the Plan Commission. That's one condition, number one. 2) That the owner/operator record a commitment stating that the operations of the business be restricted to the activities referenced within their operations plan as included in Exhibit 3 of your report which would specifically refer to the number of deliveries to and from the site, the location of deliveries must be on private

property not on public, not in the public right-of-way. And thirdly, acknowledgment that this petition would be voided and a new BZA petition would be filed should the operations intensify beyond the provisions of Exhibit 3 and then the third condition is that this approval would run only with the current property and there's and not in perpetuity with land. In other words, if the BZA were to grant the Special Exception then this approval would run only with the current petitioner, the current owner. It would not be transferable to a subsequent owner. If a subsequent owner wanted it, in other words, if the subsequent owner wanted to take over the operation, they would have to come back to the Board and, and request a Special Exception. Thank you.

Mundy Any questions for staff?

Postlethwait Am I right, this is the third time we've seen this business come before us that it was previously granted –

Mundy I believe –

Lake They were looking at doing seasonal sales on 421 –

Postlethwait But then they also petitioned to have actually set up a business – did they not on farther north on, off Michigan Road?

Mundy That's correct.

Lake Yeah –

Postlethwait South of 32?

Mundy Yeah.

Lake Yeah, and that never happened.

Postlethwait That never – well it happened at least because I know I bought some plants there so –

Lake Well they, they had the outdoor storage. They did not _____. 1:46:12

Postlethwait Oh.

Lake They came before us the first time was just for seasonal sales.

Postlethwait Right.

Lake The second time was for a physical building and continuation of the seasonal sales.

Postlethwait Okay.

Dale I also would like to note that we did receive a letter of remonstrance from Larry and Rana Fedor.

- Mundy Yes and that was included in our packet.
- Dale Great.
- Mundy So, yeah. Any other questions for staff? No? Hearing none, would the petitioners like to provide us with additional information and what you think we need to know to make a decision.
- Gibson I'm Kirk Gibson, 7645 East 200 North. As many of you know, this will be our third time seeing you. Altum's originally was at 11335 North Michigan Road and we, due to circumstances, had to close and find a new location so we moved further north to Finley Creek where we tried to build a physical location that never came to fruition so we moved further north and bought a property which is shown on screen and we are just trying to keep a small family business going and we agree to all the terms that you guys would like us to do.
- Mundy Questions for the petitioner? I, I have a few –
- Gibson Sure.
- Mundy I guess what the staff has indicated is that there was no permit for the sheds that are there and the hoop house and were you unaware or didn't care or all of the above?
- Gibson Well the, the sheds – so originally was the hoop house which we constructed as a temporary structure which we thought we did not need a permit for. We were informed later on that we were wrong. These sheds came at a later point in time and at that point in time we'd already gotten the notice that we were in violation and they, I was notified to just hold on to apply for permits until a later point in time when we'd come in front of you guys.
- Mundy Okay.
- Gibson So, yeah, we're, we are aware that we did not get the permits correctly. Negligence and ignorance probably played a little bit of a role into that.
- Postlethwait So I have a question. You say that you are not open to the public and I'm curious so you are, you have plants that you're selling to members of the public. They never come to your place to look at the plants?
- Gibson Nope.
- Altum No, it's all online and with pictures and photographs or we take the plants to their house.
- Postlethwait So they never come to check your stock?
- Altum No.
- Gibson No.

- Postlethwait To see what they're, what they're purchasing?
- Altum No, some people can find us on Google and then they found us that way but they're not, because of the, the restrictions, they're not allowed to.
- Postlethwait And so your hours of operation are purely meant to be hours at which you are there taking phone orders or –
- Altum With the employees – whatever, unloading, making containers.
- Postlethwait So the, the delivery, deliveries that are described here, are they ever done by way of semi-trailer truck?
- Altum They can. Sometimes on occasion when we get a bigger grower who supplies to other places they will drop out there because we, we only have a gravel drive so we go out there and meet them with a, with either a Bobcat or a, we don't have a Bobcat, we have a –
- Gibson Forklift.
- Altum Forklift –
- Gibson More or less.
- Altum That offloads it there and brings it on.
- Postlethwait How frequently does that happen?
- Gibson Once a week during the spring –
- Altum Yeah.
- Gibson April and May, we've had maybe one in June, none in July, none in August, one in September. It's, it's very seasonal so in spring and fall we will have some –
- Altum Yeah but we buy mostly from, we try to buy from local growers so it's a, you know, it's a box truck that's making the delivery but when we get some, a grower in Michigan they have many other material drops on there so we'll get a semi.
- Postlethwait Will you be doing Christmas trees and other types of things around the holidays?
- Altum That's yet to be determined because we can't _____ 1:50:14 public place so we don't have a place to have Christmas trees to sell –
- Gibson Currently.
- Altum Currently, yeah.

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- Mundy And the, the deliveries, are those done in large trucks, 18-wheelers, do you have accommodations that will allow them? Because one of the complaints was offloading in, in the right-of-way.
- Gibson Currently we do not have accommodations but we have been in talks of how to accommodate them going forward.
- Altum Well, we've also talked about not having them.
- Gibson Right.
- Altum But there's also farm trucks there going up and down the road too and when we offload them, it's maybe, maybe a half an hour, maybe an hour.
- Gibson We're working to minimize the amount of 18-wheelers that are coming –
- Altum Yeah, yeah.
- Gibson If not eliminate them entirely and if we can't, feel that we can't do that, we are looking into building a delivery ramp or driveway for them to pull in, unload on the property and then back out and leave safely.
- Postlethwait Is somebody residing at that property? Are, are one of you residing there?
- Altum He is.
- Gibson I'm not full time residing there but I will be shortly.
- Mundy So it will serve as your residence as well?
- Gibson Correct.
- Mundy Okay.
- Gibson Residence and home office.
- Mundy Any other questions from the Board?
- Jones So this property, it says there was the house and the office, production barn and then two other storage buildings? Those are what were there originally?
- Altum Yes.
- Gibson Yes.
- Jones So what was this originally used for?
- Altum It was just a farm. I mean he can, the people here remonstrating that we bought it from so they can answer that question.
- Jones And then, of course, the farm fields got sold off and the house got left behind?

Altum Right, 1:52:08

Jones So it wasn't, so when was the last time there was a, this was serving a producing, producing farm?

Altum We have no idea.

Gibson We don't have that answer.

Postlethwait So you purchased this with the idea that you were going to be putting your business there? Is that?

Altum We were purchasing this to continue our business because we had no place to go and we had clients that wanted our product and so I was like okay, it's an agriculturally zoned area so that way we at least could receive product and make containers and deliver to our customers.

Gibson Also, I was looking for a house.

Altum Oh, yeah –

Gibson So –

Altum Yeah because I was already done with him living in 1:52:47

Gibson Yeah.

Jones So, Mike, this property is zoned agricultural but not, I think what the difference between – because that's one of the questions always is it confined feed operations, you know, other, other things can operate in a farm but you were saying that that, this specific zoning doesn't allow that high intensity of a use.

Dale Correct.

Jones So how intense of a use would a farmer be able to use this property for?

Dale I presume, but I'm not that familiar with the Zoning Code, but agricultural zoning typically allows crop production, you know growing of farm fields.

Jones What about other than confined field operation? Cattle, sheep, chickens?

Dale Yeah, I'm not certain.

Postlewait If you look at Exhibit 2 you can see that there are fields –

Jones Surrounded.

Postlethwait It's surrounded by fields which, obviously, at the time that picture was taken it had been harvested.

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- Mundy So I think part of it is the distinction between less than 20 acres and more than 20 acres and more than 20 acres they can have all the buildings they want –
- Jones Yeah –
- Mundy Less than 20 then they're restricted.
- Jones But probably at some point this parcel was part of a larger –
- Lake Yeah –
- Dale It's a remainder of what was probably a large farming operation.
- Mundy Any other questions? Hearing none, is there anyone here or online who wishes to speak for or against this petition? Yes sir – if you would come to the podium and give us your name and address please.
- Marsh My name is Micah Marsh. My wife, LeAnn and I live at 7870 East 200 North, Whitestown. You had mentioned that you got one letter from Larry and Rana Fedor. Did you receive the ones from John and Lori Sands and from Micah and LeAnn Marsh?
- Mundy We have, well we have the Fedors letter and then there were a couple I think that signed – it's, it's a statement. They really didn't provide a letter.
- Dale Yes, we have the John and Lori Sands –
- Marsh And Micah and LeAnn Marsh.
- Mundy Yeah, letter from the Sands and then –
- Dale Micah and LeAnn Marsh.
- Marsh Yes. So was everybody aware of those letters?
- Postlethwait Yes.
- Marsh Everybody's seen them?
- Mundy Uh huh.
- Lake Yeah.
- Postlethwait Yeah.
- Marsh Are you aware of the videos and photos that were sent in?
- Postlethwait Yes.
- Marsh Okay. I had things lined up for last week but or last month and we didn't quite get there so I went ahead and sent my letter in as a letter versus a statement. My

main concern was that since this was going another 30 days since last month's was cancelled, my concern was the safety of the school buses going by these sitting in the roads because this is not only Zionsville's road, this is Sheridan School District's road also and you're not just talking about the children that live on 200 North but you're also talking about children that live maybe on Rasburg (sp?) Road further away so there's other children involved just not who just lives on that road. So that was the major concern on that and then the other thing was just the amount of traffic that just goes up and down this road seven days a week all day long and there's not one semi a month. There are several semis a month and they talk about backing down on semis – now you're having two box trucks delivering versus one semi. So you're doubling that traffic on roads that have weight limits and bridges that have weight limits going around school buses with children on them. This is seven days a week and I'm not sure how this worked – I saw the sign out in front where it was July 23rd maybe. Were they to be completely shut down at that point due to not having permits and not doing anything according to the Zionsville permits, zoning, any of that?

Dale That was an administrative decision made by my department. As long as they're showing willingness to go through the process with a cooperative spirit if you will, go through this process of getting approval and permits then we didn't feel that would be necessary to shut them down.

Marsh Okay.

Dale It was just out of a courtesy –

Marsh No, I, no that's fine because –

Dale Yeah.

Marsh Since the sign and since the meeting there has still been several deliveries. There were three deliveries there today. I have a semi at 7:45 two weeks ago pulling in the middle of the road trying to figure out who to unload because nobody's there. I go down in my golf cart because I knew what he was doing, videoed him trying to back in off the road. He's down in the side ditch, up around, ends up sitting in the middle of the road setting it off in the, in the driveway as they have done numerous times. This is not, this landscape contractor use just sounds like a way of getting around what they're really asking for which to me is warehouse and distribution. There is a non-stop traffic going down 200 North. They can come from 421, they can come from 800 from Rasburg (sp?) or Slab Town, they can come from 750 from Rasburg (sp?) or they can come from I believe it's 625 on east off of Rasburg (sp?) and now they're dividing all this traffic up so it's not so much going to 421. They're going different routes out just to go around this and I go to the Finding of Facts, you know, like the first one – it will cause injury to public health and safety. It already has. The videos show that. That is my number one concern because that's a burden on Boone County with the roads and bridges. I have to make my statements on why I'm against it. You need to read my letter which is pretty much most of it but when you start putting kids in, in danger, let alone me or grandpa coming out to visit somebody else's grandkids, that's kind of a concern and as I told Kirk when he came by to see what it would take for me to change my mind, I told him nothing could change my mind

because they have impacted this community on 200 North and surrounding far greater than the people that are going to actually, are zoned or allowed to be out there and that's kind of my statement.

Dale A condition that the location of deliveries shall be on private property and not on public right-of-way – does that address your concerns at all?

Marsh Yes, yeah –

Dale Okay.

Marsh Because that's what I was saying. I got the one right in the middle of the road.

Dale Okay.

Marsh And a semi – farm truck, they talk about farm. We're ag. You go by a semi loading or unloading he's got halfway and in the side ditch.

Dale Yes.

Marsh Out of respect for the people trying to go around. These were sitting that far from the ditch line or even further out in the road. So that is a huge concern for anybody and everybody.

Mundy That is one of the conditions that –

Marsh Pardon?

Mundy That is one of the conditions that had been stated in the staff report that would be required that they have to be off road in order to unload.

Marsh Right because I've got like three more videos of semis since the last meeting sitting in the road unloading plus box trucks going in an out of there if you need them.

Dale Thank you.

Marsh Thank you for your time.

Mundy Thank you Mr. Marsh. Is there anyone else here who wishes to speak? Yes ma'am – go ahead. If you would, give us your name and address please.

Anderson Hi. My name is Kayla Anderson. I live at 8561 East 200 North. I'm coming to you today as a concerned mom of three little kids. I hear what you're saying and I do appreciate getting the deliveries off the main road but at the end of the day there's still deliveries. There's still semis at all hours of the day and not from 9 to 5. They said there have been no deliveries in August. There was one two weeks ago at 7:45/8:00 at night. These deliveries far exceed the amount that is in the statement that they provided to you, especially given they are delivery based. They say there's nobody coming on property but it is a small neighborhood of people that live here. I know all of the cars that go up and down our road. There

are cars frequently, especially in busy season. They drive very slow because they are not frequent drivers of gravel road. They are there for a few minutes and they leave. So I am not sure what is happening with that. The delivery trucks go up and down our road at speeds that are deemed unsafe on any road and you add the gravel in there and it's concerning. It's concerning for anyone that lives on that road, especially with children. Since the District 1 representative, Bryan Traylor, had no idea this business was functioning at this property and he lives relatively close to this property, I am curious as to why the hoop house didn't get a permit. I know they say it is temporary but it has been there since they have lived here and been functioning. I think this is all just an unfortunate circumstance that could've been avoided if they would've gone about it the right way of getting the permits, asking for approval before it all started. They bought this property, like they said, knowing that they wanted to do this so I'm unsure as to why they didn't stand before you before purchasing it to ask if that was even a possibility. With all the things that have taken place already, I am nervous as to what could happen with this business as it continues, even with getting the deliveries off the road. Well, what's the scale here? You know, they say they're going to maybe build a delivery ramp. Okay. So now how many more deliveries are we going to have and who's holding them to that? Thank you for hearing me.

Mundy You, you had mentioned the speed of vehicles. So what's the speed limit on the roads there? Do you know?

Anderson So my daughter who is 7, asks me that regularly. So I do believe there used to be and they've lived there much longer than I have – a sign that used to say 40 –

Marsh 2:03:19 inaudible off microphone

Anderson So it's fallen off several times. So it is supposed to be 40 but now you add big box trucks. I'm thankful that the farmers that do farm around there are mindful of that. They do go very slow and plus they know we have kids so they go exceptionally slow. So yes, it is, I believe, 40. I am not sure.

Mundy Okay. Does – I, I know that the sheriff would be providing security there. I, I, do you know if they are aware of, of your concerns about speeding and – I mean that, that's not something we enforce obviously –

Anderson Uh huh –

Mundy But –

Anderson Yeah, I think, I was just trying to see what parameters are going to be set for this or what this is going to turn into and then from there, I mean, I will, hold those concerns highly.

Dale Are you seeing large semi tractor trailer traffic associated with the business?

Anderson Yes.

Dale Okay.

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- Anderson And large box trucks frequently, yes.
- Mundy Any other questions? Nope? Thank you. Anyone else here who wishes to speak for or against this petition?
- Sands Hello. John Sands, 7949 East 200 North, Whitestown. I'm a neighbor of the Marshes and two doors down from the Altum's business. Kathi, is it?
- Postlethwait Yes –
- Sands Postlethwait?
- Sands Yeah. You inferred a, a critical statement on an earlier case. I'd just like to restate it. "We don't ask for permission to work within the zoning laws, we expect forgiveness." We're building a home downtown Zionsville on a slab. Clean sheet. Yeah, I would've expected them to ask for permission as well and know what they're getting into. So that's where we are in this case. We've approached it this way. We knew going into it the purchase of the home, the purchase of the property, what its use was recommended for or zoned for and now we're asking for forgiveness after we've broken multiple zoning laws, right? The tractor trailers coming up and down the road are many. The video that Mr. Marsh explained I saw the same thing. A guy unloaded a truck in the street, moved the product from the truck into the street, into the yard. He really didn't even know where he was or where he was going. It was kind of weird. And then, ultimately, I echo what my neighbor to the, to the east had stated as well – we don't know what's coming so if we go into a property like this and we take a stance and say this is what we've got, I don't know what it's going to be like in six months. I don't know what it's going to be like in a year. So, you know, where does it end if we don't ask for permission and we ask for forgiveness after we break the law? So I ask you guys where does that really end? Where do we draw the line? So thanks for the time.
- Mundy Any questions for Mr. Sands? Nope? Anyone else here who wishes to speak on this petition? No? Did the petitioners, would you like to explain anything that you heard that you think needs explaining?
- Gibson I find it hard to believe that our semi-trucks are going over 40 miles an hour on a county road. I even know one of the videos that was sent in the semi-truck is going way under 40 miles an hour. There are several other vehicles that drive on there from the school bus to the mailmen, Amazon drivers, other residents – it's not like it's a just us problem that's going on up there. I'm, I will be the first to admit I'm not in control of our delivery drivers. I don't know what speed they go on but I've given you all the numbers off of our delivery logs for how many deliveries are coming in. I said there was one semi a week, not a month and I stand by that in the early seasons. I'm more than willing to accommodate deliveries off the road for the semis as we spoke about earlier. We're here to work with the Board and the community to come to a mutual agreement here.
- Mundy Okay. Was there any questions for the petitioner?

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- Hinshaw Have you spoken to the delivery companies and warned them that it's a small rural road and really try –
- Gibson Yeah, we have, we have –
- Hinshaw And make a good faith effort to –
- Gibson Issued –
- Hinshaw Get them to do that.
- Gibson Routes on how, how –
- Hinshaw Okay –
- Gibson They should deliver, how they should exit. We have given them delivery hours which we've updated. We have just eliminated one of the deliveries that come on a semi-truck so we are working forward in delivering or finding better ways to get deliveries but like he, one of the remonstrators said, if we eliminate a semi then we have two box trucks – like I don't know how we can get around that. It's just kind of how shipping works. We have definitely not blocked the road of a school bus but I do know that that can happen. I understand that risk, yeah.
- Altum And the other parties sometimes when the, and there's not many semis that, I mean they have rotating drivers. I mean if you unloaded a semi anywhere you're not sure what 2:09:24 they're seeking. Most of our local drivers are very attuned to what we're doing and they're, they're farmers themselves, they're growers. So they're, they're attuned to that. There might be a random semi that may be from a driver that's unfamiliar where they're going because it's very difficult to get drivers these days. So, we, we try the best we can but it's not like there's semis rolling in five a day.
- Dale So would your deliveries be limited to your hours of operation?
- Gibson Correct.
- Altum Totally. Yes but I will just say there are sometimes that they are drive, they're, they're doing huge loads during our very, very busy time that they may have to do a night drop. Where it's like if, if we know what time they're coming we'll be there but sometimes they get lost or they get whatever and they're just offloading it from, on, onto the side knowing that we'll get there but it, delivery and transportation is pretty difficult right now and, like I said, we don't, we do not have a lot of semis for sure and, and I have spoken to Mr. Sands personally and I told my team I'm like, you know, we are, we understand what's going on out there but we're not racing down the road and we do rotate so we don't pick up dust because that was a primary concern from so many of the remonstrators in their letters. So we're conscientious of it.
- Dale You rotate?
- Gibson Avenue, avenues to get to the house.

