Mr. McMillan called the official meeting of the Hamilton County Board of Zoning Appeals – South District to order at 7:52 p.m.

Members Present:  Adam Zeller, Charlie McMillan, Jr., Becky Harger – alternate and Frank Habig, III – alternate.  Absent:  Chuck Crow, David Musselman and Jim Galloway.  Also Present: Charles Kiphart, Director; Aaron Culp, Legal Counsel; and Linda Burdett, Secretary.

Declaration of Quorum:  Mr. McMillan declared a quorum with two regular members and two alternate members present.

Guests:  See sign-in sheet.

Communications/Reports:  Nothing to present.

Approval of Minutes:  Mr. McMillan asked for approval of the April 24, 2019 minutes.

Mr. Zeller moved to approve the April 24, 2019 minutes.

Mr. McMillan advised Mr. Habig that he had read the minutes and didn’t see any issues with them.

Mr. Habig seconded.

With no further comments from the board… Mr. McMillan called for the vote.  3 yes votes… 0 no votes… 1 abstention.  Mrs. Harger abstained from voting because she was not present at the meeting.

Mr. McMillan identified the minutes of the May 8, 2019 Special meeting.  At this time, I would like to table the minutes for a clarification as per the request of Mrs. Harger.

Old Business:  Nothing to present.

New Business:  Mr. McMillan began with SBZA-R.V.-0003-06-2019 a requirement variance. This is concerning reducing the front yard setback from the required 60 ft. down to 39 ft. in order to allow the construction of a metal 24 ft. by 36 ft. garage/storage building/carport with open sides. Location:  302 Riverwood Drive, Noblesville, Indiana.  Please step to the podium.  I need you to state your name and address.

Vera Peters, of 302 Riverwood Drive, Noblesville, Indiana, stated her name and address for the record.  This is my husband, Harold Peters.  What we would like to do is put the metal carport structure on our property and we cannot do that without a variance because the setback is going to interfere with our building.  The reason we need this is because we have nowhere to put our items.
The neighbors across the street have been very kind to let us use their 24 ft. by 36 ft. garage to store those items in. The house has been sold and we told them we would, as soon as possible, file for a variance and try to get our carport.

Mr. Peters stated that they had come before this board when they put the trailer in and there was an old building there that was 48 ft. by 40 ft. We were asked if we would tear that down and I said “yes” because it was an eyesore and it was dangerous with kids playing around. The lawyer was asked at that time if we would be grandfathered in if we tore the barn down and he said “yes, we would” so I left three posts in the ground which showed where the driveway was and in the spring I cut those posts down. She was told we were no longer grandfathered in because of that.

Mr. McMillan asked Mr. Culp if he had any clarification on that.

Mr. Culp stated that he was uncertain as to what they were talking about.

Mr. McMillan asked how long ago that was.

Mrs. Peters stated that the trailer has been there since 1995 but we just recently moved into the trailer.

Mr. Peters stated that they had a business across the street in caring for people. They took up all of our bedrooms and we wanted the trailer over there at that time so when we had company they had a place to sleep. We said we would retire over there so we moved in there two years ago.

Mr. McMillan stated that he had not had any steel buildings come before them. Have we approved any of these type of structures before. (2) With no sides and just a roof are there any wind issues or anything with picking those up? (3) Does it matter if the sides are opened or closed? (4) If they decided to enclose it would they have to come back before us at a later date?

Mr. Kiphart stated that he didn’t think any of them had been before the board but as long as they’re engineered by a company and we get the complete plans for them there is nothing that prohibits them from being built. (2) They have to be anchored with certain types of anchors. (3) The companies will build them almost anyway you want them either totally open as a carport or if you want to enclosed one or two sides… they can. They just have to give us the construction information for whatever type of building they are going to build. So there could be a difference in the number and spacing of anchors that you have to put in depending on what the final design of the building is going to be. (4) I think there would be less of a need for anchorage if it was enclosed. If they would put in the anchors for a carport I think that would be enough anchors if they were to enclose it in the future.

Mr. Culp added that it would not require a modification of the variance. As far as grandfathering… if something is grandfathered it was there before 1990, it was in continuous use, and it hasn’t been removed. (2) If something has been removed, I don’t see how it could still be grandfathered.

Mrs. Peters stated that it was removed. (2) Ok. That’s fine.
Mr. Zeller asked for clarification that it was open-sided. (2) You mentioned in your information that you had yard tools, ladders, etc. Are your intentions to store these items in the open-sided building?

Mrs. Peters answered, yes, for now. (2) Yes, it is. Unfortunately.

Mr. Peters stated that he told C.J. Spence that he wanted the west side of it and the north end enclosed because of the weather. They said I had to have somebody do that with a seal or something and this guy didn’t do what I said at all. He just drew it open sided.

Mr. Zeller asked for clarification. So you’re proposing to build the open-sided building? You’re not proposing any sides on it?

Mrs. Peters stated that they wanted the west side to be included but because the engineer didn’t draw it we didn’t think we were allowed to ask for that. The engineer drew the plans that you have and it was drawn for an open-side but we were wanting the west side and the north end of it closed.

Mr. Culp stated that if you want to do that there’s not a restriction. From a building permit side, we would need an updated plan. To tonight’s purpose you telling the board that’s your intention is sufficient if that’s how you want to go forward.

Mrs. Peters stated that they wanted to go forward the way it is right now.

