**MEETING RESULTS- ZIONSVILLE BOARD OF ZONING APPEALS APRIL 9, 2019**

The meeting of the Zionsville Board of Zoning Appeals occurred Tuesday, April 9, 2019 at 6:30 p.m. in the Zionsville Town Hall Council Chamber, 1100 West Oak Street, Zionsville, Indiana.

The following items are scheduled for consideration:

I. **Continued Business**

<table>
<thead>
<tr>
<th>Docket Number</th>
<th>Name</th>
<th>Address of Project</th>
<th>Item to be considered</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-46-DSV</td>
<td>R. Pabst</td>
<td>8090 E 550 South</td>
<td>Continued from January 8, 2019 to February 12, 2019 Meeting, Continued by Petitioner from February 12 to the March 12, 2019 Meeting, Continued from March 12 to the April 9, 2019 Meeting, at the request of the Board, Continued from April 9, 2019 Meeting to the May 14, 2019 Meeting, at the request of the petitioner. Petition for Development Standards Variance in order to permit the establishment of a 1.83 acre lot. (Minimum lot size is 2 acres) in the Low-Density Single-Family Residential Zoning District (R1).</td>
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II. **New Business**

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<thead>
<tr>
<th>Docket Number</th>
<th>Name</th>
<th>Address of Project</th>
<th>Item to be considered</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019-08-DSV</td>
<td>R. Shaffer</td>
<td>825 W Pine Street</td>
<td>Approved as presented &amp; filed w/exhibits – 4 in Favor, 0 Opposed Petition for Development Standards variance in order to provide for the construction of a garage which: 1) Deviates from the required side &amp; aggregate yard setbacks in the Urban Residential Village Zoning District (R-V).</td>
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<tr>
<td>2019-09-DSV</td>
<td>Zionsville OMS Partners</td>
<td>12036 N Michigan Road</td>
<td>Approved as presented &amp; filed w/exhibits – 4 in Favor, 0 Opposed Petition for Development Standards Variance to allow for the construction of a new commercial business to: 1) Increase the maximum office square footage in the (B-1) Neighborhood Business &amp; Michigan Road Overlay Zoning District.</td>
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<tr>
<td>2019-10-SE</td>
<td>W. Myers</td>
<td>3250 S 200 East</td>
<td>Approved with Right to Farm Commitment as presented &amp; filed w/exhibits &amp; per staff report – 4 in Favor, 0 Opposed Petition for Special Exception to allow for new residential building(s) in an Agricultural Zoning District (AG).</td>
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| 2019-11-DSV | GetGo Signage | 7011 Whitestown Parkway | Approved as Amended (only canopy sign approved), w/exhibits & per staff report – 4 in Favor, 0 Opposed
Petition for Development Standards Variance to allow for signage of an existing commercial business which:
1) Utilizes the canopy to convey commercial message(s)
2) Exceeds the allowed square footage maximums in the Rural General Business Zoning District (GB).

Respectfully Submitted:
Wayne DeLong AICP, CPM
Town of Zionsville
Director of Planning and Economic Development
In Attendance: John Wolff, Joe Kremp, Larry Jones, Julia Evinger. Absent is Steve Mundy.

Staff attending: Wayne DeLong, Darren Chadd, attorney.

A quorum is present.

Wolff Good evening, and welcome to the April 9, 2019 Board of Zoning Appeals meeting. The first item on our agenda is the Pledge of Allegiance.

All Pledge.

Wolff The next item on our agenda is attendance.

DeLong Mr. Kremp?

Kremp Here.

DeLong Mr. Jones?

Jones I’m here in my brand new chair.

DeLong Mr. Wolff?

Wolff Present

DeLong Ms. Evinger?

Evinger Present.

DeLong Mr. Mundy?

Wolff Thank you, Wayne. The next item on our agenda is the approval of, the review and approval of the March 12, 2019 meeting minutes. You should have gotten those in your packet. Any comments or discussion? Seeing none, I would entertain a motion.

Evinger I’ll make a motion to accept the minutes as presented.

Wolff Thank you. Is there a second?

Kremp Second.

Wolff All those in favor, please say aye.

All Aye.

Wolff Those opposed?

[No response.]
Wolff Motion carries. The next item on our agenda is continuance requests. Are there any petitioners here tonight looking to continue their petition to the next meeting? Seeing none, the next item on our agenda is continued business, which brings us to Docket # 2018-46-DSV. Will the petitioner please come forward and state your name and address for the record?

Jacob Good evening. My name is Jeff Jacob. I am here on behalf of Reesa Pabst. I am an attorney with Hackman Hulet with offices at 1620 West Oak Street here in Zionsville. Mrs. Pabst is the owner of a 3.83-acre parcel located on 550 South in Zionsville. She is seeking a development standards variance in order to establish a 1.83-acre lot in the total 3.83 acres in a R1 district. You guys have heard this a couple times before, so I am not going to rehash many of the details, and since my involvement and reviewing what’s occurred, it appeared clear to me that we needed some data to support drainage on the split lot, the 2-acre lot. So, you have been supplied a storm water drainage evaluation report, and those findings were prepared by Ladd Engineering. Mr. Ladd was on site a couple of times and met with the property owner, and prepared some findings and recommendations should this site develop. It’s clearly being split for the development of a 1-acre, or excuse me, a 1-home residential lot. His recommendations were pretty consistent with what you would anticipate, but that all of the water be moved to the south out to County Road 550, and that would be by the installation of a 6-inch perimeter drain, and connecting up the septic if ever needed. So, we have memorialized those by way of written commitments that will be recorded against the property. And, we have also basically made a blanket statement, and if you’re not too familiar with this property, it is flat and then it crests into a peak on the north end of it. That’s clearly where the home site would be, and we have committed further that any further drainage that we create on site through impervious construction would be taken to the south. So, what we basically said is we are not going to cause any issues with the construction of a residential home. Plus, we’re taking down, and we have committed to this, the corn bin and shed will be taken down prior to the issuance of a certificate of occupancy. So, we have made those commitments in conjunction with the comments that have been made. We believe that we have provided you sufficient justification to grant the development standard variance. My client and I are happy to answer any questions. Thank you.

Wolff Thank you, Mr. Jacob. Any questions for the petitioner?

Jones So, was any conversation held between you and the adjoining property owners to the north and the east?

Jacob Relative to drainage or otherwise, no sir, since the last meeting.

Jones Okay. Well, that was kind of the core issue is that there is a drainage issue on the east side of the property and in the northeast corner.

Jacob Well, we provided the drainage report to the property owners, but did not have any conversation or feedback from them. We believe based upon the report that we are taking care of the drainage on our site.

Jones No. You’ve agreed to run the downspouts to the south edge of the property.
Jacob Well, the report, what we have, we’re not going to fix drainage that we don’t necessarily believe is a problem in the area. If the report, if you look, it intimates that there has been off-site drainage corrections made not on our property that we weren’t included in, that we don’t necessarily believe will enhance the drainage in the area. So, we have basically taken what we believe the charge was, and I understand it was to work with the neighbors, but we don’t have the ability to install some system. So, what we basically looked at is we’re going to take impervious area and take it off the site and to the extent we put in pervious area on the site. We’ll install drainage out to 500, or 550, and keep any water, or further water, from going onto their site, to and including to the northeast, which we have committed to.

Evinger There is a perimeter drain that runs around what would be the proposed home, as well?

Jones No, they said --

Evinger --There is a perimeter tile that runs around the house.

Jones For the downspout drainage?

Jacob Mr. Jones. Also, my client did, in providing the report, indicate to me that she provided the report to a few of the neighbors, and emailed them, and they did indicate that they did not wish to meet to discuss it. And, that included to meet with Mr. Ladd.

Jones Well, I guess my concern is the remonstrance we had was regarding that there is a drainage issue that starts sort of in the northeast corner of the property and runs along the east edge of it, and that any further development of the site most likely is going to add to that issue and not really resolve it, so the charge was to come back with some sort of response that the remonstrators were satisfied that by us granting a variance it wouldn’t increase the issues that they have stated already exist.

Jacob Well, and I believe we very squarely have done that.

Jones No, you said you’d put a drain tile in to take the water off the downspouts. That doesn’t really include any of the other site improvements or changes that might be made.

Wolff Mr. Jones, I think, and Mr. Paddock is here, so I’m sure we will hear from him in a moment, but I thought I heard him say that he doesn’t have a drainage issue currently because he has resolved the issue. And, so if he has resolved the issue, there isn’t one currently, if they add a house, a structure to the house, and they take the water from that structure and take care of it, then there should still continue not to be an issue. That may be the worst thing to say. But, I think that’s what I heard. I’m sure we’ll have an opportunity to hear that from the remonstrator.

Jones Okay. That’s what I want to confirm.
In reviewing the transcript from the meeting, that’s what I read, is that there was not a drainage issue. My client doesn’t believe that there is, and what we basically said is we’re going to take impervious area away, and we’re going to put in a perimeter drain to support a home. Our septic will be drained. But, more importantly, it’s something we’re going to take our downspouts and that would most likely occur anyway. It’s where we’re going to route it. We’re going to route it to the south, which is more costly, but we’re also indicating we’re not going to put more water to the north or northeast. So, that’s what I saw the charge was, is to provide a written assurance that, to your point, we’re not going to make any perceived or actual drainage problem, which we don’t think is there, in a site with fall, worse. We believe through our commitments, which are supported by the engineering report, or the storm water drainage evaluation, do just that.

Any other questions for the petitioner right now?

And, so your commitments run with the land. It can be enforced not only by the Town, but by the adjoining property owners?

Correct.

Okay.

They’re your pretty standard language that you guys have used before.

Would you be open to including some sort of clarifying language, this is my only request, that anything that’s stated in the commitments would be in addition to, and not in lieu of, any requirements the Town of Zionsville would impose in connection with the issuance of permits for the development of the property. I just want to make sure that it’s clear that we’re not making a statement here that what’s being done through these commitments is somehow adequate to address drainage.

I’m not sure that I object to that, but I’m not quite sure I follow what your suggestion is.

Meaning, if we would approve the petition tonight, the commitments that are being made with respect to what will occur in connection with the construction of a residential development, involves installation of certain drainage-related improvements, my request would be that there be some sort of a clarifying statement in your commitments that get placed on the record that these commitments are in addition to, and not in lieu of, any commitments that the Town of Zionsville may impose in connection with the issuance of permits.

Yes. That is correct that this would be our voluntary commitments are above and beyond what would be consistent with the issuance of a building permit or certificate of occupancy.

And, you’re willing to include that in the commitments, just a clarifying statement?
Jacob: Yes.

Kremp: I know we’re agreeing that that’s the case, but I’d like it to be on the record.

Jacob: Yes.

Kremp: Thank you.

Jacob: And, one clarifying point, you made a comment that this was, that there would be, you know, a residential development. I want to make sure that everybody is clear that that’s not our intention. This is a one-lot, one-home site. This would not be, we would not split this any further. I just want to make sure everybody, when they hear residential - -

Kremp: When I said residential development I meant the construction of a home.

Jacob: I knew what you meant, I just want to make sure everybody else did. Thank you.

Wolff: Thank you. Are there any remonstrators here tonight? Please come forward and state your name and address. We do know who you are, but it’s for the record.

Paddock: Jim Paddock, 8164 East 550 South. Okay, first of all we need to get a couple stuff clear because we were not notified of this new plan. We were notified to possibly meet with them, but we had an incident last meeting in the parking lot where we were threatened, you guys were threatened. So, I did not want to meet with them until I knew how to resolve this. And, I come up here to try to resolve this. I didn’t know I was going to have to get a lawyer or an attorney or whatever to try to fight with this. So, we were not notified of the new plans for drainage. I’m not saying it hasn’t been done. We knew that they were going to have a meeting, but we didn’t know that there was plans being done, or was done. So, I don’t know, that was false. So, if we can sit up here and say false things all day, we can do that, but that’s not what happened. So, go ahead. I’m all ears.

Wolff: No, so you haven’t seen the plans?

Paddock: Absolutely not. Didn’t even know there was a plan.

Wolff: Should we go into more detail over those?

Paddock: I think I need to see it, and it looks like I probably need to get an attorney to look at it to make sure we’re all up front. I didn’t know this was going to be a big legal battle. So, if you’re wanting me to look at a set of plans, I need to have somebody look at them and see if they’re right.

Wolff: Well, so let’s - -

Paddock: We already have property lines that have been marked out that are wrong. I feel are wrong. So, I’m going to have to have a surveyor come out and check those too, because we’ve got a corner post on that property that’s two or three feet out of whack. Compared to the posts that were in the ground that they used half of them, and then they changed one. So, I’m going to have to pay for, you know, a
surveyor to come out and check that. You know, that’s not your problem. But, then you’re going to show me some engineering that somebody wants to put a pipe in the ground. You know, gutters only hold so much water. You’re still going to have rain-off on that roof that’s going to go to my property even more than what it already is. Because that land absorbs so much moisture, and drains it out on its own. We know that. You put a house there, buildings, garage, whatever else they do on these two acres, gutters and a pipe in the ground doesn’t cure all that. We know that. I’m fighting a problem behind me because of that problem. My sump runs non-stop now because they’re building houses, and you guys had it all worked out on drainage. It didn’t happen. I fixed my own drain problems.

Wolff  I’m sorry. What was that last comment? We had it all worked out on drainage?

Paddock  Well, you know, everything was approved out back about drainage. Went through the Town. You know, perimeter drains, whatever you guys approved.

Wolff  I’m not exactly sure what you’re referring to.

Paddock  Yes. The houses being built behind me. So, therefore, I’m fighting that battle now. You know, I didn’t have a problem until they started building houses.

Wolff  So, Mr. Paddock - -

Paddock  -- Yes, go ahead.

Wolff  I think what we had, and you correct me where I go wrong. I know you will. Is I believe we have in the minutes that you said you currently don’t have a drainage problem because you’ve mitigated it. You’ve taken care of it.

Paddock  Yes. That’s the stuff behind me. Yes.

Wolff  Okay. Perfect.

Paddock  That has nothing to do with the property beside me. We have rain, we have moisture that drains off that property. You can’t stop all that. I’m not here to argue that, you know what I mean. There is issues there. I’m saying when you go building on that property, it’s going to double that problem. Does that make sense?

Wolff  So, what they have done, what they have stated, and I understand that you haven’t seen it. What they have stated is that, and you’re right. If you take the rain off of a roof, it should be absorbed in that area, but that area is now covered by a house.

Paddock  Correct.

Wolff  So, they’re taking that rain, and moving it to the south of the property away from you.

Paddock  That is not correct. I haven’t looked at your plans, but what I’m understanding, there is a pipe around the house that the gutters run in that’s going to cure the
problem. That pipe is not going to cure the problem. You have runoff of that roof that don’t go in the gutter. Especially if they build another building down the road. Somebody wants to build a big shop. No gutters. Well, I’m going to have a problem.

Wolff We don’t have that in front of us. So, what they’re proposing - -

Paddock --That’s what, go ahead.

Wolff No continue.

Paddock No. Well, that’s what I’m suggesting. You know. We need to have this all up front before you guys okay, you know, somebody to build a house on here, that we don’t have a drainage problem afterwards. Because then it just gets pushed down the road.


Jones To me, it’s not so much a question. What we talked about at the last meeting was for the Pabsts to work with Mr. Paddock to come up with a solution that Mr. Paddock would not show up here tonight and speak in remonstrance of. I agree, I don’t agree. I can accept the fact that there has been development north of Mr. Paddock’s property that is creating him problems. We have no way of addressing that. It is what it is.

Paddock It is what it is.

Jones But, we do have ways of addressing what goes on downstream, and part in parcel of that is the Pabsts are asking for a variance to sell off a developable lot. What my intentions were of the conversations last month was for the Pabsts and the Paddocks to come to some agreement as to some possible solution to prevent what Mr. Paddock is saying that’s going on currently, because while a 6-inch pipe off the downspouts may handle whatever comes off the downspouts, it doesn’t particularly alleviate whatever problems are there and what might be increased by whatever potential development goes on in the lot. Whether it is, just changes in the grading. So, the Pabsts, if they would like a variance, need to work with the Paddocks so that there is no remonstrance to what they’re wanting.

Paddock Can I add something to that? We have been working on this for two months to work something out with the Pabsts. Now, I don’t have a problem working something out, but the first time the attempt was, is was to attack on the property draining behind me, and thinking I had a problem. And, I came up here and told you, they come and confronted me. I don’t have no problem with that drain. I fixed that drain. We’re addressing the problem on the driveway. This last month, I don’t know anything about it. We did get an email. Supposedly everything is hunky-dory, but we had some issues at the meeting last time. So, we didn’t know how to handle this too well. I even came here and they said that’s a civil matter. So, I’m trying to be a nice guy, but I’m just not going to meet some people out in the parking lot. You know? Try to hash out a drainage problem. I don’t know what she’s turned into you guys. I’ve never seen it. Never heard of it. Didn’t even know it was done. So, you guys sit up there with a set of plans. I had no idea. I
think if that’s the case that’s going to be dropped on me, I need to have probably something legal to look at it and make sure it’s going to work. If it’s going to be good. If you guys are going to back it, we all should.

Kremp Just a point of clarification for me.

Paddock Yes.

Kremp I think that Mr. Jacob had said that he or his client had provided the report. And, now you’re saying, I just want to make sure, that you’re saying you never received it.

Paddock No, that’s right. There was no letter. There was no nothing. We didn’t get anything. And, I’m the one that they’re supposed to be dealing with. Matter of fact, I was kind of shocked there as a meeting tonight because I didn’t hear nothing about it. Now, we did get an email.

Wolff Yes. These were public notices. They’re, you know, they’re always there, and when we continued it, we did continue it to this meeting.

Paddock You were told that she was going to get with me, and was going to work it out.

Wolff Yes.

Paddock Now, when I got an email a few days after, or a day after the incident in the parking lot.

Wolff I do want to address that. I don’t know what happened in the parking lot. I’m not aware of anything about the parking lot, so I can’t speak to it.

Paddock Do you want me to tell you what happened in the parking lot?

Wolff No, I don’t. I don’t want you to.

Paddock Okay.

Wolff I’m really focused on about what we’re talking about in this room, and what’s right in front of you. That’s what I want to focus on.

Paddock When I stopped in a week later after the parking lot incident. So, I understand.

Wolff Yes. I have got to deal with the facts I have right here, and you’re part of it. You know, you’re part of the evidence here, so that’s part of this conversation. I accept that. But, I don’t - -

Paddock --Carry on.

Wolff All right. Any other questions for the remonstrator?

Evinger What would satisfy you with this, other than her not dividing the land?
Zionsville Board of Zoning Appeals  
April 9, 2019

Paddock  
Well, that ain’t gonna happen. But, drainage. Some kind of drainage to make sure there is no more water that comes on my property that’s not already coming on my property. And, when you build on that property, you can’t just put a perimeter drain in for the downspouts. It’s going to happen. I had to put swales in on my property to get some of that water when it did come off, to work towards the south. Most of the property drains towards the, it’d be towards the east. It don’t drain off towards the south. Now, there is some big hills in front of their property, but my whole driveway stays wet because that all drains towards my driveway on that side. So, that has to be, I don’t want it any worse. I am going to have to do some work down along my drive this summer to straighten some of that up, because the dirt moves over time too. Everybody knows how dirt works. So, I’ve got to, you know, dig that back up and get that drained on my property going towards the south. But, it’s always going to happen. If you keep building on it, it’s going to be worse. So, you’re okaying a house, but who’s to say down the road they’re going to put a shop or a garage. We don’t know.

Wolff  
We’re not okaying a house.

Paddock  
I know that. So, that’s my, any other questions?

Wolff  
Any other remonstrators? Mrs. Paddock, I would ask, because we have had this conversation a lot, add value to it, but don’t repeat it. Perfect. Thank you. And, name and address.

S. Paddock  
Shelly Paddock.

Wolff  
Thank you.

S. Paddock  
8164 East 550 South. I have just a question. I need to know how we can work with Mr. Pabst at this point without getting an attorney, because we were physically threatened. We have it on camera and recording some of the things that Mr. Roberts said. Physically, I mean, threatened us. I don’t know how to work with them. And, then the next, two days later, I got an email from her as if nothing had happened. No, “I’m so very sorry that this,” you know, emotions got out of control. I understand. It’s emotional. I don’t have a problem with them splitting the lot. Please understand that. I’m a realtor. I sell real estate. I live here. I don’t want to close the door. We don’t have a problem with that. The problem is right now there is standing water in my driveway in spots. There is a tree that is falling over on her property line, our shared property line now. We have worked with the former property owner for 25 years that we have lived there without a problem to manage the water and the drainage. I need from you direction how we can, because I am fearful in my own house now because whenever I see those people, the man, he stated here in the meeting that he was six foot two. And he came and towered over us. Happened to be a police officer that pulled into the - -

Wolff  
--Mrs. Paddock - -

S. Paddock  
--I know you don’t want to hear it, but I need direction. How do you want me to deal with her?

Page 9 of 28
Wolff    I’m not sure it is in my role, or our role, to provide that direction.

S. Paddock    Okay. So, then here’s the issue. I don’t know how we can solve this problem then, other than she brings something to you, you give it to us, and then next month we talk it through.

Wolff    Okay. If you are incapable, what you’re saying is you’re incapable of working with your neighbor, that’s fine.

S. Paddock    Well, I’m afraid of my neighbor now. I’ve been physically threatened by my neighbor. I mean, would you not be? I’m not trying to be - -

Wolff    --I can’t speak to a scenario that I wasn’t involved in.

S. Paddock    I understand.

Wolff    I’m going to avoid that.

S. Paddock    I’m not asking you for legal advice. I’m just asking you for this specific issue, how do we handle it? You tell me exactly what to do here, and we’ll try to work through it.

Wolff    I don’t have a suggestion on that. And, I’m not going to provide one.

Jones    Well, I’ve got a suggestion. Mr. Jacob, can you take the microphone please? So, you represent the Pabsts?

Jacob    I do, at this juncture, yes.

Jones    They have, at a certain point, hired Mr. Ladd as a professional engineer.

Jacob    Correct.

Jones    Do you think Mr. Ladd has the capacity to meet with the Paddocks to come up with a suggestion?

Jacob    So, as I was trying to articulate earlier, I’m sure that he does. But, here is the problem. We don’t believe we can fix drainage problems that may or may not exist on other people’s property.

Jones    Do you think Mr. Ladd could give us an explanation of why or why not that could happen?

Jacob    I believe he tried to, but - -

Jones    --No, he provided us a letter saying that we could run the downspouts to the front of the property.

Jacob    Correct. And, he ran drainage calculations to indicate that we were not going to impact the, we’re not going to change the drainage in the area. But, what he did intimate to is that, well, okay, so what we’re saying is that we’re going to take
any impervious area connected to the home, move it to the south. Septic will be, will move to the south, and we’re not going to move drainage to the north. East or north. What the issues is, is that there has been offsite work done that we don’t believe is consistent with good engineering practices. And, we can’t go onto their property and fix that. So, if I’m hearing you say, “look, we’re not going to approve this, you’ve got to figure out some way to fix their offsite,” I’m happy to talk to my client about that. I’m happy to get involved and speak to remonstrators. I’m happy to charge Mr. Ladd with that. But, I think we’re going to be right back in here telling you that there has got to be offsite stuff done that we can’t control. So, I can’t speak to any of the other --

Jones --But, at that point you’ve given the remonstrators some confidence that whatever is being developed on this adjoining property isn’t really causing their issue, that they need to seek relief from people north of their property, which is a different issue. That’s something the Paddocks need to go pursue.

Jacob I believe based upon my review of the meeting minutes from the last time, and again, just as a comment. I have no idea about the parking lot stuff, but I’m always happy to have these discussions, but I thought the report did just that. Is it we’re not going to make this problem worse, to the extent there is a problem. I think that told them that your problem is coming from the north, or it’s coming from your own site.

Wolff Well, that’s fair. And, I’m not a drainage expert, but I also did hear the remonstrator say that he hasn’t seen the report.

Jacob Fair enough. I can’t speak to that issue, and I don’t know that that’s, those are commitments we’re making to you tonight in a written form. And, I hear there is no objection to the split by at least one remonstrator. I’m also suggesting that we’re going to connect any structures. We’re going to connect the residential structure, and septic and move it away to alleviate any problem that any additional impervious area would cause. We’re taking impervious structures off the site. I frankly thought I was coming here tonight and that that resolved it based upon my review of the transcript from the meeting. And, hearing that’s not the case, I understand.

Wolff Well, as you know, Mr. Jacob, we have had conversations on the previous petitions. And, we do value the neighbors’ input. That’s important to us, and so that’s, I think, kind of the crux of the issue right now at this point.

Jones And, this is not new territory. We’ve had other projects come before us where there has been drainage in an area, unrelated, and the people requesting variances, approvals, or whatever, have found a way to work with adjoining unrelated property owners to resolved things so that we got, as a Commission, people standing in front of us saying everybody is happy. And, that’s all we’re looking for.

Wolff And, I would add the I don’t necessarily need everyone to be happy, but I want everyone to have a piece of information, or defendable information that we made a decision on that was sound and logic.
Evinger  Just looking at the report, and again, I’m not an engineering expert either. But, if you look at Exhibit 8, and look at the drainage patterns, and then look at what you’re, you know, overlay, what you’re suggesting. I think that that would give a little bit more sound picture maybe to the neighbors to give them comfort. Because, the way this looks like it’s draining, it definitely, just the fall, from Exhibit 8, looks like it is draining to the south. I don’t see anything that’s overlapping onto the other property, but if you have the perimeter drain, and perhaps overlay that on Exhibit 8, that might help.

Jacob  One of the things we looked at was installing, and that’s a great comment. We looked at installing a swale along the eastern perimeter of this property, and Mr. Ladd said, “You know, that’s not going to do anything. That’s just wasted space, time and energy. Don’t bother.”

Jones  That’s not part of this report, though.

Jacob  It’s not part of this report. Absolutely not. No.