- Dale Oh, okay.
- Gibson We don't just drive by –
- Altum Right we –
- Gibson Micah and LeAnn's house every single day.
- Altum Right and –
- Gibson So every car is going there.
- Altum We also have two, two, two of the workers are carpooling.
- Jones So I just want to make sure I understand the business. So it's, there's greenhouses, growers, throughout the Midwest that are bringing you product that you've selected from them and then you've got, you take those in – are any of the buildings set up with lighting? Is it –
- Altum No.
- Gibson Yes, the production barn has lighting in it.
- Altum Oh, sorry.
- Jones I understand.
- Gibson But that was set up before –
- Altum It was already –
- Gibson When we are not using that for a growing –
- Altum As a growing –
- Gibson That is a production facility where we create pots for your front porch where we take the flowers from the growers and make our own creations and then we sell them. Grow them and sell them.
- Jones So you take the bulk and then you're reprocessing and repacking into display pieces or pots or containers –
- Gibson Correct.
- Jones And then does your product go direct to consumers or are you –
- Altum Direct to the consumers.
- Jones So people can buy whatever and so you've got your others, smaller fleet of vehicles that then deliver over the course of the day?

- Gibson Correct.
- Postlethwait Do you have any plants that you would sell to be, to be put in the yard, for example or flower beds or are you only talking about pots?
- Gibson No, we have trees and shrubs as well.
- Postlethwait Okay.
- Gibson Trees, shrubs, perennials. It's, if you've ever been to our garden center or even our pop-up shop, it's the same thing we've been doing for 60 years, we've just scaled down immensely and we are just trying to be like an Amazon of I guess I didn't mean to say that – a small scale to your door delivery because we know that they don't want the, the general population out there, the general public out there. So we eliminated that.
- Altum And it's difficult to find property to have a seasonal business. So really, my personal thing is we are a seasonal business. There is nothing going on in January and February and March. May is busy, April and May is busy. June not so much. July and August not, you know, not particularly this year with the weather the way it's been and so dry and then it's a little bit in the fall and a little bit at Christmas so. And, and from an expansion standpoint, no.
- Gibson Zero.
- Altum Yeah, I mean –
- Gibson We have six full-time staff and I'm the only male not that that's anything against women and I know what they can do but they're 55-year-old women and it's not easy to find anybody that wants to work –
- Postlethwait So, I'm going to get you out of that hole.
- Gibson Thank you.
- Postlethwait Can I, can I help you out here?
- Gibson Yeah.
- Postlethwait It's still, as much as we think that this is agricultural, 2:13:19 residential essentially.
- Gibson Right.
- Postlethwait And as a person myself who lives in sort of a, a rural area it's, it's no less irritating having that kind of traffic driving by your house even if you have 15 acres around you and the road is right in front of you –
- Altum Sure –

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- Postlethwait Then it is –
- Altum Change is hard.
- Postlethwait Anywhere.
- Altum The Amazon driver also goes up and down more than they used to before because people are ordering online.
- Postlethwait Yeah, but I think we're talk – that's apples and oranges as far as I'm concerned.
- Gibson No, you –
- Postlethwait If change is hard – change where change is needed but perhaps we could discuss whether this kind of change is needed in that place. Are there not other places that would be more appropriate for the kind of business you're doing and it would give you easier –
- Altum Sure –
- Postlethwait Access –
- Altum Yeah –
- Postlethwait 2:14:05
- Altum For \$1.5 million dollars to do a development for a seasonal business, sure. We tried that. That's why we were here before and we didn't, and all the things that were required because of the easements and we had to rezone and all that stuff. It was not feasible for us to accommodate, to accumulate those expenses to have any return on a business. I mean, so this is what we came to. We came back from being out west, I said hey, I need some help going on and we're just trying to make things work.
- Gibson And we still want to be close to the community that we've been serving for 60 years. I mean, we, we lost half our customers when we just moved up to, to Finley Creek –
- Altum Right –
- Gibson Because it was too far so that's, I mean, we lost half our customer base and half of our income. So, we even –
- Altum Yeah –
- Gibson Moved further and we said we'll bring it to you. So, I mean –
- Altum We're just trying –
- Gibson We can, we could keep going but then we won't, we won't make it.

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- Jones The, to me what's interesting about this is that they had a, a lot that they were growing flowers onsite then the taking of those, harvesting those flowers on the land, taking them into production, repackaging them and shipping them out would fall completely within the realm of their zoning. Is that, am I off base?
- Dale My understanding is that a farmer, not in our Zoning Code, they can sell what they, what they grow.
- Jones They can sell what they grow.
- Dale Yep.
- Jones But the issue is the delivery aspect of this.
- Dale Yeah.
- Jones And that's really what we're talking about.
- Dale Uh huh –
- Jones Because if it weren't for the deliveries, they would have the right to send as many cars and vehicles in and out of this property as they wanted to on a daily basis.
- Dale It would be a farming operation.
- Jones It would be a farming operation. But really it's just the issue that since they get their primary product via wholesale via semi then everything after that is just –
- Dale And agricultural uses involve heavy machinery.
- Jones Right – that's what I'm saying.
- Lake . 2:16:00
- Mundy Yeah.
- Hinshaw Uh huh.
- Jones I appreciate all the comments about the kids and all that stuff but I'm imagining when they're planting in the spring and they're harvesting in the fall there's a lot of big vehicles out there up and down those roads at all hours.
- Lake So, I'm not saying this in support of this petition but the frustration I have is that if somebody wants to build residential in farmland we get beat up because it should stay farmland and when we get somebody that wants to farm in farmland, we get, where, where there's a house, we get beat up because it should stay a house.
- Jones Right.

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Lake I, I feel like the agricultural areas in this Town, like we can't win. The last person to buy a 2-acre lot off of an 80-acre farm doesn't want to allow anybody else to buy a 2-acre lot on an 80-acre farm. You know, they want to be the last person ever to buy a, a 2-acre lot and so we get a ton of remonstrance. And, again, this is not relative necessarily to this petition but it's something that Zionsville has to come to terms with. You know, we as a community either have to not remonstrate when somebody wants to put a house there because it's a less intense use or we can't then turnaround and remonstrate when somebody wants to farm on it and it's farmland and we don't like the number of, of farm trucks that are hauling grain up and down the road.

Postlethwait But farm trucks hauling grain is a very finite period of time between –

Lake So is theirs.

Postlethwait No, no it, no we're talking about a finite with grain trucks –

Lake But, but if you've, but –

Postlethwait Finite 2:17:22

Lake But if you had 2:17:33 you're raising cattle –

Postlethwait What, what they're talking about is a much broader, longer period of time.

Lake But if you're raising cattle, you're going to have trucks monthly bringing cattle to and from the property for sale.

Postlethwait Well if you're feeding, if you're operating a feed lot maybe you are.

Lake Not a combined operation but –

Postlethwait Well, I have livestock and I can tell you that I don't have trucks coming to my place. I, I bring the hay into my barn once a year and I don't have a 2:17:47 That's one horse.

Lake Yeah, you won't for –

Postlethwait Yeah –

Lake One horse.

Hinshaw Do we have a definition of how long things need to be grown on the farm? Is there any, so any growing is growing.

Mundy Uh huh.

Hinshaw Okay.

Mundy I think there are, I, I was raised not on a farm but in the country. There are periods of during the spring and during the fall when our, our roads were always

busy. It was trucks, tractors, combines, you name it, it was there. I didn't live on a gravel road but those who do have to expect a certain amount of dust that just, and I think that they need to also expect more traffic because Amazon, UPS, FedEx, all of those are making deliveries now. They're all in box trucks –

Jones Right.

Mundy They're all running up and down roads and the people on gravel roads order from all those places too. I, it, it is, it happens with or without this business.

Jones Yeah.

Mundy So I –

Jones 200 T-bones into Promontory and once that fills in and once they start building –

Lake They're going to have all sorts of construction trucks going up and down 200.

Mundy Yeah. I did hear –

Lake Not that that . 2:19:14

Mundy I think it was Mr. Marsh that mentioned the semis and all those trucks, I guess, that do cross bridges. I assume that there is some means for them to know whether or not they are over a, a weight limit on those roads? I don't know. I'm not in that business but that would be a concern and absolutely the offloading on the road where other traffic is, is something that cannot continue to exist period.

Postlethwait And I don't think it's, I don't think it's fair or even feasible to try to mandate what the delivery people are going to be driving and that includes the, the Amazon driver and, and the UPS man who comes up my driveway like it's, like it's the Indianapolis Motor Speedway but, so I don't think it's feasible to sort of say we're going to talk with them and they're going to drive at a reasonable speed because you don't, as you say, you don't always know them. Maybe the new guy and he's got a schedule to keep and so, so I don't know how you take care of that problem if, in fact, the residents out there are worried about kids, dogs, you know, any, anybody else that might be in the road.

Lake So I will tell you not what not to do. Don't park in front of one of them and stop them and tell them they can't drive that fast in your neighborhood because the Boone County Sheriff will come to your door.

Postlethwait Is that what you did?

Lake So I've, I have had that experience, yes. So you can try and limit them but there are, few, few means to do that personally.

Postlethwait I'm making a note right here.

Lake I, I would say I'm, I appreciate the petitioner's comments. I'm less concerned about what is happening today. I'm more concerned about what this may be

tomorrow and I think if I were to vote in favor of this I would want a very finite sunset clause in here to make sure that if, in fact, this became an issue, it would have to be re-petitioned, re-heard and if the remonstrance, if the issues have increased, we would have a chance at that point to deny further use on that property.

Dale If the Board of Zoning Appeals were to receive complaints about the operations, then you reserve the right to reconsider the Special Exception at a public hearing subject to public notice.

Lake Okay. So it would not need the sunset clause? Is that what you're trying to say?

Dale It would just be the, it'd be the, if you received complaints and they were legitimate complaints so we could receive complaints, we would inform you that we're receiving complaints and then you a, you have the, you reserve the right to hold a public hearing to reconsider.

Lake Okay. So would we need to motion that into the, state that in the motion?

Dale Yes.

Postlethwait So can it be a combination of both those things that would be revisited one way or another, you know, at some finite period, a year –

Dale Uh huh –

Postlethwait And in the, in the meantime if complaints become, are submitted that then it would be revisited sooner?

Dale Uh huh, uh huh.

Postlethwait Is that possible or is that too much?

Mundy I like that idea better in that there is a sunset. I'm somewhat leery of the complaints because I think who polices that?

Postlethwait Right.

Mundy And who's going to follow up and just, I see that as difficult to enforce and to make meaningful.

Postlethwait It seems to me a hard stop to revisit is, is a good idea because that forces it on to the agenda to be, and then that gives anyone who is unhappy with the situation the option to be able to speak up again and say it's not working for us.

Hinshaw Do we have a timeline on when they're required to get the deliveries off the street, off the road? Somebody 2:23:16 suggestion and requirement but no time that it needs to be done.

Dale Meaning not accepting deliveries at certain times of the day or?

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- Hinshaw Yeah, with that driver or delivery drive needs to be constructed so that they're no longer on the street –
- Dale Oh.
- Hinshaw Right? A certain time, a, a deadline for that to be done by.
- Mundy I, I assume we could add that.
- Lake No.
- Mundy It is not in the conditional –
- Lake I might –
- Hinshaw Yeah it is, someday is –
- Lake Well, and I might note that that will take a separate hearing likely through Boone County because when you widen the radiuses on that road and you'd have to put, re, redo your drainage underneath the road that probably goes through Boone County. Does it not? I mean they can't just make their curb cut twice as wide can they?
- Dale No, they'd need a driveway permit.
- Lake So, okay.
- Dale You know, is that, is that 2:24:02 jurisdiction .
- Lake I just want to make sure. We've had issues with understanding what permits we need –
- Dale Okay, yeah.
- Lake So I want to make sure that is –
- Dale Okay.
- Lake Expressly stated.
- Dale They would need a driveway permit whether it's from the Town or Boone County.
- Lake Okay.
- Dale Yeah.
- Hinshaw Whether it's a loop or you or whatever they need.
- Lake Yeah. So I'm, I, yeah, I like the suggestion that there's A) a finite timeframe for 2:24:19 then B) that they're aware that –

Hinshaw 2:24:23

Lake There is another process for that.

Dale I wonder if our legal –

Hinshaw Fair warning.

Dale If our legal counsel had an opinion on this?

Minnette Well, under the statute, the Board has discretion to impose reasonable conditions so a condition is reserving a right as Mr. Dale or setting a predetermined review date, I believe that's in your discretion as a Commission.

Lake We've had sunsets previously. We don't use them very often but we have had them.

Mundy Normally for Use Variances but they can be into a Special Exception as well.

Lake Which is kind of a Use Variance.

Mundy Kind of. All right, have we exhausted everything other than maybe some discussion among the Board?

Altum Can I say something? Have you, I, I just want to make sure that everyone has read the people that are supporting what we're doing and, and understand, we understand what, what the problems are which is the fact that there are more, there are more people that are in support of what we're trying to do out there.

Lake Yes. Thank you.

Mundy I'm looking – here we do and I have looked at those but I, it's a relatively small number of people. It looks as though it was a prepared form with their signature.

Gibson Yes, it was everybody that I was required to mail the letters to.

Mundy Uh huh, okay. I only find two among our packet.

Postlethwait So I, I have a quick – exhausted. I have another question and that has to do – I'm looking at the operations plan that you have submitted here and I would be interested to know how, what our expectations should be of your, your sticking to this plan. For example, delivery hours are 9 to 5. We've already heard comments that sometimes it's been 8:00 at night, for example. The number of deliveries – 5 to 7 deliveries per week. There seems to be some discussion about how many of those deliveries to you, you're getting per week. I mean, is this aspirational or is this to be used as a metric to which you are going to be held? How should we look at this operations plan?

Gibson That can be the one that we are held at. That's the one that we have in our logs for deliveries. I would challenge the notion that we go over those dramatically.

We sat down and went through our logs of our, our deliveries that we had during the busy season. We only have three or four growers that come and they only come once a week. So, a couple of them come on one day, a couple of them come on another day. You can hold us to that but it's, we have no plans on expanding and bringing more traffic –

Altum Yeah, we don't even – our landscape contractor is offsite. Our installation department is not even on the property so there's no, there's no one loading up in a truck every day going out to jobs –

Gibson Well –

Altum That's all subcontracted out.

Gibson Except for our delivery team, right, yes.

Altum But that's a box truck.

Gibson Right.

Postlethwait So, I have another question and I think one of the letters I read, read from one of your neighbors, they have invested in putting is it calcium chloride? What is it? Yeah, on the, on the road in order to keep the dust down and they have, I think, if I understood this properly, they have funded that themselves. Are you willing to contribute to the cost of that?

Altum No because then he can go out to the Amazon guy and the Town, you know, the 2:28:28.

Postlethwait Well I think that's, I think that's different because you're operating a business that's right there. Amazon is not –

Altum Sure.

Postlethwait Operating their business.

Gibson Isn't it's an elective decision to put that down though? Is it a requirement for that to be on the, the gravel? I understand but I mean where does that's –

Altum Yeah –

Gibson Kind of a fine line there and when I offered that originally I was told no, they don't want my help so. I would actually say no to that.

Postlethwait Just thought I'd throw that out there.

Mundy And you are aware that if it were, this were approved you, staff's position believes that you would need to go to the Plan Commission –

Gibson Correct.

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Mundy With a plan.

Gibson Correct.

Mundy You understand that?

Gibson Yep.

Mundy Well, time for opinions?

Lake What's a reasonable sunset?

Jones Two years.

Postlethwait I would say a year, personally, but you can 2:29:32.

Mundy I, yeah. I, I would make it longer only because they're going to invest in that and –

Hinshaw See how they do with the delivery drive and –

Lake Yeah, so maybe December of 2025? December 31st of 2025? That gives them –

Mundy A little over two –

Lake Just, just over two years.

Mundy Yeah.

Dale So is your suggestion there be a sunset to the approval and that the petitioner would need to re-file?

Lake Yes.

Dale Okay. So the, the Special Exception, if it were granted, would automatically expire?

Lake Yes.

Dale Okay.

Altum Because of the deliveries?

Lake To ensure that the operations are functioning –

Altum 2:30:13.

Lake As –

Altum Correct, got it.

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- Lake As in the agreement.
- Mundy And, in terms of fulfilling what you've committed to here primarily it's going to involve permitting, changing curb cut and providing space for the trucks to offload on the premises rather than on the road. I don't know how long that takes but I think there needs to be a reasonable expectation in terms of completion of that process.
- Lake So, I'm going to have that in a motion.
- Mundy Good man.
- Lake I'm making notes over here now.
- Postlethwait So just, and one other thing that we had talked about was having a provision that if a substantial number of complaints find their way to the Planning Office that that would, that would, can anticipate the end of the sun, the sunset period and it would force a rehearing.
- Dale I wonder if that would be, if we were to see what, whatever qualifies as substantial, staff would present that information to you –
- Postlethwait Right.
- Lake Yeah.
- Dale And then you would make a determination about maybe scheduling a hearing. I'm leery, I'm leery of, of the Board just cancelling a Special Exception without having a hearing on the matter.
- Postlethwait Oh absolutely.
- Dale Oh, okay, okay.
- Postlethwait Oh absolutely. I would expect that it would give an opportunity to the, to the petitioner but also to the, the folks who had complaints –
- Dale Okay.
- Postlewait To be able to speak.
- Dale And that would involve public notice and the full public standard –
- Postlethwait Right.
- Dale Procedure for a public hearing?
- Postlethwait Yes so just anticipate the, the sunseting if you . 2:31:55
- Dale So if we were to receive complaints we would just, we'd inform you that we're receiving complaints and then you would make a decision about whether to hold

a hearing? Which is closer to my original recommendation but I see your idea for a sunset as well.

Lake Yeah.

Mundy Let me ask – do we have the capability of doing that? That is receiving complaints, some in the form of investigation, I guess, to kind of substantiate them or disprove them? Do we have that mechanism within your department?

Dale We, we – legal counsel?

Minnette Yes, I mean, that's –

Mundy You have the authority but do you have the capacity? That's my question.

Dale Well 2:32:35 We would, we would have to. That would be a part of our job is we would have to follow through on that so.

Lake Yeah.

Dale And who knows? I think our, hopefully our capacity will improve over the next year or two.

Mundy And I, I, it would be worthless to put some rules in place which can't be adhered to 2:32:55.

Dale Yeah, we appreciate that.

Mundy Anything further from the Board? Is there a motion?