Mr. McMillan asked for clarification that that was for open-sided.

Mrs. Peters answered, yes, for now.

Mr. Habig asked if he were to add a condition that it has to be enclosed would you be acceptable to that.

Mr. & Mrs. Peters both answered, yes. I could store stuff in the north end and park my vehicles in the south end. We have property next door that has a carport on it and I enclosed one side of it because the weather comes from the west and it stays dry in there no matter how much snow or what we get. I want to do the same thing with mine.

Mrs. Peters added, our things aren’t going to last if we don’t get them underroof. And our vehicles… we’re getting older, and shoveling snow off of them, and things like that are really a hardship for us.

Mrs. Harger stated that she didn’t see a report from the surveyor’s office. Did we get a comment from them since we’re so close to the floodway?

Mr. McMillan asked Mrs. Harger if she had the comments from the health department with “no issues” and one from the highway department with “no comments or concerns.”
Mrs. Harger stated that she did have those. Do you get water up in your yard?

Mrs. Peters answered, no.

Mr. Peters stated that they have the highest lot in Riverwood.

Mrs. Peters added, at least that is what our Elevation Certificate says.

Mrs. Harger stated that that probably answered her concern.

With no further questions from the board… Mr. McMillan opened the hearing to the public at 8:06 p.m. and invited anyone who wished to speak for or against the petition to please step forward. And with no one stepping forward to address the board… Mr. McMillan closed the public portion of the hearing at 8:07 p.m. Do I have a motion?

Mr. Zeller moved to approve SBZA-R.V.-0003-06-2019 with the condition [that the building have three sides closed rather than be open.]

Mrs. Harger seconded.

Mr. Habig stated that he agreed with setting it in there. I think the ends enclosed and the back side of it. I’m a little worried about the open side.

Mr. Zeller agreed to protect their property along with being more visually appealing to the neighbors.

After some discussion… Mr. Habig added… closing it on the north, west, and south sides.

Mr. Culp advised Mr. Zeller if he was in agreement that he withdraw his first amended motion and you make a new amendment to the motion where you state the specific sides.

Mr. Zeller moved to withdrawn the condition of his motion and amend the condition to enclose the north, south, and west sides of the building.

Mr. Habig seconded.

After minimal comments… Mr. McMillan called for the motion on the amendment. 4 yes votes… 0 no votes.

Mrs. Harger stated that she does see the hardship. I think people need a garage. I think people need storage for ordinary outdoor use items. I think the request is reasonable. No one is here to object. I drove through your neighborhood today and you do have a lovely property. I saw on other properties a lot of carports, a lot of canopies, a lot of tarps, and a lot of vinyl so I don’t think this carport would damage the area in any way.
With no further comments… Mr. McMillan called for the vote on the motion as amended. 4 yes votes… 0 no votes. Congratulations, your variance is approved.

Mr. McMillan continued with SBZA-R.V.-0004-06-2019 a requirement variance. It is concerning reducing the front yard setback from the zoning ordinance required 145 ft. down to 78 ft. in order to tear out an existing enclosed side porch and the rear portion of the existing one story house with a bad foundation in order to rebuild an open side porch and add a rear two-story addition. The existing size of the house is 2,084 sq. ft. The proposed size will be 2,700 sq. ft. Location: 21563 Victory Chapel Road, Noblesville, Indiana. Mr. Abbott, please step forward and tell us about your petition, sir.

Jeremy Abbott, of 21563 Victory Chapel Road, Noblesville, Indiana, stated his name and address for the record. I’m requesting a variance to reduce the front yard setback from 145 ft. down to 78 ft. The house was built in about 1900. I don’t know when the rear portion was added on but the foundation wasn’t put in properly. It’s deteriorating and is in bad shape. The front portion of the house we are just going to update and make a little nicer. The house was already built in that location before the ordinance came into play. It is definitely going to make the house have a lot more curb appeal. I think all the neighbors and surrounding property owners that I talked to were excited about updating the old farmhouse to make it a little nicer. It’s not going to be injurious to anybody. I’m not getting closer to the road. I’m just remodeling the portion that is behind the existing part that is already in that setback. If you approve this we will go through the planning department and get all the appropriate permits need for the inspections and stuff to make sure it gets up to code.

Mr. McMillan stated it didn’t look like he was changing the footprint of the home.

Mr. Abbott answered, exactly.

Mr. Zeller asked Mr. Abbott for clarification that he was just going taller from a one story to a two story.

Mr. Abbott answered, in the back half.

Mr. McMillan asked if the front already had a dormer.

Mr. Abbott stated that the front actually had a two story to it and that he was not changing the exterior.

Mr. Kiphart asked Mr. Abbott if he currently owned the property.

Mr. Abbott answered, yes.

Mr. McMillan asked Mr. Abbott how long he lived there.

Mr. Abbott stated he purchased the property May 31st.
Mr. Habig asked Mr. Abbott if he was going to be living at the house while he was remodeling.

Mr. Abbott stated that probable not living in the house because he was wanting to update the wiring and the plumbing and bring everything he could up to code while he was doing this process. I do have a camper on-site to stay in if necessary. Like an office or space to cool off in the heat of the summer. I have a girlfriend and live in her house when I’m not out there.

Mr. McMillan asked if the house was currently 2 ½ baths. (2) How old is the septic system?