Jones  So, it’s just hearsay. You know that word. And, that’s kind of what we’re looking for. If Mr. Ladd, a professional engineer, says there is no fix for the Paddocks’ problems, and the Paddocks’ problems are the Paddocks’ problems, then okay. We’ve done our due diligence for everybody.

Jacob  Well, and I think based upon the development of this particular lot, and placing the residential structure on it, I believe that that’s what his report says. Relative to this, he’s not performed an off-site drainage evaluation. He’s not tried to fix other people’s drainage problems that have been self-fixed, as we have heard even this evening, that there has been mounding and changes that have been not professionally done. And, I’m not suggesting that somebody doesn’t know what they’re doing, but we just, he looked at that and said, “I don’t know what’s going on on that site.” So, without stepping off site onto somebody else’s property, he provided this report as what we felt was the appropriate direction.

Jones  Can I make a motion?

Wolff  I will entertain a motion.

Jacob  So, if I’m hearing that that’s our charge, is that this is going to get turned down, or you have got to address this or provide additional data, I hear what you’re saying. Is that what you want to do?

Pabst  I just want to say that I have tried everything to work with the neighbors.

Jacob  So, hold on. That’s not what the question - -

Pabst  I understand what the question to me is, but I just, you know, I understand that. But, my thing is, is that if they won’t work with me.

Jacob  Again, I just want to be clear, that’s not what we’re talking about. Okay?

Pabst  Okay.
Jacob So, how do you want to proceed?

Pabst So, are we saying that this is going to be turned down?

Wolff I don’t know that we’re saying that.

Jacob How do you want to proceed is what we’re asking?

Pabst I mean, I’m not sure if a continuance is going to work with what I can’t, if I’ve given you the report you asked me for, and I’ve tried to do everything I’ve been asked, and I’ve tried to work with them. I mean, I asked them to come and meet with the engineer.

Jacob So, based upon the feedback I’ve received this evening, and Mrs. Pabst’s comments, I would request that this be continued to the next meeting. With that, my charge will be to not put my client in a situation given some of the discussions, but Mr. Ladd and I will step into the middle of this and we’ll have some discussions about how to proceed, but I think that’s the best course of action for the time being.

Jones That’s acceptable to me. If we can get just a little round of closure. If it truly comes back from the engineer that we cannot resolve Mr. Paddock’s issues, Mr. Paddock, you’re going to have to go deal with it. That fair enough?

Jacob And just, I mean, what we can’t do, and what my client’s not willing to do is to step offsite and address these issues. If somebody says, hey, do you want an easement or drain to hook in? Yes, let’s talk about that. But, I just want to, understood.

Wolff Mr. Paddock, I guess my ask to you is, we’ve had a lot of conversations. I expect you to make yourself available to Mr. Jacob and Mr. Ladd, to the best of your abilities.

Paddock Yes. Once we get an attorney to get involved, because obviously she had to get one to take care of this. So, yes, I’ll have somebody to contact him and see if we can work this thing out. And, when you go attacking somebody else’s drainage issue without even being on the property supposedly, we don’t have a drainage issue. So, for him to bring stuff up in the meeting here of what’s going on on the property beside me. I know we’re continuing this, but I will get an attorney or lawyer, whatever, and I will do this game that you guys want to play. So, not a problem.

Kremp Being an attorney, it’s not a pejorative thing to, I think that you can help that Mr. Jacob. And if you choose to retain counsel, I’m not sure that you would need to, but if you would choose to, that you can work this out. I mean, I really, I am new to this. But the two meetings that I have been to, one concern that I have, and the thing that I would not want to see happen, is that the next time we have a meeting that there was any sort of resistance to actually trying to work this out. Because, I believe you. I think that you’re sincere.
Paddock              You are correct.

Kremp   But, I think the parties should try to work it out. I understand that there is some interpersonal issues here, but now with Mr. Jacob, and if you think you need someone else, and again, I’m not sure that that’s necessary, but somebody to help resolve this, we’d like to get past this.

Paddock   Well, and that’s fine too. And, I know Mr. Jacob. But, I think some stuff that was told to him was not correct. So, I need to come up here and address those, what was said that I was notified, information or plans, from the drainage. I was not notified, and I was not. If I was given these plans like I was supposed to, we may not even have another meeting. So, I’m just saying, I didn’t know how I should handle this since we have no attorney. So, thanks for that.

DeLong Before we jump into that, I do want to clarify a point that was made. Mr. Paddock was speaking to, I believe, the potential delay for him to decide if he wishes to retain counsel, or if he and his family retain counsel. So, I think if that’s going to be an additional time frame, you probably want to articulate that this evening. Are you looking at a 30-day continuance, a 60-day continuance, 90 days. I mean, you probably want to have some clarity.

Wolff   Absolutely. Mr. Paddock, do you think, I’m asking, putting you on the spot. Will you be ready, and are you willing to work with Mr. Jacob and Mr. Ladd, I believe was the other name, and can you get that done in 30 days? Essentially 30 days. I think the next meeting is April, or May, or do you need more time than that? Should I continue - -

Paddock --If I have to get legal, you know, legal counseling in here, I need to talk to them first. So, you’re asking me to make decisions on the spot.

Wolff Mr. Paddock. Please, let’s work together.

Paddock I’ll give you 60 days then.

Wolff You would like 60 days.

Paddock Yes.

Wolff Okay. Mr. Jacob, you had a petition, you had a motion - -

Jacob --To continue it to the next meeting.

Wolff Yes.

Jacob Was my request. And, why don’t we do this. Continue it 30 days. If Mr. Paddock comes to me and says, listen, we’re not ready. We don’t have it. Then we’ll put that back in front of you. You know, we have, I don’t know how long this needs to - -

Wolff --Believe me - -
--And, my hope was to bring this to a resolution this evening. So, my request is to continue it to the next meeting.

Okay. So, I’m going to turn to my fellow Board members here. If we grant this motion to continue to the May meeting, and Mr. Paddock hasn’t had adequate time, it would be up to our discretion if we wanted to allow him to continue to the June meeting. I open the floor for discussion on how you wanted to proceed with this.

I guess Mr. Paddock has never made any request for continuance on this, correct?

He has.

I have not.

He has. Okay. I’m sorry. Okay, never mind. So, we’re kind of burnt through those. What we’re asking is the normal.

We recognize it would be in your purview and discretion to continue it again if Mr. Paddock indicates with cause that he didn’t have time to review. That’s fully in your discretion.

If somebody comes back and says they have not had time to complete whatever study that needs to be done, I don’t have a problem with granting additional continuance of it. I personally. I don’t know about anybody else.

I think we have a motion to continue to the May 14th meeting of the BZA. Mr. Paddock, if that is not enough time, we’ll discuss that, and we’ll make sure that you have enough time. But, I would encourage you, please, do your best to work with Mr. Jacob and Mr. Lead, or whatever.

Ladd.

Ladd. Sorry, I’m going to screw that up all night. Thank you. Is there a second for that motion?

Second.

We don’t need one. I guess we don’t need one. Do we just vote on it?

Mr. Jacob has made the request. You just need to decide on his request.

So, do we need to make a motion to accept Mr. Jacob’s request for continuance to the May 14?

I believe one of us needs to make the motion because we’re the Commission, and then we’ll have a second amongst ourselves, and then we go forward from there.

Before we entertain a motion, I would add for our audience’s benefit that we are short a member, and so, if a motion is tied, it is automatically continued to the following meeting. Thank you. I’ll entertain a motion now, then.
Evinger    Okay. Here, let me get my Docket number. I make a motion that Docket # 2018-46-DSV, be continued until the May 14 meeting.

Wolff     Thank you. Is there a second?

Jones       Second.

Wolff     All those in favor, please say aye.

All        Aye.

Wolff     Those opposed, please say no.

[No response.]

Wolff     Hearing none, motion carries.

Jacob      Thank you for your time.

Wolff     Thank you. All right. Moving on to new business. On our agenda, Docket #2019-08-DSV, Mr. Shafer. Will you please state your name and address for the record, and briefly describe what you’re asking for tonight?

Shafer   Randall Shafer, 825 West Pine, Zionsville. Just requesting a variance to build or replace the present garage that I have on the property now. It’s probably 80 to 90 years old. So, it’s just replacing it in the same spot it is now.

Wolff     It looks like it adds a little more square footage. It looks like the current structure is kind of an odd shape, as I saw it.

Shafer   We’re just going to fill in the back corner, and that’s pretty much it.

Wolff     Mr. Shafer. You look familiar. Have I seen you recently?

Shafer   I’m a builder in Town.

Wolff     Okay. Any questions for the petitioner? Seeing none, are there any remonstrators tonight? Seeing none, I will look for the staff report.

DeLong    Thank you. Staff is supportive of the petition as filed. We did include the procedure in there related to the construction, distances, fire ratings, dependant if the building gets more than 6 feet, closer than 6 feet to the existing residential structure. Other than that, staff is supportive of the petition as filed, and I’d be happy to answer any questions.

Wolff     Thank you. Mr. Shafer, did you see the staff report, and understand what he was referencing, the staff was referencing, when they talked about the power lines and things like that.

Shafer   Yes.
Wolff   Perfect. Thank you. Any further comments or discussion amongst the group?
Evinger  Just one more question, and I’m sure that you’ve already taken this into account, but it will be like within character of your home? It’s not going to be some odd-shaped building?
Shafer    It’s going to be same size siding, the whole, you know.
Evinger   Okay. Thank you.
Wolff     Without any further comments, I would entertain a motion.
Jones     I move that Docket # 2019-08-DSV, design standard variance, in order to provide for the construction of a garage which, one, deviates from the required side and aggregate yard setbacks as further described in the exhibits to this report, and the residential Village zoning district RV, for the property located at 825 West Pine Street be approved as filed, and as presented.
Wolff     Thank you. Is there a second?
Kremp     Second.
Wolff     Thank you. All those in favor, please say aye.
All        Aye.
Wolff     Those opposed, please say no.
[No response.]
Wolff     Motion carries. Good luck. Next item on our agenda is Docket # 2019-09-DSV. Will the petitioner please come forward and state your name and address for the record?
Andreoli  Thank you, Mr. Chairman. For the record, my name is Mike Andreoli, 1393 West Oak Street. I am here on behalf of Zionsville OMS Partners. As you will recall from our prior application that we had made several years ago, there a surgery center and we received approval for a rear-yard setback before, and a variance for the size of the building then, which was 7,000 square feet. Due to some changing economics and some re-shuffling of locations and practice, that particular building would need to be increased. So, we have gone ahead and re-requested a variance to increase the size of that building to 12,000 square feet. Ironically, it will not change much on the site. We will not have to ask for an increased variance to the rear. We made certain of that when we did our construction plans. Essentially all we’re doing from an economical standpoint is we’re just going up a story. So, the actual footprint of the building, which was 7,000 square foot before, essentially, is now 6,000 square feet, but the gross square footage of the building gone up a floor is now 12,000 square feet.
You should have, and I’m sure Chrissy did deliver to you, a rendering of the building, and we provided all elevations. North, south, east and west. So, that you are aware, obviously we have to provide notice of what we’re doing here today, and all of that has been done in compliance with your rules and procedures, as well as state law, but we took a little extraordinary step in this situation. When we had the renderings done on February 7, I sent a letter out to the homeowners immediately to the west, which is the Lost Run Farms property owners, with substantial homes there. The property immediately to our south, and then to our north, as being the most contiguous of those particular properties to give them an idea of what the new dimension of the building would be, as well as a color rendering. So, they have had that even well before we filed our application. Just because we wanted to make sure that the neighborhood understood what we were doing. We weren’t changing necessarily the footprint. In fact we were lowering it, and we weren’t going to make it any closer to their, for them, their east property line. So, we have had no concerns raised. We’ve had no comments from any of the neighbors or any of that, so I don’t know if we’ll get any tonight at the public hearing, but essentially, those renderings have been sent out, and they have not been changed or modified. We originally were thinking about doing an additional story perhaps, that would raise it up a little higher, and in looking at the overlay district, talking with staff, and talking with Mr. Cosmos, who is here tonight, who is a builder, we really don’t need that, and so we decided not to seek any additional variances. So, the height requirements meet your B1 classification as well as the Michigan Road Overlay District. So, we’re squarely within that, so we didn’t want to ask for any more variances that were necessary, and that’s the long and short of the project. We also have filed for development plan approval, which we need in order to go ahead because of some additional changes to the site. So, that will be heard hopefully next week at the Plan Commission meeting. All of those filings have already been made. Thank you.

Wolff Thank you, Mr. Andreoli. So, I have a couple of quick questions for you. Did the footprint of the building shrink?

Andreoli Yes. Actually, I think the actual footprint of the building, Frank, you could help me with that. Yes, so the actual footprint on the site is slightly --

Wolff --So, about 400 square feet smaller footprint than we were prior?

Andreoli Yes. And, it essentially goes up. So, our total square footage is 12,000 square feet.

Wolff Understood.

Andreoli But, It’s located essentially the same place the other one was located. We have the same entrances. Drainage calculations are affected because with the new square footage we have to have new parking. We’re able to accommodate that on the site without any variances or plat waivers. So, we still have some drainage calculations, as I understand it, that are being reviewed from a platting standpoint, but other than that, it is coming together quite nicely. Thank you.

Wolff Thank you. Are there any questions for the petitioner?
Evinger: Actually, I think Mr. Andreoli just explained it, but I’m just going to ask Wayne. So, with the extra square footage, we’re still in compliance as far as for parking?

DeLong: Yes.

Evinger: Okay.

Jones: Quick question. Just regarding the site. To the south of this property, that’s all the, was it Miller Brooks, the marketing?

Andreoli: Yes. It is Miller Brooks, right there.

Jones: So, this property then, let’s call it the north end, abuts that. Farther north up Michigan is another kind of freestanding, it’s been used, it’s kind of an immediate care quick clinic kind of thing lately. Is there a parcel of land left in-between?

Andreoli: We bought all of that land in there. Obviously we didn’t buy the immediate care, or the emergency care, but I think there was a building out there that was either torn down or is going to be torn down. There were several different parcels that were cobbled together for this 1.49-acre site.

Jones: So, our Exhibit #2 kind of shows what looks like to be a lot line going through an existing house. All those houses are going to go away. So, basically we’re going to end up with a series of professional buildings down that west side of Michigan Road.

Andreoli: Yes.

Jones: Does that sound right? Okay. We’re not going to keep any funny, oddball lots around in the middle.

Andreoli: We’re not going to keep any of those buildings.

Jones: Okay.

Andreoli: They are all going to go away and in its place will be this nice building which we hope you find to be attractive.

Kremp: Will the building be occupied exclusively by the medical practice, or is there other space that is going to be held up for lease?

Andreoli: There potentially could be some other tenants in that building. I don’t think that’s been decided yet. The likelihood is it may not happen. Depends on how many, with this restructuring, how many of the dental surgeons will be occupying and how much additional staff. But, we’ve included the additional information even in our road impact fee requirements with the filing of our development plan, so that the Town has a pretty good handle on what additional staff might be at that particular building at full occupancy. If there is some additional tenants, it may be more short-term than it is long-term, because eventually the plan was going to be to occupy the entire structure with the dental surgery center.
Kremp  Thank you.

Evinger  And, I know you notice the neighbors, but again, and I didn’t see anything on here, but is there any other illuminated signing or anything else that might cause like light pollution that would interfere with the neighbors in the evening?

Andreoli  We haven’t had one phone call, or one email, from any of the neighbors across the street on any of our contacts. As I said, our biggest concern given the fact that we’re going up, and the building changed in terms of what it looked like, still very nice brick, and those types of things, but it changed a little bit. We wanted to make sure the neighbors immediately to our west had that early off and so that they could digest that because they’re the ones that would be most impacted with those big houses there in Lost Run Farms. We have not heard a word.

Evinger  Okay. Thank you.

Wolff  Is there anyone here tonight to remonstrate? Seeing none, I’ll take the staff report.

DeLong  Thank you. Staff is supportive of the petition as filed. The main oddity with the area, if you will, is the ordinance protection of Eagle Village. Eagle Village, the reasoning behind the ordinance language is, originally it was conceived that this area could potentially develop out, and directly compete with the Village of Zionsville. That is, we all know and are familiar with, being your downtown area. That simply is not the case. That activity has not happened. And, so your Michigan Road Overlay, staff would view, is your over-riding language that we would look to see in this area, and ultimately the Plan Commission will be entertaining some ordinance changes here in the future, and one of those, staff will propose, is the elimination of the additional layer of the Eagle Village requirements in this very reduced small node, but that’s immaterial to tonight’s conversations. Certainly you recall the history for this petition. The property is bounded by residential to the east, which is separated by the landscaped berm, and the homes are somewhat distant from that berm, and immediately adjacent to the site are two-story buildings, be it Miller Brooks, or across the street is The Hearth, so the theme of this area is building out with a more urban-type feel to mimic the remainder of the Michigan Road corridor. With all those thoughts in mind, staff is supportive of the petition as filed, and I’d be happy to answer any questions.

Wolff  Thank you, Wayne. Just a point of clarification. When we’re referring to Lost Run Farms, that’s to the west. Correct?

DeLong  I’m sorry. To the west. Yes.

Wolff  Perfect. And to double check, it looks like Mr. Andreoli notified the neighbors correctly, and it sounds like they worked with them. So, we certainly appreciate that. Any further comments or questions or concerns? Seeing none, I will entertain a motion.
Kremp I will make a motion. I move that Docket # 2019-09-DSV, design standards variance, to allow for the construction of a new commercial business to increase the maximum office square footage in the neighborhood business in Michigan Road Overlay zoning district for the property located at 12, excuse me, 12036 North Michigan Road be approved as filed.

Wolff Thank you. Is there a second?

Jones Second.

Wolff Thank you. All those in favor, please say aye.

All Aye.

Wolff Those opposed, please say no.

[No response.]

Wolff Motion carries. Thanks you, Mr. Andreoli. The next item on our agenda tonight is Docket # 2019-10-SE, Mr. and Mrs. Myers. Thank you. Will you please state your name and address for the record?

Myers Bill Myers, 3535 South 200 East.

Wolff Thank you, Mr. Myers. What are you coming here before us tonight to talk about?

Myers I own 160 acres. There is an older house there. I plan to, I would like to build a new house to replace it. I’m requesting a special exception for agriculture with a residence.

Wolff Thank you, Mr. Myers. Can you tell us, so the old house, your intent is to replace it with a house that is similar in size?

Myers Yes.

Wolff Approximately, and then --Roughly 2900 to 3000 square feet.

Wolff Great. And, what is the intent to happen with the old house?

Myers It will be destroyed.

Wolff Okay. So, upon completion of the new structure, you’ll get rid of the old structure?

Myers Right. Well, I don’t want to tear it down with no place to live.
Yes, exactly right. Upon completion. Yes. No one likes sleeping in tents for very long. And, as I saw the area, is your intent to keep the home in a similar area to where the current structure is?

It would be to the west. I would like to build it to the west, next to the driveway, which would be approximately 225 feet from the road.

Thank you, Mr. Myers. And, this may sound as a surprise, but I’m not sure, did you see the staff report for this particular, that you put together?

No.

One of the things we do talk about is that you and your neighbors have the right to farm in that area. Were you aware of that?

We do.

Okay. Thank you. Are there any questions for the petitioner?

Just real quick, so the idea is you’re going to build a new house behind the existing one? Is that?

To the west.

To the west of it. Okay.

Well, depending on where they make you put the septic.

Seeing no other questions, are there any remonstrators here tonight? Seeing none, I’ll take the staff report.

Thank you. Staff is supportive of the petition as filed, and as the BZA has noted, it is very much a procedural nature, and also recognized and required by the zoning ordinance that a right to farm commitment be executed as a part of any petition process that’s just like this. This is a very unique set of circumstances where you actually are being approached by someone who is actually actively farming the property, and is going through the same process and also needs to commit that they can continue with their own livelihood, but that is the requirement nonetheless, and I think that can be easily taken care of, and Chrissy in our office will help facilitate that process. Speaking to facilitating the demolition of the home, that is also a very typical and standard process that we facilitate though our office where a building permit is issued for a home to be constructed while the other home is eventually will be decommissioned, if you will, during the normal course of residential build, and ultimately a time frame is assigned at the end of the build where the home has moved into, where the other home then becomes ultimately destroyed as the petitioner has indicated.

Thank you, Wayne. So, we don’t need to address the removal of the old home?

Not at this time. No.
Okay. Great. Thank you. Any comments, questions, or concerns? So, Mr. Myers, it was a poor joke, but what it was, I feel obligated. Some people move into agricultural areas and do not realize that their neighbors may be farmers, and so we ask them to sign a right to farm, which allows their neighbors to farm the area, and maybe there is dust or smells that come with farming, and it’s just our way of protecting everyone involved. I assumed you knew that farming was going on in that area. So, that was my poor joke. I apologize.

Jones Should I ask about drainage?

Wolff No. No you may not. Nope. With no drainage questions, I will entertain a motion.

Evinger I move that Docket # 2019-10-SE, W. Myers, special exception petition in the agricultural district for the property located at 3250 South 200 East be approved as presented, and with the staff report and proposed findings.

Wolff Thank you. Is there a second?

Jones And then the motion, well, you need to add the - -

Evinger --Oh, and, yes, with the addition of the right to farm commitment to be signed. Wolff Thank you. Is there a second?

Jones Second.

Wolff All those in favor, please say aye.

All Aye.

Wolff Those opposed, please say no.

[No response.]

Wolff Motion carries.

Myers Thank you.

Wolff Thank you. Good luck. The next item on our agenda is Docket #2019-11-DSV. Will the petitioner please come forward and state your name and address for the record?

Sattfield Hey everybody. I am Jeffrey Sattfield with CPH. We are the A&E consultant for Giant Eagle, representing the property at 7011 Whitestown.

Wolff I’m sorry. Will you say your name one more time for me?

Sattfield Jeffrey Sattfield.

Wolff Jeffrey, thank you.
Sattfield I'm here, Barry Porter had a family vacation, so I'm here for him.

Wolff Good for him.

Sattfield So, I think his name is down there right now. I've got a very brief PowerPoint if you all would like to look at that.

Wolff Thank you.

Sattfield With my ugly team mascot up right now. So, this will be brief and no drainage comments, hopefully. So, the site is located there at the southwest corner at Whitestown. Just an overall aerial of the commercial corridor. The blue square over there to the west is the closest C-store with fuel nearby. Essentially the competition for the site would be in the Get-Go property. Again, just some reference photos of the area, signage, the commercial nature of the structures. The bottom right corner down there is the fuel C-store. That's down the way there, with the canopy showing at that location. And, then this is the site as it is today. So, it's an existing Get-Go, and basically we're looking to relocate one sign, which is not discussed in the staff report because it's basically a swap, and we have requested to add two signs. One on the canopy and one on the building. And, again, you see the canopy here. There is no signage reference whatsoever there. Which, again, from what we're finding on this particular location, is something that's highly desirable given the surrounding areas and the competition that we're facing in that area is to have some canopy signage. So, and this is the site plan and the layout of the area there. So, the canopy signage will be located right here, S4. The additional signage that was requested was on the rear of the property, S7, and we'll discuss that here in just a bit. And, that's what the canopy sign would look like. It's basically the Get-Go logo with a café and market on the northern piece there, and the size is to scale for that size of a canopy. This was the other signage that was going to be requested. We want to, as we'll get to the staff report, we want to be in step with staff. This one is not being recommended for approval by staff, so we're withdrawing that from consideration tonight. So, basically I'm here to say that we are in full agreement with staff's recommendations, including the need to provide a photometric plan prior to the permit to show that we're not spilling undue light off-site, and I'm available for questions.

Wolff Thank you. Any questions for the petitioner?

Jones Just to clarify, we're going to add a sign over the pumps, and then is there a second sign that's being - -

DeLong They asked for a second sign in their original petition, but staff was not supportive of that, and it sounds like the petitioner is saying they would like to remove that, as well.

Sattfield We'll remove that sign.

Wolff It was a large sign on the rear of the building. So, it's just the one over the canopy.
And, then the third sign that was referenced was the one that was going to be relocation.

From one side of the building to the street side. Let me go back to that site plan to clarify. There is currently a building signage at this location, moving it to the street side.

I got it.

When the property was developed, was there no requests for, or did the concept of canopy signage come up then?

I wish I was engaged at that time.

Okay.

Yes. I mean, we certainly, if we were engaged at that time with Giant Eagle, we would have requested that. It’s typical we would like to have a pricing of the canopy. I particularly, you know, obviously C-stores and fuels, it’s a business of convenience, and price on the fuel, and so if you can’t get that message out while you’re driving 35-40 miles an hour quickly, somebody is just going to pass you and go right down to the next one. So, we would typically ask for, like, a fuel price and a logo up there for that very reason.

Any other questions for the petitioner? Seeing none, are there any remonstrators here tonight? Do you have any drainage concerns? Wayne, can we have the staff report please?

Certainly, staff is certainly supportive of the petition as it’s been amended this evening. Certainly from a history point of view, when this petition, when this site was first developed, one land owner controls this site, as well as the same acreage to the west, and so this is a land lease, and so when the property was developed out, Get-Go was ultimately the entity that moved forward with that, the building of the new gas station, convenience store. There was a decent amount of lag-time between the time of the approvals through the Plan Commission and the commencement of construction, and I think that’s where some of this learning curve has been created in the meantime. The Meijer has come online with its C-store out front and its gas component, and there has been some other changes along that corridor. So, what you have along that corridor are two different zoning ordinances. You have the Town of Zionsville’s rural ordinance, and you have the Town of Whitestown’s ordinance, and our objective as staff is to look along that corridor and if there are opportunities to advance the standards to match what other jurisdictions are doing along the corridor, we should have that conversation to sort of, you know, to lessen that competitive disadvantage with this area. And, certainly what you find out there is there is much older dated gas stations, just chronologically that have been there for, you know, many, many years that enjoy a certain level of standards, and as you move closer to the core of Zionsville you find newer facilities such as this one. So, we’re trying to raise that bubble a little bit, and that’s where the ordinance does not allow for canopy signage, however, every other gas station and convenience store enjoys a canopy
sign. So, certainly that’s why staff is supportive of that request. So, when the petition first came in for development, the signage was very limited. Since that time, it actually sought a modification to allow for the changeable copy EVMS sign that’s out there now, the pricing panel that’s actually in the ground. So, there has been some evolution of the thought process, and so I think it’s only natural to come to this point where there is a little bit more illusion to get a little bit closer and understanding better what the market is looking for out there. Certainly staff is, you know, finds obviously very helpful to not focus on the sign on the back. When this area builds out, the motoring public that is on Maple Grove Pass, is the name of that road, will be, the visibility will be very restricted by the number of buildings that are on the south side of that lane. The residential traffic that’s going to be traversing that road. I’m not sure, we’ll totally gain the benefit of a large wall sign on that iconography will not even ben visible any more once that area is build up to the curvature of the road.