Lake So I move that Docket Number 2023-29-SE, a Special Exception petition to permit a landscape contracting business for the property located at 7645 East 200 North, Whitestown, in the Rural Agricultural Zoning District (AG) be conditionally approved as presented and described based on the Findings in the staff report and staff recommend, staff recommendations, the submitted Findings of Fact that the property use will not be injurious to the public health, safety, comfort, community morals, standards, convenience or general welfare; that the proposed use will not injure or adversely affect the adjacent area or property values therein; and the proposed use will, will be consistent with the character of the district planned use authorized therein in the Town of Zionsville Comprehensive Plan, that it is in substantial compliance with the submitted site plans, that filing or receiving approvals of a development plan would be heard by the Plan Commission, that a recorded commitment that operations of the business be restricted to activities referenced within the operations plan as included in this report as Exhibit 3, specifically, the number of deliveries to and from the subject site, the location of deliveries shall be on private property and not on public right-of-way, an acknowledgement that this petition will be voided and a new Board of Zoning Appeals petition will be filed should operations intensify beyond the provisions of Exhibit 3, that approval only runs with the current property owners and not in perpetuity with the land, that a driveway solution for semis be remedied by April 1, 2024 and be approved by the authority having

jurisdiction and at no time prior to that point will semis park in the public right-of-way as previously mentioned, that if complaints to staff would trigger a public hearing that the Special Exception could be reheard at a public meeting and that this Special Exception shall sunset on December 31st of 2025.

Dale Can we say reheard and, and possibly revoked?

Lake Yes, we can add revoked to that.

Young Staff would have a question – how many complaints is enough?

Mundy Thank you Mr. Lake.

Lake To answer Owen’s question – what I understood the discussion to be was that you would bring the complaints to us and let us know that they exist and then at that point we would have to decide at what point we felt like it was enough to then require that public hearing.

Young Understood.

Lake Okay. Did I, did I hear that correctly?

Postlethwait That was the longest motion I’ve ever heard.

Jones Yeah, but I’d second it.

Mundy We have a second from Mr. Jones. Thank you Mr. Jones. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

It is unanimously approved. One further question – since we have modified that, the, the motion to approve, I’m referring to the counsel here regarding signing of Findings of Fact. I guess they have not changed in most regards but do you offer us any advice to do something different than?

Minnette Well, you have the option to have the Findings redrafted for approval at your next meeting but similar to the earlier cases, I, I think the motion –

Lake Covers it.

Minnette Covers it . 2:36:50

Mundy Uh huh, uh huh. Okay. I, I guess I don’t see delaying the signing of Finding of Fact until next month to be an issue because they still have to go to the Plan Commission –

Lake The Findings haven’t changed, it’s just the motion that changed.

Mundy The Findings have not changed. You're right, it's just the –

Lake Yeah –

Mundy The motion has grown.

Lake Yeah and that's covered by public record.

Mundy True, yeah. Okay –

Lake So I think we can –

Mundy Let's –

Lake Sign them as is.

Mundy We can leave it as is and, yeah, proceed as, as usual. All right, we have unanimous approval. I would urge you to get your development plan into the Plan Commission. The other things that you are committing to in this need to be adopted as quickly as possible and we wish you the best of luck. I think it also provides you with the true incentive to be the best neighbor you can be and hopefully your neighbors who have not been in favor of this now may have a change of mind.

Gibson Thank you.

Mundy Thank you.

Altum I would encourage everyone to support local small businesses so we can do all of the things that you are asking us to do to continue our business.

Dale Thank you.

Hinshaw Thank you.

Marsh So I have a question real quick – so you can move in –

Mundy Just, just a minute. If you identify –

Marsh Micah Marsh.

Dale After he speaks, I'd propose a 10-minute break or 5-minute break.

Mundy Yeah.

Dale Okay.

Mundy If you give you name, name and address again?

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Marsh Micah Marsh, 7870 East 200 North, Whitestown. So, there's no regard for what they, not paid any attention to what anybody requires them to do? So they can put a hoop up, hoop, hoophouse up without permits and it's just okay? I'm, I'm confused here. I had to go through a variance to get a square footage zoning for my barn. I couldn't just put it up and then ask for forgiveness later. I had to go through all the due diligence. They're just doing what they want and okay, we'll give you two more years to be good neighbors.

Dale They will have to get a permit before they –

Marsh They've already got it up. It's been up for a year and a half.

Dale They'll still be required to get a permit.

Marsh Is that noted?

Dale It's noted.

Mundy It is noted in the [_____ 2:39:01](#)

Marsh Okay, thank you.

Anderson My name is Kayla Anderson, 8561 East 200 North. I just have a clarifying question on the delivery aspect because the way I read it is if they are negligent on one of the things in the contract or if there's a complaint then we reconvene. So it says 5 to 7 deliveries during busy season. I think there's some confusion there. Are those deliveries coming in or are those deliveries going out? Is that combination? Because sometimes there's 5 to 7 deliveries a day. So I'm confused on what we're asking.

Dale And that has been decided.

Mundy I'm not –

Anderson Well I was standing here but nobody asked if there were any questions.

Mundy I'm not sure that I can define for you which are incoming and which are outgoing.

Anderson Right, so I'm just confirming that it's a blanket statement of 5 to 7 deliveries and I can confirm the details on my end of how many deliveries that is. They already left because they can't be bothered.

Mundy I think that they're, when they're talking about deliveries, I think they're talking about their deliveries but they do have incoming deliveries and, of course [_____ 2:40:07 –](#)

Anderson Right so I'm just, that is a lump sum deliveries and me, as a neighborly resident, I can be counting those.

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- Dale Within their application we can, 2:40:15 a call they state the number of deliveries per week by the time of year, depending on the time of year.
- Anderson Right.
- Dale Deliveries to and deliveries from.
- Postlethwait Right.
- Anderson And they're saying 5 to 7 a week?
- Dale Deliveries to – 5 to 7 per week March, April and May. But there are other times 2:40:33 the year too.
- Anderson Okay.
- Young Please note that the staff report is online.
- Marsh There is no way they're just doing 5 to 7 because there's 5 to 7 deliveries per week coming in.
- Mundy We've, we've ended the public discussion Mr. Marsh. Thank you.
Next item on the agenda is Docket Number 2023-30-DSV –
- Dale Mr. Chair –
- Postlethwait We were going to take a –
- Mundy A. Ott –
- Lake 5-minute break.
- Mundy Oh, I'm sorry. We will take a, oh it's 10 to 5 now – a 5-minute health break.

BREAK

- Mundy Thank you. Next item on the agenda tonight is Petition 2023-30-DSV, A. Ott at 5355 West Old 106th Street in Zionsville. Petition for Development Standard Variance to provide for a renovation and expansion of an existing single-family residence in which: 1) Deviates from the required side yard setback of 20 feet to 10 feet 7 inches; 2) Exceeds the allowable building height of 35 feet to 48 feet in the Urban Single Family Residential Zoning District (R-SF-2); and 3) Exceeds – I'm not sure this is written right – exceeds, I think it's the allowable wall line linear footage. Are you ready Mr. Dale?
- Dale Yes. Ms. Koenig is going to speak for us –
- Mundy Oh I'm sorry. That's right. Chrissy –

Koenig Thank you. Yeah, this property, as, as Mr. Mundy mentioned the location it's comprised of approximately 2, a little over +/- 2 acres annexed into Eagle Township in 2005. The existing home was built back in approximately 1951 and encompasses about 1,644 square foot house. The petitioner is looking to not only remodel the existing structure but add on and the, the first request for the variance has to do with exceeding the side yard setback. The, the existing home has a 10-foot 7 inch, I think it was, side yard setback which is existing. They're just asking to continue that line. It's, it's been in existence, obviously, for 50-some years and they're, they're asking to be able to continue to use that.

The second request for the height requirement is, is due to multiple factors. There's 2:54:05 topography, it's a heavily forested and narrow lot and there's a basement walkout area that's not seen from three sides of the structure. Staff noted when we went on the site visit that the closest residential home was approximately 265 feet plus a way. Those homes are to the east of the property – excuse me, I'm sorry – those homes are to the west of the property. The, the uniqueness of this lot is that the other side, the west and south is, and north, excuse me – is surrounded with commercial businesses. You have Martin Transportation to the south, you have a contractor and, contractor and construction business to the north and east. So this is a very narrow lot, very heavily wooded.

Staff finds the unique characteristics of the property in relation to the surrounding properties constitutes a hardship and practical difficulty for the owner to comply and, therefore, is favorable on the recommendation for height. I'm sorry – I did not state that we were favorable on continuing the existing side yard setback. And, the, along with side yard setback, the third ask is for a linear wall extension which our Zoning Ordinance allows a one-time 50% you can extend a non-conforming side yard 50% of it's original distance. This ask is going beyond that and asking for 29 feet when the original distance of the wall was 31 lineal feet. So the proposed addition would exceed the maximum allowable 50% increase in wall lineal footage. Staff believes the scale and placement of that is appropriate in maintaining the overall mass and architecture of the existing structure and, therefore, supportive of that as well.

Mundy Thank you Mrs. Koenig. Are there any questions for staff? I have one – do you know if this, if this home is visible from any place? I mean I, I drove by there today. All you can see is a gravel lane that goes –

Koenig Staff went out onsite and drove around the commercial properties as well and you can't see it.

Mundy Can't see it –

Koenig We did not go on residential property to the east but you had to go down a very long lane before you, we even were able to see the the home.

Mundy Thank you.

Postlethwait So, and I have a question – the height of 51 feet and 9 inches, is that because of the topography of the property –

Koenig The, the walkout basement, if that was taken out of the equation, it would not be, they would not need the request –

Postlethwait Okay.

Koenig Or the height variance.

Postlethwait Thank you.

Mundy Any other questions? Hearing none, can we get the petitioner and the petitioner's representative?

Andreoli Thank you Mr. President. For the record, Mike Andreoli, 1393 West Oak Street. I am here with Ali Ott who is the owner of this 2.1 acre parcel on Old 106th Street. Before I go into the formal presentation, I want to thank publicly Ms. Koenig, Mr. Young and Mr. Dale for picking up the slack this last month and getting all of these staff reports and everything ready. They were short handed by two people and yet they managed to get it all prepared and I know that, I don't know if Mr. Owen went but I think Chrissy went and they, they actually did a site visit to this particular property because it is, it is not a property that has a lot of traffic by it. It's on Old 106th Street. It's a very narrow lane and, and the site plan shows a very narrow lane that comes off of 106th Street, uh yes, Old 106th Street, and all the way back to the property. It's, it's particularly wooded as you get close to the, to the house itself both on the east and the west. Mr. Ott went ahead and received two approval letters out of the three immediate adjoining and received approval letters for this particular project and they should be part of, of your packet. So he went and talked to the neighbors about this in terms of what his plans are.

The house is circa 1951, a very old house. We're going to use part of it for the construction, assuming approval, but very little of it, essentially the foundation is going to be in the same spot. That's the reason why we're asking for the, for the variance from the normal 20 foot in the R-SF-2 to the 10.6, I believe, 10.7 as that's where the existing house is currently and has been there for many, many, many years. So, essentially, we are asking for three particular variances. I think the staff report does an excellent job of, of pointing those out from 20 feet for a side yard setback to 10.7 feet, exceeds the allowed building height of 35 feet to 51.9 feet. I think in the actual agenda item it says 48. That was an old submittal but everything including staff report, all of the narratives, public notices and everything all included it up to 51.9 feet and exceed the required wall line lineal footage. Quite frankly, when that was discussed with Suzanne, I didn't understand what it was. I'd never dealt with lineal footage and I think what, what that means is that if you have a say a traditional subdivision and you have, you have a, a, a traditional house on one lot and the other lot they, they don't want, they don't want a lineal footage of the house to go all the way down the lot line so it basically has no air space or no visual space on the other. They want them reasonably in proportion. In this particular situation, the actual house itself the wall line will be on the, on the east side. That's all commercial over there. There's, it's, it's, again, it's a lot of trees and, and bushes and shrubs in that particular back area as you can see that's, that kind of surrounds that particular house. It'll be a tremendous improvement to the area. The house itself is not in

particularly good shape as you might imagine. I don't know if any of you took a, took a drive back there. Hopefully you might've but it's, it's, it'll be a wonderful addition to that particular area it, itself. The original house was 1,600 square feet. This will be a, a shade over 4,500 square feet when done and architecturally we think, given the topography and the, and the woods in that particular area, the height of the structure itself will not present a, a visual problem to any of the neighbors or anything of that nature, particularly on the, on the east where the commercial is with the heavy woods there and then similarly where one of the neighbors lives on the western section where the, where the house will be located in particular. There is a house that is located on the drive as you go up the drive. There is a house to the, to the, immediately to the right – I think, I don't know if that's being rented or?

Ott It's rented.

Andreoli It's being rented but it's, it's, it's an older structure as well but that's, that's the closest house even to the actual road and the rest is all essentially a woods that will be sheltered back there. So, I couldn't think of a, a better place to locate something that would need variances as this particular property and, and hopefully you'll, you'll approve it and we'd be happy to answer any questions and Mr. Ott is here to answer any questions as well.

Mundy Thank you Mr. Andreoli. Any questions for petitioner? Anyone online? No?

Young No there's not.

Mundy Okay, all right. Thank you. Is there anyone here who wishes to speak for or against this petition? Seeing none, any discussion on the Board?

Postlethwait So, I just would like to point out that I think this is a situation where the unnecessary hardship is extremely –

Mundy Well done.

Postlethwait Spot on, yes.

Mundy I agree. We'll use this as a role model. All right, if there's no other discussion, is there a motion to this petition?

Lake I move that Docket Number 2023-30-DSV, Development Standards Variance to reduce the 20-foot side yard setback to 10 foot 7 inches at 5355 West Old 106th Street in the Urban Residential Village Zoning District (R-V) be approved as presented and described based on the Findings in the staff report and staff recommendations, the Findings of Fact that state that this will, that by granting this, this will not be injurious to the public health, safety, morals and general welfare of the community, that the use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner and that the strict application of the terms in zoning, of the Zoning Ordinance will result in an unnecessary hardship to the use of the property and that the substantial compliance with the submitted site plan.

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- Mundy Thank you Mr. Lake. Is there a second?
- Postlethwait Second.
- Mundy Thank you Mrs. Postlethwait. All in favor please indicate by saying aye.
- All Aye.
- Mundy Opposed same sign.
[No response]
- That variance motion carries.
- Dale Congratulations.
- Lake Well, we got two more. Hold on.
- Dale Oh.
- Lake It's a three-parter.
- Dale On that one.
- Lake So variance #2 – I move that Docket Number 2023-30-DSV, a Development Standards Variance to increase the height requirement from 35 foot to 51 foot 9 inches at 5355 West Old 106th Street in the Urban Residential Village Zoning District (R-V) be approved as presented and described based on the Findings in the staff report and staff recommendations, the submitted Findings of Fact previously read into record and substantial compliance with the submitted site plan.
- Mundy Thank you Mr. Lake. Is there a second?
- Postlethwait Second.
- Mundy Thank you Mrs. Postlethwait. All in favor please indicate by saying aye.
- All Aye.
- Mundy Opposed same sign.
[No response]
- That motion, too, is approved.
- Lake Variance 3 – I move that Docket Number 2023-30-DSV, Development Standards Variance to exceed the 50% maximum allowable wall line linear footage for an addition of 29 foot 6 inches to the existing 31 foot wall line for a total length of 60 foot 6 inches at 5355 West Old 106th Street in the Urban Residential Village Zoning District (R-V) be approved as presented and described based on the Findings in the staff report and staff recommendations, the previously read in

submitted Findings of Fact and substantial compliance with the submitted site plan.

Mundy Thank you Mr. Lake. Is there a second?

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

That motion also is approved so best of luck with your project.

The next item on the agenda is Docket Number 2023-31-UV, D. Stohler at 5898 South 700 East, Whitestown, Indiana. Petition for a Use Variance to provide for an office for a home improvement company in the Rural Single Family Residential Zoning District (R-1). Can we get the staff report Mrs. Koenig?

Koenig Yes. Subject site on the left side of 700 East between Whitestown Parkway and 525 East – I'm sorry East 525 South. It's just under a half of an acre and has historically been used for residential single-family use. There is a home directly to the north of it as well and those two parcels are owned by the same owner. The company before us tonight, Stohler Roofing, has, has leased the property with hopes to put a business in there of their home improvement.

The Use Variance is largely looked at for the land and the Comprehensive Plan. In this particular situation, our 2003 Comprehensive Plan did not encompass this area of Eagle Township. So, in lieu of that, future land use designation for the site we look at highest and best use of the site and the surrounding uses. You can see, can you back up one slide? Yep, thank you. You can see that surrounding the site we have a multitude of what I would call commercial or non, not-for-profit type businesses being the Fire Station, the Boys & Girls Club, the ZWest Middle School, soccer fields. There to the east there's Eagle Church and there's some apartment complexes as well.

So these, these uses, if they were in the urban jurisdiction would fall into the Special Use classifications. That's not a category that we have in the urban or, excuse me, in the rural jurisdiction so I think that given the, the lack of that classification in the rural jurisdiction that this commercial business which is limiting in its five employees, excuse me, five full-time employees which are two owners and three office employees, they are intending to have any storage on the site. They are seeking, they share a driveway easement with the home who, again, is owned by the same homeowner to the north. If that does not work out, they have committed to putting a driveway to the south closer to Boys & Girls Club and there is a huge green field between those so it wouldn't be real close but they would remove the parking pad that's existing out on the road and put a parking area back behind. I think we have, yep, that's on the smaller slide there in color. That would be to get the, get the traffic off of, well the traffic pull-in

area and parking area off of the, the busy road there across from the Fire Department. The petitioner is aware of the fact that if this is approved tonight they would need to go on to Plan Commission for their development plan approval and I think that's – any questions anyone has?

Lake No.

Koenig Staff is supportive of this given the area and the uses surrounding the property.

Postlethwait I, I'm curious just to understand how this little island of R-1 developed – is there, is there residents on the other side of, of that middle drive across from this property?

Lake It's an abandoned home.

Koenig Yes.

Lake It may be zoned residential but it's abandoned.

Postlethwait Oh, it's abandoned?

Koenig Yes.

Lake Yeah, they use it for fire training.

Koenig 3:10:56 fire station.

Postlethwait They use it for fire training? Okay. So I'm just curious – I, it's not really I guess important except it's kind of hard to understand how this little R-1 became this little pocket with everything else around it.

Koenig The best that I can explain would be it came in from the County that way.

Postlethwait Oh, I see –

Koenig When we consolidated in 2010.

Postlethwait Got it. Okay.

Lake It was formerly –

Koenig Sorry I can't provide more than that.

Postlethwait No that already explains it.

Lake I think this formerly the, the subdivided some residential.

Postlethwait Yeah.

Mundy It's probably not the only one like that.