Mr. Abbott stated that it was two full baths right now. (2) I’m not sure on the date of any of that stuff. I know it’s in proper working order.

Mrs. Harger asked how old the septic system was.

Carl Abbott, of 213 Tippecanoe Drive, Riverwood, stated his name and address for the record. The previous owner put a system in without pulling a permit. It was Sam Stoops. I got with the health department. I dug the holes and found everything and told them where it was. I told them if we run into any kind of issues we would deal with it at that point. Mr. Stoops was a backhoe guy and the property belonged to his mom, so he just went ahead and did it. It’s that simple.

Mr. Jeremy Abbott stated that the easiest way to put it was there wasn’t a problem with it right now. We’re hoping it’s not any kind of an issue.

Mr. Carl Abbott stated that the house was an existing three bedroom, two bath now and I think we’re adding a half bath. We’re not going to strain the system any more.

Mrs. Harger asked if either one of them could estimate what the market value of the house and property is the way it is right now, and what you think it would increase to after you’re done with your improvements.

Mr. Carl Abbott stated that his son bought the property for $125,000.00. I think they estimated it would be about $350,000.00 when we’re done.

With no further questions from the board… Mr. McMillan opened the hearing to the public at 8:26 p.m. and invited anyone who wished to speak for or against the petition to please step forward. With no one stepping forward to address the board… Mr. McMillan closed the public portion of the hearing at 8:26 p.m. Do I have a motion?

Mr. Zeller moved to approve SBZA-R.V.-0004-06-2019.

Mr. Habig seconded.

Mr. Habig stated that this was a beautiful improvement.

Mrs. Harger stated that she loved the floor plan. It was a very well done design. Did anybody
look at the thoroughfare plan? I was shocked to see what Victory Chapel is because you’re driving out there and you feel like you’re in the middle of nowhere. What I see is a dotted line which is in the suggested research category where they would join what is Boden Road curves around to Middletown Avenue goes north on Pennington Road then there is a dotted line where the road stops and starts again as Victory Chapel. The experts and researchers have said this would be a good primary arterial and to take the road joining up these two ends on north through Victory Chapel Road. And then there is a suggestion that they would straighten out State Road 37 and would take a pretty straight route northeast and get away from some of the jogs in the area. Victory Chapel Road would go right into what would be new State Road 37. The property we’re looking at is just barely south of that area where Victory Chapel would hit State Road 37.

Mr. Zeller stated that regardless of that fact… they’re not encroaching any closer. They’re making the property look nicer. So, I still don’t see a problem with it.

Mr. Culp stated that we run into a problem if we start limiting what someone can do with their property because we’re worried about how much the county might have to pay for it. That under the constitution would probable be considered us taking. You don’t have to actually take the property. If I start placing restrictions on what you can do with it then I am taking some of your rights. (2) You can get a taking if you take someone’s view or you impede like they can only do certain things with a part of their property. Here we would be saying that because we don’t want to pay you down the road, we’re not going to let you do everything a normal person could do with their property. I think we would have some constitutional concerns if we did that. (3) That is for the county to do planning in terms of where it wants to develop things? Where it wants to use it’s resources but it’s not for us to use that to necessarily restrict people. At this point the thoroughfare is a plan but plans are known to sometimes change, obviously. (4) Yes. Because we are essentially adding an extra criteria above and beyond what the statute says. For a requirement variance there are three considerations.

Mrs. Harger stated that she has never heard anybody say that before. I know I raise this question a lot. (2) But the thoroughfare plan has a purpose and if not for this… for what? (3) Even on a variance? (4) I understand. Those three considerations really aren’t about anything in the future.

Mrs. Harger stated that she liked to hear in plain language that this doesn’t come into play.

Mr. Kiphart stated that there was a new supreme court decision that if somebody makes a decision and it’s considered a taking it goes directly to a federal court. It bypasses completely the state court system. If I’m looking at this correct, this is actually outside the purple study area. It’s not in the study area. (2) The boards have approved things up to the existing right-of-way. And then if the county does decide that it wants to make that improvement then, basically, they have to pay the people for their property.

Mrs. Harger stated that it’s not, but their road threatened by widening as a primary arterial is my point.

Mrs. Harger stated that she wants the property owners to understand then that if this board does
approve their variance it’s no guarantee that the road won’t be widened someday and your beautiful house that you worked so hard on and spent so much money on may still get bought out. You’ll be paid fair market value for it, but it will be heartbreaking because it’s your dream house. So I just want to make sure that our approval here is no guarantee against that happening.

Mrs. Harger offered her personal opinion. If it were me, I think I would set the house back. You have the property to do it and the septic system is already suspect. I would set the house back to the 145 ft. mark and then you know you’re good. Then you have a beautiful country estate that’s back a little longer driveway and you’ve got no problem. (2) It is. (3) I know. The setbacks come from everywhere. (4) I hope you don’t try and drive your first nail in your 120 year old section and wish you had just torn that down, too. I hope it goes well for you. It is a beautiful design but…

Mr. Carl Abbott stated that the problem with that is the barn, the garage, everything is inside that distance. (2) Everything is in there, and the house next to it. If you go to new rules then you end up with 145 ft. can be from 216th Street if you face way or Victory Chapel. So you’re changing the size of the property and it gives you a usable one acre by the time it’s over. (3) It puts the house in a bad place by the time you meet all the setbacks because I thought about that.