Sattfield They should surely understand what it is at that point.

DeLong They get it by that. Or Josh will be talking to them about something else. But, at any rate, what we would encourage, and certainly it’s something that came up when the project was first proposed, if there is a need to provide directional signage at the entrance, at the entrances to this property, that is certainly something that could be done. Certainly would function to serve a lower speed clientele, and certainly those signs routinely have some sort of commercial message on those, and they would not require a permit. You know, two to three-foot tall, the small typical signs you all do, I know that different Get-Go facilities have them in the metro Indianapolis area, 146th and Gray Road, for example, in Carmel, and other facilities. So, that’s an opportunity to provide some additional signage, some additional copy area. Not require a variance and certainly not entertain any other real, you know, big changes. Probably provided way too much information for you this evening on this particular topic. Staff is supportive of the petition as it’s been amended, and I’d be happy to answer any questions.

Wolff Wayne, thank you. As I reviewed this petition, and as I look at the recommended motion, it looks like the motion reflects our conversation tonight. Is that the way you read the motion?

DeLong Correct. We broke out the motion to support the canopy sign, and to not support the wall sign.

Wolff Perfect. Thank you. Any comments or questions for the staff?

Kremp One quick question. The, this is a groundly structure, so you’re required to have the owner’s approval. The memorandum of the lease that was provided shows the landlord as 7105 East SR 334, LLC and the owner’s authorization is by John W. Demaree. Has the property been conveyed or what explains the difference?

DeLong John Demaree is the managing partner of the LLC. I’m not sure if he fully completed a title block on that document to show that information.

Kremp I think it’s clear, his intent.
Thank you. Any other comments, concerns or questions. Seeing none, I’ll entertain a motion.

I move that Docket # 2019-11-DSV, development standards variance for the property located at 7011 Whitestown Parkway to allow for signage of an existing commercial business, which utilizes the canopy to convey commercial messages, and exceeds the allowed square footage maximums all within the rural general business zoning district be approved as presented, and as recommended by staff.

Thank you. Is there a second?

Second.

All those in favor, please say aye.

Aye.

Those opposed, please say no.

[No response.]

Motion carries.

Thank you, guys.

Thank you.

I would note just before we stepped away from this petition just to make sure that the findings of fact that have been submitted do not embrace anything about the wall sign, as it’s proposed. I mean, the only thing you have in your findings is it speaks to the plural nature of signs. We could just simply make that adjustment for the additional wall sign, singular, and just strike that out.

Okay, thank you. Next item on our agenda. I’m going to turn to my fellow BZA members. We were supposed to receive some training tonight, but I failed and I did not read it and Mr. Chadd didn’t see it on it, so we are not going to receive training tonight, but we will plan on it on our agenda next month. And, I think next month should be shorter, although we did continue one petition to next month.

What is the training for next month?

It’s our annual update.

Okay. I will not be here. I will not be present, just so you know.

Okay. We normally have some written materials.

We’ll take good notes.

Okay thank you.
Wolff  Wayne, do you have any other updates for us?

DeLong  I can provide a plethora of updates for you.

Wolff  Spectacular.

DeLong  So, the first item on your list there, the special exception, those folks are still working through getting that document executed. They are not in possession of the property yet, so we typically do see a delay in the submittal of the document until the property is ready to switch and go through a closing. Rottmann Collier’s petition, 06-DSV, those are currently in review in-house. The 03-SE has been recorded for the Soffa petitions. Those are as well in-house for review. The Wheat Holdings matter, they have actually recorded their commitments. We await a copy of the recorded document. Zionsville underground, petitioner is still working on finalizing that document. Wildwood Designs, there has been a lag in the communication from the petitioner, so we’re working on re-establishing that communication. And, Fisher Homes, I know this has been on your Docket for probably 2 years now as we await that petitioner’s wrapping up that project. Uniquely, we did hear from that landowner today. They anticipate re-commencing with the re-commencement of the re-commencement of the work within about 45 days.

Jones  Who would have guessed. The re-commencement of the re-commencement.

Wolff  Thank you, Wayne, for the update. Seeing no other items on the agenda, this meeting is adjourned.
Petition Number: 2018-46-DSV

Subject Site Address: 8090 E 550 South

Petitioner: Reasa Pabst & Gregg Roberts

Representative: Reasa Pabst & Gregg Roberts

Request: Petition for Development Standards Variance in order to permit the establishment of a 1.83 acre lot. (Minimum lot size is 2 acres) in the Low-Density Single-Family Residential Zoning District (R1).

Current Zoning: Low-Density Single-Family Residential Zoning District

Current Land Use: Single-family Residential

Approximate Acreage: 3.83 overall acres (resulting parcels will be 2.0 acres and 1.83 acres in size)

Zoning History: This parcel was consolidated into the Town of Zionsville’s jurisdiction in 2010. No prior petitions are known.

Exhibits:
- Exhibit 1 – Staff Report
- Exhibit 2 – Aerial Location Map
- Exhibit 3 - Petitioners Project Description
- Exhibit 4 – Petitioners Proposed Site Plan
- Exhibit 5- Transcripts, January 8, 2019 & March 12, 2019 BZA hearings
- Exhibit 6 – Boone County Health Department Letter
- Exhibit 7- Boone County Natural Resource Conservation Letter
- Exhibit 8 - Stormwater Drainage Evaluation
- Exhibit 9 – Voluntary Commitments
- Exhibit 10 – Petitioners proposed Findings of Fact

Staff Presenter: Wayne DeLong, AICP, CPM
**Petition History**

This petition received an initial public hearing at the January 8, 2019 Board of Zoning Appeals meeting. At the request of a Remonstrator, the matter was continued to the February meeting of the Board of Zoning Appeals, and at the request of the Petitioner, the matter was continued to the March meeting. As the March meeting, subsequent to hearing information from both the Petitioner and Interested Parties, the BZA voted to continue the matter was continued to the April 9, 2019 meeting.

At the January 8, 2019 meeting, the Petitioner presented information pertaining to the justification of the requested variance, and Remonstrators presented concerns regarding potential negative impacts to the area which, per Remonstrators, have the potential to occur as a result of the granting of the variance. Subsequent to the dialog between the BZA, the Petitioner, and Remonstrators, the Petitioner consulted with a number of additional professionals regarding the contemplated division of land and eventual construction of a new dwelling on the resulting lot. For reference, the transcript of the January 8, 2019 hearing is attached as Exhibit 5, and letters from Boone County agencies are attached as Exhibit 6 and Exhibit 7.

At the March 12, 2019 meeting, the Petitioner presented information pertaining to the justification of the requested variance, and Remonstrators presented concerns regarding potential negative impacts to the area which, per Remonstrators, have the potential to occur as a result of the granting of the variance. Subsequent to the dialog between the BZA, the Petitioner, and Remonstrators, the Petitioner retained the services of a Civil Engineer to generate a Storm Water Drainage Evaluation regarding the contemplated division of land and eventual construction of a new dwelling on the resulting lot. For reference, the transcript of the March 12, 2019 hearing is attached as Exhibit 5 (following the January 8, 2019 transcript), a Stormwater Drainage Evaluation is attached as Exhibit 8, and, voluntary Commitments based on the findings of the Stormwater Drainage Evaluation are attached as Exhibit 9.

**Property History**

The property is comprised of a 3.83-acre tract. Staff is not aware of any prior variance requests for this property.

**Analysis**

The 3.83-acre combined parcel is currently improved with a circa 1880’s dwelling (addition constructed circa 1960’s) with a detached accessory structure and a corn bin. As proposed, the Petitioner desires to split the parcel to create two (2) parcels, one being a vacant 2.0-acre parcel and the other containing the existing single-family dwelling and accessory structure would become a 1.83-acre parcel.

**Lot Size**

Per Section 194.081, Table 3, the minimum R1 Rural Residential District lot size when utilizing a well and septic system is two (2) acres, therefore the Petitioner must obtain a variance from current Zoning minimum requirements. As contemplated, each parcel would contain the minimum amount
of required road frontage and parcel depth. No other zoning related development issues are identified based on the facts presented as part of the petition.

This area is comprised of parcels which vary in size (from 1.25 acres to parcels in excess of 100 acres); there is no established theme as to lot size which reflects the Zoning District minimum of two (2) acres. With this in mind, Staff would note that parcels along County Road 550 South, being directly south and further east of the contemplated 1.83-acre parcel are between 1.25 and 1.57 acres in size, as well as parcels along County Road 800 East, being south of the contemplated 1.83-acre parcel are between 1.69 and 1.81 acres in size. Given that the requested parcel size is already established in the area, Staff is supportive of the petition as filed.

**PROCEDURAL – VARIANCE TO PERMIT THE ESTABLISHMENT OF A 1.83 ACRE PARCEL UTILIZING A SEPTIC SYSTEM**

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

(a) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

(b) *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

(c) *the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property:*

Proposed Findings of Fact are attached for the Board of Zoning Appeal’s consideration.

**STAFF RECOMMENDATIONS**

Staff recommends approval of the design standards variance included in Docket # 2018-46-DSV, as filed.

**RECOMMENDATION MOTION**

I move that Docket # 2018-46-DSV design standards variance in order to permit the establishment of a 1.83 acre lot, which results in a deviation from the required minimum 2 acre lot size, within the Low-Density Single-Family Residential Zoning District (R1) for the property located at 8090 E 550 South, be (Approved as filed, based upon the findings of fact / Denied/ Continued) as presented.

**PROCEDURAL NOTES**

As the parent tract was created prior to 1999, the division of the parcel is permissible to occur without the filing of a Plat with the Plan Commission, nor the conducting of a public hearing. Any future division of either the parent tract or the newly created parcel will require the involvement of the Plan Commission (and additional development standards variances).
Based on correspondence with the Boone County Health Department (Health Department) dated November 28, 2018, a location on the contemplated tract has been identified which supports an inground septic system. While the Health Department, based on the submitted information, is supportive of the location, deviating from the minimum lot size of two (2) acres could, in the future, result in the need to install a mound septic system in the event that adequate acreage is no longer available to facilitate a conventional in-ground septic system (in the event that the second system is required to be installed to replace a failed system). Additionally, reducing parcels to less than the minimum lot size of two (2) acres has the potential to reduce opportunities for routing perimeter drains associated with septic systems. While neither of the points raised in this paragraph should be viewed individually as justifications to prohibit the contemplated division of the parent tract, the Petitioner should be fully aware that actions taken based on the granting of the variance could potentially foreclose future opportunities related to waste disposal and drainage that could have otherwise existed if the parent tract had not been divided.
January 1, 2019

Zionsville Town Hall
1100 West Oak Street
Zionsville, IN 46077

RE: 2018-46-D5V R. Pabst

Dear Board of Zoning Appeals Members,

I am asking for a Development Standards Variance to do an administrative divide for the property located at 8090 E 550 S. My goal is to preserve the home that was built in the late 1800's and was our family home for over four decades. The proposed divide will create a 2-acre lot and the home will remain on the 1.833 acreage.

I have furnished a soil evaluation determining that a new septic can be placed on the 1.833 acre for the current home and a letter from the Boone County Health Department verifying the findings. It's my understanding that the property will conform to all other requirements needed for the divide.

I have included a photo of the home.

Thank you for your time and consideration concerning this matter.

Sincerely,

Reasa Pabst

Exhibit 3
Morical South.
Wolff All those in favor, please say aye.
Aye.
Wolff Those opposed?
[No response.]
Wolff Motion carries.
Shafer Thank you for your time this evening.
Wolff Thank you. The next item on our agenda is new business, which was Docket#2018-46-DSV, for the property at 8090 East 550 South. Would the petitioner please come forward and state your name and address for the record?
Pabst Good evening, my name is Reesa Pabst, and I am at 8090 East 550 South. I grew up in Zionsville, and I moved away. And, then my husband and I were coming back to purchase his parents', the family home, and finish restoring it. My husband passed away a couple months ago, so I have come back to do it myself, and I am just trying to split up the land, and I am wanting to put the house on the 1.83 acres and trying to keep the home, because it is from the 1800s. A big portion of the house is from the 1800s. So, I'm just trying to keep it, and then I wanted to go ahead and do the divide on the land so that nothing can happen in the future where it could get divided down to something that would end up being a subdivision.
Wolff Ms. Pabst, I'm sorry for your loss. Thank you.
Pabst Thank you.
Wolff I do have a couple questions for you.
Pabst Okay.
Wolff Specifically one. And, as I was looking at the petition and the division, and let me get my bearings straight. The house is in the, the existing house, is in what is proposed to be the western lot?
Pabst Correct.
Wolff Okay. And, I believe there is a detached garage just to the north of that.
Pabst Yes.
Wolff And there is another, when I looked at the aerial from the satellite, there was another structure that was there. What is that?
Zionsville Board of Zoning Appeals  
January 8, 2019

Pabst  That’s a shed, and we are actually, we have already pulled the permits to have that removed. It’s just an eyesore, is what it is.

Wolff  Perfect. So, I guess my concern was that it would be right there on the property line, or proposed property line.

Pabst  Yes. Be removed.

Wolff  And, so we might have an issue there, but it looks like you’ve already taken care of that.

Pabst  Yes.

Wolff  Any other questions for the petitioner?

Jones  So then will the new lot get a separate driveway established for it?

Pabst  Yes. Yes. And, I did check into the code for that, and every, with the highway as far as what the, you know, requirements were. I met the requirements for all of that too. But, I also did the soil testing for a new septic.

Mundy  Is that a new septic for the existing home?

Pabst  Yes. Yes.

Mundy  Okay.

Morical  So, there is new septic for the existing home, and then whatever structure you’re going to build on this, on the new parcel you would have a septic system for that, as well?

Pabst  Yes. Because it meets the two-acre requirement.

Morical  And, whatever septic system you build will have to be sized to meet whatever the size of the house is.

Pabst  Yes. I already had them, I had somebody out there that did all of that work.

Morical  Yes. I read the report and I noticed that the County said the soils are good, which is great, but the report did not necessarily conclude it’s adequate space for a septic of this size.

Pabst  Oh, I’m sorry. He did mark it, and there were pictures of it, and it was for a 2800-square foot home.

Morical  Okay. So, and we don’t deal really so much with septic. That will be a requirement as you go to get your building permit for the particular building you’re going to build.

Pabst  Correct.
Morical
Did you see the language in the staff report kind of identifying some of the potential future issues as it relates to septic and drainage?

Pabst
I did. That it could possibly be above-ground at one time, and right now it has been approved for, and I have met with Clayton, as well, to be able to put the septic in beside the current one on the 1.83 without any issues.

Morical
Okay. I just wanted to make sure you saw what the staff --

Pabst
--Yes. And, then I figure eventually City is going to be down there, I give it 5 more years maybe. And, everybody is going to have to do that, so, you know, if it fails them, they are just going to have to go to city. I'm not sure if I'll still be there.

Wolff
So, today we're talking specifically about splitting these two. This isn't, you know, obviously permission for the septic. That's a separate issue.

Pabst
No, no, no.

Wolff
Okay. So, we're all clear on that? Any other questions for the petitioner? Seeing none, are there any remonstrators here tonight? Please come forward and state your name and address for the record.

Paddock
Hi. My name is Shelly Paddock and I live at 8164 East 550 South. I share a property line with 8090 East 550 South. I hope the Council will vote no to the proposed variance.

The rezoning and recent development of the land around us has already caused the issue and runoff and drainage on our property. Sorry, I'm very nervous. I'm not sure why. Hi, Julia. I received the letter from Ms. Pabst presenting the idea that she is dividing the land in order to save the house. I'm not sure how that saves the house. She did not explain, or I didn't understand her reasoning. My concern is that Mrs. Pabst is trying to preserve the house at the expense of her neighbors. If you allow this proposed variance, one of my concerns is the lot will then be sold, then a house would be constructed on the lot, additional water will run off that lot to our property, causing my driveway to deteriorate quicker than it should. Right now, water stands on our driveway because we are a little bit lower than that lot, and the lot line, where we have mowed, and before when her in-laws lived there, and then her brother-in-law used to mow, and he and I would share mowing their front ditch line. So, but over the years it's gotten worse, and one of the trees is actually split on the property and it's kind of falling over because there is a lot of water right there. So, that was my concern.

We purchased our property and built our home in this area because we didn't want to live in a subdivision or in a neighborhood on a small lot. I appreciate that this parcel of land is now Mrs. Pabst's property and she has the right to enjoy it fully. However, I don't believe it should be at the expense of any of her new neighbors, and the landowners, who will be directly affected should a house be constructed on the lot in the future. I'm not an attorney, but perhaps if the goal truly is to preserve the house from being destroyed, Mrs. Pabst could check into having the deed revised with a restriction that the house must be preserved. I've
come across many properties with deed restrictions, but again, I am not a real estate attorney or any other kind of attorney.

I struggle with all the change that has happened on our street and the land that surrounds us. Over the years, many of the long-time landowners in this area have tried desperately to convey to you, the members of the Town Council, and to the Planning Commission, we welcome zoning that mirrors what currently is here. Multiple acres with one house. Not multiple homes on one acre. I appreciate the opportunity to share my thoughts, and I hope you will respectfully consider the ramifications to those of us who depend on you, and must live with your decision. Thank you.

Wolff   Mrs. Paddock, can I ask you a question?

Paddock   Sure.

Wolff   Sorry. I just wanted.

Paddock   I'm like a rabbit. I'm going to run. Sorry.

Wolff   Not out of here yet. Can you please again restate your address? Not for the record, but so I can try to find where you're at on the map.

Paddock   I'm 8164 East 550 South.

Wolff   Okay.

Paddock   The long driveway.

Wolff   So, you share on the eastern side of the property, you have a long piece of driveway, kind of common border there, then your house goes up?

Paddock   Correct.

Wolff   Okay. Great. Thank you. And, if I could, I want to try to make sure I understand your concerns. One would be, I think I heard two. Two primary ones. One is drainage. And, the other one was, I'm going to kind of lump into a density category. Sort of look and feel, dividing this lot from 4 acres to 2 acres.

Paddock   Exactly, it is. When we moved there, there was nothing, and now Pemberton is behind us and all of the new developments and the new subdivision was just approved at the corner of 875 and 550. And, when we get it, you know, there is just a few of us out there, but most of us are on more than 3 acres. A lot of them are on 5 acres, and we appreciate that they let us in. But we abided by the zoning that was there, in place when we got here. And, that's all we're asking, because what's happened is when Pemberton moved in and those houses started to be constructed, that waterway, which used to be just regular runoff and there is a ditch. There was an old farm. We've dug it up at least 4 or 5 times. We hit the gas line once, having a fire department come out. Thank God our neighbors, thank goodness our neighbors have a backhoe and can help us with this drainage, but before her in-laws passed away, we had talked to Ron, and told him, you
know, we had a little bit of his property that needed to be dug up because water stood there all the time. Have a giant willow tree there, I mean, and it is giant now because there is so much water.

Wolff  Okay.

Paddock  And, that’s our biggest concern because water stands there almost year-round.

Wolff  Okay. Great. Thank you.

Paddock  Thank you.

Wolff  Anyone else would like to speak to remonstrate against? Please come forward and state your address for the record.

J. Paddock  Jim Paddock, at 8164 East 550 South. I’m not going to sit here and repeat everything my wife has spoken about, but a couple concerns is the drainage. I’ve been working on the drainage, and pretty well got it under control, but there is just a lot of water that runs off there. I’m afraid when they do build another house that’s going to be another issue. So, that is a big concern. The other concern is, you know, the house being built on that property, where it’s going to be, is going to be right on top of like my drive. And, you know, it’s going to feel like a subdivision. You’re building houses right on top of each other. And, if we had the intent of buying 3 or 4 acres when we put it in, and then get a variance for our home so we could, you know, subtract 2 acres from it so we could sell and make money, we would have done the same thing. But, that’s not the intent out there. The intent out there is to build on some land and be a little bit away from the subdivision. Now, I’ve spoken with all the homeowners that are adjacent and around that property, and they are all for “no” on the variance. I mean, there is some here that had other commitments tonight. But, it’s definitely “no.” So, I’m not sure how you guys vote on this. I haven’t been involved that much. But, as of right now, we are all no for this to happen. And, I feel that this is just an intent to, you know, split it up and make money on both parcels, is what I’m thinking. Not necessarily to save the house. I’m all for saving the house. But there is different ways of doing that. Not dividing the land, building another home to make money on it. I’m not in for that. So, how you guys go about this, wish you a lot of luck, but I’m hoping it’s, you know, honestly it’s the neighbors around that has to deal with it.

Wolff  Certainly. Mr. Paddock, if I may ask you a quick question?

J. Paddock  Yes.

Wolff  You have an unusual lot. Did you build on that lot?

J. Paddock  I did.

Wolff  Okay. So, did you happen to get a variance for that lot?

J. Paddock  What?
Zionsville Board of Zoning Appeals
January 8, 2019

Wolff  Do you recall having to get a variance for that lot?

J. Paddock  No. No. absolutely not. That was a little over 5 acres, and it was divided in half, roughly, 2.6, 2.4, plus there was an acre behind that I ended up buying just to keep it. You know, a little bit of cushion.

Wolff  Okay.

J. Paddock  And, there is actually a little bit of land behind that, that I may be in the process of buying it to keep a little bit of cushion. Not to sell to make money on it.

Wolff  So, the drainage issue that, it appears to be for the address that’s in question is, it would be really affecting, and I’m not, I’m not saying this is not important, but it would be affecting your driveway portion of your property?

J. Paddock  Yes. Mostly in that one corner where my part of the first curve goes out. There is a lot of water that stands right there. Always has been. I have kind of worked with all the neighbors and Mr. Pabst at the time, because that was really bad, and spent a lot of money putting some good drainage in, and matter of fact, went on up towards that new subdivision with new field tile that I put solid in, instead of the old clay. So, you know, it’s been some time. It’s part of being out there. You know, it’s not that big of an issue, but it is an issue that I think if you keep building on these lots like they are, it’s going to be a problem. And, I know that all the new houses behind it, they are supposed to have their own drainage and all that worked out. And, hopefully that will work out, but it’s not all built up yet either.

Wolff  Okay. Thank you.

J. Paddock  Thank you.

Mundy  Mr. Paddock, if you don’t mind.

J. Paddock  Sorry about that.

Mundy  I’m trying to understand the impact in terms of drainage that a new house might cause. Is it just the fact that there is going to be, I don’t know, a couple thousand feet that are now going to be impervious, or is there something other. You’ve got water problems now, I guess, but how does this compound that?

J. Paddock  I think because that two acres is fully on a big hill. The full length of that two acres. You go building a house on it, the driveway. You have the water runoff, the rainwater off, that you call it. I think all that will be going straight east off that hill, and just right over my drive onto my property, and if you’ll look on the maps, there is actually another above drainage that runs and splits my property with Ferguson’s, right next to me, straight east of. So, it’s the Pabst, me and then the Fergusons, and there is kind of a normal drain that runs right there all the time. Like a little creek back in the days, you know?

Mundy  It’s an open drain?
J. Paddock: It’s an open drain, and then our field tiles and all of our tiles we put in go clear to the road to drain, but I think when you build up on that with all the rain runoff, we are going to get a lot more come through there. And, over time, my driveway was actually, oh 6 to 8 inches above the land, you know, when we paved it. And, that is all filled in and the dirt is actually trying to come up over my drive, and that’s how much just normal drainage comes through there. Do we have to deal with it? Absolutely. It’s been there, but I think building a new home it’s going to make it even worse. But, the other concern was, if you’re trying to save the house, you know, what’s the deal with trying to deed off some property to sell to make money. It has nothing to do with saving the house. That is the biggest concern I have, more than just the drainage.

Mundy: Thank you.

Wolff: Are there any other remonstrators who would like to speak tonight? Please come forward and state your name and address for the record.

Stark: My name is James Stark. 5395 South 800 East. We own 5 acres just north.

Wolff: Mr. Stark, what are your concerns tonight?

Stark: Well, we’re just kind of a little 5-acre patch out there and we like it that way. We really don’t want to be in a subdivision like Jim. No need to go over all that, but as far as the land is concerned, I wanted to make sure that you understood that that’s a hill that goes down into that drainage ditch and valley that drains all that out through there. And that hill is a seep. It runs water out of it during the spring all the time. In fact, you come down behind my house down where Jim is talking, where we put the tile, and you can’t drive a tractor down there because you’ll get stuck, and it’s real seepy. Septic system there, my septic system is kind of out away from where that hill, that fence line between me and their property is at, but it stays pretty wet. And, Jim’s concerns are exactly right. I helped him when we tried to keep that drained out, but it’s a problem, and they call that High Hill out there. Is where they built the subdivision. And High Hill, all that drained down through there. So, it’s got county tile down through there at one time. They had problems with it years, and years.

Wolff: Mr. Stark, how long have you been at your property? Guess.


Wolff: 1988. And, similar to your neighbors, your concern is primarily drainage, and if we subdivide or if this lot is subdivided tonight, that it would create additional drainage issues?

Stark: Yes. Yes.

Wolff: Okay. Thank you. Any questions for the remonstrator?

Jones: I got a question for Wayne. I’m kind of down here doing a little quick math. We’re awful close to getting into the flag lot scenario. The --
Zionsville Board of Zoning Appeals
January 8, 2019

DeLong    Lot ratio.