- Postlethwait I'm sure. Thank you.
- Mundy Any questions for Mrs. Koenig? Nope? Thank you. Could we hear from the petitioner and provide us with any information that was not included in the staff report?
- Stohler Yeah, thank, thank you. Thanks again for, for hearing us tonight. Thanks to the staff for helping us walk this application through. You guys have been very helpful so I appreciate that. I guess the one point that I would make –
- Mundy Could I ask you for your name and address please?
- Stohler Oh, I'm sorry yes, yes. My name is Dustin Stohler. I live at 6562 Yorkshire Circle. The point that, the one point that I would make is that this is typically our business is done at our customers' homes. We are meeting with them in their homes, They're, most of our customers are not coming to our office. I think we maybe had one customer stop by the office in the last month so it's pretty unusual for us to have customers there so there's not going to be a lot of traffic there. We don't store materials or, or any significant amount of tools at the office. It's all, our, our tools or our materials are dropped by our supplier at the home so it's, it's, I mean, we're, we're very much a, a sales organization more than anything else so it's not, it's not a situation where we're going to have any heavy machinery or any, any materials stored or anything like that. Overall, it's a, it's an office environment. We're not making any major, you know, we're not making any structural changes to the property other than essentially changing the parking to make it safer for ingress and egress from the, for the parking lot.
- Mundy Okay. Any questions for the petitioner? Did, did staff mention the usual practice of placing a sunset clause on Use Variances which, more than anything, I, I think – oh, I'm sorry this is, yeah, this is a Use Variance, yeah. More than anything it's if we made a mistake and all of a sudden it was your showroom and had 25 people coming a day, something like that –
- Stohler Uh huh –
- Mundy That there would be a sunset. So we do typically do that. You may have heard it earlier in the evening where we placed one but were you aware of that?
- Stohler I was not. My, my wife has been actually handling most of this through and she had to, to leave a little bit early to put the kids to bed. I wasn't but I'm perfectly, I mean that, that seems reasonable.
- Lake So can I ask what the term of your lease is? How long?
- Stohler So currently we, we leased a, we entered into a four-month lease with the landlord with the expectation that once this approved we'd enter into a longer lease and preferably look to some type of situation where we'd purchase both of those properties.
- Lake The reason I was asking is if we're going to do a sunset, my thought was maybe we can make the sunset align with your lease –

Stohler Okay.

Lake So if you're going to do a five-year lease, we'd sunset it five years and then if at that point you've decided to buy the property, it's no, we can hash that out but I'd hate to do it for a year –

Stohler Yeah –

Lake And you're in a five-year lease and then –

Stohler I, I think anything in the three to five year –

Lake Okay.

Stohler Period would be, would be great for us and then at that point we'd have, we would have a better knowledge about whether we're going to purchase the, the property and, and –

Lake Okay.

Stohler What our landlord is going to do with it.

Lake All right. Thank you.

Jones My only comment would be this property ought to be commercial.

Lake Yeah it – yeah.

Jones So –

Lake Yeah.

Jones You know –

Lake Totally agree.

Jones Those sunsets on – I don't think we're ever going to get challenged for it –

Lake But you do have a homeowner that owns the property directly, you know, that is the –

Jones But he's also agreeing to this.

Lake I know.

Jones So, protecting himself from himself even though he's not here to represent himself? Well that's kind of benevolent.

Lake Yeah, I agree.

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- Mundy I, I agree it's probably unneeded, at the same time it is zoned residential –
- Jones Correct. All right.
- Mundy And it would be used for something different.
- Lake That's why I thought if we could match it up with the lease term or something we're, we're not making it over, overly burdensome on them.
- Jones Okay. That's fine.
- Stohler And I, I think within three to five years we would likely purchase the property and come back and, and get this rezoned commercial would be our, our long-term goal.
- Lake Okay.
- Mundy Any other questions for petitioner? Hearing none, is there anyone here tonight who is, wishes to speak for or against this project? Anyone online?
- Young There's nobody online.
- Mundy Discussion among the Board? A motion on the, from someone on the Board?
- Lake I'll make a motion. I move that Docket Number 2023-31-UV, a Use Variance to provide for an office for the property located at 5898 South 700 East, Whitestown, Indiana be approved as presented and described based on the Findings in the staff report, staff recommendations, the submitted Findings of Fact, substantial compliance with the submitted site plan and that there be a three-year sunset on the special use or Use Variance.
- Jones Second.
- Mundy Thank you Mr. Lake and Mr. Jones and would you be amenable to inclusion of the Findings of Fact, the elements of the Findings of Fact in your motion Mr. Lake?
- Lake Yes. Do you want me to add those in –
- Mundy Let's, let's do that.
- Lake With me reading those? So as a variance for use that granting this will not be injurious to the public health, safety, morals and general welfare of the community, that the use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, the need for the variance arises from some condition peculiar with the property involved and the condition due to the general conditions of the neighborhood and that strict application of the terms of the Zoning Ordinance constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought and that the grant does not interfere substantially with the Comprehensive Plan.

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Mundy Thank you Mr. Lake. Are you willing to second that motion now Mr. Jones?

Jones Yes.

Mundy Thank you Mr. Jones. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

It, it carries. We'll mean for you in three years that sunset period is up. If you're going to remain there as is, you would need to come back to this, this group again to extend that.

Stohler Thank you.

Mundy Thank you. Best of luck.

The next item on the agenda is Docket Number 2023-32-DSV, M. Humphrey at 65 North 700 East, Whitestown. Petition for a Development Standard Variance to provide for an accessory structure which exceeds the permitted accessory square footage in the Rural Agricultural Zoning District (AG). Can we have the staff report Mrs. Koenig?

Koenig Yes, yes. This property located at, it's the corner of 700 East and State Road 32 out in our rural jurisdiction. It's approximately 12.64 acres, was also consolidated into our jurisdiction in 2010. Primarily then used for residential purposes. There is a 1-1/2 story home and several accessory structures which were there when the current owners purchased the property. The petition is to exceed the accessory, accessory square footage that would exceed the primary which our zoning, Zoning Ordinance, excuse me, does not allow for. The petitioner is proposing to construct a 2,500 square, 2,560 square foot barn and that would exceed the primary structure along with the other existing roofed structures that are there that would bring it up to 9,029 square feet. That would be exceeding the primary by a total of approximately 5,531 square feet. Along with this request, the petitioner would also be or has also petitioned our office to waive a portion of the 40-foot buffer yard that's required in the agricultural zoning and the Director was amenable to that and supportive if the neighbors signed the consent, which they did. I believe you all have that in your packet as well. In the opinion of staff, even at that, the level of square footage, roof to accessory square footage does not meet the level of hardship or practical difficulty and, therefore, we are not supportive of this as presented.

Mundy Thank you Mrs. Koenig. Are there any questions for staff? Hearing none, you're the petitioner, sir? You're the petitioner, is that right?

Humphrey Yes sir, yes sir.

Mundy Okay. Could we hear from you, if you'd give us your name and address first and then give us any information that you think might be helpful in our consideration.

Humphrey Definitely. Thank you very much. Mike Humphrey, 65 North 700 East. I appreciate you all hearing me tonight. I'll try to be respectful of your time. I won't go through the narrative, you've already read that. Let me stick to the points I think that are questions on everybody's mind. Why you need so much square footage and why does it need to be close to the fence, even though we've already dealt with that. So the, the property, as she said, it's an older property, it's farm property. I think the house was built in about 1900 so the larger barn that looks like a normal barn was built in roughly 1890. So back then 8-foot ceiling height was more than enough and really the, the, the area, usable area in those barns are pretty small. The big barn there's, there's basically a, a runway down the middle, barely wide enough to get a trailer into and certainly not tall enough to get larger tractors in. Roughly about the square footage of a two-car garage. The other barn on the property, it's a three-sided barn, same story there. It was built in, I'm assuming 1950 from what we hear talking with other neighbors around. It's, it was really meant to house cows so they could eat out of the rain. Another 8-foot ceiling and won't accommodate much storage space.

So the new barn, the reason I'm asking for a new barn is in order to get my stuff out of the rain, it's, it's getting wet, it's getting ruined and I'd like to get a larger tractor so I can do some of my own hay work. Right now I work with a neighbor. He's got a larger tractor, he does that, we make the hay. I don't have any place to put it, we stick it over by his house and dispatch it from there. The new barn will have larger ceilings. I can get a bigger tractor for myself with a, either a, a cab or a rollbar on it and it would fit inside the building and keep it out of the rain. It's a pretty large investment. I haven't bought anything like that yet because I do not want to leave it out in the rain with my other stuff and start letting it get ruined. So that's basically the purpose of the barn for me is to allow me to get my stuff out of the rain. Normally you work on this stuff in the winter and right now none of those buildings allow me to, to really work on stuff inside of them and this would give me some space that is closed off on all four sides. There's a lot of wind out where I live to work on the stuff in the winter. The placement, unless you want to hear about it, we're running late. It's well past my bedtime I'll tell you that –

Mundy I think the conditions for that have already been outlined for you so we don't, I don't think we need to hear it but –

Humphrey Very, very good. We'll cut it short right there then. I'll, any questions from anybody?

Mundy Any questions for the petitioner?

Postlethwait I have, I have some questions. So much, I assume the hay you're talking about you're growing on your property there?

Humphrey Yes ma'am.

Postlethwait How many, how many bales do you normally get?

Humphrey About 20, 25 round bales.

- Postlethwait Oh big round, big ones?
- Humphrey Yeah.
- Postlethwait Are you feeding livestock?
- Humphrey Well, I mean, depending on who, who wants it right? Sometimes we'll make the smaller square bales –
- Postlethwait Right –
- Humphrey If, if it's directly for horses and as the seasons go on, the hay gets less good. Like the first cut is really nice for the horses –
- Postlethwait Right –
- Humphrey It's got all the good stuff in it and then later we'll round bale it. If I'm lucky I get three cuts.
- Postlethwait So you're, you're selling it to, to folks that have livestock I guess. You don't have livestock on this property?
- Humphrey No, not, no.
- Postlethwait Okay. So you're talking, what you want is a place to put a tractor that you can use to cut and bale hay?
- Humphrey Yes.
- Postlethwait And be able to get the hay put, put up under shelter after –
- Humphrey Yes ma'am.
- Postlethwait After you –
- Humphrey And I want to put my other implements in there because like I said, they're out in the rain. My brush hog this year I got water in the gearbox. I don't know how –
- Postlethwait Uh huh –
- Humphrey It shouldn't got in there but it's out in the rain, it's coming off the roof and draining right on it.
- Postlethwait Yeah.
- Jones So you're harvesting your own property or some of the adjacent ones as well?
- Humphrey I'm just dealing with my own and I'm, right now I'm leaning on a neighbor. He's got all the equipment.

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- Mundy You have no animals and your crop is a single crop of hay is that correct?
- Humphrey Yes. I mean we've, I've grown corn on it and we've done some beans. The hay looks nice. The wife likes it so. We do have chickens, I mean, if that counts.
- Jones So you are using some of the other buildings?
- Humphrey Yes sir.
- Postlethwait Chicken coop?
- Jones Chicken coop?
- Humphrey Chickens got their own building and their own little yard they stay in.
- Mundy I think the staff report indicated that there was a Use Variance approved or it may have been a Special Exception for one of the barns there for events.
- Humphrey Yes. The, the original barn in 1890, it's got a lot of character, very nice. We had visions of doing a, a wedding barn and we went through the process and worked through it but by the time we got to the end of it and looking at the market, the business case really faded by the time we got to the end of the process. A lot of other barns open up, that's a very fickle industry and the money it would've took to close the deal on that, it wasn't a good risk and we, we decided against it. So now we just got a really good-looking barn.
- Lake So when you bought the property, were all the other accessory structures already there?
- Humphrey Yes sir.
- Lake Okay.
- Humphrey Yeah, that's part of the reason we bought it –
- Lake Okay.
- Humphrey It was the dream farm. Everybody had something, it's even got a pool, believe it or not, an in-ground pool on a farm in the middle of an agricultural zone.
- Postlethwait Yeah.
- Humphrey But, yeah, it was, it was a special place for us.
- Koenig One thing staff would mention is the, back in 2015 when you see that Use Variance, you also see the subsequent number of Development Standards Variance. At the time, we went back and researched that but at the time staff suggested that if they were going to ask for a Use Variance they go ahead and ask for a development standards just to, to –
- Dale Memorialize.

Koenig Memorialize there's the word, thank you. Memorialize the existing buildings that are, that were there. So they were not asking to get the buildings, they were already in existence and staff just wanted to memorialize that.

Lake Okay.

Humphrey Yes, thank you for that.

Mundy And then I'll go back. If there are no other questions for the petitioner, could, I guess I'd like to hear a little bit more from staff as to the lack of support for the additional barn.

Koenig I think there –

Mundy Is there –

Dale I, I can weigh in on that. It's our position that there's nothing unique here or unusual about the property that presents a practical difficulty with using it for its intended use. So that's why generally we're not supporting the variance. There's no, there's no hardship associated with using the property as intended. The property can be used with, with, with barns, with existing barns certainly, but 5,000 square feet over the, larger than the primary structure when the accessory structure is supposed to be less than the square footage of the primary, we just didn't find a, a practical difficulty or a hardship associated with this.

Mundy Okay, thank you.

Postlethwait So is it fair to say that when, I don't know when Mr. Humphrey purchased this property –

Dale Uh huh –

Postlethwait But is it fair to say that this was already non-conforming at the time he purchased it –

Dale Uh huh –

Postlethwait With the barns being cumulatively larger than the square footage of the house?

Dale Yes, that's fair to say.

Lake Yes.

Postlethwait So, I, I think I sympathize with his problem having myself worried about where to put hay so I can sympathize with wanting to be able to shelter that and have the independence of having it, not having to work off your friends, reach out to your friends asking for their, for their goodwill –

Dale Uh huh –

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- Postlethwait And also the machinery to be under, under cover. It's an investment, a sizable investment –
- Dale Uh huh –
- Postlethwait Farm machinery.
- Dale Yeah.
- Postlethwait So I, I think I'm probably more sympathetic to this –
- Dale Uh huh –
- Postlethwait Maybe if this were a 20-acre parcel it wouldn't be a question would it?
- Mundy No.
- Postlethwait So, he's just 7, 7 acres short so to speak.
- Lake And I look at it very similar to the way you do I think. You know, you, you bought it and now you're trying to actually use the land and that requires equipment and, unfortunately, that equipment doesn't fit in any of the barns that are there because of the, the age and general of a lot of the barns. They just weren't built to handle bigger equipment like that. So, I kinda feel like there is a little bit of a hardship –
- Postlethwait Right –
- Lake To, to truly use the land the way that it was intended, it takes modern equipment to do that. We're not doing that with donkeys anymore, you know, so it takes modern equipment to do that and that modern equipment doesn't fit in any of the, the barns that are there so.
- Mundy And I think this is one in which the Finding of Fact, the strict application to the terms of the Zoning Ordinance would result in an unnecessary hardship is well answered. It's much what, what the petitioner said verbally but it's in their Findings of Fact as well and this was probably at one time, probably a part of a larger farm and got cut off and wound up being less than the 20 acres.
- Postlethwait Right.
- Mundy Is there anyone here who is, who would like to speak for or against this petition?
Yes.
- Koenig While he's approaching the podium, I did want to mention we did have a couple letters of support that came in after we started and I did get those printed and handed them out.
- Postlethwait Yes.
- Koenig Hopefully –

- Mundy We got those. If you could state your name and address please.
- Auch Matt Auch. I live at 6851 East 32, I'm diagonal from them. I want to start by saying they're good people. They take good care of their property. It's always well kept. As far as the hardship issue, I guarantee you there's a hardship issue because he's got his stuff stored in my place so I got hardship.
- Mundy So you've got a hardship as well?
- Auch I do. He's using my barn to work on his equipment because I have a covered building. On top of that and I don't want to offend you people but before we were zoned or annexed by Zionsville, we came under Boone County. That's when I built my barn. Boone County told me I can put up as many barns as I want as long as they don't exceed the square footage of the house. We did not ask to be annexed by Zionsville. We weren't even alerted that we were being annexed. I found out a year after the fact. When I first talked to Zionsville several years ago, they told me we adopted Boone County's Ordinance. Great. What happened? We went from being able to put up as many barns as we wanted to as long as we stayed within the setback and stayed within the square footage of the house so now we're working under the sum of the outbuildings. I don't understand. We live in a rural area. The closest subdivision is miles away. There's no sewers near us so there's not going to be any subdivisions near us. There's cornfields all around us. The 20-acre rule is a stupid rule. So, please consider all that. We are under 20 acres, we are rural and we do rural things.
- Jones Hey I want to ask you a question. You were saying that you could build as many barns as you wanted as long as you didn't exceed the square footage of your primary structure.
- Auch According to Boone County –
- Lake I think what he meant want each building –
- Postlethwait Each barn.
- Mundy Yeah.
- Jones Each barn?
- Lake None of the buildings –
- Jones Not the cumulative total?
- Postlethwait Right.
- Lake Yeah.
- Auch Yes. And you can just go back a few years to your own Ordinances and it distinguishes between urban and rural and rural stated the same thing. Somehow that got changed in the last few years.

- Mundy I'm not an expert on the Boone County but that is what the Town did. They adopted the County Ordinance –
- Auch Uh huh –
- Mundy And I, I don't, again, not an expert. I don't know but it sounds to me like there may have been a misunderstanding because I think the square footage was intended to be total square footage of outbuildings in relationship to your primary residence.
- Auch Well, I went back. I don't remember the woman's name that works in Boone County Building Commission, perhaps you know who she is, and I asked for a clarification. She gave it to me and somewhere in my files I have that. That was within the last three years.
- Mundy Yeah. Again, I'm not an expert but I know that that's, that was the Town's intent was to adopt the, the County Ordinance. Thank you.
- Auch Yeah.
- Young Staff would like to clarify –
- Mundy Yes sir?
- Young I don't believe you were annexed, it was reconsolidated. There is a difference.
- Hollingsworth Good evening. My name is Theodore Hollingsworth, address 7055 East State Road 32. I live right across the street from the Humphreys and much like Matt, I have some of their implements in my property as well so I definitely –
- Humphrey 3:35:17. inaudible off microphone
- Hollingsworth If I didn't like him so much I wouldn't, I wouldn't let him do it but I, I guess by default I kind of have a dog in this fight as well. First off, this is my first time ever attending anything like this and I've written a statement but I amended it while I was sitting here. I want to take a moment to, to commend the Board for all the hard work you guys do. After sitting here this evening, I had no idea these meetings could become so contentious between people. No clue whatsoever. I thought these were pretty, pretty robotic but, but as Mr. Lake pointed out earlier, anytime you make a ruling somebody is happy and a whole bunch of people aren't very happy and to sit here and do that month after month, I couldn't do it so appreciate the hard work you do and I know a lot of other people do as well.
- Back to my neighbors here – the Humphreys – their property has been nothing but a positive impact on all of us that live up and down in this little area of State Road 32 near 700. Mr. Humphrey has worked diligently to enhance the aesthetic appeal of our little community there and other responsible homeowners have been doing the exact same thing and anybody that drives up and down State Road 32 there can tell you exactly how much nicer that area looks now. By granting Mr. Humphrey a variance to build this pole barn on his property, he will be able

to continue to support the positive trajectory of our neighborhood and this decision will also just reinforce us as a community's commitment to continue to develop and improve the areas we live in and, not to mention, Mr. Humphrey's efforts with what they do with the property between the barn that they told you about, the wedding barn, is absolutely stunning to see and, and all the other improvements they made just visually on their property, you know, I can document it, it helped, helped raise the property values of all of us that live in that area. I have no doubt in the world this pole barn is going to help all of us in addition to freeing up some space on my property as well. So, I just wanted to throw that in there and, and thank you very much for your time.