Mr. Zeller stated that it seems like a good plan. I don’t have any problems with it.

Mr. McMillan stated that it is going to be very nice.

With no further comments from the board… Mr. McMillan called for the vote. 4 yes votes… 0 no votes. Congratulations. Your variance is approved.

Mr. McMillan continued with SBZA-R.V.-0005-06-2019 a requirement variance concerning:
(1) reducing the required front yard setback on the north side of building 1 along State Road 32 East from zoning ordinance required 145.0 ft. down to 58.0 ft.; (2) reducing the west side yard setback on building 1 from the zoning ordinance required 20.0 ft. down to 10.0 ft.; (3) reducing the required south rear yard setback for building 1 from zoning ordinance required 20 ft. down to 15 ft.; (4) reducing the required north side yard setback on building 2 from the zoning ordinance required 40.0 ft. down to 0.0 ft.; (5) reducing the required south side yard setback for building 2 from the zoning ordinance required 80.0 ft. down to 45.0 ft.; (6) reducing the front yard setback on Durbin Road from the zoning ordinance required 120.0 ft. down to 75.0 ft. for building 2 and the side yard setback from the zoning ordinance required 120.0 ft. down to 115.0 ft. for building 1 on a corner lot; (7) allowing the outside storage of materials and supplies in areas identified as outside storage in the side and rear yards; zoning ordinance does not allow outside storage in any yards unless approved by the plan commission or the board of zoning appeals; (8) allowing one additional wall sign on the west side of building 1 and one additional wall sign on the south side of building 2 when zoning ordinance allows one sign per road frontage; (9) allowing a gravel parking lot without curbs instead of zoning ordinance required curbed and paved parking areas.
Location: 18227, 18233, and 18255 Durbin Road, Noblesville, Indiana. Mr. Jones please step forward and state your name and address.
Steve Kincaid, of 54 North 9th Street, stated his name and address for the record. I’m an attorney here in Noblesville. Mr. Jones is with me. He lives at 948 South 9th Street, Noblesville, Indiana. He is requesting approval by the board for the improvement to the two properties so that his business can continue to thrive and grow better to better serve the waterfront homeowners in Hamilton County. He does own a business known as Indy Docks and Lifts based here in Noblesville. Having the storage facility will allow him to increase the size of his business which will likely add jobs in Hamilton County. This is a low-impact business since there will be no customer visits to the site so the change in traffic pattern in and out of the property will not change from the current situation. In all likelihood it will improve the safety by taking out a house. The current property is in urgent need of repair. This will improve the appearance of the property. I would much rather invest in new buildings on this property rather than repair the existing old structures. The new structures will be energy efficient. They will be constructed with concrete floors and a metal roof with a sleek and attractive design. This will be a marked improvement over the current structures on the property or anything currently in or around the area.

Mr. Jones has prepared a model that may be of some benefit.

Mr. Jones stated that currently there is a house sitting here, a house here, and then a garage back here.

Mrs. Harger asked if the fenced in area was the gravel.

Mr. Jones stated that this would not be fenced in. It would remain a drive. And the fenced in area would be over here all back behind the buildings with appropriate buffers and so forth.

Mr. Habig asked about the drive along State Road 32.

Mr. Jones stated that there is an existing drive that fronts State Road 32 and comes off of 32. There is actually a drive that parallels State Road 32 and comes out to Durbin Road. One of the conditions that Mr. Lucas would likely make is to vacate that drive.

Mrs. Harger asked for clarification that he would be vacating the driveway off the state highway. (2) We had a new bit of information from him that talked about the commercial drive off of Durbin Road.

Mr. Jones stated it was off of the corner.

Mr. McMillan stated that it was dated June 26th. Counselor, did you get a copy of this?

Mr. Kincaid answered, he wasn’t sure.

Mr. Jones stated that they did receive it.

Mr. Habig asked for clarification that there would be two driveways off of Durbin Road and they would both have to be commercial drives. But no drive allowed onto 32?
Mr. McMillan said... according to, yes.

Mrs. Harger asked for clarification that there couldn’t be two drives, can there. There has to be a separation of 200 ft., is what he says here?

Mr. Zeller stated that it looks like there are three drives on that model. Am I seeing that correctly - one off of State Road 32 and two off of Durbin Road? (2) If I’m reading this right the State Road 32 drive won’t be allowed.

Mr. Jones stated that this was a concept because we didn’t know what to ask for and it was kind of dictated by the powers that be.

Mrs. Harger questioned the 200 ft. separation. From each other? (2) He doesn’t have 200 ft. of separation.

Mr. Zeller responded... from each other and then 200 ft. from the intersection of Durbin Road and State Road 32. (2) I don’t know that.

Mr. Jones stated that he thought Mr. Lucas was talking about the drive he omitted along here.

Mr. Kincaid stated that that would be a problem with respect to coming out on Durbin Road too close to State Road 32.

Mr. Habig stated that with your road frontage on Durbin Road, you only have room for one commercial drive.

Mr. Jones stated that that would be fine. Are we talking about vacating this one?

Mr. Zeller and Mr. Habig answered, yes. They wouldn’t allow it.

Mr. Habig stated that they had a letter dated today from David Lucas.

Mr. Zeller read that portion of the letter... “the northern drive will not be allowed due to proximity to State Road 32” is what Mr. Lucas states in his document. (2) Along State Road 32.