Jones     Yes. The 3 to 1 kind of ratio.

DeLong    Yes. Certainly that’s not something that’s been requested, and the exact dimensions aren’t identified, what these two lots, what they’re resulting dimensions would be. This corridor of 550 South has a number of flag lot variances, lot depth to width throughout this corridor. But, sure, that is without knowing the final dimensions of what this, what it would look like, that’s a potential risk that the petitioner would run.

Jones     Have we actually granted variances for flag lots out there, or is it just one of those things that were there prior?

DeLong    No, I’m sorry. Didn’t mean to cut you off. There have been several variances that have been granted over the years. A number of parcels exist in this area that do have these dimensions. They exist prior to the area Plan Commission adopting the lot depth to width ratio, and certainly before the Town adopted that standard with the 2010 reorganization addresses like 8346, I believe have a variance for lot depth to width. There is another parcel on the south side of 550, I don’t know the address exactly off-hand, but yes, there is a number of variances in this area.

Jones     But, those are variances granted for something that was pre-existing?

DeLong    No. These were newly created.

Jones     Newly created after the ordinance?

DeLong    Correct.

Jones     Okay. But that is part of the reason we sort of created the flag lot, the desire not to allow flag lots was because the combination of space for septic fields and drainage and just kind of everything everybody is talking about?

DeLong    Correct. I think that’s why that standard was adopted and certainly when staff was looking at these requests, like the one that’s in front of you this evening, it’s reviewing what do the other neighbors enjoy. Do they enjoy flag lots, dimensions and other deviations, and then the conversation, which would happen later on this evening of, you know, this property asking to enjoy the same things and features that the neighbors enjoy.

Morical    Wayne, how far away from the Eastern property line could they build the house? What’s the buffer that has to be there?

DeLong    Well, the zoning ordinance would say 5 feet. Is the minimum side-yard setback.

Morical    Okay.

Wolff     I would like to speak with the petitioner again, but before I do, I want to make sure, are there any other remonstrators that would like to speak? Please come forward and state you name and address for the record.
My name is Christine Jordan. I live at 5455 South 800 East, on the corner lot.

Southwest corner, or West ---

--West of the Pabst property.

Yes. Thank you. Ms. Jordan, what are your concerns?

My concerns are just a green space buffer, in general. I know that the Fergusons were not able to come because of a commitment for sports, but she texted me and objects, and I would say that if their position has a bearing on this then, I don’t know if we can ask for a continuance. I feel just that the whole leach field and the fingers, we put a pool in this summer, and there was big, not big, but a substantial process involved to be sure that our leach field was a certain amount of space, and it’s actually on the upper side of our property. So, I’m just shocked based on the information that we received in our construction process that that could even be possible there, but I am not an engineer.

And, the other point that I would just like to make, and I don’t know that it’s appropriate, but the timeline and the intention just does not add up. She resides in Florida, and her husband passed away before she approached her sister-in-law to purchase this property. He was terminally ill at the time that Mr. Pabst passed away unexpectedly, and I honestly, I mean, it is hearsay, but at the closing of that property with her sister-in-law, they told the attorney that they intended to split the property and flip it, and if that is what will happen, which I firmly believe that it will. She does not live here. She did not visit the property. I met her husband many, many times and he would come and stay for a month, and he said she would stay at her mother’s in Carmel. She didn’t like to come to the property. I am sorry to broach that, but I feel very strongly about her intentions. And, if you look at the timeline of the purchase contract versus the timeline that she is presenting, it is off.

So, Mrs. Jordan, I think I heard one of your concerns was, you mentioned green space. I’m going to lump that into density, right? So, you think it might be too much to split the lot.

Especially if you’re on the opposite side of that, the Ferguson’s home is positioned in a way that that is a huge green space buffer that they had in place whenever they built their home.

The other I would mention is, and I think that’s a valid concern. Thank you for sharing. The other thing I would mention is you suggested that you had concerns about how they would get the construction permits or go through the process because you had similar issues dealing with your pool this summer, and we don’t have that in front of us. So, we’re not looking at that. We don’t know what that is. We don’t know where the house would sit or any of that information. So, that’s not what we’re focusing on tonight. So, it’s really just taking that what is one lot today and kind of splitting it up into two. So, that process will happen if it is approved tonight, and there is kind of other mechanisms for that. But, I think I
heard your primary concern was really that it would not fit the feel of the neighborhood. It would create, in your mind, a density issue.

Jordan: Yes. We left a neighborhood for the area that we are in now.

Wolff: I said neighborhood, but I meant the area. Yes.

Jordan: Yes.

Wolff: Okay. Thank you, Mrs. Jordan.

Jordan: Thank you. I appreciate it.

Wolff: I would like to speak with the petitioner again. Mr. Paddock, would you like to come back up? Was it Paddock?

J. Paddock: Jim Paddock. 8164 550 South. Can I ask, what’s the flag lots? What does that mean?

Wolff: Flag lots is a term we use where, it’s similar to what your lot is. It is shaped like a flag. So, there is a driveway that goes up, with kind of a narrow property line, and then it gets wider at the top.

J. Paddock: Okay.

Wolff: I don’t think that’s an issue here. At least not in front of me right now.

J. Paddock: It’s never been an issue. Go ahead. I mean, what do you mean by that?

Wolff: What flag lots violate are, well, there are statutes within our zoning rules that discourage flag lots. But, that’s not what we’re talking about tonight. So, I don’t think that’s relevant.

J. Paddock: So, that’s the first time I’ve ever heard of anything like that.

Wolff: Yes.

J. Paddock: So, that’s why I brought it up to see what the issue was.

Morical: Like the parcel to the east of you, 8218 is a flag lot. Is a clear flag lot.

J. Paddock: Oh, okay, east of Ferguson, you mean?

Morical: You guys are 8164, right?

J. Paddock: Yes.

Morical: Yes. And, your property, the people that own the property to the east of you.

J. Paddock: Right.
Morical: That's a flag lot.

J. Paddock: Okay. Makes sense now.

Morical: So, we generally disfavor those, and to the extent they were created after the zoning code became applicable, then you need a variance. If it were created before the zoning code became applicable, then it's not a problem. It's a legal non-conformity.

J. Paddock: Okay. I just didn't want to miss something in case something else was coming up.

Morical: Yes. That's what we mean by a flag lot.

Wolff: Is Mr. Paddock not 8164? What is your address, Mr. Paddock? I'm sorry.

J. Paddock: 8164 East.

Wolff: Okay.

J. Paddock: I'm the flag lot.

Morical: Next to the other flag lot.

Wolff: Next to 8218?

J. Paddock: Yes.

Morical: I don't think that's an issue here.

Wolff: Thank you. Flag lot is not a derogatory term, nor are they a protected class. Mrs. Pabst, would you please come forward? So, I think I heard a couple different concerns. One is drainage issue, and the other primary one was, and again, I may not be using the appropriate term, but density. It was taking one lot, and splitting it into two. Do you have any comments about that?

Pabst: I would just like to say that the 2-acre lot is the minimum out there. That's just standard. I mean, so I'm meeting the requirements for that. All I'm asking for is the variance for the house. The house is not obviously the drainage problem. So, all I'm asking for is for a variance to leave the house on the 1.8 acres. And, yes, it would save the house, because at that point nobody could actually do anything with that piece of property until City sewer and water came through where they wanted to tear the house down, and then they could possibly do something different with it. But, from what I understand from all of the different departments, nothing else could be done with the house. You know, they couldn't tear it down and build another one without coming and getting a variance for putting it on a 1.83 acres. So, I am trying to save the house. And, just for your information, my husband was still alive. He did not have terminal cancer. He died from an operation where he bled to death. And, we had bid on the house. He, my husband, signed on that house too. So, I don't know where you got your information from.
Wolff: I really would like to focus --

Pabst: I apologize.

Wolff: --No problem at all. A challenging situation, but I would really like to focus on what we're dealing with at hand, which is taking an approximately 4-acre lot and splitting it into 2 lots. And, so, I believe, as I understand the petition, you're right. The minimum lot size is 2 acres. So, it looks like if we did this, we got one lot that's in conformance, and then we would have a new lot with the existing structure, which is an older structure, that would require the variance because it is a 1.83 acre lot, which is about 0.17 acres short of what we need to be.

Pabst: Correct. Yes, Sir.

Wolff: Okay. Thank you. Can we have the staff report, Wayne?

Delong: Thank you. With certainly a lot of the dialogue this evening has covered staff's support of this petition and the staff, the Town’s review of this petition, is primarily focused on the fabric of the area. Talking about the lot area, the lot dimensions, what do the other, what do the other property owners enjoy in this area? And, certainly from 800 East to 875 there are a number of lots that deviate from the minimum 2-acre lot size. There are a number of lots that enjoy deviations from your depth to width ratios, referred to tonight as the flag lot. But the ordinance talks about it as a depth to width ratio. And, so where staff looks at a request, we are looking at what, just like we do with lot coverage requests and other types of petitions that come in front of you. It is what do the neighbors enjoy? Certainly, the dialogue related to drainage, the dialogue related to density. These are almost routinely topics that are broached during these types of conversations. The BZA has been very well in tune with these conversations. Oftentimes you will work to work through those conversations. Sometimes the petitions are denied. Sometimes they are approved. But, that dialogue occurs routinely. But, specific to the staff review, we’re focused on Article 2, Table 3, which is the lot size, and focusing again on what do the neighbors enjoy in the area, and as the aerial photograph indicates in front of you, the lot area, the lot dimensions. There are parcels that are near this site and in proximity to this site that enjoy the same requests, if not less than what is in front of you this evening. With that in mind, staff is supportive of the petition, and I would be happy to answer any questions.

Wolff: Thank you, Wayne. Any questions for the staff?

Morical: No, but I've got a couple of questions for the petitioner again, if you don't mind?

Wolff: No I don't. Mrs. Pabst, will you come forward please?

Morical: Mrs. Pabst, have you noticed the drainage issues that have been addressed tonight?

Pabst: I have been married to my husband for 40 years, so I have known that property since I was 17 years old. And, there was actually a creek that went through all the
properties along there, including ours, and for some reason, the creek has not been kept the way it was when it used to flow down to the property to the west. And, so, I think that’s a lot of the drainage problem to be honest with you. And, also we don’t have any kind of things at the end of our driveway to let the water flow through. Any kind of, you know, we have a, most of the driveways around there are gravel, so, you know, we don’t have a whole lot of problem with the washout like this gentleman does with his paved driveway. So, I think that’s kind of common with anything around that area.

Morical

So, you noticed the drainage issues?

Pabst

I do not notice any drainage issues. We have, and as far as back behind the property being wet, I walked that back area with the soil gentleman after it had rained, and I was shocked that it was not as wet as it could have been. So, I thought that he would have a problem with the soil, but he said it was, you know, everything was fine. So, no I have not noticed a drainage issue. We are on a hill, so I have no issues with drainage, we’re on that, but I do know, like I said, there used to be a creek that went down at the front of the road, that has not been there for several years now. And, if they’re having a drainage issue, I would say that is probably is related to that fact that that has basically just been removed, and I don’t know where all that water is going off to now.

Morical

Okay. So, a couple things. Did you have the opportunity to review the staff report?

Pabst

Yes, I did.

Morical

Okay. And, the staff report notes the procedure and process by which we act on variances.

Pabst

Yes, correct.

Morical

That is the petitioner, you need to meet the burden of proof on the three different elements that are stated in the staff report.

Pabst

Correct.

Morical

One of those elements is 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. Which is what this whole drainage thing is about. So, to the extent we were to grant the variance, split the two parcels, you build something on the two acres. It’s on a hill. You don’t have a drainage problem. You build something on the two acres that’s going to deflect even more water. They say they’re going to have an even greater drainage problem. That’s a substantially adverse effect on their property.

Pabst

I don’t feel that way. I don’t feel that anything you put on that hill. I’m also actually personally taking a structure down now. So, I mean, I’m also taking a structure down that is, and there is a corn bin that I’m also removing.
Morical  The purpose of splitting up the lots is to allow for a structure to be built on the two acres. Right?

Pabst  Correct. My husband and I originally were going to build on that two acres, yes.

Morical  Which is great.

Pabst  Yes.

Morical  If you build a structure on that two acres, it’s going to deflect more water. It’s going to cause additional drainage runoff to the east. The testimony that we have here tonight is that they’ve already got a drainage problem. If we were to grant this, and you build on top of the hill, or whoever buys the lot builds on top of the hill, it’s going to exacerbate that drainage problem.

Pabst  I do not feel like that would be a problem, no.

Morical  Okay. So, you have the burden of proving that they’re not going to be substantially adversely affected.

Pabst  This is the first we have ever heard of the drainage problem.

Morical  Okay. And, that’s fine. So, that means you haven’t had the opportunity to work through this issue with your neighbors.

Pabst  No, no.

Morical  What we’ve heard, one of the remonstrators tonight asked for the Fergusons, because they’re not able to be here tonight, that we continue this to the next meeting. Everybody, either you or the remonstrators, have the right to one continuance.

Pabst  Well, my problem is is that they’re not here to ask for that continuance.

Morical  No, but she asked for it. And, she has the standing. So, Mrs. Jordan has the standing to ask for that continuance, and I think that’s going to benefit you, because if I had to vote on this right now, I’d say no, because you’ve got the burden of proof on those three elements. That one element of substantially adverse effect, you haven’t yet been able to meet. So, I would encourage you, I’m inclined to suggest therefore that we grant the continuance for one month, and during that time, you work through the drainage issue, and hopefully in a way that’s satisfactory to your neighbors, and come back to us again in February with a variance request that addresses this.

Pabst  Well, can I ask you this, I sent out a letter with my name and phone number for them to call me if they had any concerns. Not one of them called me. So, do you think the concerns are really the water issue, or do you think the concerns are that they don’t want a house being put on two acres that is legally allowed to be done?

Morical  It’s not legally allowed to be done.
Pabst well, it's two acres.
Morical no, it's 3.83 acres. you've got one house on there now. if you want to, you could take that house down and build another house on there. if you want to be able to split this into 2 acres and 1.83 acres, you need our approval.
Pabst correct.
Morical for you to get a variance, you have the burden of proving these 3 things. i agree with you, they're not interested in having this project move forward. i also believe that you have property rights, and we all have property rights, and as staff said, there are a bunch of other pieces of property similar to this around there. you're not creating anything new by this 1.83 or 2-acre issue. but, you are going to be, according to the testimony tonight, exacerbating a drainage problem. that's not acceptable. we're not going to approve you just doing that in a way that substantially adversely affects the neighboring piece of property. so, the burden is on you. i'm sorry they didn't reach out to you in response to your letter. i appreciate you sending out the letter because we always want to facilitate petitioners and the nearby property owners working through issues together instead of us having to make a decision. the reality is, you're the one that needs to get over that hurdle. not them. you. so, either you meet that burden of proof, or you don't. and, right now, you haven't. so, we can either act, we've had a request for a continuance. we're going to grant that continuance. i would encourage you to work with these guys and figure out the drainage issue. so, whenever you come back next time, you can say, you know what, we came up with a way to address the drainage concerns.
Pabst let me ask you this, if he had a drainage issue, why didn't he bring pictures or something? something for us to visualize this drainage issue.
Morical great question. but again, you have the burden of proof. they have raised the concern.
Pabst the burden of proof of something i wasn't aware of. but, i mean, i will work with them. i have no problem with that. but, the question i have is, is i'm asking for 1.83 where the house is. that's not the drainage issue. the drainage issue is the two acres that could actually be separated.
Morical you are correct. so, with these split into two parcels, you've got the right to build on the two acres.
Pabst correct.
Morical if you build on the two acres, on top of the hill, it's going to exacerbate the drainage issue to the east.
Pabst i'm not going to be, i don't know that i'll be building anytime soon.
Morical if we grant this variance request, you would have the right to build a house on the two acres. if so, you know, it's x and y and z. z causes the adverse effect. if we
grant this tonight, you’d have the right to do something that can cause that adverse effect.

Pabst I guess I’m still confused when the two acres would be legal. That’s what I’m still confused about.

Morical It’s not.

Jones Wait a minute. Isn’t the issue that --

Pabst --Yes it is.

Jones To create the 2-acre lot, you are creating a 1.83-acre lot that is non-conforming.

Pabst Correct.

Morical That’s why you’re here.

Pabst Which is on the other side, though. It’s not in the drainage issue problem.

Jones But, you’re creating a lot that doesn’t meet the standard. You need the variance for the 1.83, not the 2.

Pabst Correct. And, that’s what I was saying. The two acres is what they are saying is causing the drainage issue.

Wolff But, the two acres doesn’t exist today.

Pabst Right.

Wolff It’s 3.83 acres.

Pabst Okay.

Wolff That’s what we’re dealing with. And, so we need a variance to split that up. And, that variance is going to create a problem.

Pabst Yes.

Morical And, you’ve got the burden of proof of working through that, so I would encourage you to take the next month, because we are going to vote here on this continuance. I would encourage you to take the next month to work with your neighbors to address the drainage issue. Maybe talk to them about what your commitment would be to not build the house too far to the east. That is too close to the road. You can’t subdivide this any further than the two if we were to grant that variance, and see if you can work through these issues with them. So, there is no risk of this becoming a subdivision. It’s just going to be the one house on the two acres. There is a whole bunch of other houses like that. So, that’s really not the, this density isn’t really the issue. It’s the drainage the adverse effect on the property to the east.
Zionsville Board of Zoning Appeals
January 8, 2019

Pabst I understand what you’re saying, but, and there could be an issue with it being subdivided later, if somebody wanted to.

Morical They would not have the right to do that. They would either need to come before us or the Plan Commission.

Pabst Right, I understand that. But, if there was City water and sewer that came through there, is that, what could be done with that? I’m just curious.

Morical Well, you can deal with the building department on that, but we’re not going to work through those details with you, but I think what makes sense for us to consider is the continuance request. Unless, Mr. Paddock, you want to - -

J. Paddock May I ask simple questions real quick?

Morical Sure.

J. Paddock I’ll make it real quick.

Morical Oh, John, actually you get to say sure.

Wolff Sure.

J. Paddock Jim Paddock, 8164 East 550 South. Do you have to do that every time you come up here? Is that the rule?

Wolff We do record the meetings, and so then we know who is speaking.

J. Paddock So, next time I’m up here I won’t do it. Quick question, two questions. If the variance goes through on that 1.8-acre, and she’s talking about the house is torn down, they will not be able to build on it unless there is another variance. Is that correct or incorrect? That is incorrect.

Morical You’re talking about if the house on the 1.83 acres is torn down, to build another house?

J. Paddock To build a bigger house, they have to get a variance for that. No, it’s already approved, correct?

Morical Hold on a second. Let’s let Wayne weigh in.

DeLong The variance is requesting the establishment of a 1.83-acre lot. If this home that’s on the lot was destroyed, the zoning would permit a new home to be built to replace the house that is lost.

J. Paddock So, therefore that changes a little bit of things, too, there because that’s still building another; you know, there is a house there under two acres. Which, we are against that, too. You know, we had to have at least two acres to build, so now you’re trying to get a variance for that house to be okay under two acres. That’s a problem for us.
Morical  So, in my, if you look at the aerial, and hopefully you’ve had the opportunity to look at the staff report.

J. Paddock  Yes, I have many times.

Morical  If you look at the aerial, big picture, there are a lot of lots about this size.

J. Paddock  But they’re over two acres.

Morical  No, not on the south side of the street.

J. Paddock  What?

Morical  Right, Wayne?

DeLong  Correct. There is lot sizes that range from 1.25 acres, 1.8 - -

J. Paddock  --Right. Go back in history and time.

Morical  There is nobody more infallible than Wayne. So, the reality is there are lots - -

J. Paddock  --Back in history, they were building stuff on one or half acres too.

Morical  But right around here there are lots on two acres. So, the whole, you know, 1.83 is an issue. Two is an issue. No. We’re not going to hold this up because of that. It’s just not going to be the case. People have property rights. This makes sense except for the adverse effect on your property. You’ve identified two issues. Drainage, totally legit, and your concern of it being built too close to your driveway.

J. Paddock  Right.

Morical  Those are the two things that we would encourage you to work directly with her to try and resolve.

J. Paddock  And, the other thing is, on the creek she is talking about is the one along the side, it runs along the road out front. It’s just the drainage ditch. So, there was no other creek that was there that always worked. Okay. And, the reason it wasn’t behind her house at the time is because my drainage is working, that I’ve been working on.

Morical  And, obviously building a house on that hill is going to have an impact.

J. Paddock  Big time.

Morical  And, you’ve got historic drainage issues.

J. Paddock  Right.

Morical  Right, Larry? Important stuff.
Zionsville Board of Zoning Appeals  
January 8, 2019

J. Paddock  We do have pictures too. Many pictures. A lot of pictures.

Morical  Which is great. She has got the burden of proof. Will you work with her in good faith to try to address this issue?

J. Paddock  Yes. We’ll see what happens.

Morical  Okay. So, talk to those two things. Try to see if you can work through the drainage and see if you can talk to her about where the house could be positioned, a new house, that wouldn’t be problematic for your driveway.

J. Paddock  Well, I think there we’re probably wasting time. It’s not for her to build the house. She’s probably going to sell the lot. So, how would you go around dealing with that then?

Morical  So, there would be a commitment as part of the variance that it would be --

J. Paddock  --So, if she would sell that lot afterwards, the commitment would stand in court?

Morical  It would be recorded, and whoever bought it would be bound by that.

J. Paddock  Okay.

Morical  But be reasonable. Seriously.

J. Paddock  I understand. I mean, we’ve been out there a long time. We can work with it.

Morical  The legit issue is the drainage.

J. Paddock  I used to work with her father-in-law quite a bit. I mean, it was no issue.

Morical  Great.

J. Paddock  It was just a wet problem.

Morical  Well, let’s see if we can figure out a way to deal with that.

Evinger  If there is a problem with the ditch out front, you might check with the County and see what could be done too, from the County level.

J. Paddock  Well, the County has worked on that, only every five years.

Morical  But, it’s the northeast corner that’s got the real problem?

J. Paddock  Yes. That’s the normal drainage on top. Because a lot of water goes through her property onto ours. That’s happened. It’s there. You know, I built there knowing that. It is, it’s a drainage problem.

Morical  It’s the way God made it. But, you’ve got the concern about an additional home that will exacerbate it, and she’s got the burden of proof to show that her variance is not going to cause a substantially adverse effect.

Page 26 of 28  
Exhibit 5
J. Paddock Right.

Pabst Can I ask one question?

Morical Nope, you gotta do it in the microphone.

J. Paddock Thank you.

Morical Thank you.

Pabst May I ask if your property is in a flood zone?

J. Paddock It’s definitely not.

Pabst Not in any kind of flood zone at all. Okay.

Wolff Okay. So, to formalize this, Mr. Jordan, did you ask for a continuance request? Right, did one of the petitioners ask for --

? One of us will.

Wolff Okay. Thank you. Do we need a motion, or do they have the right?

Chadd I--they’re allowed one by right, if I recall correctly.

Morical The only issue would be they may not have done it in time. So, we probably should vote on it just for --

? [Inaudible]

Morical We’ve enjoyed all of this. So, I don’t want it to end.

Stark My name is James L. Stark, 5395 South 800 East.

Wolff Thank you, Mr. Stark.

Stark I just wanted to ask you boys if you understood what a seep is? Do you understand a seep?

Wolff I’m going to default to my drainage person.

Stark When they built my house, it’s up on the hill. They dug the basement, and when the boys come over from Illinois to dig it, and the boy was down in the bottom of it and he said, “There is six springs down here in your basement running water.” And, they took a pump and started pumping the water out. And, I’ve got a drain that runs down to daylight, and it runs water all the time. Now, the northeast portion of that two-acre lot, that’s what a seep is, boys.

Morical Okay. Thank you.
Jones       It’s a sand vein. If we go around Michigan Road, there south of Pittman’s property, in that thing that always takes the - -

Wolff      --Oh, sidewalk timber. Yes.

Jones      There is a seep. The water up on the top of the hill is running down through a sand vein comes out the side of the hill down low, and forms a creek that they can’t stop because to do it you’d have to go all the way up in the subdivision and re-pipe it all the way out.

Wolff      What I think they did is they dug it up and ran tile. So, it’s still there. It just goes underground now.

Jones      Yes. But then it fills in the tile and goes elsewhere.

Wolff      I think we need a motion.

Jones      About the seep?

Wolff      No.

Morical    Okay. I will make a motion. I move that we continue Docket#2018-46-DSV, R. Pabst, 8090 East 550 South to the February 12 meeting of the Board of Zoning Appeals.

Wolff      Is there a second?

Evinger/  Second.

Mundy      All those in favor?

All        Aye.

Wolff      Those opposed?

[No response.]

Wolff      Motion carries. Okay, next item on our agenda is other items to be considered. Do we need to do any of these on the record?

DeLong     No, I can just offer you a brief update. Villanueva, we are working through some language finalization on that. The Davis special exception has been recorded. We are waiting receipt of the copy. Lavallette is under our office’s review currently related to language. We did have a meeting with Mr. Webb related to Wheat Holdings, and he is working on finalizing those commitments, and Soffa, Frandsen is working on that set of commitments, and the Miller petition is pending recordation currently. So, we are moving forward on a variety of those.

Wolff      Thank you for your diligence. Any other business? Seeing none, this meeting is concluded.
11, 2019 meeting minutes. Those should have been passed out to you earlier this week. Any comments from the group? Seeing none, I will entertain a motion.

Evinger
I will make a motion to approve the minutes as presented.

Wolff
Thank you. Is there a second?

Jones
Second.

Wolff
All those in favor?

All
Aye.

Wolff
Those opposed?

[No response.]

Wolff
Motion carries. The next item on our agenda is continuous requests. Are there any petitioners here tonight requesting a continuance? Seeing none, moving on to continued business. Docket # 2018-46-DSV. Please, will the petitioner please come forward and state your name and address. Welcome back. So, will you please state your name. I want to start the conversation, but will you give us your name and address.