Mundy Thank you Mr. Hollingsworth. Is there anyone else here who wishes to speak?

Postlethwait I'd just like to make an additional comment. I'm also appreciative of, of the, the fact that he has, you have chosen to not tear down a barn that was built at the end of the last century or the century before which would've been perhaps a more expedient thing to do because that would've allowed you a little bit more wiggle room with regard to total square footage. So I'm very appreciative of your, of your not doing that. Thank you.

Mundy And I'll make a comment. I drive by on 32 probably on average three times a week and you, your place is spectacular. It looks great, it's this little green oasis among farm fields and pastures so it, it does look wonderful.

Humphrey Thank you. Thank you very much.

Mundy All right, anyone wish to put a motion forward?

Jones Sure. I move that Docket 2023-32-DSV, Development Standards Variance to provide for an accessory structure to exceed the permitted accessory square footage of the property located at 65 North 70, 700 East, Whitestown, Indiana in the Rural General Agricultural Zoning District (AG) be approved as presented and described based on: 1) the Findings in the staff report and the staff recommendations, submitted Findings of Fact stating that the grant will not be injurious to the public health, safety, morals and general welfare of the community and 2) that the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and 3) strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property and then finally, with substantial compliance with the submitted site plans.

Mundy Thank you Mr. Jones. Is there a second?

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

That motion carries. I will mention Mr. Humphrey that there is a, a note here also for us – you're aware of it, you already indicated that the petitioner shall seek and obtain a consent to the waiver of the buffer yard setback from your neighbor.

Lake And he did and that was already signed.

Humphrey Yes.

Koenig He did.

Mundy He's already gotten that done?

Lake Yeah, it's done.

Koenig That is.

Mundy All right, thank you. Best of luck.

Humphrey Thank you very much. Appreciate your time.

Mundy Your neighbors will really like you a lot more now.

Postlethwait Gluttons for punishment.

Mundy I'll bet they'll never be back for another one of these.

Next item on the agenda is Docket Number 2023-33-DSV, Chase Bank at 10701 East 300 South, Zionsville. Petition for Development Standard Variance to provide for additional signage which exceeds the maximum allowed of two (2) and proposed is ten (10) signs to the Rural General Business Zoning District (GB) and the Rural Michigan Overlay District (MRO). Are these – there are two Chase Bank petitions are they going to be stated separately –

Koenig Separate.

Mundy Are they not?

Koenig They are separate, yes –

Mundy Okay.

Koenig They're by two different petitioners.

Mundy All right. Can we get the staff report please?

Koenig Yes. So, this, I think everyone's aware of the location here. It's part of Appaloosa Crossing development and the, the package that Chase brings to present to us tonight goes beyond what is allowed. In the rural jurisdiction you're allowed signs based on your linear footage of your road frontage – one per 200 linear square feet or, excuse me, linear feet. This site borders on three sides with 421,

146th Street and an interior road that comes off. You can't really see it there much but you can see the curb cut starting. So, this would result in road frontage of 745 feet which divided by the 200 results in 3.72 signs, so three being the max. The sign package that Chase has presented us, they have presented one monument sign, four wall-mounted signs, four directional signs, which also include the Chase name or logo and, therefore, they are counted because they have that. If they did not have the Chase name or logo we would not be counting those and then a ATM surround sign for a total of 10, 10 signs total on the lot. We did, we did explain to the petitioners that the name and logo could be taken off of that directional, our incidental signage and they wouldn't be counted but the petitioner or the owner wanted to move forward with the request. So, so the request is for the 10. Staff visited the site here at Ford and Oak of the other Chase Bank. That site, while definitely not in the fast traffic area as the Appaloosa site, it's still on two major crossroads of Oak Street and Ford Road. That location has a post-directional sign, two wall signs, two ATM signs and a monument sign for a total of six signs. When staff compares these, we don't see the practical difficulty or the hardship in why the petitioner needs 10 signs on that location as their location here closer into town seems to be working and gaining business fine. Staff has suggested that they would be, we would be supportive of them increasing the signs from three to five but not up to 10.

Mundy Thank you Mrs. Koenig. Any questions for staff?

Jones Is there a plan in here that shows where all the wayfinding signs are located? Because at the –

Young Yes E11 through E –

Koenig It's that one but it's really hard to –

Young E14. You could put a turnaround and probably see it better.

Jones I think I've got the right one here.

Lake Do you count a wayfinding sign if it has a logo on both sides as two signs?

Young No.

Koenig No, not on both sides. Sorry.

Lake Same thing with a monument sign? You only count that as one sign?

Young Correct. It's, if you get outside of, I think, 14 degrees then we're going to start counting the two separate signs.

Lake Okay. Thank you.

Mundy Mr. Jones, did you get your question answered?

Jones Somewhat.

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Gayde Can I ask a question?

Mundy Who'd that come from?

Gayde This is Megan. My name is Megan with SignDoc Identity and I'm actually representing the Chase Bank here for the sign package.

Mundy And you'd like to ask a question?

Gayde Yes.

Mundy Okay.

Gayde Did she just say at the beginning that they had said that we could take the signs from three to five?

Mundy I, I think what staff –

Koenig Staff said –

Mundy The staff recommended that they would be willing to support an increase from three to five signs. Is that correct Mrs. Koenig?

Koenig Correct. I could not be supportive of 10.

Gayde Okay. I wasn't, I wasn't made aware of that. I was told they would increase it from two to three but not the, I didn't know the three to five and Chase is aware – I did make it aware that if they would remove the, their name and the logo off of the directionals they would not be considered a sign but taking it three to five, I think, would make them better.

Mundy Okay well that, that has been their –

Gayde Yeah –

Mundy Recommendation and then the, the petitioner is here and would like to make a case for 10. We have not heard yet from them.

Gayde That's me.

Mundy That's you?

Gayde Yes.

Koenig She is the petitioner.

Mundy Okay.

Koenig She's . 3:46:49

Mundy I guess I didn't understand that but are you Megan Gayle, Gayde?

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Gayde Yeah, yeah Gayde.

Mundy Okay, all right.

Koenig And, Megan, those, if you, staff – page 3 of the staff report that was sent out under Staff’s Position that’s where it states that staff could be supportive of increasing the total number of signs from three to five.

Gayde I don’t think I’ve had a chance to look at it yet. Okay. I just want, I was, I was looking over this this morning.

Lake So, how time critical is this decision for Chase?

Gayde They are wanting to open in October.

Koenig The building is currently under construction.

Lake Okay.

Gayde Yes.

Lake I’m just curious given that you haven’t reviewed staff’s comments yet if it would benefit us to continue this to the next meeting and give staff and the petitioner time to potentially look at reducing the quantity of signs and bring it back next month for approval.

Gayde Yeah, I mean, if you guys would like to do that that’s fine.

Lake I think I, I would, I would prefer that.

Postlethwait I think so.

Mundy I, I would agree, yeah.

Lake Okay.

Jones Plus, don’t if they get denied they can’t come back for another year?

Lake Yeah.

Postlethwait Right.

Lake Yeah, so I think it’s in best, in their best interest in this case to get –

Mundy Yeah.

Lake This worked out.

Postlethwait Right.

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- Lake Maybe a little bit more prior to coming back to us so –
- Postlethwait And I'd say a little studying of the staff report would be good.
- Lake Yeah. With that being said, I guess I would move that Docket Number 2023-33-DSV, Development Standards Variance for signage that exceeds a maximum allowed of three (3) signs for ten (10) signs at 10701 East 300 South, Zionsville be continued to the September 6, 2023 [should be October 4, 2023] BZA meeting.
- Mundy Thank you Mr. Lake. Is there a second?
- Jones Second.
- Mundy I'm not sure who was first but I'll award that to Mr. Jones.
- Jones All right.
- Mundy All in favor of continuing Docket 2023-33-DSV to the September 6, 2023 [should be October 4, 2023] BZA meeting please indicate by saying aye.
- All Aye.
- Mundy Opposed same sign.
[No response]
- The motion will be continued to the September 6th meeting.
- Postlethwait Just to clarify – it's going to be until when?
- Mundy September 6th. I'm sorry –
- Postlethwait That's today.
- Mundy Yeah, our meeting –
- Lake That what it said on the –
- Postlethwait Just to clarify.
- Jones It's coming close to being yesterday.
- Mundy Continued to the October what – whose got a –
- Lake Ughh.
- Koenig I'm looking –
- Lake Sorry, I was reading off my document and wasn't even –
- Mundy Yeah.

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Postlewait October –

Lake It would 4th.

Postlethwait October 4th.

Lake Yeah, October 4th meeting.

Mundy Continued to the October 4th meeting of the BZA.

Lake Do I still get a second on that then?

Jones Second.

Mundy You're willing to second that Larry?

Lake Do we need to revote this then?

Mundy I think that we're okay.

Lake Okay.

Postlethwait Given the late hour I think we better just soldier on.

Lake Yes.

Jones Uh huh.

Lake I'm fine with that.

Mundy So that will be continued. The next item on the agenda is Docket Number 2023-34-DSV, again, Chase Bank, 10701 East 300 South, Zionsville, Indiana. Petition for Development Standard Variance which exceeds the permitted light level at the east property line in the Rural General Business Zoning District (GB) and in the Rural Michigan Road Overlay District (MRO). Can we get the staff report on that one Mrs. Koenig?

Young Well, I am not Chrissy. I'm taking this one over. I am Owen, Economic Development for the Town. This is the 7th inning stretch. Those of you betting online please stand up in your seats and take a stretch. Thank you for staying with us. The, but we are talking about 2023-34-DSV, Chase Bank variance for lighting. The petition, I believe you already touched on that Steve. The petition is for a Development Standards Variance to exceed the permitted light levels at the east property line of the Rural General Business Zoning District (GB) and Rural Michigan Road Overlay District (MRO) within the Appaloosa Crossing development boundaries.

The project description: They want to increase light levels near the ATM at the east side of the site to provide for a "safe and secure" drive-up area. The 0.3 foot candle standard maximum would be exceed, exceeded at the time of their

submittal by 4.2 foot candles so a difference of 3.9 foot candles at the lot line. Staff's recommendation is unfavorable. If you guys are curious, please direct your attention to the staff's report and if you would like further notations on that, please feel to ask staff.

Procedural note: Staff wants to remind the petitioner regardless of the outcome of this, the photometric plan will need to be submitted for an update since you guys have an open improvement location permit for the Chase Bank you will just need to submit for an amended ILP 3:52:13 fee but definitely needs to be updated to allow for the current maximums not to exceed 0.1 foot candles on the west side and whatever the outcome of this is. Thank you for your time.

- Mundy Thank you. Are there questions for staff?
- Lake Just real quick – did you guys put the red and yellow bars on there?
- Young On this?
- Lake On the site plan?
- Young Oh on the –
- Lake Where, where it exceeds?
- Young Hold on a second – yes. They submitted a, the most, most, most, most recent photometric that was submitted very late today is what is currently up on screen –
- Lake So is that in our packet then?
- Young I believe that was the updated photometric plan –
- Lake Okay.
- Young That I handed out to you guys.
- Lake The reason I was asking is when we get it like this which is what we have in our packet, we can't read the numbers under the bars –
- Young Well it's, it's –
- Lake So –
- Young Well, the red, red is everything that was exceeding. Yellow is what was met. It is further defined on here as everything that is highlighted in red is that that exceeds.
- Lake Yeah, it just doesn't allow us to actually see the number underneath it.
- ?? You're mature.
- Young I simplified it for you.

Lake I, I know, I'm just –

Young 3:53:18.

Lake There was just a, just a 3:53:22 graphical thing like we can't, can't read through the red. So just –

Young Understood.

Lake Food, food for thought. Okay.

Mundy Any other questions for staff?

Jones In their comments they talk a lot about wanting to keep it brighter around the ATM.

Young Understood.

Jones But is that what's throwing all the extra light off the property?

Young The most up to date, I believe so. The ATM is on the east side of the building –

Lake Umm – is it?

Mayes Southeast side.

Lake 3:53:54 south side.

Jones That, isn't it, yeah there's –

Mayes That's a house, yeah.

Postlethwait Where the little cars are.

Lake Yeah, it's actually on the south face.

Young But, again, this site is greenfield development. It is currently under development.

Lake Yeah.

Mundy And I'm sure we'll hear this from them as well but can you, for the layman, can you distinguish between the two different levels of light and what is common at a location of an ATM?

Young This, I, I can't really speak to what the common levels at an ATM are. I just know that this is the first time that the lighting standard has ever been appealed. In recent memory and as far back as since I started working with the Town, so seven years ago, this is the first time that the lighting for the MRO or lighting standards in general has been appealed. As far as light levels, I think the urban

lighting standards were updated maybe five years ago and, again, we have not had any appeals on those either. 3:55:10

Postlethwait So when there's another, I mean, we, we were discussing the other Chase which is there at Ford Road and, and 334, Oak Street –

Young Uhh –

Postlethwait Do we know what their lighting might be? They have a drive-thru there as well, security cam.

Young I –

Postlethwait I'm just curious.

Young I don't think they have come through with a lighting plan under our current lighting standards –

Postlethwait Oh, okay.

Young So I could not tell you.

Postlethwait All right.

Lake So, you know, I guess I look at this and I'm, especially on the east side, you've got light levels actually on the drive that are around 2.7, 3.5 and then as you get closer to the building, they actually drop. Is there a way to get more illumination – if the drive needs to be illuminated, move the lights inboard towards the back of the building so that the drive still has the same amount of light but then the trespass off the, the property line was decreased because you're going, you know, it's lowering as it goes towards the property versus now it's actually going up as it goes towards the property. At least that's the way I'm reading these numbers.

Hinshaw Yeah.

Lake It's getting higher at the property line as you go away from the building. It should be the reverse of that. It should be higher at the building and getting lighter as you go away.

Hinshaw It's high at the building in the corner but then it drops fast –

Lake Yeah, like here –

Hinshaw Which is difficult for people's eyes to adjust to –

Lake Like a 9.9 –

Hinshaw To have a very bright spot and then all of a sudden it goes back.

Lake Well and here's a 12.5.

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- Hinshaw Right. It's very – there's a spot –
- Lake There's a weird hotspot right here, yeah. You must have a pole light here which we can't see and a pole light there.
- Jones And why does a business that doesn't operate at night need that much light at night?
- Postlethwait For the ATM, the ATM is the rationale and the ATM is essentially a 24-hour business. I mean, anybody can go through there any time of day and night I suppose but –
- Jones But –
- Mundy No other questions for staff, can we hear from the petitioner and maybe we can get some of those other questions answered that way.
- Young Chad, I'm going to stop sharing my screen so you can plug in.
- Mayes Good evening. I'm, I'm Chad Mayes.
- Mundy Just now –
- Mayes Oh, sorry. Ready?
- Lake Yeah.
- Mundy Ready.
- Mayes I'm Chad Mayes. I'm with Kimley-Horn & Associates, the site civil engineer for, for the design team. I think Amy Ferguson is on. She's with TAP, the architect. First, I'd like to start off by thanking staff. I know there's been some changes so I appreciate your guys' coordination and effort. I know there are quite a few questions between me and the signage so thank you guys. Thanks Mike. So, so the, the request tonight, obviously, is for a lighting variance around the east side. To kind of give you a high overview, this site is currently under construction, as you guys now, it's at the southeast corner of County Road 300 and Michigan Road. To the north is Circle City Trees, to the east is more undeveloped commercial outlots that are a part of Appaloosa Crossing master development, to the south are the shops and to the west is kind of a vegetated tree line, pond and single-family residents. So, the project is at 10701 East 300 South, Zionsville. Again, it's obviously, a bank on 1.13 acres. Here's the project location with the zoning so everybody's aware. It's R-2 to the west, GB Rural at the project and all throughout the Appaloosa Crossing development and also to the north, that Circle City Trees.
- So the request formally is a variance to exceed the permitted light level at the east property line in the Rural General Business Zoning District (GB) and in the Rural Michigan Road Overlay District. So, more specifically, the request is to exceed the east property line permitted level by 0.1 foot candles. I, I know Owen has been probably four or five different photometrics so I appreciate your

patience but that is, that is the request, just the, it's really the southeast. So I, I know the photometric has quite a bit on it and I brought some hard copies that, Mike, if you're willing to pass down.

Mundy Are those changed from the ones we have in our packet?

Mayes So this is the most recent that I'm passing out and Owen, as mentioned, has probably seen three or four here in the last two days.

Lake So you're saying that the property line right now you're 0.4 and it's supposed to be 0.3?

Mayes On the east side, correct. So if you refer to the slide up here, I know I don't have that highlighted on your hard copies but –

Lake Okay.

Mayes On, on the east side since it's commercial adjacent it should be 0.3. Owen can correct me if I'm wrong, or Chrissy – but it should be 0.3 and those little orange boxes we're exceeding it by 0.1 so at those little orange boxes it is 0.4 maximum and I know I wasn't clear with Planning staff on the actual property line prior but it is the middle of the drive because that is a private drive. So, the property to the east is undeveloped currently, another commercial outlot. To the north, it is too, a commercial use because of Circle City Trees. We are meeting the Ordinance there as well as to the west which is considered residential adjacent to it and then to the south is also commercial. It's the shops, right? So we are meeting it there. So, the request is really for those two areas shown in orange on the screen.

Young The confusion was is that on your original photometric it had a pink line denoting the property line but that was drawn incorrectly then.

Mayes That's correct. That was, that's an easement line so.

Young Understood.

Young But I think the line where it came out a little funky with the, the photometric vendor so. I apologize it wasn't clear to staff at all. We also added more readings of the foot candles further east so you can see as it gets to the other side of the easement it's near 0 as well as I think it probably gets to 0 – I'd have to go back and check but before it even gets to East 300.

Lake Yeah, I think that's a huge difference for me. Obviously, you were working with the information you had, you had at the time so no, no harm no foul there –

Mayes Totally, totally on our design team.

Lake Yeah, you're going from about 4.2 variance to a, to a 0.1 variance is obviously significant and in, in an area that, obviously, doesn't have or face any sort of residential on that side.