Mr. Kincaid stated that they were questioning what he defines as the “northern drive.” We will need to clarify that. (2) Are you talking about the driveway that terminates on Durbin Road that’s parallel to State Road 32?

Mr. Habig answered, correct. Because of it’s proximity to State Road 32 not that it comes out on 32 but it’s close to 32, too close.

Mr. Culp added that he thought that was the one he said he was eliminating. Is that correct?

Using the diorama that was provided by the petitioner, they discussed the different driveways on and proposed for the property.
Mr. Kiphart stated that the one along State Road 32 would be up to the state highway. They’ll determine whether or not that one can stay.

Mr. Habig asked if he would be correct when he says they only have enough room for one drive off of Durbin. If he has multiple, they have to have 200 ft. of separation and he doesn’t have 200 ft.

Mr. Zeller stated that assuming he is talking about the northern drive off of Durbin that’s too close to State Road 32.

Mr. Kiphart stated that Mr. Jones does have the right to go to the county commissioners for a waiver or variance against what the highway department says.

Mr. Culp stated that this board does have the right to condition anything it decides on obtaining that.

Mr. Habig asked if they could table this until this is clarified.

Mr. Culp answered, yes. If you have questions and don’t think there is enough information or we need to let the time play out so they can get more answers, you certainly can table it.

Mr. McMillan stated that he had some more questions while he was here and had counsel tonight. We received a letter on your ordinance requirement variance. Do you have that? (2) And you’ve read those and are ok with those conditions?

Mr. Jones answered, yes. (2) Mr. Kiphart gave me a copy of these. The only one I would have a problem with is the 2021 date. By the time I get my engineered drawings and have all the site civil engineer to do their thing and to complete both buildings would be a time constraint. One building is not a problem but I would not even attempt to agree to two buildings.


Mr. Kiphart stated that 2023 was the first one. It was amended at the request of another board member.

Mr. Jones stated that the 2023 was doable.

Mr. McMillan asked Mr. Jones how long he had owned his lot. The one you solely own.

Mr. Jones answered, just a few months. I think it was deeded in March.

Mr. Kiphart stated that that was part of the railroad right-of-way that went along there. It was an enlarge piece of property that the railroad still owned and for some reason it was automatically turned over to the county commissioners. They didn’t even know they owned it. I don’t know if Mr. Jones approached them; that is what I recommended. It was officially turned over to Mr. Jones the first of this year.
Mr. McMillan asked Mr. Jones how long he had been in a contractual agreement with the Bays.

Mr. Jones answered, about three years.

Mr. Kincaid stated that the contract was signed in 2014 or 2015.

Mr. McMillan asked Mr. Jones if he had started any destruction or raising or anything out there at all. (2) Is there currently anyone in either of those houses? (3) Have you personally gotten any letters from the county stating that there’s violation issues and things going on out there over the years? (4) On your property or the property that you’re in contract with? (5) Did the Bays get the letters since they are the actual property owners? (6) So you knew there were issues there?

Mr. Jones stated that when he first got the property it was overgrown. We cleaned everything up. No one was living there. This is my last bad piece of property. One way or another something is going to happen here whether I’m permitted to do what I want to do. My main goal is to update the properties all together. I first thought about renting the houses out but as time has gone on the houses are just too close to State Road 32. (2) One of the houses there is. (3) Yes. (4) No response. (5) Yes, and they forwarded them to me. (6) Yes.

Mrs. Harger asked if they could “for the record” hear what those violations were. (2) It’s an outside storage issue. Is that what the violation was?

Mr. Jones stated that they were for storage of equipment. But my understanding is that this property is zoned commercial. It has always been a commercial piece of property with outside storage. It is not the best looking property in the county but it’s not the worst, but that’s irrelevant. (2) To some degree. I have bulky equipment that we need to store. Boat docks and most of the stuff is in the back. I have some pictures that were recently taken. We have started over the weekend cleaning up brush and just cleaning stuff up to rehab or tear down.

Mr. Kincaid stated that Mr. Jones’ plan does directly address the outside storage by having it fenced in in the back area and the conditions that have been set forth provide a timetable for him to get that done. Obviously if this is tabled we ask that the conditions be adjusted accordingly.

Mrs. Harger asked if the business could operate legally with the business and the land the way they are now.

Mr. Jones stated that it can. It’s not ideal. There was a trucking company that operated out of this property. The house on the corner acted as an office. The pole building was the mechanic’s shop.

Mr. McMillan asked Mr. Jones if he currently had anything in that building of his own. (2) Had you thought about maybe before you came to us about cleaning the lot up? (3) You would entertain renovating the metal structure that’s on there now? (4) And Plan B may I ask?

Mr. Jones answered, yes. (2) Tearing everything down? No, I’m not. That scares me. Mr. Kiphart and I mapped that out on the aerials. You have a dinky piece of property that you could
build a dinky building on. In all honestly, I’m not going to do any more residential rentals out of the two houses, but I am going to operate my business out of the building. (3) Only as my last resort. That is Plan C. Obviously, this is Plan A. (4) I don’t know. Plan C is to completely re-skin the buildings, new roof, new doors, new concrete floor.

Mr. Kiphart added, plus the beams supporting the building have been sawed in half. (2) I think what they’re asking for is can you get all the outside stuff that is sitting there out of there within the next 30 days. (3) How long have I heard that? (4) Please be aware there is a new junk ordinance.