Pabst
Reesa Pabst. I’m at 8090 East 550 South.

Wolff
Thank you. So, Mrs. Pabst, as you know we have a new member tonight, and we had a fairly lengthy conversation a couple months ago, but I think it’s important that we kind of hit the reset button, and let’s try to understand what it is you’re asking for. We heard some remonstrators, and so they had some concerns, and let’s also try to understand what you’ve done to help mitigate those concerns.

Pabst
So, what I asked for was a variance to split my property, which I am asking for the home to stay on 1.83 acres, and to create a 2-acre lot. And, as a reminder of the last meeting concerning the variance, my husband and I inherited part of the property, and from a family estate. After my father-in-law died, there were several people interested in the property, one of which was a neighbor. I was unaware until the last meeting who the neighbor was that was interested in the property, but it happened to be the Paddock that were interested in purchasing it for their son. I don’t know what the circumstances were as to why they didn’t purchase the property. It was all dealt with by a lawyer, so having said that, when they did not come back to look at the property or show any interest in it, the lawyer had come to us and said that he was going to go ahead and have it appraised by a realtor, and see about putting it on the market. At that time, he had come back to us and told us that he had a realtor that had a developer that was interested in the property. At that time, my husband and I decided that we did not want to see the home torn down, so, having said that, we went ahead and decided to move forward with purchasing the property from the rest of our siblings, and we did so. So, you know, it was always in the family’s interest to keep the house. They had actually done very extensive remodel to the outside of the home in the
last two years, and spent a lot of money doing that, so it's always been, you know, they've had it in the home for over 50 years, I mean in the family for over 50 years, so it was just always that we would try to keep the home in the family, or keep it standing, because it was from the mid-1800s. So, having said that, I am just here tonight to try to see about getting it. I did work with my neighbor, all my neighbors, and got several people out there to try to work on the drainage issues. The Paddocks had met with, and you probably have a copy of it. I had submitted that from the Natural Resource Conservation Services. I did get Angela Garrison to come out and meet with us. She met with me twice. She met with Mr. Stark at one time, and she also met with Mr. Paddock. And, there was also Brian Daggy that came out with the Boone County Soil and Water District. They met and Mr. Paddock explained to them that he didn't currently have any drainage issues. That he had corrected them. They looked at our property, and all the properties surrounding, and had said that they could not really come up with a hypothetical for a home being built, but they did say that there were safeguards that were put into place in the building departments and all the permitting processes for drainage, if and when something is built on that 2 acres. And, she also had offered to come out at a later date when somebody was deciding to build and work with them on the drainage. I don't know if you have a copy of the topo, as well, but it did show the elevations of everybody's property, and unfortunately, the Paddocks are at a very low level where their property kind of, everything kind of goes down to them. But, they do have a creek that I had mentioned at the last meeting. It's a stream that has been there for, I think they put in this report for over 40 years, that is one of the diversions that they are having that goes across their driveway. She did not feel like our property would be a very big impact on it if we did go in and make sure that we, that somebody had done the proper drainage when they build a home. We also, I also want to point out that all roads lead to my property. All of my neighbors, drainage, comes to my front yard because the huge drainage ditch that crosses the road is actually in front of my property. So, I am going to be just as conscious about drainage as anybody, any of my neighbors. With this last rain, I did go out and look at the property again, and behind me to make sure there wasn't any wet areas. I did see a couple of very minor wet areas, and driving around Zionsville, I could not believe how many people were under water. I just want to say that Brian Daggy from the Soil and Water District joking said to me when I said I was unaware of their being drainage issues because I haven't lived in Zionsville for 30 years, and he said to me, he said, "Well, my business card has a lily pad and a frog on it, if that tells you anything." So, I did try to work with my neighbors. I did go around to all the other neighbors and speak to them, and I got no resistance from anybody as far as putting a home on the 2 acres. They were ecstatic that the older home was going to be able to stay, and everybody was very welcoming and signed letters to that effect, and I did furnish those, as well.

Wolff        Thank you, Mrs. Pabst. I think I am going to try to sum this up.

Pabst        Okay.

Wolff        And, you correct me where I go wrong.

Pabst        Okay.
Wolff  We’re talking about one parcel that is currently 3.83 acres.

Pabst  Yes, sir.

Wolff  And you would like to have that split into two parcels. One that is 2, and one that is 1.83 acres.

Pabst  Correct.

Wolff  As we will discuss in a few moments, the staff feels that the size of those parcels is consistent with other parcels in the area. We had some neighbors have concerns regarding what splitting that parcel into would do, and adding a house to it, and to help work through that issue, you have hired some experts, and they did a bunch of drainage studies, and I think what I heard was nobody exactly knows what’s going to happen when you put a house on it because water is a little bit unpredictable. So, it’s difficult to interpret what’s going to happen, but you have a better understanding of where the water goes, and where it might go, but adding a house that we don’t know what it looks like, how big it is, or where it is going to sit is a pretty hypothetical situation.

Pabst  Correct. And, they did not want to go into hypotheticals. But, the way that the hill is, it’s got a very good slope on it going down towards the drainage at the road, and Brian Daggy did say that he felt like a house could be built at the slope where everything went towards the front of the property where it should go to the drainage.

Wolff  Thank you. Are there any questions for the petitioner?

Pabst  Excuse me. This is my brother. Can you come up?

Wolff  Absolutely. You’re welcome to speak. Come forward.

Pabst  He can’t talk. He lost his voice.

Wolff  Or you can whisper to her and have her do it. But we just want to make sure we get it on the record.

Pabst  Oh, yes. We are also taking down two structures. There is a corn bin that has been there for years and years, and there is also, we’ve permitted to take down a barn that has been sitting there for several years, as well. So, there are two structures that are being removed.

Wolff  You’re right. Thank you for bringing that up. That is important.

Roberts  Also, I’ve been doing excavating for many years - -

Wolff  Can you state your name and address for the record please?

Roberts  Greg Roberts.

Pabst  And your address.
Roberts  9085 State Road 38, Sheridan.

Wolff  Thank you.

Roberts  I’ve been doing excavating for many years, and most all these properties have perimeter drains anyway. When they build new homes anyhow, any of the ones in the suburb areas, and I just wanted to reiterate that, and she has natural fall, and the soil hasn’t been tampered with. You know, it’s not build-up, it’s not home-maid. It’s natural. And, basically what I’m saying is that I don’t, you know, even from my experiences over the years, I don’t see a problem with building a house on that acreage because it is a natural slope, and 90% of the property, the fall is in the front of the property, the adjacent road in the front.

Wolff  Thank you.

Roberts  Thank you.

Wolff  And, also, thank you for bringing up the removal of a couple of accessory structures. We did talk about that last meeting, we brought it up, but thank you for doing that. Any questions for the petitioner?

Jones  I guess my question along the line though is, while you have met with all these individuals and they have given you all this information, there still is no real drainage plan to alleviate any of the problems that might be created. It’s still pushing off the, it still pushes off the correction of any potential problems to a future owner, or adjoining property owners, or Zionsville. In other words, what you have told us is, even by your own account, driving around the Town of Zionsville, you understand there is drainage issues everywhere.

Pabst  Correct.

Jones  But, you’re not really proposing anything to alleviate that with the ability to get this variance to partition off this piece of property.

Pabst  Well, I have met with your Well and Septic Department, which approved the well and septic on the 1.83 acres.

Jones  But a well and septic isn’t drainage.

Pabst  I understand that. I’ve also met with your street division and contacted, I think it was Nick Parr. Spoke to him about the drainage, and I contacted every department I could contact through the city trying to get any kind of, but I’m going to be honest with you, all of them told me that the Building Department has safeguards for the drainage issues when building a home. And, I would have to defer to Wayne DeLong about that because that is basically what I have been told by all the departments.

Jones  Does the Building Department have safeguards?
With any new construction, there is certainly going to be drainage ordinances and building code that speaks to the positive drainage that is required to be perpetuated with any new development. The characteristics that have been discussed and previously discussed this evening, as well, are not atypical or foreign. I mean, these are every day encountered items that are routinely addressed when a 2-acre parcel is thought of to be built upon by somebody who then needs to take upon the right requirements to put in the right drainage, structures, perimeter drains, outfall places, routing drainage accordingly. So, the safeguards themselves are the ordinances of the Town of Zionsville building code, which mandates positive drainage, and like, those rules are implemented on a daily basis.

Okay.

Any other questions for the petitioner?

Absolutely.

So, I’m the new member, so I don’t want to battle too far out into the deep waters, I don’t float in the deep water, but I do have a couple questions. Because I wasn’t here for the first meeting on this. But, I have read through the transcript. The drainage that exists right now on the property, is it your view that the existing improvements don’t contribute to the problem that exists at the northeast corner, that the northeast corner of the property, that that’s all coming from, that’s coming down from the north?

It is coming from that new subdivision, yes, but I don’t know that it was ever just coming from that new subdivision. There is, if you look at the plat, that I think there was a copy of that furnished, that shows that it was a natural drainage that came from the north.

So, the 1.83-acre parcel that you want to create with the existing improvements, it’s your position that those improvements aren’t contributing to any sort of drainage issue in the northeast corner?

No, no. The 1.83, and I’m not, all I’m trying to do is just save the home. I’m not doing any improvements other than I did check to make sure I could put a new septic in there if it was needed. But, I will say that Mr. Paddock did take part of our property. He took down part of the fence, and he built a berm on part of our property when he alleviated his drainage issue, which I have no problem with. I mean, we want to be neighborly, and we want to get along with all our neighbors, so that was not a problem for him to do that, but, you know, we have tried to work with him. And, I was unaware that that had gone on, but that had happened within the last year.

But you’re establishing through this process, and if a 2-acre parcel, we’re being asked to approve a 1.83-acre parcel that is below the existing requirement - -

--Yes, that’s actually - -
Kremp --to the east of that there will be a 2-acre parcel that would be consistent with the zoning requirements. And, that 2-acre parcel is where this drainage issue exists at the northeast corner, if I’m correct.

Pabst Correct. Yes.

Kremp And, so this is quick, I don’t want to take more of everybody else’s time. I saw the initial submission had a plan that had a hand-drawn line where the 2-acre split would occur, and I’ve seen something that, is that a supplement to it that has actually a metes and bounds description where there is a lot line --

Pabst I actually did have my surveyor redo that, and it was turned in by the surveyor.

Kremp Okay. My question is, if the petition is approved, is the petitioner bound by those lot or by that lot description? Are we approving 1.83 acres that they could somehow resize, or is it going to be that lot size as shown on the resubmitted plan?

DeLong The 1.83 acres would, if it changes, it would have to come back for an additional variance if it were to get smaller.

Kremp Okay, are we approving the dimensions then?

Wolff Are you implying that if we made a diagonal line here and a diagonal line there, we stayed at 1.83 acres --

Kremp Can they adjust the 1.83 acres, if we approve the petition, can they adjust the 1.83 acres?

Wolff No. We are approving the 1.83 acres.

Kremp So, the 2 acres has to stay on the east side?

Pabst Correct. Yes.

Wolff Correct.

Kremp And, last question, and I’ll shut up.

Wolff No please go ahead.

Kremp And, I promise I will not be like this. I noticed on your plan that you have the driveway, the current driveway is located on both sides of what that lot line would be on your plan.

Pabst That would be moved, yes.

Kremp So, your intention is to move it all onto the 1.83 acres?

Pabst Yes.
Kremp    Okay, thank you.

Wolff   Good questions. Thank you. We may have you come back up.

Pabst    Okay.

Wolff   Are there any remonstrators here tonight? Please come forward and state your name and address.

S. Paddock  Shelly Paddock, 8164 East 550 South.

Wolff   And, Mrs. Paddock, if I remember, you’re directly to the east. Correct?

S. Paddock  Correct. It’s our property that is affected.

Wolff   Okay, great. What are your concerns?

S. Paddock  I just first want to correct something that Mrs. Pabst said. We did not approach anyone to buy the property. Her sister-in-law, Judy, called me and asked if we would be interested and I said I would talk to my grown son, and his future wife, and then let her know. Which a couple days later I called her back and they said they have no interest. So, we did not seek that.

Wolff   Yes. For everybody involved, I want to stay inside our lane here. I’m really just worried about taking 3.83 acres and cutting it up into 2 and 1.83. That’s really my focus and so some of these transactions that may or may not have had that I was not involved in or I couldn’t hear myself, I’m not overly interested in any of those.

S. Paddock  I’m not either. I just want to make sure that everything is clear, and truthful, if that matters.

Wolff   Yes. Certainly. So, you, last time, and I want to give you an opportunity to speak. The last time, you had some concerns about drainage.

S. Paddock  Correct.

Wolff   Actually, you also had some concerns about the lot size. Could you please review us your concerns, and can you also talk to what Mrs. Pabst may have done to alleviate or not alleviate your concerns?

S. Paddock  Sure. First of all, the only reason that they’re concerned about the lot sizes, it’s your rules, not mine. I didn’t make them. That’s the Town of Zionsville. So, I don’t have a problem with the lot. As long as the drainage is addressed. And, as far as what was done. When we moved there 25 years ago, not a year ago, we dug with her father-in-law, and mother-in-law, who lived in the property, they were our neighbors. We talked to them, along with our other neighbors, that the three properties connect. They all adjoin. And, they said, there is an issue with drainage here. All of us agreed, on their properties, as well as ours. So, we said, well, we’re going to put a driveway in, so let’s, how about this, we all three work together to make that work for all of us. Not just so we could have a driveway.
We removed the fence. Of course, with permission, with working with her in-laws, who then owned the property. We were good neighbors, and we were friends with them. So, there was never a relationship with, I had never met Mrs. Pabst until the first night that we were here. So, I don’t have a problem with the building a house if you give them the variance. They’re your rules. As long as everybody is following the same rules, I am good with that. The drainage is, is our driveway is right along that fence line. It’s probably less than 7 feet, maybe 10, from the fence line and the fence, actually part of her fence is on our property, because the line is not directly straight. So, we have a tree that is on our side of the fence that is on her property, which we’re going to have to address because it’s going to fall over on that lot, because the water. And, it’s not their fault. It’s just the way the property is. It’s not, no one built it up. No one stacked dirt or dumped or did anything. It is the natural fall of the land. And, we have. We have dug up our yard. We have dug up our neighbor’s yard. We have redone that drain about 4 or 5 times since we have lived there in the 25 years. It’s dug up now. She didn’t hire an engineer. As far as I know. She called the Boone County. They called me. They came out. They met with my husband. We talked to them. They just said, you know, “Do you have a problem?” Because, when she called, what the drainage, what they said to us was, “Mrs. Pabst called and said you have a problem with drainage.” We don’t have a problem, I mean, it drains. I mean, it’s low. We understand that. Only problem, my only concern that we have is if you put a house on there, and it doesn’t all go forward. Rain doesn’t know which direction. It’s the path of least resistance. It’s just, and I’m not trying to be difficult. Seriously not. I am not. I’m just trying to, let’s just make sure that we don’t create a bigger problem. Our other neighbors, it’s right now, our side of the drive, the east side, it is completely, you can’t walk through there. It’s soupy right now. And, yes, there was a natural-like drainage. It’s not a creek. It’s just a path that goes through. It’s dry most of the time. I mow it. And, between our other neighbors to the west of us, but when it rains, everything runs downhill.

Wolff    So, Mrs. Paddock, did you see the information that the various groups provided that Mrs. Pabst had put together about the elevation changes and those?

S. Paddock  Yes.

Wolff    And, after reviewing that and taking a look at that, and your experience for living there for 25 years, is that it’s going to go to the east?

S. Paddock  Well, yes, some of it is. The majority of that back corner is going to go set in that. We have a huge willow there, and there is a reason it’s a huge willow. It’s because the water just stands there.

Wolff    And, is there something that Mrs. Pabst could do to help alleviate those concerns?

S. Paddock  Just, I mean, the whole idea, I thought was the last meeting was, was that she was supposed to have somebody draw something, do something to give us some idea if they put a house there, when somebody puts a house there, what their plan was. Are they going to put a culvert in?
Zionsville Board of Zoning Appeals  
March 12, 2019

Wolff  So, I think the challenge with that statement was Mrs. Pabst isn’t going to put a house there. Somebody else may in the future, but we don’t know what house it is, or where it’s going to sit. So, it’s difficult to address it specifically at this time. In addition, I think what we also heard was that part of building a house, there comes some obligation to make sure that you address the water that comes off of a house. That’s part of the building process in getting building permits and those types of things. So, that may help alleviate the condition?

S. Paddock  Maybe. But, what’s going to be left is that we get to deal with it once she sells the property to the next people. Then she just takes her bag of cash and goes back to Florida, and then we have to deal with the new landowner.

Wolff  Again, I am not concerned about transactions right now. I’m not worried about selling the property. I’m really worried about 3.83 acres going to 2 and 1.83 acres.

S. Paddock  But, the reason that it’s going to that is to build a house on, correct? Is that not the goal?

Wolff  I have no plans in front of me of a house. I can’t see that. I have no visibility to that.

S. Paddock  Okay. But is that not something you would take into consideration?

Wolff  Well, I think it is because you voiced a concern about drainage.

S. Paddock  Right.

Wolff  And, I think we can logically follow the thought that if you sell this you are going to put a house on it, but I don’t know where the house is going to go.

S. Paddock  Me neither.

Wolff  It’s difficult, you asked for plans, and it’s difficult to address plans when I don’t have a specific house in front of me. And, I don’t expect Mr. Pabst to build a house there, or have someone develop a house, or plan a house there for us. That’s not a reasonable ask.

S. Paddock  Correct. But you asked for her at the last meeting to work with us to try to find a solution to drainage in case that did happen. That was what you said to her, not me. You suggested that she work with us to try to find a solution when it was developed.

Wolff  And, it sounds, from what I have in front of me, is that she had conversations with you and other neighbors.

S. Paddock  No. She talked to the Boone County, she talked to the Boone County resources.

Wolff  Let me rephrase that. I think what she said was she had the Boone County resources talk to you.
S. Paddock: Correct. But, they didn’t do anything. They just said she called and said we had a drainage problem.

Wolff: So, I do have some results of those studies in front of me. Have you seen those?

S. Paddock: Yes.

Wolff: Okay. So, they did do something.

S. Paddock: Well, yes. Sure. They printed out the topo from all around us. I mean, but they didn’t say, you know, here is a solution. Here is what something you could do. You could add some kind of landscaping or some kind of, you know, there was no, I mean, we understand what’s already there. We already had maps. I’m not exactly sure, I mean, this was just an exercise in futility then. We just went through the motions for the same results as we had before, which is no solution. No suggestion.

Jones: Can I suggest an alternative view of this?

Wolff: Absolutely.

Jones: So, if this lot was 4.1 acres, and you’re dividing it into two 2.05-acre lots, we wouldn’t be having this conversation at all. Correct?

Wolff: Correct.

Jones: But, go ahead. Walk up and ask the question and state your name and address.

J. Paddock: My name is Jim Paddock. 8164 East 550 South. Are you making a hypothetical example because we done that at the last meeting and it doesn’t pertain to this. Because I would still be here.

Jones: No, I’m going to follow through with what we discussed at the last meeting.

J. Paddock: Okay.

Jones: And, the last meeting what we discussed is that there is a request for a variance to create a 1.83-acre lot.

J. Paddock: Correct.

Jones: Once you step up and are asking for a variance, I do not think it’s unreasonable to ask that there is some sort of plan put together to identify and deal with an identified problem. And, the problem that keeps coming up is that there is a long-term drainage issue in the back part of this property. Your statement and your desire to impose the correction of that upon the Town of Zionsville isn’t really what I consider equitable for the ask. If want to get a variance, assemble a plan that addresses the Paddock’s issue, and it will be a commitment that will run with the parcel that you are attempting to create. If you don’t want to do that, pick your path. But, last meeting, that is what we asked for, and going out and talking to our, you know, getting approval for a septic field, is not drainage. The
information you provided us, it's nice, but it isn't a fix. It isn't a fix that equates to something that will solve an issue that we can all see potentially happening.

Pabst  Can I come up?

Wolff  I'll have you back up. Hold your thought for one second. I'll have you back up. Do you have any other questions for remonstrators?

Jones  No.

Wolff  Mr. Paddock, do you have anything else?

J. Paddock  All I was going to add, it wasn't, they didn't come to me to talk about this to try to work this thing out. And, I'm not talking about just the corner.

Wolff  Who didn't come to you?

J. Paddock  The Pabsts. They were supposed to come with us, or come with me and work this thing out.

Wolff  Did the --

J. Paddock  --that was just the County and the U.S. She called them. So, not me. I didn't set that up. She did. But, I want to address one thing too. We're talking about the east whole side of that property. Not just a corner. Not just drainage that comes from up north, because I have addressed all that. We're talking about just drainage that's happening on the east side. So, you know, we keep talking about what's behind me and all this, has nothing to do with this issue. Okay? So, I just wanted to bring that up.

Wolff  Okay. Thank you. Are there any other remonstrators who would like to speak tonight? I will have you guys back up. Please come forward and state your name and address for the record.

Stark  My name is James Stark, 5395 South 800 East. We adjoin that property and have for years to the north, and that corner down there where she said the we encroached and built kind of a dry dam with a tube through it to slow that flow of the water down, coming from the north. But, all I want to say is that 2-acre lot that she is wanting to have, about two-thirds of that, and clear up to the north on the Paddock property, that all drains down to that corner, and that is swampy wet. It's what I call a seep. And, so it's wet all the time back there. So, to be able to put a septic system in that area, if you are going to do that, seems a little bit difficult because it's going to stay pretty wet. I want to say that your rules say that it's 2 acres for a lot. I think the easy solution to that is to just kinda hold up to that, boys, and just, if it's going to be 2 acres to let's just do it that way. Thank you.

Wolff  Thank you, Mr. Stark. And, I would add to your comment, again, I don't have a septic plan in front of me to approve, so I'm not overly concerned about that, but your point about sticking to the 2-acre lot limit is noted. Any other remonstrators here tonight? Seeing none, Mrs. Pabst, will you come back up? So, it sounds like
your neighbors still have concerns about some of the drainage issues, things headed, water headed their way, and it sounds like it is happening currently, and I think they feel that a house would make that problem worse.

Pabst: Having said that, I understand their concerns, and I did try to meet with them, as well. And, I was at both meetings that Angela came to. Angela also offered to come out --

Wolff: --Who is Angela?

Pabst: Angela is from the Department of Agriculture resources that you have, one of these studies on. She said that she would come out and work with whoever was building a home there, or whatever was going to be built there, and work with them on the elevation of the property, and to work on alleviating any drainage issues. Now, I want you to understand, I walked that property after the rain, and I walked back there. I have photographs on my phone of very little standing water back there. I was able to walk back there on my property without sinking into any mud or anything, but the front of my property, which will be now addressing, and I'm sorry that Mr. Jones doesn't think that this should be part of the drainage issue, but I will be addressing an issue about my drainage in my front yard because my front yard is soaking wet, and like a lake, because Stark's property comes to mine. The people, all of them, come into the big thing in the front of my property. So, it all stands in my property if it overflows. So, I'm going to be very diligent in trying to make sure there are no drainage issues and to also correct mine. And, I do intend to be in the home, and I don't know why I keep being told that I'm not. But, I am. So, yes, I know you don't care about that.

Wolff: Staying in my lane here.

Pabst: Yes. Do you have any other questions?

Wolff: I turn to the group.

Jones: Well, it's not a question. It's just a statement. You know, and the statement is, and I'm sure your friend can address this.

J. Paddock: This is just a brief statement. Let's say this room right here that we have here, two-thirds of this property is on a hill, and at a 9-foot slope, I'm 6'2". If you were to stand down at the creek, down at the bottom, water runs downhill. But you only got one-third of the property going towards them. We're cutting two structures down, and the rest of it runs downhill. Now, you know, Archimedes will tell you, water seeks its level. It's only common sense. That's all I gotta say.

Pabst: Well, I would also like to say that I am not the highest elevation here. The Stark property is, and the property to the west of me is at a higher elevation. So, it's coming off of their properties, as well. It's not just coming off of my property.

Wolff: Certainly. But, I think the chance we had last time was that --

Pabst: --And, I have diligently tried to address it. I have done, I contacted anybody and everybody that I could contact to try to work with trying to fix problem, and I
Zionsville Board of Zoning Appeals  
March 12, 2019

...don’t intend to stop. I will make sure that it gets taken care of. I am, I want to be 
neighborly, but I do feel like the 2 acres, it stands on its own. I mean, the 1.83 is 
basically really what I’m asking for here. Is for the home to be on the 1.83, and 
all of that runs down to my front yard, just so you know.

Wolff  
Thank you.

Pabst  
Thank you.

Wolff  
Wayne, can we have the staff report?

DeLong  
Thank you. As shared in the January meeting, staff is supportive of the petition 
seeking the request that’s in front of you this evening related to the lot size. The 
lot size as requested and as indicated in the petitioner’s packet is an area that is 
comprised of a variety of lot sizes. With that in mind, staff, much like with any 
other petition, be it lot coverage or lot size, we are looking for compatibility in 
comparison to lots in proximity to the subject site, and the 1.83 acres is a lot that 
is size that is found in the area, with some being larger and some being smaller.

Wolff  
Thank you, Wayne. Discussion amongst the group?

Evinger  
Since there is nothing proposed to be built on the lot at this time, it does seem 
like it would be a very difficult challenge to try to put in some kind of a plan 
without knowing what’s going to be there. If we were inclined to approve this 
motion tonight, is there anything other than the building code itself in going 
between all the different Boards at the time something would be constructed that 
we could add to as a commitment at this time, short of an engineering plan?

Jones  
There is a very simple fix. The petitioner needs to hire an engineering firm and 
given a 2-acre lot we know how much hardscape they could put on it, they can do 
the drainage calculations and they can make a commitment to put in the fix. And, 
if they choose to have that address this property and their 1.83-acre, however 
they want to do it, it’s fine, but at that point, there would be a commitment tied to 
the property that would bind the current owners, the future owners and would 
provide a fix for the known issue. And, if the petitioners do not wish to do that, 
that is their right, but they are asking us for a variance.