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- Mayes To, to acknowledge the question – I, I apologize, I forget who asked it but, if you, if you look at the screen, and I think it is on the hard copy, that, that circle there – that is kind of the center of it is on the south side of the building –
- Lake Gotcha, yeah –
- Mayes That is where the ATM is and per Chase’s safety and security standards which all of their Chase Banks follow, they have a certain foot candle they got to meet within that and you can see it touches, it basically touches the easement line and just to the east of it so –
- Lake Yeah, okay.
- Mayes That, that’s the purpose of it.
- Lake All right.
- Hinshaw Okay.
- Mayes So, again, thank you to staff. Owen and Chrissy, I appreciate everything you’ve done for us so far so. Thank you to the Board members for considering this. If you have any questions, let me know and I don’t know if Amy can answer but I’ll do my best.
- Mundy I have one question and I, it’s a little less relevant now but is, I assume that those are dusk to dawn and since potentially from 10:00 at night until 9 in the morning, there may not be a car that drives up. Is it conceivable to put something on activity that would raise the level of lighting near the ATM versus something that is on – depending on the time of year, all night long for maybe as much as 14 or 15 hours?
- Mayes That is something we can look into and I’d like to give Amy a chance to answer if possible. She is probably online.
- Young Yeah, we’ve got her.
- Mayes Our presumption is they’re on a photocell but that could be something that we, we bring to Chase. I don’t know the answer.
- Lake Yeah and, you know, if they could be at 50% light level, of their required light level, anytime there’s not a car but then when a car pulls up or it senses motion, they raise up to the, to the higher level. I know it doesn’t affect the light trespass necessarily but it affects the lighting overall in the space and there, there are already concerns about the level of light along that, that section of 421.
- Mayes Understood.
- Young Yeah, there’s been, I believe, there is, we are in possession of a remonstrance letter to, from a property owner to the north and a property owner to the east or west –

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- Lake West, yeah.
- Young And there has been a lot of investigation requests regarding lighting for the already up and running BP gas station and the shops, I think it's the B Shops to the north of the BP so –
- Lake Is your person online able to address that?
- IT They're there.
- Young They're there. They're unmuted. No, they're unmuted. I love technology.
- Lake This, this individual's name is Amy?
- Postlethwait He would agree.
- Young I believe so –
- Mayes Amy Ferguson.
- Young It's The Architects Partnership – raise your hand.
- Mayes Yes.
- Young I believe Amy is probably trying to figure out the microphone situation. It's kind of like a séance – Amy, are you with us?
- Mundy While we're waiting, are there any other questions?
- Lake No questions. I would just make the comment again so it's clear for the record that the revised lighting plan that we have has a one-tenth (0.1) foot candle increase over the required 0.3 versus the 4.2 increase as noted in staff report. Just so that's clear and documented.
- Mundy Okay. I'm not sure if staff wants to do anything here on the fly but now knowing that has that changed staff's position on it?
- Young Due to previous actions and investigations and remonstrance, staff still is in the same position that they were in previously.
- Mundy I've driven by multiple times at night. It's a lot of light but there's not a lot, there aren't a lot of residents around there who are affected by it other than if they look out you'll see light instead of dark which is a change.
- Hinshaw It is so close. It must be the security lighting that's probably pushing you over the edge in those spots –
- Mundy Yeah.
- Hinshaw But has Chase ever reduced that so that they'd be in compliance because it wouldn't be a large change? Or is that a hard and fast rule?

- Mayes It's a, I've been told it's a pretty hard and fast but we can definitely look into it. I've been trying to work with the photometric designer to bring it down.
- Lake I mean –
- Postlethwait I'm, I'm curious whether Chase when they committed to taking this spot was aware of what the restrictions were and what the Ordinances were and how they made the decision that it was, were they thinking they would go ahead and then hope to change it or were they just, I mean, what was the strategy there?
- Mayes So, not necessarily. It was known. It was known to Planning at the time when we were going through and the approach in the, it was an agreed to we're going to disagree to, or agree to disagree at the time and so they, the path forward that we saw was it was going to be an administrative review approval at the time which has since changed understandably so. So that, it was, it's been known and then trying to get it from probably what Owen initially provided you guys to where we are now was quite, quite an effort so.
- Young Is there also a way to, if you cannot actually reduce the lighting at the element itself, there is, is there a potential to put something in the way such as a berm or landscaping or something like that?
- Mayes They, they are open to that I thought and that's been discussed too so. That's not out of the question. I guess the concern initially with putting plantings or such is it takes them time to get to grow to that height, I would say, the best way to put it. Like five years is probably on average. So –
- Hinshaw So is Chase's –
- Mayes I don't know if that's necessarily the correction that's necessary for it but it's a good thought.
- Hinshaw Is Chase's standard set on a specific lighting security design standard that's independent or is it purely their own standard they've set?
- Mayes To me, it's their own security safety standard.
- Lake So I would argue as an architect we don't give the contractor means and methods, we just tell them what needs to be done at the end of the day and so I think we can, we can say that this needs to meet the light requirement and we kinda don't care how they do it. They could have a person stand up there with a sign if that's what it takes, if that's what they want to do. They can put plantings in, they can find an additional way to add a, a cutoff or add a piece of aluminum break metal to the edge of the light figure to just get it, the, the cutoff down, like that's not our problem.
- Hinshaw Uh huh.
- Lake We can, there are a number of means and methods for them to be able to address that and we can simply just say hey, it needs to meet the standard and we can

figure out seven different ways to do it and figure out which one is most cost effective.

Postlethwait I mean I think it's a slippery slope to change the rules because they don't like the rules. I mean, I think that's a slippery slope.

Lake Yeah, yeah, yeah. As a designer, there's, there's only about 6,000 different things that we have to comply with that all pull in –

Hinshaw Uh huh –

Lake In completely opposite directions on a project so it's, you know, if they, if they tilt the building 1 degree then all of a sudden their parking is in the easement on the north side of the building but they met the lighting requirement and so –

Postlethwait Fortunately, we don't have to worry about the . 4:12:21

Lake No, no we don't but it's, it is a reality.

Mayes Yeah and there was –

Hinshaw It's very close . 4:12:27

Mayes There was questions asked – I'm sorry – to your note, Chris, there were questions asked about is the ATM necessary outside and per the market study and survey it says both inside and exterior is, is desired and needed. So that's, that's why and to your point, the back of a house is where everything comes in, right? So, we have utilities to contend with and that's dictating where the ATM is and there's also a cueing space that have to consider and that's going to drive where the ATM is and if the ATM was on the other side, the east side, it's just going to get worse as far as lighting so.

Lake Yeah, okay.

Mayes There's a ripple effect for sure.

Lake All right.

Mundy It doesn't sound like we're going to make connection here with Amy.

Mayes Is there a –

Lake I don't –

Young Amy, are you with us?

Ferguson I believe I am. Hi.

Young Hello from beyond.

Ferguson Amy Ferguson with The Architects Partnership. I've been listening the whole time. It's been riveting. Thank you very much. I'll introduce myself. Amy Ferguson, The Architects Partnership, 200 South Michigan Avenue, Chicago, Illinois 60604. I am the Project Manager for the architect of record for this project. We've been working diligently with the, with our lighting designer to try and get the Zionsville requirements met with little tweaks and turns and twists of the, of the lights as best we can but to Chad's point, it is, we have that 50-foot circle around the ATM that has, that needs to have certain foot candles to meet Chase's security requirements that they apply nationwide. We, we did have some levels on the north and on the west side that were a little bit over. We, we were able to get some things tweaked and moved it a few inches to get those levels taken care of but the lighting that's along the east where only now it's just 0.1 foot candle over, I don't think tweaking something a little bit is going to change that. It would, it would move the foot candle over to maybe a different spot but it wouldn't necessarily alleviate it completely in order to maintain the required foot candles in that 50-foot radius around the ATM.

Lake Can I ask you, Amy, is, would Chase with their standards, is, is that it has to be that foot candle all the time or only while the ATM is in use?

Ferguson It's my understanding that it needs to be that foot candle all the time as a minimum.

Lake Okay, all right. I'm good.

Postlethwait I'm still, I'm still trying to understand if, in fact, Chase understood what our Ordinances required for max, what the max was with regard to our Ordinances, why they agreed to, to build on that site realizing that, I mean, you're going to tell me that this is just one of many things that can go wrong but I can't understand how they could know that that wasn't going to suit what they required and would still go ahead in good faith with the assumption that they were going to change the Ordinance? I mean, I don't really understand –

Lake It's not that you, it's not that you don't know that –

Postlethwait The thinking.

Lake You can't meet the requirements. It's the, you have to spend \$300,000 in design fees to get everything laid out to the point to where you realize that some small aspect doesn't work and it's an unreasonable investment to make when you think you can reasonably comply. I know we have very few buildings that we design that meet every building code in every Zoning Code because they're met as a best case that are applied across all different circumstances of sites and so –

Postlethwait But I, I thought I heard, and correct me if I'm wrong Amy, but I thought I heard you say that this standard that the, the Town has set is below the standard that Chase requires.

Ferguson No.

Postlethwait Is that right?

Lake No.

Ferguson No. What, what I, what I said was that Chase requires a certain minimum foot candle within a 50-foot radius of an exterior ATM.

Lake I asked her if she could, if they could dim it when there aren't cars there.

Postlethwait Okay. So, but that minimum that you're talking about is greater than what Zionsville stipulates. Is that right?

Ferguson By 0.1 foot candle.

Postlethwait So it's greater.

Lake Well –

Mayes So I think, I think it's due to location. It's all about location of where you would put the ATM, right in proximity to a, to a property line.

Lake Yeah. I mean, if you had a light fixture up there that got blown by the wind after it was installed and shifted 1 degree, you could have an extra tenth of a foot candle come off the property line because that cutoff is now slanted 1 degree and so how do you regulate the wind to not shift the head of the fixture in a high wind condition to put one-tenth of a foot candle. It's, it's that finite.

Postlethwait So how do we think about this going forward I guess is my question.

Lake Yeah.

Postlethwait I mean, this is angels on the head of a pin to me but, you know, I –

Lake Yeah –

Postlethwait I'm just –

Lake Don't get me wrong – I'm not actually in favor of granting them –

Postlethwait Right.

Lake Their request. I just, the position that every job, every project can comply with everything given all the requirements out there, it's a unicorn.

Hinshaw Self-imposed requirement though in this case for Chase.

Lake Uhh, yes.

Hinshaw Unless you come with another –

Lake Yeah –

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- Hinshaw You know, this is standard –
- Lake Correct –
- Hinshaw Across the industry. If all ATMs have to be this –
- Lake Which is –
- Hinshaw But if it's just Chase's, we don't know that, right?
- Lake Yeah. Which is why I'm not inclined to support it.
- Postlethwait And we don't even know whether the, the other bank that's here just around the corner from this meets that standard and that's a Chase Bank.
- Lake Yeah.
- Postlethwait So, you know, if, the question is if we deny then they are going to be, I mean, I don't know how up to date and accurate – it seems to me that this is a little bit of a work in progress, the data that we're getting. Is this the final resolution? I mean, do you want us to go ahead and make a decision or would you like to continue it? I mean, how do we think about this going forward I guess, but –
- Mayes So I think there are some questions that need answers that you guys have provided us and as part of the design team, I think it would be better suited to get you those answers if we talk to our client. So, it probably seems best to continue it to next month.
- Lake Okay.
- Mayes If you're, if you're willing.
- Lake I'm willing to do that. So, I move that Docket Number 2023-34-DSV, Development Standards Variance which exceeds the permitted light levels at the east property line located at 10701 East 300 South, Zionsville be continued to the October 4, 2023 BZA meeting.
- Mundy Thank you Mr. Lake. Is there a second to that motion?
- Postlethwait Second.
- Mundy Thank you Mrs. Postlethwait. So all those in favor please indicate by saying aye.
- All Aye.
- Mundy Opposed same sign.
[No response]
- The motion, the motion carries so this petition is, will be continued to the October 4th meeting and we all now know a lot more about foot candles than we did earlier.

Mayes Thank you guys. Have a good night.

Dale You're welcome.

Mundy Thank you. The next item on the agenda is Docket Number 2023-36-DSV, Culver's Restaurant, 3263 U.S. Highway 421, Zionsville, Indiana. Petition for a Development Standard Variance to provide for additional signage which exceeds the maximum allowed of three (3) and proposed is four (4) signs in the Rural General Business Zoning District (GB) and in the Rural Michigan Road Overlay District (MRO). Can we have the staff report Mrs. Koenig?

Koenig Yes. As we discussed very similar with the Chase Bank signage, this is just south of that area in the same development, the Appaloosa Crossing development. The site does have three, three road frontages as well and when those are totaled up using that same rural equation of 1 per 20, excuse me – 200 linear feet of road lot, we get a result of 3.27, so allowing a maximum of three signs. Petitioner has asked for one monument sign and a total of four wall signs so that exceeds by the, the or the ask exceeds the three that are allowed by Ordinance. Again, the, the subject site is unique in the fact that it has the three sides, there are other commercial retail areas in the Appaloosa Crossing development in this area that have a, only have two frontage or one, one to the west fronting Michigan and one to an interior road. The signage on these façades would still be limited to the maximum of 15% square footage and under, under staff's review, we find that the practical difficulty in the use of the property having three road frontages is as proposed, excuse me, as opposed to nearby retail sites with only two frontages supports the need for the variance.

Lake Can I clarify real quick?

Koenig Yes, please.

Lake They only have, they have one monument and three building signs, correct? Because I see a revised set of elevations in here that shows that the rear sign was removed. I thought I heard you say one monument –

Koenig There was a –

Lake Sign and four building signs.

Koenig Yes, I might have that wrong. It's getting late.

Lake So that one shows the four –

Koenig Thank you.

Lake But if you go to the next –

Koenig And the petitioner can probably clarify –

Lake Yeah, see there you –

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Koenig For us.

Lake You gotta, bubble cloud there that shows –

Koenig Yes.

Lake The, the sign in the back removed. Okay. I just wanted to clarify.

Koenig Thank you.

Lake So, one monument, three building. Okay.

Koenig Thank you, I appreciate that.

Lake Yeah, no problem. I just, I, trying to connect my dots over here. It's late.

Mundy Any other questions of staff? I think we're getting numb.

Jones I have a question – if a road is considered a private drive, it's also considered frontage?

Koenig That was, staff discussed that and we came to the evaluation of yes it was.

Dale From the practical sense we decided that would, it'd be the same, same function. Private drive versus a street.

Koenig The intent would be the same.

Jones But we just previously heard about how foot candles carry to the center of that versus its property line on the other frontages.

Dale In this case.

Lake I think it might be different if the road looped around the back but didn't serve another –

Jones I'm just, just –

Lake Tenant further down.

Jones Our meandering standards of a road, you know –

Lake You're just trying to keep us here later. I know what you're doing.

Jones Just, I'm, you, my comp –

Postlethwait He's absolutely 4:25:19.

Jones My, my batteries are dead on my computer so I'm left wandering on my own 4:25:24 so, you know – you're in for a wild ride on this one.

- Lake Moving on –
- Jones Kathi’s going to ask for a new seat.
- Lake Don’t we need to hear from the petitioner? I would like to hear briefly from the petitioner if that’s possible.
- Resetarits Sure, I’m not sure if I should say good evening or good night, good morning, something but –
- Lake Pretty near good morning.
- Resetarits We’ll keep it, keep it brief. My name is Kyle Resetarits. I’m an attorney with Dentons at 10 West Market Street, Suite 2700 in Indianapolis. I’m here on behalf of the petitioner K&J Investments XXVII, LLC. I am standing in lieu of my partner, Matt Price, who wisely had a conflict this evening.
- Lake He saw the docket, right? He’s no dummy.
- Resetarits That’s right, that’s right. You’re all familiar with Appaloosa Crossing, Matt Price as well. To reiterate staff, here requesting a petition for a variance of development standards to permit an increased number of signs on the, on the lot for four signs, three on the building and, and one monument sign in the southwest corner of the site. So, Mr. Lake, thank you for that correction. The, the elevation that shows the bubble removal of that fourth sign on the rear elevation is, is the, is the most accurate depiction of the sign, sign package. So the Zoning Ordinance regulates the total number of permitted signs, whether that may be one or, or three, the, the variance is still a request for additional signage for four, in fact.
- The subject site is unique that it has right-of-way frontage along three sides, at least right, so whether that might be private or public, given its location in Appaloosa Crossing. And, I’ll, I’ll add that Hanovarian Street is the, the main point of ingress and egress on this portion of U.S. 421. I think the BP site to the north was referenced with it in an earlier petition this evening. The proposed signage would still be limited to the maximum of 15% of square footage. It would allow the petitioner to adequately market the intended use, the Culver’s location, consistent with practices of restaurants of this type in the marketplace.
- I will add anecdotally the Board has approved a similar sign variance for commercial shops to the north – generally they’ve been referred to as the B shops This would be further north along U.S. 421 for, the variance was a similar request right. So, so the lineal frontage whatever reduced the number of signs on the structure but the, the practical signage use, the marketability of restaurant or commercial users would dictate the marketplace, would dictate that commercially speaking signage should be on the frontages, front, frontage of these buildings right? So the B shops, ultimately the decision of the Board was to allow individual signs by the individual tenants.
- So, in a similar fashion, the petitioner here to allow for the necessary marketing of, of the Culver’s Restaurant provides those three frontage signage packages.

We recognize that the rear use of this would be the eastern wall there along Appaloosa Drive would not have the Culver's sign. I would anticipate there might be a question about the other sign packages or other signage on the development. Obviously, that was a topic of a continued petition this evening. Those other sign packages, directional signage being the, the, the most, the, the largest number of those – those don't include the Culver's sign. So, as we worked with staff to identify the number of signs that would qualify for needing a variance, we identified that as four in this, in this evening.

So, we certainly appreciate staff's thorough report and their support of the requested variance. The petitioner has already received approval for its development plan and the necessary replat of the subject site. For the record, I'd incorporate our proposed Findings of Fact as submitted in connection with the application. I know the Board has enacted a procedure at least for this evening for those Findings of Fact but, but certainly appreciate their recognition of, of our proposed Findings and we kindly ask that the Board approve the variance as presented based on the Findings in the staff report, the staff recommendations, the submitted Findings of Fact and, of course, substantial compliance with the submitted site plan so. I don't know if that qualified for brief but thank you for your time. Happy to answer any questions.

Lake No, but thank you.

Mundy Any questions for petitioner's representative?

Postlethwait It's clear to me that Culver's has more confidence in their, in their customers than Chase does. That they can find a way to the restaurant more easily than Chase people can find their way to the –

Mundy You're dealing with chicken sandwiches, not cash.

Postlethwait It is late, that's my excuse.

Lake Yeah.

Mundy Is there anyone here who would like to speak for or against this petition? Anyone online? The Town's asleep by now.

Young Uh no, Jane Jenkins is still online. Thank you so much for sticking with us Jane. She is, she does not have any questions though.

Mundy Okay, any other discussion among the Board? Is there a motion for this petition?

Lake Sure. I move that Docket Number 2023-36-DSV, Development Standards Variance to exceed the minimum, the maximum allowed of three (3) signs to four (4) proposed signs for the property at 3263 South U.S. Highway 421 in the Rural General Business (GB) District and the Michigan Road Overlay (MRO) be approved as presented and described based on the Findings in the staff report and staff recommendations, the submitted Findings of Fact where approving this motion will not be injurious to the public health, safety, morals or general welfare of the community; the use value, use or value of the area adjacent to the

property included in the variance will not be affected in a substantially adverse manner; the strict application of the terms of the Zoning Ordinance will result in an unnecessary hardship to the property and substantial compliance with the submitted site plan.

Mundy Thank you Mr. Lake. Is there a second?

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

The motion is approved. Good luck with Culver's progress.

Resetarits Thank you for your time.

Mundy The last item on the agenda is Petition 2023-37-DSV, T. Gottschalk at 8802 Oak Street, Zionsville. Petition for Development Standard Variance to provide for additional accessory structures which exceed the permitted accessory square footage which is also utilizing shipping containers in the Rural Single and Two-Family Zoning District (R-2). Owen, could we get the staff report on that please?