Mr. Jones stated that that was another caveat. (2) We have already started that. (3) I still work and this is my busiest time of year. The things that are classified as junk we re-hab and sell. (4) I understand that.

Mr. McMillan stated that they have gotten a lot of information and stuff new to us, we will move on and get as much of this out tonight since you’re here with counsel. We received a letter from a David Zeller concerning… did you get that as well?

Mr. Jones and Mr. Kincaid both answered, yes.

Mr. Culp stated that for clarities sake… we do have a board member, Adam Zeller. Mr. Zeller, what is your relationship to David? (2) And you haven’t received any information about this from him?

Mr. Adam Zeller stated that David was a cousin, but they had had no communication on this variance. Not much communication at all. He is just coincidentally a cousin of mine. I just wanted to divulge that. (2) No. I just received it here this evening.

Mr. McMillan stated that they had some pictures. It looks like a lot of that stuff out in front of the building are sitting in the line of view as you look to the west at that intersection. Had anybody approached you and said that stuff is in the way? (2) And that’s to the west? (3) I know you have your model showing that… it’s hard to visualize that until it’s there.

Mr. Jones stated that they have not. I talked to Mrs. Burkhart last week and she said there were some concerns about the line-of-sight looking back east. So I went back to see if that was a valid claim. The only way that the buildings would obstruct anything was if you were roughly 30 ft. south of the intersection. But if you were out where the “stop bar” was supposed to be you could see about 500 ft. (2) Correct. It’s a bad curve. Removing the house on the corner would give a sense of security, I think.

Mr. Habig stated that there is way too much information and this is not tying together for me. Because I’m sitting here as an alternate, I’m tempted to just table this until these loose ends are tied up because I’m certainly not going to vote on this project until I know exactly where the driveway is, what driveways are going to be shut out. I don’t know the history of this property. I’m looking at a lot of rubble here. I’d almost remove myself and you would be faced with having
all three of these vote and you would have to get them all to vote the same way because there isn’t enough information for me to make any kind of a judgment here.

Mrs. Harger stated that she agreed. I think we’re missing a lot of pieces of the puzzle.

Mr. Jones stated that when the petition was being read there are a lot of numbers. However, just by looking at the diagram all of the setbacks would be greater than they are now.

Mr. Habig stated that he understood all that. I understand where the buildings are already there but I’m worried about this drive. I’m worried about that intersection. I’m worried about a new fire department going in across the street. And I’m really worried about the traffic flow through there. That is my main concern. I’m not concerned about where you want to put your buildings or what you’re going to do with them. I’m really worried about the traffic pattern with your driveway and I’m not going to vote until I know exactly what driveways are going to get shut out and where this new driveway is going to be. With that… I would make a motion to table this.

Mrs. Harger asked to make a longer list of things to tie up and then we’ll table it. (2) My concern is with the long letter we received from the conservation district. There’s a strong recommendation that you put a perimeter drain to drain the whole property because of poor soil and I’m not sure you’ve got the square footage to get in such a drain. And I don’t see a septic system addressed anywhere on the plans.

Mr. Jones agreed. (2) There are septic systems in place now that the new building will not be attached to.

Mr. Habig stated that as a commercial enterprise you would have to be approved for a commercial septic. You can’t use residential on a commercial property. (2) I’m not sure that’s possible, is it Mr. Kiphart?

Mr. Jones stated that they wouldn’t have any septic system at all.

(2) Mr. Kiphart stated that as long as he doesn’t have any offices and it’s just a storage building he wouldn’t have to. No restrooms or sinks or anything like that.

Mrs. Harger asked if there was no water usage in your production.

Mr. Jones answered, no.

Mr. Habig stated that the remaining septic systems would have to come out.

Mr. Kiphart stated that if the houses went… yes. They would have to come out.

Mrs. Harger asked if the well would have to be sealed.

Mr. Kiphart answered, plugged.
Mr. Jones stated that per the conversation with Mr. Lucas it wasn’t clear as to where he was talking about.

Mr. McMillan stated that he didn’t even get to the part with soil and water. All we know is that they are working with you and their suggestions.

Mrs. Harger stated that she was getting the feeling from the letters that they think the board may go ahead and approve the variance and they will work it out later. But that doesn’t make a whole lot of sense to me. I think a revised proposal would have to address the driveways, their perimeter drain that has been recommended by the conservation district, details on removing the septic.

Mr. Kiphart stated that about the drain they do have the surveyor’s report. The only thing that we require is that they make contact and they discuss what may be required. He will have to spend several thousand dollars up front to do a full-fledge drainage plan before the surveyor would sign off on it and that’s why they put it that way. He is going to have to comply with the county standards for drainage. When he does do that it is going to cost him a lot of money. The surveyor doesn’t want him spending the money up front and you turn down the variances and him not be able to do his project.

Mr. Culp added… if you add a condition it can impact the solution that they come up with.

Mr. Jones stated that when he spoke with Kent Ward and Andy Conover of the surveyor’s office they were told about what I wanted to do and they said as long as hard surfaces – gravel and well as buildings – as long as that square foot number was equal to or less than… a civil site plan would not be necessary.

Mr. Culp stated that it would be a benefit for a clearer site plan. For me, even looking at the three D model, it’s very hard for me to conceptualize exactly what you’re removing and what it’s going to look like at the end.

Mr. Jones asked which part was hard to visualize.