Mundy  
If I could ask our drainage expert a question. Larry, that fix, I guess it seems to 
me that the fix may actually include more property than that 3.83 acres. That 
may, since water does flow downhill, the fix might be on the property to the east 
in order to get water out of there, so I guess I would add to that that I don’t see a 
flaw with your argument there, but it may also involve that the neighbors be part 
of the fix.

Jones  
Yes. They may need to be. But, that would be, once again, the petitioner is 
seeking to partition off a piece of property for value, for financial renumeration, 
and there is no reason to expect to be provided the variance to do that, which is to 
leave the remaining property on 1.83 acres. They need to sit down and come to 
terms with the adjoining property owners to put together something that will run 
with the property, and you’ve got the history, you’ve got the plans, you’ve got 
80% of the work done. You just gotta make the commitment to spend the money,
Zionsville Board of Zoning Appeals  
March 12, 2019

put the plan together, get everybody to approve it, and then put it together as commitment. I'm sorry to say this, I've done this decades ago. Now much larger estates, much larger homes, but basically a private individual who rebuilt a regulated drain across his property and tied in the adjoining neighborhoods. And everybody was happy.

Wolff: Mr. Jones. In that scenario, or in this particular scenario, I'm more concerned about, what does that plan look like? Does that include where the house would be located?

Jones: Once again, you can, with a 2-acre parcel, there is generally going to be some parameters that they can set out to what would be the building pad, if you want to call it that. You know, where the driveway is going to go. Basically, what you're talking about is taking a portion of the land across the east side of this, dedicating what 10 or 20 feet to be a drainage easement. Probably have to put in some pipe. Do a little calculation. It's not that difficult. But you have to be willing to hire the engineering and commit to it, and in exchange, that gives the neighbors something to approve, and accept; and it gives something that a fix can be put in place, and it can be enforced. And, it doesn't get enforced just by assuming the Town of Zionsville is going to make, you know --

Pabst: I want to correct, I never said anything about the Town of Zionsville. But, I do want to say that Mr. Paddock did say that he hardly has no drainage problems in that area. He currently has no drainage problems. So, I'm not sure what I would be fixing until a house was put there. That's what I'm trying to say.

[Inaudible] 42:51

Jones: Can I speak?

Wolff: One second. Sorry. I want to finish with you real quick. So, Larry, your concern is when we look at our burden of proof here, the use and the value of the area adjacent to the property, including the variance, will not be affected in a substantially adverse manner. You think granting this variance would violate that?

Jones: Correct. Granting the variance --

Wolff: --In your mind, the petitioner has not solved that problem?

Jones: Correct. Well, we have remonstrators.

Wolff: We may always have remonstrators.

Jones: Correct. But, we do not have any proposal that solves the issue the granting of the variance could create.

Wolff: So, we've done research. We have a better understanding of the issue.

Jones: Correct.
Wolff  We don’t have a proposal to address the fact that we may substantially affect the neighbors’ property.

Jones  Correct.

Wolff  Mr. Paddock.

J. Paddock  I just wanted to say that it was mentioned I didn’t have a problem. The reason I didn’t have a problem with the north of me was because I fixed that problem. Is all I’m trying to address. They’re making it seem like I didn’t have a problem with the east property line. I just want to make sure that’s on the record. If you build a house or a structure or do anything different, that problem will be worse. I’m okay with what I got. I’m dealing with it, on the east side. When they came out to talk to me, they mentioned, in the paper, that I didn’t have a problem. I don’t have a problem with the drainage in the back. And that’s why she sent them to me, thinking I had a problem back there. I got that addressed.

Wolff  Mr. Paddock. I’m not worried about that.

J. Paddock  I know you’re not. But when things get brought up, I just want it to be on the record what’s clear or not clear, so we don’t go back in history and go, well this wasn’t mentioned. This wasn’t agreed to.

Wolff  Thank you.

J. Paddock  I just wanted to clear them up where the property line is and where the problems are.

Wolff  Thank you.

J. Paddock  Okay. That’s all I wanted.

Wolff  Mr. Paddock, before you wander off, I have a couple thoughts for you. So, you’re still of the opinion that granting this variance will adversely affect your property?

J. Paddock  It definitely will. Yes.

Wolff  Okay. If the petitioner were to come up with a more specific plan that included how they would address, we have now identified that there is a water issue. We know where the elevations are. We know where the water should be going, in theory. Water has a mind of its own. If the petitioner were to get a more specific plan that actually addressed the issue itself. For example, to Mr. Jones’ point, adding pipe or drainage, would that alleviate your concerns that this is adversely affecting your property?

J. Paddock  I guess you’re telling me that it would, yes.

Jones  Well, no.

J. Paddock  Because, all I’m saying is, I don’t want any more issues with my property. And, whatever they do on that property, I don’t want any more issues. So, I guess if
they come up with a proposal, what's going to happen, if something ever happens on that property, I'd like to be aware of it. Yes. And, then we could probably work something out.

Jones There's no guarantees, but there are civil engineers that could - -

J. Paddock There's no guarantees. I'm finding that out to the north of me. You guys got all that property in there - -

Jones --Go through the area and put together a plan that should generally solve the issue, the creation of an easement, doesn't affect anything.

J. Paddock That is correct.

Jones It's going to be in the side yard, and it's not a buildable area anyways, but I'm assuming if they brought to you some sort of stamped engineered drawing saying, hey, we've hired these people and they have come out and looked at this area and they said if we do this, it should resolve that, then by rights you should be happy.

J. Paddock I guess you're saying that that's what will make it work.

Jones Well, at that point - -

J. Paddock You're trying to get me to agree to anything, but I'm saying, I think that's the problem we're having.

Jones I'm not trying to get you to agree to anything, what I'm trying to do is get the Pabsits to understand that there are professionals out there who can put together plans that can be presented to you and the neighbors, and based on their professional credentials they can most likely say yes.

J. Paddock That's the right direction.

Jones This should resolve what we see going on.

J. Paddock That's the right direction. Correct.

Wolff Okay. Let's get this back on task.

Jones All right.

Kremp Can I ask just some follow-up questions?

Wolff Absolutely. Yes.

Kremp So, the grain of the variance, having an adverse impact on you. If the property, if the 2-acre property is never developed, would the granting of that variance ever have any adverse effect.
Zionsville Board of Zoning Appeals
March 12, 2019

J. Paddock If something is in agreement on drainage, I don't care what they do on that property. So, if you just make it a pasture with a bunch of cattle on it, we got a drainage problem. So, I want whatever happens because you're giving somebody a variance for less than 2 acres, and we can go to the past, and we've built houses on an acres in the past, but that's not what is zoned today. It's 2 acres. You made people all around me go 2 acres. I understand that. So, I just want to get kind of an agreement what's going on with the drainage so I don't have any more drainage problems. So, we're wanting to give a variance, but not worry about what they're building on the 2 acres. I understand that. But, I am not agreeing to anything, and you know, and I'm not for anything until I know what's going on so I don't have to pay even more money to fix what I'm fixing. I moved out there with water going through that property. I don't want any more.

Kremp But you agree it will be the act of actually developing the property that has the impact on you?

J. Paddock Well, I know what's going to happen, but you say you don't really care right now.

Kremp But that's the assumption.

J. Paddock So, yes, it's going to impact that property. You know, I'm a betting man like anybody. I know what's going to happen on that property.

Wolff Thank you, Mr. Paddock. Will you come back up? So, Mrs. Pabst, I see this going, are there any questions for the petitioner right now?

Mundy I guess leaving the last meeting, I assumed you were going to have an engineering company come out and look at potential effects and solutions, so is there a reason you didn't do that?

Pabst I was not aware that's what I was told to do. I actually had talked to Wayne, and he said to contact some of the different departments with the city and the state to talk to them about the drainage, and Angela came out with Natural Resources, and came out and she said she would also work with whomever in the future when that property is developed, that they would not do hypotheticals on it because it was just impossible to do. That people would change the grade of the land. Lots of things can happen. They want to put a basement in. I mean, there is just a lot of variables there, and I don't feel like I could do an engineering study with my neighbors because, to be honest with you, I tried to meet with them. I did contact them, and I did go to both meetings, and I got resistance. My situation is is that what if I was to put a pole barn there like all my other neighbors did. My neighbors directly across from me have a pole barn. Mr. Paddock has a very large barn or garage at the back of his property. My neighbors to the left of me have a big pole barn, and the gentleman behind me, Mr. Stark, has two buildings behind his property. I literally have a house and a garage, and I'm tearing down two structures on the 2 acres. So, I'm a little perplexed as to the 2 acres is a legally buildable piece of property, and I'm only asking for the 1.83 for the home to be left on, and all of that falls to the front of my yard. So, I was not aware that I was told that.
Wolff  For us to grant a variance, we talked about this last time.

Pabst  Right. I understand that. I understand that.

Wolff  That those three --

Pabst  --Right.

Wolff  Okay.

Pabst  But, I am wondering, what if I wanted to put a pole barn there? Do I just go get the permitting for that, and put a pole barn up on that 2 acres?

Wolff  Well, the 2 acres doesn’t exist today.

Pabst  Well, I’m saying on my property.

Wolff  On the 3.83 acres, Wayne can walk you through it better than I could, but there are some accessory structure limitations and things like that, but there are opportunities to do that, yes.

Pabst  So, I mean, I’m saying that I can actually still build on that piece of property now, and still not have to see a civil engineer, and I just don’t understand why I would have to bring in a civil engineer for hypothetical. It just doesn’t make good sense. I’m thinking, I mean, and especially when he has done all, you know, taken all three properties and taken care of the drainage, the drainage problem that currently exists. They would actually be fixing a hypothetical drainage problem.

Wolff  Stay close.

Pabst  Okay.

Wolff  Larry, your thoughts on that last comment, which is an interesting comment.

Jones  That they could build a pole barn on it without permission, or without, they could build a pole barn on that --

Wolff  --an accessory structure.

Jones  An accessory structure on that as long as it meets the size requirements and blah, blah, blah.

Wolff  Yes.

Jones  Sure.

Wolff  Which would --

Jones  --Be permissible on a 3.83-acre site.
Zionsville Board of Zoning Appeals
March 12, 2019

Wolff   Yes.

Jones   They'd be limited to a certain size, but at that point, they probably wouldn't be
adding a second driveway. They probably would not be adding additional hard
surface.

Wolff   Yes.

Jones   So, while the Paddocks may have some drainage issues up in that corner,
basically it wouldn't probably have any real net effect. The issue is, like I said,
it's, once again, I'll say it one more time. There are engineering firms that you
can give the parameters of what you think might be built, and the driveway, and
they can create a drainage plan that might alleviate what existing problems are
out there, and at that point, they bring that forward to us with the commitments
and the sten and the stamp, and if the Paddocks then, at that point, want to say,
well, we still don't want it, at least at that point, we, as a Board in granting a
variance, have done our due diligence to alleviate a known issue so that the
petitioners can get the financial benefit of subdividing a piece of land that they
own.

Wolff   So, a more formalized, what is the term here? Engineering drawing?

Pabst   Well, I'm not sure why you keep referring to a financial benefit. My problem is
this, it's 3.83 acres that I cannot personally take care of. I'm a single woman.
And, I financially cannot --

Wolff   --Mrs. Pabst, I want to get this right back to the point here.

Pabst   All right.

Wolff   So, I think we have a couple opportunities. We can continue this, and be very
specific in what we're asking for, or we can vote on this. I think you have an
inking on where a few of the Board members feel currently if we voted on it. I
don't want to speak for everybody, but you can probably infer some of that. If we
continue it, I think I'm going to defer to Mr. Jones and specifically what he is
asking for, which is a detailed plan with commitments addressing how you will
address the drainage issue.

Pabst   I'm still confused how I would address these drainage issues without knowing
what is being built on that property. I just think that any engineer would do that.

Jones   Mr. Rottmann is in the audience somewhere, aren't you?

Pabst   And, my other issue would be --

Jones   --Can I borrow you for a minute?

Wolff   Mr. Rottmann, would you please state your name and address for the record?

Jones   And professional qualifications.
Zionsville Board of Zoning Appeals
March 12, 2019

Rottmann
Todd Rottmann, address 320 West Hawthorne Street, President of Rottmann
Collier Architects, Chairman of the Zionsville Architectural Review Committee.

Jones
Okay. Is it an out-of-the-question question, didn’t make any sense, but, within
certain parameters, a person could propose a buildable lot area on a parcel of
land, an area for the septic field, identify what we would call a drainage
easement, and then have a civil engineer put together enough of a plan to
alleviate both the existing and potential drainage problems on a 2-acre site fairly
reasonably, fairly clearly, and then put together a drawing and a document that
then would be a commitment added to the property and move forward?

Rottmann
I definitely think that that is a possibility. That there could be some assumptions
made, which would probably limit the size of the house, or the amount of
hardscape, or permeable area, and then drainage calculations could be run
upon a certain amount of permeable area, and then solutions for drainage
issues that might be caused could be developed for that. Another route that I was
thinking about is we want to tie something, or you guys want to tie something to
this variance that is a commitment not knowing what’s going to be built there.
The commitment to the variance could be that a stamped and certified drainage
plan be part of the requirement for building permit so that it shows zero
additional runoff from the site with that design. But, that could be a commitment
that could be tied to it that would say, you know, who the registered engineer
would have to do the calculations and say that the runoff is no worse than now.
Or you could even put it that it’s 5% better or 10% better, or something.

Pabst
I think that seems like a more reasonable ask.

Wolff
Thank you very much. Let me go backwards. If we prove a variance tonight, with
what the second suggestion, or the first, Larry’s suggestion or the suggestion that
Mr. Rottmann brought up, could we tie a commitment to this property so that if
someone purchased the property, the commitment is on the property and they
couldn’t develop it without adhering to the commitment?

DeLong
That’s correct. And, certainly your lawyer can answer that much more eloquently
than I.

Wolff
I will refer to Mr. Chad to sum that up.

Chad
Sure. That’s what we do frequently.

Wolff
Okay. Larry, does that address some of your concerns?

Jones
What’s funny is as I was doing the research for the other items on the Docket
tonight, I was - -

Wolff
--There’s other items on the agenda tonight.

Jones
I know, I understand. And, I notice there was a house going up where we had this
same discussion about, and they actually did go out and get a civil engineer to put
together a plan for the drainage, and as I drove by it today, it appears that none of
that has gone in. Now, maybe in the end, they’ll clean up and it will get shaped
up. It’s mid-construction. But, as to date, it doesn’t look like any of what we discussed and asked them to do is going on. We have no way to enforce it, per se. We don’t have any way to really track it, go find out about it. Hence, my reluctance to create a verbal or written commitment attached to a piece of property that kicks a known issue down the road. There is a fix. French drain, some pipe, get some time with a trench, maybe a 4-inch drain with some stone. Could be a 6-inch perforated tile. But, there is a way to put together a plan that fixes the known issues in that, and gets it in place so that there is a commitment. There is a drainage easement. The drainage easement created along the side of the property, it is known from the time the property gets sold, it alleviates the issue, and we are done.

Evinger  May I just make a comment?

Wolff  You may.

Evinger  The property that you’re referring to actually came before us with an actual plan for the house, and had met with the Street Department to be able to address the drainage issues. In that case, we had a known quantity. We knew that there was going to be a house. We knew size, and we knew what was going on in that area. Here we know that there is, you know, drainage issues. We don’t know that this property is necessarily contributory by itself, in and of itself, and to come up with an engineering plan that is hypothetical that could change the future is a little bit, I don’t, now the best interest necessarily. I think it’s better, as Mr. Rottmann had said, to come up with having a commitment that at the time of pulling a building permit that there would be a drainage plan with the civil engineer that would address any drainage issues, that that structure at that time would create, because again, the structure, it could either not be developed on that 2 acres. It could have a potential house. It may be some other structure altogether, if a neighbor buys it and wants to put a pole barn, or something else on it for their own use. So, I think that at this point, I think we do need to just look at this as having an engineering commitment at the time of development.

Mundy  I agree.

Wolff  Thank you.

Mundy  I think that doing it that way would accommodate for whatever is planned to be built, and would fit the need.

Pabst  Okay. I feel like that is fair. Thank you.

Wolff  One last question, if we were to approve the variance with that commitment, that would tie it to the property, that would say, are you amenable to what we have been discussing this last couple minutes?

Pabst  Yes.

Wolff  Then we would tie it to the property saying that an engineering study will need to be done with any development plan or any building plan, building permit, that would not only address the water issue, but improve the water drainage issue?
Pabst: Yes. Yes.

Wolff: Okay. Thank you. Any further discussion for the group?

Evinger: Just one more. And this commitment would be recorded so that it would run with the land to Larry’s point. Correct?

Wolff: Yes. Correct?

Kremp: It would have a mechanism once this has been satisfied that it is released to record, right. That we just, once, if they develop.

Chad: I think that’s part of the standard language, I believe.

Wolff: So, if the building permit is issued, okay. Mr. Paddock. Sounds like, it looks like you have something else to say.

J. Paddock: I just gotta keep adding to this stuff that gets twisted around. We agreed to some stuff that happened in ’07 and ’08 on the buildings behind us, and we had to go through this whole crap again in 2012, and for some reason, minutes weren’t recorded. Some got lost. We had to start all over, and they did something totally different behind us, and we had it all worked out. So, we get a lawyer involved, and gets us agreed, and gets voted on, whatever happens, and then they go trying to get a permit on this, I’ve got to get a lawyer to fight it, because that’s not what we agreed upon. And, then when I gotta come in here and say, “Hey, what’s in the minutes? What was agreed upon?” Well, I don’t know. That was 6-7 years ago. Because, hypothetically, we don’t know what’s going in on this property, and when, or if any. Correct? So, you’re trying to hold her to standards, and you guys vote, and whatever happens, and there is a lawyer that says that’s agreeable. And I got to fight it 10 years from now where I have to hire a lawyer to say that’s not what was agreed upon, and I have no proof of that. So, I just want to get that stated. Okay.

Wolff: Further discussion.

Jones: Hence my preference for the plan, and the design and the commitment on the front end, not, I understand what you’re saying. You know, you should be able to make a commitment that it runs with the land for something to be done in the future. My preference is, you fix the problem now.

Evinger: How do you fix something that you don’t know what the issue is going to be until it’s actually built?

Jones: Because there is a known site. There is a buildable area. There is certain parameters, you know, on a 2-acre site, you cannot build a 1-acre house. So, the house will be somewhere under, whatever. There is the ability to actually put together a reasonable set of assumptions for what could be developed on the site, that addresses the existing draining conditions.
S. Paddock  If I may, I'm sorry, Mr. DeLong. I don't have a problem with either direction that you decide to go in as long as there is something also that runs with the deed that says who will enforce this when it's to happen. Who will check, police it, and who will pay any cost or expense? Do we come back to the Town of Zionsville then? Or Boone County? Are we calling the Ag Department saying we now have a drainage problem? I can't mow part of my property, part of the year, when it's tore up because we are going to have to redo another drainage tile. Seriously, I'm not, I'm really, I don't have a problem with Mrs. Pabst. I don't know her. I'm sure she is a fine person. I don't have a problem with her selling the property and making a profit. I don't have a problem with her building a house. I don't care if she lives there and has cattle. It's your property. I'm fine with that. I don't have any interest. I just don't want it to cause, seriously, right now, along my driveway, there is water standing in my driveway that runs, because it is downhill. The whole east side of our driveway.

Wolff  Thank you. I understand there is a drainage issue.

S. Paddock  I understand that. So, my question is, what is –

Wolff  Your question is, what is the enforcement mechanism?

S. Paddock  How do we make sure that the next person, if it ever happens, our hypothetical person. Who is the hypothetical police that check on this that make sure it's done, and enforce that it's done?

Wolff  Thank you, Mrs. Paddock. I understand your question. Wayne, could you?

DeLong  Well, I want to explore a couple different points. But first, Mrs. Paddock's comments about who enforces commitments. Commitments, the language in the form document that this Board routinely uses has trip wires in it that the Town has enforcement abilities, as well as the adjoining who receive notice. So, that's how the standard form works, so it could be 2 years, 7 years, or 2 months until a petition is filed to build or a permit is sought to build a home. So, let's just kind of reflect a minute on a couple different petitions that you've had over the years where you have had similar issues like this. So, thinking about the petitioner, or the matter that you're both aware of, Ms. Evinger, Mr. Jones, that things are happening that people aren't following through. Which one is that? The property that's being improved where whatever was committed to wasn't being done.

Evinger  Well, I don't know that nothing is being done. I just know that we had one particular home that came before us that was in the Village.

DeLong  Right, so the one on 3rd Street. Okay. So, that 3rd Street project has had numerous touch points, if you will, with the Town related to permanent drains will impact development features that are being put in there. That project, as Mr. Jones pointed out, had a quantifiable conversation, worked strongly with the Street and Storm Water Department and provided that data, that drainage study that was reviewed by this Board. So, that was one outcome where you had very specific data that you could work from. Another project that you worked on, on Academy Drive, I believe it was, where you set a dollar amount, $1000. Again, you were approached with a project that had a set data amount that you could
quantify and you set a dollar amount that the petitioner would invest into working with the neighbors within a certain period of time, and focusing on an outcome. And, that actually ended in a reasonable outcome that was positive for everyone. In other projects you’ve set areas where a home could be built or not build, positively influencing the outcome of drainage. There has been discussion tonight that the water sheds two-thirds one way and one-third another way. I mean, you don’t have that information quantified by a P.E. or an engineer, but it can be determined by the topo. So, you know, a couple different tools. Staff is certainly not objecting to a commitment executed to encourage that conversation. It certainly doesn’t sound like it creates, it doesn’t answer the questions that folks are looking for. You know, the drainage study could be just a simple water shed study, you know, someone coming up with some parameters like Mr. Jones is suggesting, we’re saying maximum scenario that could be improved on the property to generate some numbers. Certainly state law calls out that water is the common enemy, and water is, no property is allowed to discharge more than it’s discharging today. So, that’s an outcome that’s going to be achieved no matter what by Indiana law, to the best of my understanding. In summary, staff is happy and obliged to facilitate anything that you come up with, but certainly some effort to quantify some things now on the front end, while it might have more cost and take a little bit more time, I think it would have a better outcome in the long run.

Wolff Mr. Rottmann, do you have some color to add to this?

Rottmann Just a little bit. I am an outsider on this project, so there is a lot of he said, she said about drainage issues and problems, and honestly, I can’t keep track of it, and I don’t think anybody has quantified it, so I think kind of what Larry was getting at, and that I support, is that if an engineer went out now, and actually did a drainage calculation on the property as it is now, we would know of there even was a problem related to the property, where right now, it’s just he said, she said. So, maybe they don’t have to design a house on it, but they can at least tell us what’s going on now so that when we talk about if a house goes up there, we’ll know would it really cause more problems. Is there potential for issues with that. So, I think that’s kind of what Wayne was getting at a little bit too is, engage an engineer now to determine what is happening with the property so you really understand what we’re talking about. That’s all.

Wolff Thank you. Any other discussion? Mr. Jones, would you like to make a motion to continue this with an engineering study?

Jones I would make a motion that we continue this Docket # 2018-46-DSV, to allow the petitioner the opportunity to meet and bring us, if they so choose, bring us a proposal for a engineered solution to the issues that appear to exist.

Wolff Is there a second?

Mundy I’d like some clarification. I’m not sure exactly what --

Jones --What are we continuing? We are continuing to give the petitioner an opportunity to put together a more formalized plan to fix, or a solution to the issue.
Zionsville Board of Zoning Appeals  
March 12, 2019

Wolff  I'm going to turn to our counsel to make sure I have this correct, but I believe we have a problem with the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. We don't have a way, what you're suggesting is that we don't have a way to address that right now without a more specific engineering study that shows what the drainage currently is and what we can do, what the plan is to do to address that issue.

Jones  Correct.

Wolff  And, so what your suggestion is, let's continue that and get that study completed so that we can have that information.

Jones  We will offer the petitioner the opportunity to continue this Docket so that if they choose, they can proceed to provide that information, meet with their neighbors, do whatever. So, it's an opportunity to continue. And, if they chose not to do it, and come back next month, then at that point, we can make a motion to deny if we so choose.

Kremp  If they wanted to proceed to a vote this evening, I mean, does the petitioner have the right to do that at this point?

Chad  I'm not sure what motion Mr. Jones just made, whether to continue this or - -

Jones  I understand. The motion that I should be making is a motion to continue this until whatever the next BZA meeting.

Chad  So, we need to act on that. The Board can do that if it so desires.

Jones  Correct.

Kremp  But, I guess my question was, if the petitioner would rather have a vote this evening on the petition as it stands.

Chad  If Mr. Jones makes a motion to continue, and it gets a second, you need to act on that.

Jones  Okay.

Chad  And, depending on how that goes, I guess, it would be your next step.

Jones  So, I will make a motion to continue to the next Board of Zoning Appeals meeting the petition known as # 2018-46-DSV, for the property located at 8090 East 550 South to the next meeting on April 9.

Wolff  Is there a second for that motion?

Mundy  That motion was merely made. The petitioner can do whatever they like.

Jones  Correct.
Mundy
I guess I want it to be specific so the petitioner understands what it is we would expect before we would listen to this again, which is the drainage issue, and I, you know, at this point, I think we do have a question about the point be of the three that we need to consider, and the only evidence we have comes from remonstrators who have adequately described the problem, which may or may not be affected by a new residence, or a new structure there. So, I'll second the motion.

Wolff
Thank you. All those in favor, please say aye.

All
Aye.

Wolff
Those opposed?

[No response.]

Wolff
Motion carries.

Jones
So, Mrs. Pabst, do you understand what the request is?

Pabst
Yes.