Young This project description, the petitioner is proposing to retain the two metal shipping cargo containers located onsite. No ILP permits on file for the site improvements. They are also seeking to retain the lean to attached to the existing barn located onsite. Again, no ILP permits are on file for the site improvement. They also want to allow for a future addition of a shed. ILP permits will be required for this future site improvement before installation and they also want to allow for a future extension of the front porch. ILP permits will be required for this future site improvement before installation. Staff's recommendation, staff's position is favorable for the petitioner's request for accessory structures to exceed the primary structure to a maximum of 6,189 square feet subject to substantially complying with the submitted materials and following conditional approval with 30 days with the approval of this petition complete submittal of improvement location permit for the lean to structure currently onsite and good faith effort to proceed through the permitting process to gain approval and issuance of that ILP permit and also the removal of both existing metal shipping cargo containers from the site.

Mundy Thank you. Are there any questions for staff? Hearing none, you're the petitioners, is that correct?

Eberg Yes.

Mundy If you could state your name and address and then provide us with some information you think might be helpful.

A. Gottschalk So my name is –

Mundy Can you get to the microphone please?

Eberg Let me go. I am Sherry Snyder Eberg. This is my daughter, Alison Eberg Gottschalk, and my son-in-law, Thomas Gottschalk. They are renters currently at my parents' home. I am the power of attorney. My parents are at Hoosier Village in the healthcare center – broken hips, blah, blah, boring. Anyway. I just wanted to make sure you all knew who we all were and why my parents aren't here. I brought papers if anybody needs to see the Power of Attorney papers. I would like to qualify the word storage – what's the word?

A. Gottschalk The shipping –

Eberg The shipping containers, use them as storage containers. At the moment, they are storing a lot of my parents' personal belongings, the hobbies my dad took up post-retirement in the barn which he had several hobbies. We're overwhelmed with things but that's what they are serving. They are not serving any other purpose. Period, period, period. So, if it, if the word PODS was on the outside and somebody brought them in and we are paying them 50 bucks a month that's all they are there for period. So and now I will step aside.

A. Gottschalk So like she said, my name is Alison Gottschalk. This is my husband, Thomas. We are “renters” of this family home. We're actually in the process of buying it from my grandparents but going through this process it hasn't been finalized yet so it's showing as renters to any, all and everybody else. So, just so you guys know that that's the process and what's going on. So, like my mother said, we do have the shipping containers. They've been there since last fall. When we brought them in initially, they were what they're being used for now, holding my grandparents' things so that, unfortunately, that time of life came for my grandparents to be moved out and go to Hoosier Village and for our family to sit here and go, okay, well, here's what we're going to do – we're going to buy the property, we're going to move in, we're going to upgrade the house, we're going to redo the property and we're going to live here as a family and then this way it gives you guys time to go through everything. It can be stored here and when you guys are ready to come through, once we've got everybody settled, once we've got aunts and uncles and everybody coming in from out of state because we're the only ones that live here, everybody can go through everything and then we can sort through.

That was the plan and then we got started working on the property itself and we had the first complaint come through and that was earlier this or late, late spring/early summer, I believe, claiming that we were running a business on the property which we, in fact, are not. We do own a business, yes, but it is run out of Lebanon. I did clarify when we had our first meeting with the staff members here that we are allowed to use our equipment from the business as long as it's not being used for business purposes, it's being used for personal purposes on our own property to, in fact, upgrade the property itself. We were incredibly clear on that like I had to make sure that I understood it about six different ways. We did get the, the verification that, yes, we, in fact, can do that so that's what we've been doing. We have tried to go around and talk to a few different neighbors,

ones that are like directly affected that are right in the back. We've also talked to a few other neighbors that are towards the front where right now if you drive by you might want to pull your hair out because the front looks horrible, although it just was finished today.

Eberg It's a work in progress.

A. Gottschalk It's a work in progress but that was also brought up in the initial meeting of the berm that was put out front but we did get approval for that as it meets the Zionsville requirements of square footage of dirt – am I saying that right?

T. Gottschalk Less than 10,000 square feet. It does not require a stormwater permit for dirt work.

A. Gottschalk Umm –

T. Gottschalk And it is less than that.

A. Gottschalk So, so that is something else that was brought up by a fellow Oak Street individual. I wouldn't say neighbor because they are not close enough to even be able to see from our property but another individual, so that's why that was not mentioned in this because that, this was prior to any of this happening. My husband asked me – he said let's, let's do something with the front landscape because it's driving me nuts and I said let's not. Let's do a porch, let's get that approved first and then let's get the landscape done. He said okay, great. So, with all this said and this initial issue being brought to light of we're a running a business which we're not and we were able to prove that we were not, we started this process and then learned uh-oh, we should have filed for a petition for the lean to and uh-oh we should've filed for a petition for the shipping containers just not even realizing. The lean to didn't even occur to us because they are no sides to it, it's just poles and a top. The shipping containers, again, they've been there for almost a year now, it hadn't, the thought just, because we were using them as storage pods versus like a shed, so to speak, the thought didn't even occur to us to have a permit done. We are in rural Zionsville so we're not in town. It's back behind everything.

When the neighbor first made the complaint, we said okay, we completely understand they're not pretty to look at. Let's go ahead and put up a privacy fence so it runs the entire length of the back property so it cannot be seen. We have since talked to at least one of the neighbors on that line and she said oh, thank you. It looks so much better. I don't have to see shipping containers and I have a nice fence now. So, that is one thing that we've tried to do to just be good neighbors. We didn't mean to stir up issues and we didn't try and cause problems. That's not us, at all. And then also, we have heard from the developer who is building the neighborhood that's going to be on two of the four sides of us, which I do have a letter. I got that today so it's not something that's been submitted but I'd be more than happy to show you guys but they have no issue with what we are doing. In fact, they're happy to have somebody with a chunk of property right there that's been easy to work with and –

Eberg It's the Old Town group for those of you that –

A. Gottschalk Yes, Old, Old Town is who, is who it is but they have zero complaints with what we are doing. There is no privacy fence on that side so it is completely open to them. They have seen, they have been out, they have actually been on our property because one of the trees that is, was on my grandparents' property, which is now what they own, one of the limbs fell and it hit the corner of the house and so they came out and they fixed that issue so they have been on our property, they have seen everything, not just pictures but that's ultimately what we are trying to do. So I hope that answers any questions there may be or if you have more please throw them at me or us or.

T. Gottschalk Can I make one, one comment – so the shipping containers are not visible from Oak Street at all. You cannot see them from Oak Street no matter which way you go, no matter which direction or angle you look at. We've driven by and taken a video as we drive by and –

A. Gottschalk Yes we did.

T. Gottschalk I mean it –

A. Gottschalk We do have, we do have videos. We have them with us as well as pictures to show that it is, they're not visible in any capacity. The only thing that you see is the very front part of the lean to you cannot see the shipping containers at all.

Mundy Questions for the petitioner?

Postlethwait What, what is your expected timeline for, currently you're using the shipping containers to store family artifacts so to speak.

Eberg I would like to be able to answer that. We are spread far and wide on being able to survive. I'm the oldest of five, the only one in state and that's not an easy question to answer. I'd like to give you an answer but I really don't have a good one.

T. Gottschalk We just need to be able, we just need to be able to keep all of that stuff, a lot of it very old and equipment like wood turning and lathing equipment and that kind of stuff, keep it out of the elements and we don't have room under cover. We couldn't, we couldn't even put those under the lean to because of the moisture would rust the bare metal.

A. Gottschalk So we did have a structural engineer come out and also look at that because like you asked – how long are you going to have them? And the simple answer is we don't know but he did come out and take a look and said if we do need a foundation, here's what we would need. I provided that to all of you awhile ago actually so you guys should have it. If you don't, I do have that here so in the event that they are going to be there for a while we do have a plan in place if required to put a foundation under them to make that more stable and secure.

T. Gottschalk Because they're more than the 200 square feet –

A. Gottschalk Because they're, yeah –

- T. Gottschalk That Zionsville requires any outbuildings over 200 square feet to be on a foundation, either 4:45:31 or concrete foundation.
- Eberg And we're bring more things back to those. Right now my parents are having to move out of assisted living into the healthcare center due to health issues –
- A. Gottschalk And like she said, . 4:45:46
- Eberg Seven trips I've made . 4:45:47
- Mundy I, I do have a question and does deal with timeline on when those would be removed because the letter we received in our packet of information, which is #2 of 2, states that the shipping containers that are currently used and will continue to be used as storage containers. So it doesn't appear from that letter that you have any intent in removing them. Is that –
- A. Gottschalk So ultimately we do not want to remove them until everything is cleared out. We don't want to have to get rid of my grandparents' things until family can go through them. So, yes, to answer your question, we are hoping to keep them. Do we have a timeframe of when they would eventually disappear? I have no idea. Is it something where they could wind up staying for five years because nobody gets a chance to come down and go through anything? That's a good possibility. It is something that we would love to have off the property in five years? Yes, we would love to have them off the property yesterday but realistically they're still there.
- Mundy I believe if I'm interpreting staff's position on this, is it shipping containers are not something you find at, at residential homes on a permanent basis. You might see one there for a short time to serve as a, a receptacle or, or a bin for throwing out for a remodel but you don't find them there on a more permanent basis and I, though I can only speak for myself but I think the staff's requirements or recommendations for approval of this were that they be removed in short order – 30 days.
- A. Gottschalk So that was, that was the initial, when they had the first conversation with my husband but when we had our second meeting, I asked Janice I said what, what would it take in order to get them to be able to stay for an indeterminate amount of time and she said well, you would need to get an Indiana certified structural engineer to come out, which I did. We have that foundation put into place if need be which is what was then submitted to you all. I do think, and I'm going throw this at you – is it Kathi, right?
- Postlethwait Yes.
- A. Gottschalk I think I'm one of those people and I'm so sorry for the, #3 I didn't answer it initially because I didn't know how to answer it. I was told, I was turning them in literally right before 4:00 so I was told just turn them in and Janice will contact you. So, I'm not sure which one you have but I did resubmit that with updated information just because I simply wasn't sure the definition of hardship and what

that exactly meant. So, if you don't have the revised one showing #3 completed, please let me know.

Mundy I, I don't know what – I know what we have but I don't know –

A. Gottschalk The Findings of Facts.

Mundy Yeah, I, I –

Lake There's about five lines of text.

Mundy Yeah.

Lake Five or six lines of text.

A. Gottschalk There is? So you have, you have the updated. Okay.

Mundy Okay. It will cost us, as individuals residing in the home – that sound familiar? Okay, we have it then.

Postlethwait I, I don't, I don't believe, myself, that's it's unreasonable for us to expect that there's a finite period of time that you should be, you should be able to deal with the furniture that you're referring to and commit to being, to having those shipping containers gone. I, believe me, I've been through this, I understand exactly what you're talking about with losing parents or grandparents and having to process the, all of the results of a lifelong lived and well lived but I also understand that as a, putting them on foundations only seems to assure that they're going to be there for a long time and I don't think that's what staff is advocating. I think what they're advocating is it's a short term and that there's some finite period of time in which the expectation would be that you can go through the things that are there, make the distributions you're talking about and be able to get the shipping containers removed from the property. Am I, others agree with me or other thoughts?

Mundy I think that is the proposal from staff.

Postlethwait Right.

Mundy And I, too, have had the same thing. We had parents that had to be moved and woodworking equipment, everything imaginable and you go get a rental spot. I, I think it is unreasonable to expect in a residential area to have shipping containers in your backyard for five years. There are other approaches to that and I had the same thing. I was the only one in state. Brother and sister are out of state and I had to do the same thing. So there are other solutions. They may not be as –

Eberg Cost effective.

Mundy As palatable –

Eberg Cost effective.

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- Lake Which, which isn't a hardship.
- Eberg It is when your parents are paying \$22,000 a month from \$7,500 a month in a matter of 90 days.
- Lake It is, I don't disagree with your comment. It is not as it relates to the, to the definition in this document. Somebody's personal hardship financially is not, does not play into this.
- Eberg Okay.
- Mundy Is there any other questions for the petitioners? And I guess I, I think you've at least stated and perhaps clarified for all of us the, the equipment that is there on occasion and, and I, I will say that I drove out today, turned around in your driveway and can't see those containers from Oak Street and I saw no equipment there but I have heard from numerous people that drive by there, in some cases daily, and they have, they have mentioned the fact that there is equipment there and it looks as though it is the preparation for the start of a business there. Now, they're speculating just based on what they see but, again, it is something that is not normally seen at a residential area.
- Lake Well, I mean, look at the upper righthand picture up there with all the –
- Jones What is going on in that picture?
- Lake 4:52: 47 and scaffolding.
- T. Gottschalk Those are logs for firewood to, we heat the house and the barn with firewood in the winter so those are, need split up and – that, she happened, that picture just happened to be there the, the scaffolding was from when we were working in the barn insulating it and I didn't have anywhere to put it inside. I mean that's all, but the wood is all just –
- Jones What's all the pipe?
- T. Gottschalk Huh?
- Jones What's all the pipe?
- Lake It's not pipe. It's corrugated metal or –
- T. Gottschalk No that's, that's metal roofing that was going to be used for the lean to but we ended up using something different so actually it's just waiting to go to the scrap yard when I get some time.
- Lake Question for staff – is this in rural Zionsville? Because you can go all the way over to Cooper Road and that's urban.
- Koenig 4:53:40 inaudible
- Lake On the north side of the road?

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- Koenig On the north side of the road that's . 4:53:57
- Lake Okay because I know south side is Cooper.
- Young So it's zoned rural and it is in the Rural Service District. These are two separate things.
- Lake Correct, yes, and that's what I'm trying to clarify. The other side of the street though is urban. Because the neighborhood that abuts Cooper Road is urban, is my understanding.
- Koenig There's, there's pockets that have been 4:54:09.
- Lake Okay.
- Koenig But not the rural –
- Lake Yeah.
- Koenig Excuse me, the zoning of those though remain rural.
- Lake Correct, yeah, yep.
- Koenig . 4:54:18
- Lake Yep.
- Koenig It's very confusing.
- Lake Trust me, I'm over in Stonegate and everybody that moves in throws all their stuff –
- Koenig Residents 4:24:24, Enclave, Shannon Springs –
- Lake Yeah.
- Koenig Those have been brought in to the urban jurisdiction.
- Lake Yeah.
- Koenig But there's . 4:54:30
- Lake Gotcha, okay.
- Mundy Any other questions? Thank you. Is there anyone here who wishes to speak for or against this petition? Yes sir. If you would state your name and address for the record please.
- Crowell Thank you. My name is Michael Crowell, 652 West Russell Lake Drive and, and I'm located diagonally across the street from the property and been there at that

location since 1998 and what do I see there? To, to support Mr. Gottschalk, the containers are out of sight. Whenever I'm mowing out front along the right-of-way you can't see anything at all 4:55:35 and other things I see is I see new neighbors raising a family, trying to make a living and as friends with the, the grandfather, and helped them split wood and, and use some of that equipment that is currently in storage and so what do I hear over there? I hear mostly road noise from out on Oak Street and we've gotten a little bit of a reprieve from that which will end whenever the, the new roundabout is done down on 850 so, so that's going to be the predominant noise that we hear and no noise from, from across the street. But anyway that's, no, that's basically it. I'm in support of Mr. Gottschalk and, and hope that everything works out very favorable for him.

Mundy Thank you Mr. Crowell. Is there anyone else who would like to speak?

Haines Hi.

Mundy Give us your name and your address please.

Haines Yes. I'm Julie Haines. I live at 7950 Hunt Club Road, Zionsville and I'm just here on behalf of the family because the property that we're looking at is actually the property that my husband grew up on and they, they lived there about 20 years and then and they were a family with five children and then the Snyder family bought it from my mother-in-law and with five children. So, anyway, it's a very special property to us and I have to echo what their neighbor just said. We drive by there several times a week and I've never seen the storage containers. I didn't know they were there until Sherry told me and I've seen the improvements that they've made to the barn and all. I do understand what the family is going through with just having moved the Snyder parents out in late December, mid to late December to Hoosier Village and that has been one trial after another and then they also lost their youngest daughter so the family has been through a lot. I know, and, and I went through this having to clear out my mother's house. I know it's, it's not ideal to have the containers. I guess I would ask for a little bit of patience and grace so that this family can get them cleared out but I do, you know, I understand it's not ideal to have the containers but they, they are all spread out and that's, that's the main reason. So anyway, thank you.

Mundy Thank you Mrs. Haines.

Deinlein Good evening. My name is Paul Deinlein. I live at 641 Karen Drive and, first of all, I think all of us have experienced what happens when parents or grandparents die and you need to get rid of things. There's nothing worse than that but there's some things that aren't being said about this property that we've experienced living on Karen Drive. My family room looks across the street through my neighbor's yard at the storage containers so I was the one who originally called in addition to Marcia Burtner who actually backs up to the property to make a complaint. I spoke with, I think, a gentleman by the name of Cameron that works for the city and he was told that he was told to get off of the property because he had had complaints and he went to take pictures and they told him to get off the property, he was not going to be able to take any pictures. Since then, I have to give them credit, they've put up a 10-foot-high fence that's very nice looking. I

pray that they put it in correctly so that when we get cross winds it doesn't end up in my front yard and in my front window. We won't know about that.

Second of all, you cannot see the containers anymore. They've done a nice job of getting rid of that. So, we don't have that complaint anymore. However, it is containers in a residential area, in a residential lot which is not in, in confirmation of Zionsville's zoning and everything else.

Second of all, they have transformed this property significantly. They're saying that they are re-landscaping and everything else and they very well might be but if you would get a new aerial shot, you would notice that there is no grass back there, there is no farm back there, there is no anything back there. There's aggregate that's been poured down for them to make a substantial size parking lot to park all of his landscaping equipment for the business that's based in Lebanon. We have pictures of that, we can submit those to you. I think that Cameron has taken pictures of those and I think you probably have that in a file someplace but we've called on numerous occasions to find out what's going on. The last phone call that I made, I was told that since you had granted them a variance hearing, that they could do whatever they would like. The things that are in the containers, I don't know but they have spent a substantial amount renovating the barn, insulating the barn as they had just said with woodworking tools and everything else that have now been taken out of the barn and put in the containers. My question would be what is the barn being used for, it's not living, they're living in the house, if not for a commercial business or something else. So there's no reason to have the containers. The things in the containers could go back in the barn.

On Sundays, if you all would like to drive by sometime, probably not now since I'm announcing it, but you would hear their equipment going all the time. You would have refuse being burned in the backyard. So they have dump trucks that have come in that I've got videos of that I'd be happy to supply you with where they move it around, they burn it and everything else. We have a couple of other residents that back up to the property that will let you know that the burning of stuff that has come onto the property, it hasn't been cleared off, it's been brought onto the property and being burned. That is not allowed by Zionsville Code either so, the comment that you had made about you were hearing references to it might be a business, I can't tell you that it's a business, I can tell you it appears to be a business and my request of you would be not only do the containers go but nothing else gets granted for building on this property until the city of Zionsville determines what the property is truly being used for. I would like for you all to be able to go and see what they've done to the property in the back and then you determine, and I will be happy to take whatever you rule with, after you explain to me what it looks like, how it's being used and how it's being transformed. It's not within any code that you all have. I've been investigating it, I've been reading your zoning regulations for rural single housing, two housing for Zionsville and there isn't anything in here that meets any of your codes at all.