Mr. Culp answered… what’s going to be located exactly where on that property? What are we looking at? North, south, east, and west. Where’s the road and where are the buildings going to be? (2) The last project that we had was done with a ruler on white paper. (3) Right. And it was very clear. We could tell what was located where.

Mr. Jones stated that next time he comes back he wants to have every answer for every question that they have. I don’t mind spending money to have a professional site plan. (2) Instead of graph paper? (3) So the small boxes are confusing?

Mr. McMillan offered the GIS photos. It would give us a better line of site to address the safety concerns with the intersection. Our goal and our mission here is public safety, and concern is there.
Mr. Zeller asked if the office hadn’t asked that this property be cleaned up for a long time. Am I correct?

Mr. Kiphart stated that we were sending letters to the Bays before Mr. Jones had a contract with them.

Mr. McMillan asked if he was aware that there were issues before he entered into the contract.

Mr. Jones answered, no.

Mrs. Harger asked for clarification as to how long he had been operating there.

Mr. Jones answered, three to four years.

Mr. Kincaid answered, four to five years. A couple pieces of information have come in. One from Luis LuLaracunte a professional engineer for the state highway department he says…

“There are no proposals at the intersection. Traffic volumes are currently low. There are no documented safety concerns.” The second safety net is the surveyor’s office. With any soil, water, or drainage issues either there is a drainage plan that is going to be acceptable to the surveyor or there won’t be.

Mrs. Harger stated that on the conditions page… you have already agreed that the variance would ride with your ownership Mr. Jones.

Mr. Kiphart stated that the variance is being issued to him. The variance would hold for any future owner. I think there is something that if you put a lot of money into a piece of property then they have a right to sell that the way it is as long as it complies with the variance. The other point on your plan is some deadlines. I don’t want to constantly be harassing you about… the one building is a dilapidated building. It should have been down years ago. (2) Are you going to get rid of it? The house. (3) When? (4) I’m talking about the houses. (5) Why would you be wanting to pay the taxes on one that is not being rented?

Mr. Jones stated that in all due respect… the building is plum and square. It’s not falling down, however, it does need some work. (2) If I can do what I want… yes. (3) If you guys rule against me… it will look like a brand new building. (4) I’m not tearing the houses down. Why would that benefit me? They are square and they’re plum. (5) I don’t know what is going to happen 10 years from now. Somebody may come along and offer me two or three million dollars for the property.

Mr. Kiphart asked… if the variances are approved and it’s a buildable site when will the two houses go down? (2) When will construction start?

Mr. Jones answered, we will have to tear them down to start construction.

(2) Mr. Kincaid stated that the conditions are to finish by a certain time for the variance and how he manages that would be up to him to make sure those deadlines are met.
Mr. Kiphart stated that he wasn’t going to let things go for two years when they’re in violation of another county ordinance. (2) I asked that it be narrowed just a little bit. I don’t want to have to write letter, after letter, after letter.

Mr. Kincaid stated that if he has a deadline then that is the condition he has to meet. (2) There is an ordinance to deal with outside junk.

Mr. Culp stated that Mr. Kiphart is giving Mr. Jones the opportunity to say he needs “x months” to tear it down before the board imposes one without his input.

Mr. Kincaid stated that the honest answer is… he just doesn’t know.

Mr. McMillan asked Mr. Jones how long he was into the contract. (2) In theory since you are under contract… they are the ones in violation right now. Is that right, Mr. Kiphart?

Mr. Jones stated that he was about half way.

(2) Mr. Culp answered, that is correct. The titled owner is the one who is in violation and that is why we send letters to them. Even though he is occupying the property he is not the titled owner. I would guess… if we would have to take action against the titled owners their contract would allow them to bring him into that. They have given him full authority. There is a power of attorney to make changes, make improvements and so he can make all these agreements on their behalf just as though they were here in front of us tonight.

Mr. Zeller asked what exactly was keeping Mr. Jones from tearing down the houses.

Mr. Kincaid stated that Mr. Jones is trying to present an entire plan of what he wants to do. As a result of this proceeding or ruling from the board he will decide how wants to approach the properties. He has considered all of his options based on what he’s allowed to do.

Mr. Culp stated that what Mr. Jones said earlier is if the board says no to this… he may then re-hab and somehow use those.

Mr. Jones stated that his plan is not to rent those houses. I am going to use the 24 by 30 garage.

Mr. Kincaid stated that there is an open question whether he would want to maintain the houses just as they are for some future investment for somebody.

Mr. Jones stated that he has no desire to rent those houses.

Mr. Zeller stated that they were pretty dilapidated looking structures. (2) Very poor looking structures. (3) But you said you are not going to re-hab the houses. (4) So you’re just going to leave them like they are? Visually…

Mr. Jones asked Mr. Zeller to define that. (2) They’re square and they’re plum. They’re not
settled. They’re not leaking. Are they waterfront properties? No, they’re not. But they are definitely re-habable. (3) I will keep them structurally sound but I’m not going to dump a bunch of money into them. (4) No. Not necessarily. People will associate those houses with my business.

Mr. Culp stated that is only if the board says no.

Mr. Zeller stated that if the board said yes there is no question that those houses would have to come down.

Mrs. Harger asked Mr. Jones if since he was purchasing the property on land contract and the houses have some value then do you have the authority to tear the houses down.

Mr. Culp stated that he could build, he could demolish, he can do whatever he wants.