[Start of audio file #2]

Braun
Looking for a petition of lot coverage, variance of lot coverage. The plan is, my wife and I are going to remove the existing structure at 805 West Pine Street, and build a new house there. The new house would have a coverage of 5,186 square foot, which would put us at a lot coverage of 46.12%. I think a couple of the things to note on this is the existing property currently has a 40.5% lot coverage, and if you take into account hardscapes, then the existing property would have a 48% lot coverage, and our new property would actually reduce the lot coverage there by 3%.

Wolff
Thank you, Mr. Braun. Are there any questions for the petitioner?

Evinger
Do we have drainage issues on Pine Street?

Wolff
I hope not. It's going down.

Braun
If we do I might just walk out the door.

Wolff
I'll be right behind you. Are there any questions for the petitioner? Seeing none, are there any remonstrators here tonight? Thank you. Please come forward and state your name and address for the record.

Zelonis
Sally Zelonis, 40 South 3rd Street, here in Zionsville.

Wolff
Sally. Can you say your last name slowly for me?

Zelonis
Zelonis.
November 28, 2018

Reasa Pabst
164 Olivette St.
St. Johns, FL 32259

Dear Mrs. Pabst,

This office received a set of soil borings dated November 25, 2018 for the lot located at 8090 E 550 S in Zionsville. The soil borings were taken by Mark McClain. In general, the soil borings for this lot are suitable for an in-ground septic system as long as no soil disturbance occurs in the soil boring area between the date of when the borings were taken and the date of when the septic system is installed. Drainage will not be needed needed for this lot due to the seasonal high-water table.

Sincerely yours,

Clayton Campbell
Environmental Health Specialist
Reasa Pabst  
8090 550 South  
Zionsville, IN 46077  

RE: 8090 550 S, Zionsville Site Visit  

Ms. Pabst and neighbors,  

Thank you all for showing me and my co-worker Brian Daggy around your properties in the last week. As we all know, the areas where the properties meet is naturally wet and historically has been a drainage path for approximately 47 acres. Changes in the landscape change flow, water tables and can influence vegetation.  

As proposed, a lot will be split and most likely sold for a home lot. This too will influence the flow and quantity of run off in the area. There are a lot of unknowns in the future so at this time no permanent plans or changes can be made to provide a solution to this.  

In the last year Mr. Paddock has removed a fence, trees/shrubs, built a dam and installed a non-perforated tile in the area where the properties join. Most of this work was on the Stark property. Both Mr. Stark and Mr. Paddock are happy with the results and see no need for further improvement at this time. The water does stand in the area behind the dam but dries often enough to mow. If Mr. Stark no longer wishes to mow this area we did provide a few recommendations on possible plantings and can follow up on this at a later date.
The water enters the system through tile north of the Stark property and at his north property line through a riser. The tile has a relief on the west side of the drive which may allow water out of the tile during high flows and stand in this area/flow over the Paddack driveway. During normal flows the water is taken to the road ditch. Runoff flows through a culvert entering the natural drainage path that is located on the east side of the drive/Paddack’s east property line. The neighbor to the east did not join us and I was told they had no issues with the property being split. Water also stands on the north and east property line of the Pabst property due to it being the lowest part of the landscape and poorly drained soils. We have attached a map of this and other materials for your reference.

We recommend providing our contact information to whomever purchases the property to allow a conversation on drainage issues that may occur and possible solutions. This conversation should also occur with any contractors and builders on this property as plan are formed. Diversions, rain gardens, wildlife plantings and tile are all possibilities.

Sincerely,

Angela Garrison
District Conservationist
Natural Resources Conservation Service

Brian Daggy
Resource Conservationist
Boone County Soil and Water District
# Map Unit Legend

<table>
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<tr>
<th>Map Unit Symbol</th>
<th>Map Unit Name</th>
<th>Acres in AOI</th>
<th>Percent of AOI</th>
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<td>ThrA</td>
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<tr>
<td><strong>Totals for Area of interest</strong></td>
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<td><strong>100.0%</strong></td>
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</table>
The soil surveys that comprise your AOI were mapped at 1:12,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL: Coordinate System: Web Mercator (EPSG:3857)
Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Boone County, Indiana
Survey Area Data: Version 21, Sep 6, 2016
Soil map units are labeled (as space allows) for map scales 1:25,000 or larger.

Date(s) aerial images were photographed: Oct 12, 2013—Dec 27, 2016

The orthophoto or other base map on which the soil lines were completed and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.
# Dwellings Without Basements

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Description

Dwellings are single-family houses of three stories or less. For dwellings without basements, the foundation is assumed to consist of spread footings of reinforced concrete built on undisturbed soil at a depth of 2 feet or at the depth of maximum frost penetration, whichever is deeper.

The ratings for dwellings are based on the soil properties that affect the capacity of the soil to support a load without movement and on the properties that affect excavation and construction costs. The properties that affect the load-supporting capacity include depth to a water table, ponding, flooding, subsidence, linear extensibility (shrink-swell potential), and compressibility. Compressibility is inferred from the Unified classification of the soil. The properties that affect the ease and amount of excavation include depth to a water table, ponding, flooding, slope, depth to bedrock or a cemented pan, hardness of bedrock or a cemented pan, and the amount and size of rock fragments.

The ratings are both verbal and numerical. Rating class terms indicate the extent to which the soils are limited by all of the soil features that affect the specified use. "Not limited" indicates that the soil has features that are very favorable for the specified use. Good performance and very low maintenance can be expected. "Somewhat limited" indicates that the soil has features that are moderately favorable for the specified use. The limitations can be overcome or minimized by special planning, design, or installation. Fair performance and moderate maintenance can be expected. "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.

Numerical ratings indicate the severity of individual limitations. The ratings are shown as decimal fractions ranging from 0.01 to 1.00. They indicate gradations between the point at which a soil feature has the greatest negative impact on the use (1.00) and the point at which the soil feature is not a limitation (0.00).

The map unit components listed for each map unit in the accompanying Summary by Map Unit table in Web Soil Survey or the Aggregation Report in Soil Data Viewer are determined by the aggregation method chosen. An aggregated rating class is shown for each map unit. The components listed for each map unit are only those that have the same rating class as listed for the map unit. The percent composition of each component in a particular map unit is presented to help the user better understand the percentage of each map unit that has the rating presented.

Other components with different ratings may be present in each map unit. The ratings for all components, regardless of the map unit aggregated rating, can be viewed by generating the equivalent report from the Soil Reports tab in Web Soil Survey or from the Soil Data Mart site. Onsite investigation may be needed to validate these interpretations and to confirm the identity of the soil on a given site.
Rating Options

Aggregation Method: Dominant Condition
Component Percent Cutoff: None Specified
Tie-break Rule: Higher
New subdivision being built north of here

Flow path

Riser

New tile (replaced clay)

Water stands

Pop up drain

Dam and pipe

Culvert

Creek/ Natural Drainage Way

Filled in & driveway moved, new garage built between 2015 & 2018

1 inch = 489 feet

2015 Reference map

Exhibit 7
STORMWATER DRAINAGE EVALUATION

PREPARED FOR

REASA PABST
8090 E. 550 S.
ZIONSVILLE, IN 46077

MARCH 26, 2019

[Signature]

Certified By: Gary D. Ladd, P.E.
PE No. 60019630

Prepared By:

Ladd Engineering, Inc.
1127 Brookside Drive
Lebanon, IN 46052
765-482-9219

[Stamp: RECEIVED MAR 28 2019]
TOWN OF ZIONSVILLE
1.1 Summary

The Owner of the residence located at 8090 E. 550 S., Zionsville, Indiana is desirous of splitting an approximately 3.83-acre property into two lots, one consisting of 1.83 acres (Lot #1) and one at 2 acres (Lot #2). Based on information obtained the existing house, located on the proposed 1.83-acre lot will remain but the barn and corn crib will be removed.

It is our understanding that adjacent properties have expressed concern about stormwater drainage issues worsening as a result of future development on the proposed 2-acre property. This report provides information on the existing and proposed drainage.

Refer to Exhibit 1 for a Vicinity Map.

1.2 Existing Conditions

The existing stormwater drainage from the Pabst property runs off the property in several different directions. Refer to Exhibit 2 for a contour map depicting the direction of the stormwater runoff, as well as other existing stormwater runoff related information. The contours on Exhibit 2 are from the Indiana Office of Technology Statewide Lidar. Refer to Appendix A for photographs of the site.

During a visit to the site, I observed the following:

- A wet area existed at the northeast corner of the Pabst property. The wet area is sloped but the soil appeared saturated. Per the soil’s manual, the soil in this northeast corner is Treaty silt clay loam, 0 to 1 percent slopes, which is very limited for drainage. This may explain why the soil acts like a sponge and appears saturated.
- The neighbor to the northeast (Paddock property) had installed a berm, culvert, and an underground tile with area drain pipe in an effort to divert some of the runoff away from the wet area (see Exhibit 2 for an outline of the wet area and photograph on page 4 in Appendix A). It is unknown as to what design storm these pipes and culverts are capable of handling.
- There is an underground 24-inch diameter corrugated metal pipe (CMP) beneath the CR 550 S. roadside ditch that runs the entire length of the Pabst property and across the driveway for the Paddock residence (see Exhibit 2)
- All of the stormwater runoff in the area drains to an existing 68-inch x 52-inch CMP that crosses CR 550 S. near the southwest corner of the Pabst property.

Exhibit 2 shows drainage subareas A, B, C and D.

Subarea A consists of approximately 0.35 acres, none of which is impervious surface, of the Pabst property that flows towards the wet area in the vicinity of the northeast corner.
Subarea B consists of approximately 0.94 acres of the Pabst property, of which none is considered impervious since the existing barn and corn crib are being removed. Subarea B flows east towards the Paddack driveway then into the drainage ditch near the east side of the Paddack property.

Subarea C consists of approximately 0.62 acres, of which 0.13 acres is of impervious surfaces. A portion of Subarea C also flows towards the Paddack property driveway then to the ditch near the east side of the Paddack property, and some of it flows to the southeast towards the southeast corner of the Pabst property.

Subarea D consists of approximately 1.92 acres, most of which is impervious surface, and it flows south towards CR 550 S.

It is apparent that the Pabst property has not been altered, and all subareas drain towards the natural drainageway.

1.3 Recommendations

The following recommendations are provided:

- Whenever a residential house is built, install 6-inch diameter perimeter drains around the house to connect roof downspouts into and connect to the existing buried 24-inch CMP, located on the north side of CR 550 S.
- That no additional stormwater runoff be directed towards the north side of the Pabst property
- Should a 4-inch perimeter drain be required for an on-site future septic system, then connect it to the proposed 6-inch drain pipe flowing south to the 24-inch CMP
APPENDIX A
PHOTOGRAPHS
In Pabst front yard looking west towards CR 550 S. culvert crossing – 24” CMP is under roadside ditch

In Pabst front yard looking towards CR 550 S. @ east edge of driveway – note roadside ditch – 24” CMP is beneath ditch
Drainage inlet just east of Pabst driveway over top of 24" CMP in ditch line

In Pabst back yard looking west -- note slope of property from west to east
Drainage inlet just northeast of northeast corner of Pabst property
ZIONSVILLE BOARD OF ZONING APPEALS  
PETITION NO. 2018-46-DSV

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF  
REAL ESTATE VOLUNTARILY MADE IN CONNECTION WITH  
DEVELOPMENT STANDARDS VARIANCE

In accordance with IND. CODE §§ 36-7-4-918.5 and 36-7-4-1015, Reasa Pabst & Gregg Roberts (hereinafter referenced as "Owner") represents and warrants that Owner is the owner of certain real estate located in the Town of Zionsville, Boone County, Indiana, which real estate is described in Exhibit 1 attached hereto (the "Real Estate") and is commonly known as 8090 E. 550 S., Zionsville, Indiana. Owner further represents and warrants that Owner has the authority to, and does hereby voluntarily make, the following COMMITMENTS concerning the use and development of the Real Estate, including any portion thereof.

STATEMENT OF COMMITMENTS

Owner voluntarily agrees and commits that approval by the Zionsville Board of Zoning Appeals of petition filed as Docket No. 2018-46-DSV requesting approval for the establishment of a 1.83+/- acre lot in the R1 Rural Low-Density Single-Family Residential Zoning District, the Development Standards Variance, shall be subject to the following COMMITMENTS:

1. **Subject Property.** The subject property is described in the attached Exhibit 1 comprising of 3.83 +/- acres of land, commonly known as 8090 E. 550 S., Zionsville, Indiana. Owner intends to improve and divide the real property into two lots, west to east referred to as Lot #1 (1.83 acres) and Lot #2 (2.0 acres) as detailed in Exhibit 2. These commitments shall apply only to Lot #2, see attached Exhibit 3.

2. **Structures.** Owner commits to remove the existing ‘barn’ and ‘shed’ from Lot #2, as depicted in Exhibit 2 within ninety (90) days of the grant of this variance. No certificate of occupancy shall be issued for Lot #2 until the existing barn and shed are removed.

3. **Drainage Improvements.** Owner commits to the following Development/Use Restriction with respect to the construction of a residential structure located on Lot #2:

   a. Any residential structure constructed on Lot #2 shall have a 6" (or greater) perimeter drain installed for the connection of roof downspouts and shall outfall to the southern portion of Lot #2 and generally into the common drainage swale/24" corrugated metal pipe (or the like) located along CR 550 S consistent with commercially reasonable construction standards and engineering practices.
b. All septic systems installed on Lot #2 will utilize a 4" (or greater) perimeter drain connecting to the residential perimeter drain (described in section 3a.) or will drain such that the outfall is to the southern portion of Lot #2 and generally into the common drainage swale located along CR 550 S consistent with commercially reasonable construction standards and engineering practices.

c. That generally no additional (beyond what exists at the time of approval) stormwater runoff from Lot #2 be directed towards the northern portion of subject Lot #2 onto adjacent properties.

The COMMITMENTS contained herein shall be effective as of the Zionsville Board of Zoning Appeals approval of the petition docketed as Docket No. 2018-46-DSV and shall continue in effect until modified or terminated in conformance with the requirements herein and/or applicable statutory standards.

These COMMITMENTS shall be promptly executed and recorded by Owner in the Office of the Boone County Recorder, Boone County, Indiana, within sixty (60) days after the Zionsville Board of Zoning Appeals approved the petition for Development Standards Variance in Docket No. 2018-46-DVS and shall thereafter be considered a covenant running with the land described herein as the Real Estate, including any portion thereof.

These COMMITMENTS shall be binding on Owner, subsequent owners of the Real Estate or any portion thereof, and on any and all other persons or entities acquiring an interest in any portion of the Real Estate (hereinafter collectively “Owners”). Owner shall have an affirmative duty to inform any third parties with whom Owner negotiates for a possible sale, lease, assignment, mortgage, or transfer of the Real Estate, or any portion thereof, of the existence of these COMMITMENTS. In the event any sale, lease, assignment, mortgage, or transfer occurs, Owner shall ensure that a copy of these COMMITMENTS is incorporated into any such written agreement with the third party. If Owner fails to comply with the terms of this paragraph and the third party fails to perform and/or comply with these COMMITMENTS, the Town of Zionsville shall be entitled to recover from Owner and from each such third party, jointly and/or severally, any and all damages which arise from this failure and shall also be entitled to injunctive relief to terminate any non-compliance herewith.

These COMMITMENTS may be modified or terminated by a decision of the Zionsville Board of Zoning Appeals made after a public hearing for which proper notice is given, including hearings for other land uses or zoning approvals involving the Real Estate or any portion thereof.

These COMMITMENTS may be enforced, jointly and/or severally, by the Town of Zionsville Board of Zoning Appeals, the Director of Planning for the Town of Zionsville (or a position created for the Town of Zionsville which is analogous thereeto), the Town (including any successor city or municipality), and/or owners of any parcel of ground adjoining or adjacent to the Real Estate. Owner and all Owners shall be obligated hereunder to indemnify the Town of

Revised 3/25/19

Exhibit 9
Zionsville Board of Zoning Appeals and the Town (including a successor city or municipality), and
to hold said entities and their respective authorized representatives, including the Director of
Planning for the Town, harmless from any liability, expense (including reasonable attorney fees
and court costs), costs, or damages which result from the failure to perform Owner’s and/or
Owners’ obligations under the terms and conditions of these COMMITMENTS. Throughout these
COMMITMENTS any reference to “Town” or “Town of Zionsville” shall also include any successor
city, municipality, or other governmental body having land use, planning, and/or zoning
jurisdiction over the Real Estate.

In the event it becomes necessary to enforce these COMMITMENTS in a court of
competent jurisdiction, and Owner and/or any subsequent Owners of the Real Estate are found
to be in violation of these COMMITMENTS, all such violators shall pay all reasonable costs and
expenses the Town and the Town’s Board of Zoning Appeals and other authorized
representative(s) incur in the enforcement of these COMMITMENTS, including reasonable
attorney fees, expert witness fees, and court costs.

Owner and all subsequent Owners of all or a portion of the Real Estate shall be obligated
hereunder, jointly and/or severally, to indemnify the Town of Zionsville Board of Zoning Appeals
and/or the Town and hold said entities and their respective authorized representatives, including
the Director of Planning for the Town, harmless from any and all liability, expense (including
reasonable attorney fees and court costs), costs, or damages which result from the failure to
perform Owner’s and/or Owners’ obligations hereunder and/or to comply with the terms and
conditions of these COMMITMENTS.

Any controversy arising under or in relation to these COMMITMENTS shall be litigated
exclusively in the applicable state courts of Indiana without regard to conflicts of law
principles. Owner irrevocably consents, for itself and all subsequent Owners, to service,
jurisdiction, and venue in such state courts for any and all such litigation and hereby waives
any other venue to which Owner or subsequent Owners might be entitled by virtue of
domicile, habitual residence, or otherwise.

Owner shall be responsible, at Owner’s expense, for recording these COMMITMENTS in
the Office of the Boone County Recorder, Boone County, Indiana, within sixty (60) days after the
Zionsville Board of Zoning Appeals approved the petition for Development Standards Variance in
Docket No. 2018-46-DVS, and shall promptly provide the Planning Department of the Town of
Zionsville with a copy of such recording as a condition precedent for the Development
Standards Variance approved in said docket to be applicable to the Real Estate and issuance
of any Improvement Location Permit, Building Permit, and/or Certificate of Occupancy for the
Real Estate. The COMMITMENTS shall be considered a covenant running with the Real Estate,
including any portion thereof.

The undersigned, by executing these COMMITMENTS, represents and warrants that at
the time of executing this document, Reasa Pabst & Gregg Roberts are the sole owners of the

Revised 3/25/19

Exhibit 9
Real Estate, that execution of these COMMITMENTS is being voluntarily undertaken, has been duly authorized on behalf of Owner, and requires no additional authorization on behalf of said limited liability company or of a third party, and that these COMMITMENTS shall be binding upon Reasa Pabst & Gregg Roberts as to all the particulars herein and shall be considered a COVENANT running with the land described herein as the Real Estate, including any portion thereof.

IN WITNESS WHEREOF, Reasa Pabst & Gregg Roberts, as the sole owners of the Real Estate, has executed these COMMITMENTS this ________ day of __________, 2019.

OWNER: Reasa Pabst & Gregg Roberts

Signature:________________________

Signature:________________________

[NOTARY PAGE TO FOLLOW]

Revised 3/25/19

Exhibit 9
STATE OF INDIANA  }  
COUNTY OF BOONE  }  

Before me, a Notary Public in and for said County and State, personally appeared Reasa Pabst & Gregg Roberts the owner of the Real Estate described above, who acknowledged the execution of the foregoing and who, having been duly sworn, stated that any and all representations and/or warranties therein contained are true.

Witness my hand and Notarial Seal this ________ day of __________________, 2019.

Signature: ____________________________  Print: ____________________________
Notary Public
My Commission Expires: ___________  County of Residence: ________________

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. Name: Jeffrey S. Jacob, esq

This instrument prepared by: Jeffrey S. Jacob, Hackman Hulett LLP, 1620 West Oak Street, Suite 200 Zionsville, Indiana 46077, (317) 344-2111

Revised 3/25/19

Exhibit 9
EXHIBIT 1

(General 3.833 Legal Description)

A part of the Northwest Quarter of Section 33, Township 18 North, Range 2 East in Boone County, Indiana, more particularly described as follows:

Beginning at a point on the South line of aforesaid Quarter Section, said point being 338.60 feet East of the Southwest corner thereof; continue thence Easterly along and with said South line 349.45 feet, thence Northwardly deflecting left 88 degrees 50 minutes along an existing fence line a distance of 525.22 feet to an existing fence corner; thence in a Westwardly direction deflecting left 97 degrees 05 minutes along an existing fence line a distance of 310.10 feet; thence Southwardly deflecting left 78 degrees 06 minutes a distance of 495.84 feet to the Place of Beginning, containing 3.833 acres, more of less, but subject to legal highways, rights-of-way and easements.

Located in Eagle Township, Boone County, Indiana.
EXHIBIT 2

(Site Plan)
EXHIBIT 3

(Legal Description for 2.0 acre, Lot #2)
TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant (will / will not) be injurious to the public health, safety, morals, and general welfare of the community because:

Attached is a letter from the Boone County Health department and a certified soil test verifying that a new septic system can be safely placed in behind the home on the 1.833 acres. The property meets all other county requirements for the division. A permit has also been secured for removal of the pole barn located close to the division line on the survey.

2. The use or value of the area adjacent to the property included in the variance (will / will not) be affected in a substantially adverse manner because:

The existing home will remain on 1.833 acres and the division will create the vacant lot size in compliance with the zoning of a 2 acre minimum.

3. Strict application of the terms of the zoning ordinance (will / will not) result in unnecessary hardships in the use of the property because:

A hardship will be created with the one time administrative divide of the property causing non-compliance for the zoning ordinance of the existing home.

DECISION

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this ______ day of ______________, 201__.

_________________________________  ___________________________________  ___________________________________

_________________________________  ___________________________________  ___________________________________

Exhibit 10
Petition Number: 2019-08-DSV
Subject Site Address: 825 W Pine Street
Petitioner: Randy Shaffer
Representative: Randy Shaffer
Request: Petition for Development Standards variance in order to provide for the construction of a garage which:
   1) Deviates from the required side & aggregate yard setbacks in the Urban Residential Village Zoning District (R-V).
Current Zoning: Residential Village Zoning District (RV)
Current Land Use: Single-family residential
Approximate Acreage: 0.14 acres
Zoning History: No prior petitions are known
Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Site Plan
Exhibit 4 – Petitioners Narrative
Exhibit 5 – Petitioners Exhibits
Exhibit 6 – Petitioners proposed Findings of Fact
Staff Presenter: Wayne DeLong, AICP, CPM
PETITION HISTORY

This Petition will receive a public hearing at the April 9, 2019 Board of Zoning Appeals meeting.

PROPERTY HISTORY

The property is comprised of approximately 0.14 acres including Lots 37 and 38 in the Schick’s Addition of the Town of Zionsville. Staff is not aware of any prior variance requests for this property.

ANALYSIS

The 0.14-acre parcel is currently improved with a circa 1926 single-family dwelling and accessory uses, including a circa 1930 detached garage (approximately 256 square feet in size) and a shed (50 square feet) per the Boone County Property Record Card. As proposed, the Petitioner desires to demolish the current detached garage and construct a new 280 square foot detached garage in approximately the same location (with the size increase of 24 square feet resulting in 12 square being added per side to the garage footprint).

SETBACKS

As proposed, the petitioner seeks to deviate from the standards of the ordinance in order to allow flexibility of the placement of a new detached garage. Per Section 194.052.(c), the RV Residential Village District regulations, any improvements to the site are required to conform to minimum setback standards (side yard minimum: 5 feet with 15 foot aggregate, rear yard minimum, 5 feet). As the site currently enjoys a 8-foot 6-inch aggregate side yard setback (4 feet on West side and 4.5 feet on East side), Staff is supportive of the continued utilization of a 8-foot 6-inch aggregate side yard setback as illustrated on the Petitioner’s site plan attached to this staff report. Additionally, the scale and placement of the contemplated improvements are not, in Staff’s opinion, out of character for the immediate area.

PROCEDURAL – VARIANCE TO DEVIATE FROM STANDARDS

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

(a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

(b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

(c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property:

Proposed Findings of Fact are attached for the Board of Zoning Appeal’s consideration.
STAFF RECOMMENDATIONS

Staff recommends approval of the design standards variance included in Docket # 2019-08-DSV, as filed.

RECOMMENDATION MOTION

I move that Docket # 2019-08-DSV design standards variance in order to provide for the construction of a garage which 1) Deviates from the required side & aggregate yard setbacks (as further described in the exhibits to this report), in the Residential Village Zoning District (RV) for the property located at 825 W Pine Street be (Approved as filed, based upon the findings of fact / Denied/ Continued) as presented.

PROCEDURAL NOTES

While Staff is supportive of the reduced side yard setback, the presence of the overhead power lines and Duke Energy’s asset management requirements may impact the final location of the garage. Prior to commence of construction, Duke Energy should be consulted to confirm that the contemplated improvements provide the minimum amount of required separation from the overhead power lines.

In situations where residential structures are within six (6) feet of one another, the International Residential Code requires that each structure maintain a specific level of fire rating. The distance between the proposed garage and existing dwelling will be reviewed during the normal course of the Improvement Location Permit process for compliance with this standard.
Site Plan

Site Plan prepared by others

Exhibit 3
Our existing garage was built over 50 years ago. Time and normal wear and tear has deteriorated the structure. We intend to demolish the existing garage and replace it with a new garage in the same place. This will improve both the aesthetics for our neighbors as well as improving the useability of our garage. New construction will use modern materials consistent with existing structures. Construction will be in compliance with current building requirements.

Thank you
Randy Shaffer and Floranne Pagdalian
Bigger door

7' 10'

7/12 to match house

825 W. Pine

Front

Exhibit 5
Fill in offsets

Exhibit 5
TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant (will / will not) be injurious to the public health, safety, morals, and general welfare of the community because:
   New garage will not be injurious to the public health because it will be going in same location as existing garage.