So, we've had a theme all tonight about you just do what you want and you ask for forgiveness later. We've given them almost a year to continue to build and build and build. I think it would be a favor to them if you'd tell them to cease building because if you reverse it, they're going to lose even more money by not

being able to continue what they're doing. But I can tell you right now, we had kind of short notice. I know you all sent out some letters to the people that butted up directly against it. I'm on the other side of the property. We didn't get any letter. Had I not been advised by somebody to come, I wouldn't have been here. None of my neighbors were advised for them to come that are getting the smoke, hearing the sounds carrying the equipment moving and everything else.

Second of all, or last of all, I'll finish with this – on all of your things that you have approved or not approved, you read a statement at the end about injury anything else. Is it safe, is it going to hurt anybody or whatever else. By what they've done to that property, they have injured me financially for my property values. Speaking to the realtors that live in our neighborhood, they now know it's there. They specialize in our neighborhood and they have to disclose to anyone who would want to buy my property that there is something over there which decreases my property value. So I have been harmed by what they're doing. So has everybody else in that neighborhood that wants to be able to sell their home or list their home according to the realtors that we've been advised by. So, I respectfully ask that you not only remove the containers but you deny all of their petitions until you all, as a council, and the Town of Zionsville can determine what's truly being done there and bring it into a residential code versus a commercial code. Thank you.

Mundy Thank you. Is there anyone else who would like to speak?

5:05:56 – 5:06:11 conversation off microphone

Mundy We'll be kind. We're just getting tired now.

Hobson My name is Lisa Hobson and I live at 640 Karen Drive with my husband. We've been there 43 years and we but up against catty-corner from their property. It's been a quiet neighborhood until recently. Almost every Friday night there's big machinery. You can hear it backing up – the beep, beep, beep, beep, beep. Our granddaughter was there the other night and she's like mamaw what is that? And I mean, you can hear it every Friday practically. There's been two or three big fires where I was out in my sunroom. I had to come in the smoke was so bad. I've had ash on my car two or three times from whatever they're burning, usually on Sundays. We just, we just, we stayed as late as we did because we wanted to know what was going on. I mean, we should be able to sit outside without all the smoke and the noise so. Thank you.

Mundy Thank you Mrs. Hobson. Anyone else? If you can come to the microphone but we, we record this so we have accurate minutes.

A. Gottschalk So, I'm going to address the three of you as your new neighbor. Our intention was not to not let you know. We were given a list of who we needed to mail the letters out to so we did. We have had an open door policy, we sent it out in the letter. If there's an issue, if you'd like to meet us, anything, come knock on our door. I provided my cell phone number, I provided my husband's cell phone number. We don't know that there's problems unless we're informed that there's problems. Obviously, with this issue, we were informed that yes, there, in fact, is an issue with the shipping containers. When it comes to the beeping and

everything going on in the evenings, my husband works and he works late and so his weekends are Sundays. I call my single mom syndrome starting from like mid-March to about November because he's there maybe one day a week for a weekend and he's home late in the evenings. So, in order to be working on our property, he's there late. We've had a lot of friends helping out and being supportive and coming over and helping and working so, yes, there's a lot of equipment going later on in the evening when everybody is off work. I know that, you know, it's not ideal but it's the time that we have available to us. We have since figured out how to deactivate the beeping noise so that that is no longer going to be an issue. That was taken care of two days ago or a day ago? Two days ago?

When it comes to the things that we're burning and the ash that you guys were having fly into the yard, again, I apologize. That was not our intention of having things fly all around. It's things within the house that we've been burning – papers, things like that. We did have a big wood pile at one point because we took down three or four trees in the backyard that were dead or dying that, yes, would've created that big fire that you guys had seen with things floating around. Again, papers of my grandparents with Social Security Numbers on them, things like that.

With the Town, again, we have already talked with them that we are not, in fact, running a business. They have come out, Cameron came out, I talked to Cameron. We've had people out on the property. Again, I talked with the staff, we've gone over, we've talked and talked and talked and talked to clarify, in fact, we are not running our business out of there. Do we own a landscape business? Yes. Is it registered out of there and running out of there? Absolutely not. Are we using the equipment from the business for our own personal reasons? Sure, we are. We have access to it. I don't know if that answers any of your questions. I don't know if that helps clarify anything. I don't know if that creates more questions but I'm hopeful that that maybe helps a few things.

T. Gottschalk I have a couple things to add. Mr. Paul mentioned about, I, I, in his complaint he mentioned about chainsaws and this and that and we do occasionally, you know, like I said, we cut up firewood which, actually, her grandfather had been doing that for years. If you've been by that property there was always a large woodpile but the, the chainsawing that he was referring to in the complaint was, it was right after, I don't know within a week or two after a big storm we had and it was actually the people to the west of us had a tree company, I think they were out there six days in a row running chainsaws so the, that particular noise we kind of got blamed for. Same thing with the fire stuff. We've burned a lot of brush there and, in fact, Mr. Crowell brought over some of his from across the street and we burned it because we have a big open area and he didn't know what to do with it so, you know, I mean, there's nothing wrong with having a bonfire. It's always under control. I mean, it's not like a ginormous fire. It just, I always try to make sure the wind is blowing to the north because it's an empty field. It changes. It, I, I don't know – I, I always try to light a fire in the morning because the wind is usually calmer in the morning but you can only do what you can do with Mother Nature and it's not illegal to burn brush out in a rural area as far as I know. I, I don't think that that's an issue. You know, I can't control the wind. I can't control all that. So, those are kind of some small complaints I feel like.

I, I think the main thing about this is these shipping containers, the lean to, all that being over the square footage of what we're allowed to. I don't really see, I don't know if you, if there's an issue with the lean to. If anyone has an issue with it being there. I understand the shipping containers but that's why I spent \$9,000 to build a fence to block those from view while they're there. You know what I mean? We're trying to be, we built the berm along the road. That's what all the work in the evenings that they're referring to has been me when I can get dump trucks delivered with, with dirt delivered so I can spread that out. It's done now so that won't be a thing anymore and we're going to landscape those and plant trees and, I mean, I don't know. I mean, I, I do have a ton of equipment and it follows me there because I use it and I have to use it. I'm not going to dig all that by hand, you know? So, I don't know what the definition of that they're using that's saying we're doing something we shouldn't be but.

Deinlein Can I ask a question?

Lake Sure.

Deinlein And, I can walk up, it's just a simple question so –

Lake You need to go to the microphone.

Deinlein I need to go up?

Lake You gotta go to the microphone.

Mundy Yeah.

Lake So it can be, so it can be recorded.

Deinlein I need to ask you all a question. Because I'm sure it'll solve a lot of problems. So, I actually run a business out of my house. I have my own insurance agency and was told that I was allowed to do that but I was limited on, not from my insurance agency, but what I could actually park at my home. Does Zionsville have an Ordinance that says for an actual residence in rural because we are in rural, what can you park there? Because that's part of the problem. I mean, he just stated, and I believe him, I come home and I bring my car because that's what I use. He's in landscaping. He's got a big truck. He comes home and he parks his truck but it's not a truck, it's multiple trucks, it is multiple trailers, everything else. So, if that's permitted in a residential area then I don't have an argument and I'll concede but it's not. It's not just him coming home and parking his truck. It's all of the things that are parked there continuously which is what makes us believe that it's an adjunct to their business in Lebanon.

Lake So, do you guys have an, staff, do you have an answer to that? Because I, when we had this issue up on 421 we had a guy that had a basketball facility indoors and it's not necessarily, it wasn't necessarily the number of cars, it was the number of people utilizing the business at any one point in time because they were coming to him –

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- Deinlein Okay –
- Lake So I don't know that it's specifically a, a vehicle count –
- Deinlein But he can only drive one vehicle –
- Lake Yeah, let me get there in just a second –
- Deinlein Okay.
- Lake Do you guys know what that requirement is? It's under the home-based business provision in the code.
- Mundy Yeah, there, there is a code which does put some limitations on that. I think in that case, Chris, it was cars were parking along the road at that facility because he didn't have enough parking for all the cars.
- Lake Yeah, but we've had a couple other instances where the, where Wayne had described the, the code and it was vehicles but vehicles related to the quantity of people coming there. I, I do agree with your point though and I, I would say –
- Deinlein Well, the other one, Chris, is that he stated this isn't a home-based business. This is a home.
- Lake Yeah, so –
- Deinlein With large vehicles, trailers, everything else parked –
- Lake Yeah –
- Deinlein In a residence which I don't think that's into Zionsville's zoning.
- Lake I, I don't know because it's rural but I, what I will say is my observation, so, I happen to know the developer that bought all that property, Old Town Development –
- Deinlein Uh huh –
- Lake They're a client of ours and right around that same time I started seeing a lot of vehicles and vehicles with trailers and equipment on it more than to your point one person could drive.
- Deinlein Right.
- Lake And I thought they had bought that property and that was their crew that was going to come in and start doing land clearing because I started seeing more and more stuff, limbs, fences go up, lean to's, equipment, and I thought that they were running a, they were basically using that as their base of operation when they were starting to get sitework or contemplating getting sitework done. So, it fully appeared to me like it was an active business with three, multiple times I've

seen three trucks with some of them had trailers and equipment as I would, you know, because I drive along there going out toward Stonegate so.

Dale The owner has testified to us, to staff, that equipment that is stored on the property is for, not for the use for the business but for the use of maintaining and using the property.

Lake But to –

Deinlein But it, but it leaves every day and comes back. So if it's used for the property it ought to be used, it ought to be staying on the property and yet as Julie said, she drives by all the time and she can't see the containers but in the middle of that field she'd see the trucks and she didn't say that she saw the trucks. So they're coming and going back and forth so all I'm asking is would you all please check – something doesn't add up. Just tell me how to do the math so that I can walk away from it and I want to welcome them as neighbors. I certainly, if I can do anything to help them with their family and everything else, I know they're not going to believe me because I'm really stepping on their parade right now but it just doesn't add up for what we've seen from the time that we made our initial complaint. Now that we've got complaints, we've got an attempt for compliance but I don't think that the whole story is there and all I want is the property in compliance because then I know what my property is going to be worth. If it's not in, if it's in compliance now I now know that I can go to the Boone County Registrar's or whatever and say you need to devalue my property, I don't want to pay that much tax.

Lake Yeah. And, and I, I agree. I mean, if you, if you have one individual working for the landscape company that lives there, one truck there is reasonable but when there's consistently multiple trucks there with –

Deinlein Yeah –

Lake Trailers and equipment, you know, even if, even if you're not operating the business out of the house but you're storing all the equipment there, that is –

Deinlein Then you have an adjunct business.

Lake Then you have a business so.

Dale We, we would agree with you –

Lake Yeah –

Dale However, the owner has testified that the equipment is being used for –

Lake I, I get that –

Dale His property.

Lake But I, I agree that there's a disconnect –

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- Dale Yeah.
- Deinlein And, and you –
- Lake As to what, what people are seeing –
- Dale Uh huh –
- Lake Doesn't line up –
- Deinlein Right.
- Lake With –
- Deinlein You have somebody on your own council who has witnessed what I'm describing.
- Lake Yeah.
- Deinlein So, anyway, thank you.
- Lake And, again, knowing the developer was who I thought bought that property, like, it legitimately –
- Dale I also want to mention that there's a mention of a 10-foot-tall fence and open burning.
- Young Yes. We've, we've got clarification on the 10-foot fence.
- Dale Okay, go ahead.
- Koenig It does say in the Rural Property Development Standards, I, of course, I just lost it – I have it right here. The rule does not set a minimum or maximum on regular fences nor is a permit needed to build one. Just make sure to stay out of any easements on your property.
- A. Gottschalk Correct and that's, that's what Cameron told us.
- Young 5:20:41 of the Rural Property Development Standards.
- Koenig Which was brought in from the County so.
- A. Gottschalk And that is what Cameron did confirm for us which is why we went ahead and proceeded as we did. There's already an existing fence on the property line so we brought that wood fence in about 5 feet in from that so –
- T. Gottschalk 15.
- A. Gottschalk Oh, 15, excuse me.
- T. Gottschalk About 15 to 17 feet from the property line, what we think the property line is.

A. Gottschalk We left the tree line there as an additional extra buffer so the clearing that put the fence in but to answer your question on multiple trucks and trailers. The multiple trucks are actually my husband's. Those are not the business. They are not registered to the business. My husband has a, a – I don't even know what to call it – but he has an affinity for trucks, okay? So he has multiple trucks and he rotates them quite regularly. The trailers themselves I know you have not been in our barn. You have not seen in our barn. You've not even seen under our lean to but we have so many off-road vehicles I can't even begin to explain to you. We have a side-by-side, we have a Jeep, we have multiple 4-wheelers, we have multiple dirt bikes, we have all those things. So those trailers that are sitting there on the property, some of those are not even the business trailers. Some of those are our own personal trailers to be able to haul these things. The trailers that are sitting there on the property that have been or that are business trailers that are leaving the property on a daily basis, is because we are not allowed to store things for the business there. We bring them home at night because they're not being used for the business, they're being used for our personal reasons and then the next day they have to leave because they are not allowed to be stored there for business purposes. So they are coming and going on a consistent basis because we are not allowed to store things, which we are not doing, which is why that we, again, had the meeting initially to make sure that we dotted all our I's and crossed all our T's to say we, in fact, are not running a business here. Now I do understand how it might appear that way, again, with everything that's been going on. We do, by the way, have grass in the backyard. We have a big chunk of grass in the backyard.

Postlethwait Mr. President, I'm sorry – I'd like to – could we get along to –

Mundy I think we can, let's get down to the detail of what this Board needs to consider and you can try to pacify your neighbors another way or another time.

A. Gottschalk Sure.

Mundy We're, we're really here to examine what you have requested in the way of a variance and decide to either approve or deny.

Jones And let's get that –

Mundy I think we've heard enough.

Jones Sorted out, yeah, so the lean to and the shed and the front porch so are they needing a variance because the addition of those then get the square footage of all their accessory above the primary house? What's all that? As far as the shipping containers, I'm going to give them 30 days to get them out of there so.

Young As far as, so they have two future asks which are the porch and the shed. They have a, they want to retain the lean to that's on the property but that does not have an ILP for it and they want to retain the two shipping cargo containers.

Jones So, well – for the lean to –

- Young Yep –
- Jones Will they need a variance for that to get that improvement location permit?
- Young They, they will not, they will need the, the, the Development Standards Variance for the additional square footage above and beyond the legal non-conforming which is the barn. The barn was originally, I did the original calculation but I believe the, the barn was a legal non-conforming use that was approved through Boone County and it was, exceeded the primary structure's square footage. The lean to was, was added onto above and beyond that and so was the, the two shipping containers.
- Jones Forget the shipping containers.
- Young Correct. The, what, what staff has outlined in its recommendation which is the 6,189 square feet – that would be the totality of their two future asks and just the lean to. It does not include the shipping containers.
- Koenig And the barn.
- Young Oh, and the barn?
- Mundy Staff's recommended position on this is favorable to the request for the accessory structures to exceed the primary structure to a maximum as Owen said – 6,189 square feet but the shipping containers will be removed within 30 days and that there must be a completed submittal of improvement location permit for the lean to which would bring it into compliance.
- Lake So conditionally approving it allows for the lean to square footage and the shed square footage but then requires the ILP and, if, if you read it as read – requires the ILP for the lean to and removal of the containers.
- Jones So the motion would be –
- Lake It'd be, it'd just be what is in the, well, depending on what you want to do –
- Postlethwait Well there's also the front porch addition too which is –
- Lake Which is not – is that contemplated in here under the –
- Postlethwait I think so.
- Lake So that's contemplated under the, the additional square footage?
- Postlethwait Right.
- Young Correct.
- Lake So that would be allowed with the conditional approval.
- Mundy Right.

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- Jones So that's the 6,189?
- Young Correct.
- Mundy Correct.
- Postlethwait So you're saying a 30-day window for removal of the shipping containers?
- Jones Correct.
- Postlethwait Alternative to –
- Mundy If there's no other input from the Board members, do we have a motion then?
- Jones I'm trying to sort it out, yeah. So it'd be that, okay, so it's – I move that Docket 2023-37-DSV, Development Standards Variance to provide for accessory structures which exceed the permitted accessory square footage for the property at 8802 Oak Street, Zionsville in the Rural Single Family, in the Rural Single and Two-Family Residential Zoning District (R-2) be okay – it's conditionally approved as presented and described based on the Findings in the staff report and the staff recommendations, submitted Findings of Fact that's where we're going back through and adding in the grant – 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 included in the variance will not be affected in a substantially adverse manner; 3) strict application of the terms of the Zoning Ordinance will not result in an unnecessary hardship in the property, that substantial compliance with the submitted site plans and then within 30 days of the approval of this petition, complete submittal of improvement location permit (ILP) for the lean to currently located on the site and good faith effort to proceed through the permitting process to gain approval and issuance and then the second is within 30 days the two shipping containers will be removed from the site.
- Mundy Thank you Mr. Jones. Is there a second?
- Postlethwait Second.
- Mundy Thank you Mrs. Postlethwait. Any other discussion among the Board? Hearing none, all those in favor of approving the recommended motion for conditional approval indicate by saying aye.
- All Aye.
- Mundy Opposed same sign.
[No response]
- The motion is carried for the conditional. Do you, do you need those repeated in any way or written? Okay.
- A. Gottschalk Just to clarify, I need to get the not the petition but the –

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Lake Improvement location permit.

A. Gottschalk Yes, for the lean to and the shed that we would like to bring in, correct?

Lake Yeah.

A. Gottschalk Okay.

Jones And the containers need to go away.

Mundy Removal of the containers.

T. Gottschalk Thirty, thirty days 5:29:36 you'll allow us to get rid of the containers?

Jones Yes.

Lake Yes.

Young Just to clarify, you will need ILP permits definitely with this, tied to this conditional approval is – you need to start the process for the lean to because it's already on the property but for your future asks like the, the shed and the porch, you'll need ILPs for those but you don't need to submit for those within 30 days.

A. Gottschalk But not until we're ready?

Young Correct.

A. Gottschalk Perfect, okay.

Mundy Yeah.

A. Gottschalk Thank you.

Mundy That concludes the agenda.

Lake So, I want to make, I want to make one statement just for the record – earlier Mr. Cohen, Mr. Cohen noted that we have approved 72 variances in the Village and denied none and what he is failing to count are the petitions that were going to be denied and were withdrawn so that they didn't have to be denied because they would not be allowed to resubmit those. So while he's not incorrect, he is also incorrect. So, I just, I think it's a, was an unfair statement and representation of the Board's –

Postlethwait Right.

Lake Efforts.

Jones I'm assuming prior to those 72 showing up that staff or Matt Price or the many architects review clients' requests and tell them – that ain't gonna go.

Lake So, anyway – with that I make a motion to adjourn.

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Postlethwait Second.

Mundy We have a motion and a second. All in favor say aye.

All Aye.

Mundy We are adjourned.