Mrs. Harger asked about the trees. There are a couple of beautiful trees on the property. Are they in your way? (2) Are they in your way?

Mr. Jones stated that he guessed that that was in the eyes of the beholder. They are way too big. (2) They are trash trees. They’re silver queen maples and they are just too big. Mr. Kiphart and I have talked about a landscape plan.

Mr. Kiphart stated that he will have to come up with a landscape plan.

Mr. McMillan asked Mr. Jones if he was not going to have an office there. (2) But currently one of those houses is your office? (3) But you’re not?

Mr. Jones stated that his office was in his truck. (2) They were used as an office back… (3) No.

Mr. Kiphart stated that the trucking company was years ago. If you quit using a legal non-conforming use… there wasn’t a permit given for an office, it doesn’t have a commercial septic system… for 18 months or two years then it is no longer a valid thing. You would have to go through the entire process to put an office in that house.

Mr. Habig made a motion to table this.

Mr. Zeller seconded.

Mr. Kiphart stated that he would talk to the highway department. And I’ll talk to the state. (2) I don’t think they realize that he has a continuous driveway or how far on State Road 32. When you change the whole use and you get rid of the primary structures you start from the beginning on codes and ordinances. That’s up to the state, but I want them to know what’s going on. I don’t want them to find out when he starts building that they’re going to come in and close that driveway off. If they’re going to do that he needs to know that now.
Mrs. Harger stated that there has been accidents there. It would be tempting to just vote this down because it is so complicated but the mixed feeling for what I have is… Mr. Jones, I feel like you’re our best hope that this property might improve. I want to work with you.

Mr. Zeller stated that he agreed. It would be nice to have this cleaned up because the property is a mess.

Mr. McMillan stated that maybe by the next meeting some of that stuff that is out there now and you say that you’re cleaning up and if we saw some new pictures or some improvement by the next meeting…

Mr. Jones stated that they were shut down next week so his guys would be working there next week. I have been talking to Mr. Kiphart about this plan for probably a year.

Mr. McMillan stated that he knew that their department is frustrated with what’s going on trying to get it cleaned up. They’re trying to work with you and we’re trying to work with you. You would not be happy with our vote tonight with what’s going on.

Mrs. Harger asked if this was the way he built his dock. (2) You have this wooden scaffolding in some sense that the product is being assembled on top of? (3) So why is it up in the air in this picture? (4) So this is a temporary, one-of-a-kind thing that you would do to have something this high in the air?

Mr. Jones stated that that was a lift that would be refurbished. (3) Because there is no water around there. We pulled everything out so we could clean thoroughly and cut brush. (4) It would be in the fenced in storage area.

(2) Mr. McMillan stated that that was normally sitting in the water.

(4) Mr. Habig stated that it comes out of the water for the winter.

Mrs. Harger asked Mr. Jones if this was what his worksite was going to look like? Is this how you work and assemble things?

Mr. Kiphart stated that if it was going to be constructed it would be inside the new building.

Mr. Jones stated it would be done in the fenced in slatted storage area.

Mrs. Harger asked Mr. Jones for clarification that they would not be seeing things sticking up over the fence that looks like this for some reason?

Mr. Jones answered, no.

Mr. Kiphart stated that to him the whole purpose of building those buildings was to put all that stuff inside of it so it doesn’t rot.
Mrs. Harger asked Mr. Jones if the ceilings were high enough for him to do everything he needed to do in there.

Mr. Zeller stated that this would be above the fences, absolutely. How tall…

Mr. Jones stated that that lift had 7 foot legs on it.

Mrs. Harger stated that these legs are what you’re building. This is all metal covered with mud. Are you going to build this all indoors? Or are you going to assemble things like this outdoors? (2) So this will be sticking up above the fence that is supposed to be hiding your storage area? (3) Your counting on the peaks of your roof to make this…

Mr. Jones stated it would be in the storage area out back. (2) No. (3) That was behind the building before.

Mr. Zeller stated that the building may cover it but the fence won’t.

Mr. Jones stated that that had extension legs on it and are not normally in it. With the exception of the canopy or dome part… the top of the lift is about 6 ft.

Mr. Culp reminded the board that they currently had a motion and a second to table.

After minimal comments… Mr. McMillan called for the vote to table.

Mr. Culp stated that the meeting would be tabled until July 24th at 8:00 p.m. and because we are announcing this in a public meeting that has been noticed properly there is not a need for you to re-advertise.

3 yes votes… 1 no vote. Mrs. Harger voted no. I think we should’ve just voted on it.

Mr. McMillan advised Mr. Jones that this would given him a chance to provide better drawings, a better plan, and this would give you a chance to address some of the letters that we just got today in all fairness for all parties.

Director’s Report: Mr. Kiphart advised the board that Mr. Crow has resigned. He will be moving out of our jurisdiction.

Legal Counsel Report: No report.

The next BZA meeting will be Wednesday, July 24, 2019.

With no further business to come before the board… Mr. McMillan asked for a motion to adjourn.

Mr. Zeller moved to adjourn.

Mr. Habig seconded.
With no further comments… Mr. McMillan called for the vote. 4 yes votes… 0 no votes. Meeting adjourned at 9:41 p.m.

___________________________________
Charlie McMillan, Jr., Chairman
Date: ________________

____________________________________
Linda Burdett, Secretary
Date: ________________