2. The use or value of the area adjacent to the property included in the variance (will / will not) be affected in a substantially adverse manner because:
   Will not because new garage is going in same spot as old garage. Although new garage will look much better than what is there now.

3. Strict application of the terms of the zoning ordinance (will / will not) result in unnecessary hardships in the use of the property because:
   When home was built there were very little building codes in Zionsville. (80 plus years old)
   Today's codes were not in effect.
   Garage will go in same location Just filling in the back two corners of the structure.

DECISION

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this ______ day of __________, 201__.
Petition Number: 2019-09-DSV

Subject Site Address: 12036 N Michigan Road

Petitioner: Zionsville OMS Partners

Representative: Michael J. Andreoli

Request: Petition for Development Standards Variance to allow for the construction of a new commercial business to:
1) Increase the maximum office square footage in the Neighborhood Business & Michigan Road Overlay Zoning District (B-1).

Current Zoning: Neighborhood Business & Michigan Road Overlay Zoning District (B-1)

Current Land Use: Residential structures, off street parking facilities

Approximate Acreage: 1.49 Acres (+/-)

Zoning History: This area was annexed into Zionsville's jurisdiction in November of 2005.

2016-31-DSV – Approved
2016-59-DP - Approved
2019-14-DPA - Pending

Exhibits:
Exhibit 1- Staff Report
Exhibit 2- Aerial Location Map
Exhibit 3 - Petitioner’s Narrative
Exhibit 4 - Site Plan
Exhibit 5 - Schematic Elevations
Exhibit 6 - Petitioner’s proposed Findings of Fact

Staff Presenter: Wayne DeLong, AICP, CPM
**Petition History**

This petition will receive a public hearing at the April 9, 2019 Board of Zoning Appeals meeting. A Petition for Development Plan Amendment is also scheduled to be heard at the April 15, 2019, Plan Commission meeting (2019-14-DPA).

**Property History**

This property is located at 12036 N Michigan Road, south of the intersection of 550 South (Greenfield Road/121st Street) and N Michigan Road (US 421). The site is comprised of 1.49 (+/-) acres and is presently improved with residential structures as well as off street parking facilities.

**Analysis**

A maxillofacial and oral surgery group was heard by the Board of Zoning Appeals in January of 2017 and by the Plan Commission in July of 2017, and was given approval to construct a 7,000 square foot building which did not adhere to specific standards found within the Michigan Road Overlay, including:

- a reduced lot size of 1.49 acres (minimum required lot size shall be no less than 2 acres)
- a reduced rear setback / buffer yard of 30 feet (minimum required 50 foot)
- a 7,000 sq. ft. building size which exceeded the maximum primary building size of 3,500 sq. ft.

During the past 1.5 years, changes within the surgical practice have caused the Petitioner to come back before the Board and request this building be allowed to increase its square footage to 12,000 square feet, increasing from a one and one-half story to a two story structure.

- **Maximum Building Size**
  The Michigan Road Overlay’s intention is to regulate the mass and scale of any building / improvements within the area known as Eagle Village. There is no known methodology as to the selection of a 3,500 square foot maximum building size requirement other than to establish a metric as to the regulation of improvements. Further, it is important to note that the commercial building to the south of the subject site is a two-story building which exceeds 12,000 square feet in size and the commercial building to the north of the subject site is more than 5,000 square feet in size. Given the establishment of existing buildings which exceed the zoning standards that are in proximity to the site, and the contemplated building characteristics, Staff does not have a concern with the Petitioner constructing a 12,000 square foot primary building size and is of the opinion that the intention of the Ordinance is met.

**Procedural – Consideration of a Development Standards Variance Petition**

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

(a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:
(b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

(c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property.

Proposed Findings of Fact are attached for the Board of Zoning Appeal's consideration.

**STAFF RECOMMENDATIONS**

Staff recommends approval of the design standards variance included in Docket #2019-09-DSV (based on the submitted site plan and conceptual elevations), subject to the review and approval by the Plan Commission of site improvements associated with Petition 2019-14-DPA.

**RECOMMENDATION MOTION**

I move that Docket #2019-09-DSV design standards variance to allow for the construction of a new commercial business to 1) increase the maximum office square footage, in the Neighborhood Business & Michigan Road Overlay Zoning District (B-1) for the property located at 12036 N Michigan Road be (Approved as filed, based upon the findings of fact / Denied/ Continued) as presented.

**PROCEDURAL NOTE**

Prior to commencing with construction, a Development Plan Amendment associated with this request will be required to be heard and approved by the Plan Commission (currently docket #2019-14-DPA is scheduled to be heard at the April 15, 2019, Plan Commission meeting).
NARRATIVE

The Applicant is Zionsville OMS Partners, and now the fee-simple title owner of the 1.49-acre site located at 12036 N. Michigan Road, Zionsville, Indiana. By way of history, they requested, and were granted by the Board of Zoning Appeals in Petition No. 2016-31-DSV, Variances to reduce the minimum lot size, reduce their rear Buffer yard /Setback from 50’ to 30’ and increase the maximum office square footage which is permitted in the Michigan Overlay District from 3,500 square feet to 7,000 square feet. Due to the changing nature and logistics of the surgical practice, as well as a better scrutiny of the economics, the Applicant’s building must be increased from the originally permitted 7,000 square feet to 12,000 square feet and increase from a story and a half to a full 2 story structure. The footprint of the building (building area) will only be 6,000 square feet but the added story will increase the square footage. A new building layout and site plan have been submitted and the maximum height of the building will be 33’. Renderings and elevations have been submitted. The renderings show a penciled-in penthouse and access to said penthouse which would increase the height of the building arguably to 38’. However, in reviewing the need for such an elevation, in light of the current height limitations, the Applicant will only propose a height of 33’ at its maximum. As such, no variance will be necessary for the building height.

So that Staff and the Board is aware, the actual rendering was forwarded to owners of adjacent owners of ground to the west (Lost Run Farms) and to the north and south prior to Application. No negative comments regarding the building have been received.
TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: the building footprint will not be increased but rather adding a second story. Further, the building is attractive and no further setback variances are being requested.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because: prior variance has established the use and location of a dental surgical center and height limitations will not be exceeded.

3. Strict application of the terms of the zoning ordinance will result in unnecessary hardships in the use of the property because: a building with more square footage will be necessary to locate the proposed dental surgery center in this property.

DECISION

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this ______ day of ______________________, 2019.

__________________  ____________________
Petition Number: 2019-10-SE

Subject Site Address: 3250 S 200 East, Lebanon

Petitioner: William Myers

Representative: James Plankey

Request: Petition for Special Exception to allow for a new residential building in an (AG) Agricultural Zoning District

Current Zoning: Agricultural District (Rural)

Current Land Use: Farm & Residence

Approximate Acreage: 160 acres

Zoning History: Consolidated within Town of Zionsville's jurisdiction in 2015. No prior petitions are known.

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial / Location Map
Exhibit 3 – Petitioner’s Aerial / Site Plan
Exhibit 4 – Petitioner’s Narrative
Exhibit 5 – Findings of Fact

Staff Presenter: Wayne DeLong, AICP, CPM
PETITION HISTORY

This Petition will receive a public hearing at the April 9, 2019 Board of Zoning Appeals meeting.

PROPERTY HISTORY

The approximate 160 acres associated with this petition is currently improved with a single-family dwelling and several agricultural farm buildings/structures. The dwelling, constructed circa 1960, was located on the property prior to Boone County’s adoption of the ordinance language requiring that a Special Exception be obtained through the Board of Zoning Appeals for residential structures proposed to be constructed within an Agricultural zoning district.

ANALYSIS

Based on the applicant’s interest in replacing the existing single-family dwelling and constructing a new residence on acreage zoned AG, the applicant is required to request a Special Exception. The purpose of the AG Agricultural District is to encourage agricultural operations while allowing for limited residential development.

In the opinion of Staff, the Petition represents a limited presence of residential development in the AG district as the proposed improvements are contemplated to be located in proximity to the existing residence. Further, as the parcel operates as a farm containing more than 400 acres, the petition serves to perpetuate an established use of the property.

RIGHT TO FARM

As stated in the Zoning Ordinance, the Applicant for a Special Exception acknowledges and/or agrees that agricultural uses are permitted in the surrounding area, no agricultural or agri-business operation in the area shall be or become a nuisance, and to not object to the continuation of any such agricultural or agri-business operation in the surrounding area as long as such operation does not constitute a nuisance. This acknowledgement will be required to be reduced to writing as a part of the Petition process.

PROCEDURAL – CONSIDERATION OF A SPECIAL EXCEPTION PETITION SEEKING APPROVAL FOR THE LOCATION OF A DWELLING IN THE AGRICULTURAL DISTRICT

The Board of Zoning Appeals shall hear, and approve or deny, all requests for Special Exception requests as provided for by the Zionsville Zoning Ordinance. A Special Exception may be approved only upon written determination that:

(a) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;

(b) The proposed use will not injure or adversely affect the adjacent area or property values therein; and
(c) the proposed use will be consistent with the character of the District, land uses authorized therein and the Town of Zionsville Comprehensive Plan.

Proposed Findings of Fact are attached for the Board of Zoning Appeal’s consideration.

**STAFF RECOMMENDATIONS**

Staff recommends approval of the Special Exception Petition included in Docket #2019-10-SE, subject to execution of the Right-to-Farm acknowledgement (as required by Ordinance).

**RECOMMENDATION MOTION**

I move that Docket #2019-10-SE W. Myers Special Exception Petition in the Agricultural District for the property located at 3250 S 200 East be (Approved as presented / Approved based upon the staff report and the proposed findings / Denied / Continued).

(If Approved, it shall be required that the Petitioner execute the Right-to-Farm acknowledgement documentation)
March 11, 2019

WLM Inc.
3535 South 200 East
Lebanon, IN 46052

Dear WLM Inc.,

Please be advised that I have made a formal application to the Zionsville Board of Zoning Appeals for a special exception from the requirements of the zoning regulations as they apply to the following described property at 3250 South 200 East, Lebanon, IN 46052:

The northeast quarter of Section 20, Township 18 North, Range 1 East, containing 160 acres, more or less, in Boone County, Indiana.

It is my intent to ask the Town of Zionsville Board of Zoning Appeals for a special exception to agriculture with a residence to allow us to build a new construction house to the west of the current house on the aforementioned property. After completion of the new house, the old residence will be demolished. In order to provide you an opportunity to become fully aware of our intention, a meeting will be held on April 9, 2019 at 6:30 P.M. at the Zionsville Town Hall located at 1100 West Oak Street, Zionsville, Indiana 46077. The docket number for this petition is 0019-10-SE. If you have any questions, please contact the Zionsville Board of Zoning Appeals for further information.

Respectfully,

[Signature]

William L. Myers
Petitioner & Property Owner
TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA

PETITION FOR SPECIAL EXCEPTION

FINDINGS OF FACT

1. The proposed use (will / will not) be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;

2. The proposed use (will / will not) injure or adversely affect the adjacent area or property values therein; and

3. The proposed use (will / will not) will be consistent with the character of the District, land uses authorized therein and the Town of Zionsville Comprehensive Plan.

DECISION

It is therefore the decision of this body that this SPECIAL EXCEPTION petition is APPROVED/DENIED.

Adopted this __________ day of __________________, 20__.
Petition Number: 2019-11-DSV

Subject Site Address: 7011 Whitestown Parkway

Petitioner: Giant Eagle, Inc.

Representative: Barry Porter CPH

Request: Petition for Development Standards Variance to allow for signage of an existing commercial business which:
1) Utilizes the canopy to convey commercial message(s)
2) Exceeds the allowed square footage maximums in the Rural General Business Zoning District (GB).

Current Zoning: Rural General Business Zoning District (GB)

Current Land Use: Fuel Station & Convenience Store

Approximate Acreage: 2.26 acres

Zoning History: This area was consolidated into the Town of Zionsville's jurisdiction in 2010.

2016-13-CA Commitment Amendment
2016-14-DP GetGo fuel Station & convenience store development plan
2016-49-DPA GetGo commitment amendment for a LED pricing sign

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Petitioner’s Narrative
Exhibit 4 – Petitioner’s Signage Site Plan
Exhibit 5 – Petitioner’s Signage Exhibits
Exhibit 6 – Findings of Fact

Staff Presenter: Wayne DeLong, AICP, CPM
PETITION HISTORY

This petition will receive a public hearing at the April 9, 2019, Board of Zoning Appeals meeting.

PROPERTY HISTORY

The property is comprised of approximately 2.26 acres containing a one story fuel station and convenience store, a canopy associated with the fueling component, a surface parking lot and associated signage (as per 2016-14-DP and 2016-49-DPA).

A sign package was identified as a part of the initial filing, which identified a variety of signs designed for the benefit of the facility. Subsequent to the previous approvals, the Applicant has identified that it desires to install additional wall signage which exceeds the allowable square footage and desires to install a canopy sign with a commercial message, all which deviates from the signage approved by the Plan Commission previously.

SIGNAGE - VARIANCE REQUEST – SIZE / NUMBER OF SIGNS

The site currently benefits from two (2) wall / building signs and a freestanding electronic variable message sign (EVMS) as well as incidental signs throughout the property all serving to identify areas within the property.

In an effort to best summarize the need for the variances, Zionsville’s Rural sign code allows for a total number of signs per lot based on the linear feet of road frontage the parcel contains. Further, while the Ordinance permits the use of a canopy sign, it does not permit the use of a commercial message on a canopy sign. With this parcel having 613 lineal feet of road frontage, the maximum number of signs allowed is three (3), of which the Petitioner already enjoys.

As proposed, the property would be improved with one (1) additional wall sign and one (1) canopy sign (containing a commercial message) bringing the total number of signs on the parcel to five (5). An existing wall sign would also be relocated from the East elevation to the West elevation (not requiring a variance).

When the proposed signage of 77.25 sq. ft. (canopy sign 23 +/- sq. ft. and wall sign 54 +/- sq. ft.) is added to the existing signage of approximately 188 sq. ft., the total square footage for all on-site signage would be 265.35 square feet.

Staff is supportive of the installation of a retail logo (at the contemplated dimensions) on the north side of the fuel canopy to communicate information related to services and recognizes that the use of canopy signage already exists along the Whitestown Parkway corridor (specifically for fueling center uses). Notably, other fueling operations, with canopy components, utilize signage on each respective canopy along the Whitestown Parkway corridor, and Staff recognizes the practical difficulty (and hardship) created by this relationship with the built environment. However, while this is the case, Staff is cognizant of the potential for a northerly facing internally illuminated sign, installed in excess of 16 feet above grade, to interfere with the residences to the north / northeast. With this in mind, a photometrics plan, indicating that less than one (1) foot candle of light will be transmitted from the sign when measured at the south right of way lines of the adjoining public street (Whitestown Parkway),
should be provided as part of the Improvement Location Permit filing associated with the proposed sign (in the event the Board approves the variance request).

Specific to the southerly facing wall sign, Staff does not come to the same conclusion as with the contemplated canopy sign and is not supportive of the installation of signage in excess of Town standards on the south side of the existing building. While the location is permissible, Staff cannot identify a practical difficulty (or hardship) in the use of the property which necessitates the support of a deviation from the terms of the Zoning Ordinance.

**PROCEDURAL — CONSIDERATION OF A DEVELOPMENT STANDARDS VARIANCE PETITION**

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

(a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

(b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

(c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property.

Proposed Findings of Fact are attached for the Board of Zoning Appeal’s consideration.

**STAFF RECOMMENDATIONS**

Staff is supportive of the canopy sign as proposed and filed, subject to the review and approval of a photometrics plan as described in this report. Staff is not supportive of the contemplated wall sign.

**RECOMMENDATION MOTION**

I move that Docket #2019-11-DSV (Development Standards Variance) for the property located at 7011 Whitestown Parkway to allow for signage of an existing commercial business, which utilizes the canopy to convey commercial message(s) and exceeds the allowed square footage maximums all within the Rural General Business Zoning District be (Approved as presented/ Approved as recommended by Staff / Denied / Continued).
March 26, 2019

Ms. Chrissy Koenig
Department of Planning & Economic Development
Town of Zionsville
1100 Oak Street
Zionsville, IN 46077

RE: 2019-11-DSV Petition to the Board of Zoning Appeals
GetGo #3564, 7105 E. SR 335

Dear Ms. Koenig:

On behalf of our Client, Giant Eagle, Inc., CPH is pleased to submit a Revised Sign Package for the above referenced Petition. The Revision shows the relocated “S6” Building Sign proposed to be moved from the East Side to the West side of the store, the proposed “S4” Canopy Sign to be placed on the northern façade of the Canopy, and a new “S7” G Channel sign to be placed on the rear elevation. The existing Building Sign on the northern elevation will remain.

The location of the new and relocated building signs, and the total number of signs, will not impact safe visibility for motorists or pedestrians, are consistent with the signage already on the building and adjoining retailers, and will promote the high quality fuel station and convenience store that benefits the general welfare of the community.

In addition, the additional wall signs are consistent with the existing signs. The canopy signs are designed for primarily internal direction and identification purposes and are not oriented to adjacent residential properties.

Finally, it is noted that the site is located at the western edge of Zionsville’s jurisdiction. The total number of signs and locations of the signs are necessary for identification of the retailer, particularly as it relates to other similar users in the immediate area. Strict application of the terms of the zoning ordinance regarding number of signs, placement of signs, and design of Canopy signs, represents and unnecessary hardship in the use of the property.

Please feel free to call with any questions.

Sincerely,

CPH, Inc.

Barry S. Porter, AICP

cc: Erik Kunselman, Giant Eagle
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<thead>
<tr>
<th>COLOR SPECIFICATIONS</th>
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<tbody>
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<td>PMS 287C BLUE</td>
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<tr>
<td>PMS 186C RED</td>
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<td>PMS 877C SILVER</td>
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<td>PMS 123C YELLOW</td>
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<td>3M 3630-57 OLYMPIC BLUE</td>
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<td>BLACK 3M 180C-12</td>
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<td>WHITE 3M 3630-20</td>
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<td>PMS 7496 GREEN</td>
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# Scope of Work

## Scope of Work - Included

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## Scope of Work - Not Included

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**Current Brand Revision:** [ ]

- All provided image elements and services meet the current brand standard revision.
- The following image elements and services do not meet the current brand standard revision due to municipal code and/or specific site conditions.

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*These drawings are not for construction. The information contained herein is intended to express design intent only. This original design is the sole property of Blair Companies. It cannot be reproduced, copied, or exhibited in whole or part, without first obtaining written consent from Blair Companies.*
NOTE FOR SIGNS INSTALLED ON THE SIDES OF THE FUEL CANOPY:
1) CANOPY SIGNS LAST POSITION IS 50 CENTER OF SIGN IS CENTERED ON LAST CANOPY SUPPORT, DO NOT GO BEYOND LAST CANOPY SUPPORT WITH CENTER OF SIGN.
2) CANOPY SIGN TO BE INSTALLED CENTERED ON LAST SUPPORT.
3) FOR BEST VISIBILITY THE SIGN CAN BE INSTALLED ANYWHERE IN BETWEEN THE LAST CANOPY SUPPORTS.
GENERAL SPECIFICATIONS:

- CABINET: ALUMINUM RETURNS (GLOSS PMS 186-C RED)
- RETAINERS: 1" X 1" X 1/8 ALUM ANGLES (GLOSS RED)
- FACE: PAN FORMED & CMBS (CLEAR POLYCARBONATE) - (PAINTED FACES)
- "BACKGROUND": RED
- "GET GO & TRIM COPY": WHITE
- "CAFÉ MARKET": WHITE
- "ARROWS": YELLOW
- 3/16" LINE & - YELLOW
- ILLUMINATION: WHITE L.E.D. ILLUMINATION W/ POWER SUPPLIES @ INTERIOR OF SIGN

NOTE:

FACES ARE TO BE BACK SPRAYED.
YELLOW STRIPE W/ CAFÉ " + " MARKET EMBOSSED 1/2" AND PAINTED @ TOP OF FORM, NOT ON PAN.
ALL OTHER GRAPHICS 1/2" EMBOSSED AND CUT ON THE PAN.

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Exhibit 5

S-6

GT: 55
SERVICE AMPS: 5 A

ON/OF
W/P SWITCH

5'4-6 7/16" 2'-11 7/16"

19-4 3/8"
3/8"
1/2" PAN FORM

5 1/2"
4 5/8"
5 1/2"

ALUM ANGLED RETAINERS 1-1/2"
EMBOSSEMENTS

FRONT ELEVATION  SCALE: 1/2" = 1'-0"

GENERAL SPECIFICATIONS:
- CABINET: ALUMINUM RETAINERS GLOSS PMS 186-C RED
- RETAINERS: 1-1/2" X 1-1/2" X .125 ALUM ANGLE GLOSS RED
- FACE: PANELED AND EMBOSSED (CLEAR MODIFIED ACRYLIC) - (PAINTED FACES)
- BACKGROUND: RED
- "GET GO & TM COPY" : WHITE
- "CAFE MARKET" : WHITE
- ARROWS: YELLOW
- 1/2" LINE & + YELLOW
- ILLUMINATION: WHITE L.E.D. ILLUMINATION W/ POWER SUPPLIES @ INTERIOR OF SIGN

NOTE:
FACES ARE TO BE BACK SPRAYED.
YELLOW STRIPE W/ "CAFÉ "+" MARKET EMBOSSED 1/2" AND PAINTED @ TOP OF FORM, NOT ON PAN.
ALL OTHER GRAPHICS 1/2" EMBOSSED AND CUT ON THE PAN.
**3" CHANNEL LETTER**

**QTY:** 1  
**SQ FT:** 54  
**SERVICE AMPS:** 4.8 A

---

**GENERAL SPECIFICATIONS:**

- "G" - COFT: 3-1/2" DEEP CHANNEL LETTER, 1/17 CLEAR ACRYLIC W/ 1st SURFACE ACRYLON WHITE # 20 (ILLUM. WHITE L.E.D.'S) ALSO: GLOSS WHITE RETURNS (1" TRIM CAP TO MATCH)
- ARROWS: 3-1/2" DEEP CHANNEL LETTER, 1/17 CLEAR ACRYLIC W/ 1st SURFACE ACRYLON 123 GOLDEN YELLOW # 159 (ILLUM. WHITE L.E.D.'S) ALSO: RETURNS GLOSS PMS 123 C YELLOW (1" TRIM CAP TO MATCH)
- BRIDGE: 4" WIDE, 1" DEEP (LED WIRE PASS THRU) PAINTED TO MATCH WALL.

---

**NOTE:**

DUE TO A.D.A. SIGN SPECIFICATIONS  
THIS SIGN MAY ONLY BE 3-1/2" WIDE IN DEPTH.
INSTALLATION EXAMPLES

1. #8 SWH L/H 1/4" THREADED
crane coarse thread
flush mount/brick

1. #8 SWH 1/4" THREADED
crane coarse thread
flush mount/brick

1. 1/4" ALL-THREAD
pin mounted

1. 1/4" ALL-THREAD
pin mounted

1. 3/8" ALL-THREAD
2. 3/8" LOCK WASHER
3. 3/8" FLAT WASHER
4. 3/8" NUT
raceway/ceiling

1. 3/8" ALL-THREAD
2. 3/8" LOCK WASHER
3. 3/8" FLAT WASHER
4. 3/8" NUT/FF
raceway/ceiling

LAG & HOLE ACROSS TOP & BOTTOM
ALL-THREADED ON TOP LEFT & RIGHT ONLY

LAG & HOLE ACROSS TOP & BOTTOM
ALL-THREADED ON TOP LEFT & RIGHT ONLY

MOUNTING NOTE:
To be used with either masonry mounting systems or toggle bolt system for hollow walls as required electrical primary pass thru the wall into J-box in the sign.

INSTALLER NOTE:
When sealing ALL penetrations use a polyurethane sealant that is ASTM-C200 compliant. An example and approved product would be Loctite PI Premium.

SAFETY CRITERIA
All employees are recommended to possess a valid API certification, follow the established guidelines set forth by API as well as follow any local, state, or federal laws.

- Perform a Pre-Task Job Safety Analysis
- Understand how and where to obtain First-Aid and Medical treatment, including CPR.
- Use the proper level of PPE per the assigned task.
- Only use tools that are in safe working order before using them.
- Always use tools for their intended purpose and never over their safe working limit.
- Employees operating vehicles must conform to all DOT requirements as well as API regulations.
- Use proper fall arrest equipment.
- Understand the requirements for working at height on a job site.
- Properly barricade the work area from the public in accordance with Section 8 of the API guidelines.
- Only competent and trained people using approved equipment in a manner in accordance with Section 10 of the API guidelines should perform lifting duties.
- Follow all approved lock-out tag-out policies when de-energizing equipment.

- Examples of Equipment Include: Personnel Protective Equipment, Barricades, Crane, Hoist, Bucket, Truck, Scissor Lift, Ladder; Vinyl Applicators (Squeegees or Application Liquid), Welder/Torch and Hand Tools/Power Tools

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TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant (will / will not) be injurious to the public health, safety, morals, and general welfare of the community because:
The location of the new and relocated building signs, and the total number of signs, will not impact safe visibility for motorists or pedestrians, are consistent with the signage already on the building and adjoining retailers, and will promote the high quality fuel station and convenience store that benefits the general welfare of the community.

2. The use or value of the area adjacent to the property included in the variance (will / will not) be affected in a substantially adverse manner because:
The additional wall signs are consistent with the existing signs. The canopy signs are designed for primarily internal direction and identification purposes and are not oriented to adjacent residential properties.

3. Strict application of the terms of the zoning ordinance (will / will not) result in unnecessary hardships in the use of the property because:
The site is located at the western edge of Zionsville's jurisdiction. The total number of signs and locations of the signs are necessary for identification of the retailer, particularly as it relates to other similar users in the immediate area. Strict application of the terms of the zoning ordinance regarding number of signs, placement of signs, and design of Canopy signs, represents and unnecessary hardship in the use of the property.

DECISION

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this ______ day of ________________________, 20____.

_________________________  ______________________  ______________________

_________________________  ______________________  ______________________

Exhibit 6