



**LAPORTE COUNTY
BOARD OF ZONING APPEALS**

Government Complex, 5th Level
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Michael Polan
Building Commissioner

September 19th, 2023

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, **September 19th, 2023, at 6:00 p.m.** in the Assembly Room of the County Complex.

MEMBERS PRESENT: Melissa Mullins Mischke Glen Minich
 Deb Vance Vern Schafer

PRESENT: Michael Polan, Recording Secretary, Attorney Doug Biege; Ashley Kazmucha, Administrative Coordinator

The Pledge of Allegiance.

APPROVAL OF MINUTES:

Melissa Mullins Mischke asked for approval of the meeting minutes of August 15th, 2023.

Vern Schafer made a motion to approve the meeting minutes of August 15th, 2023 with a correction to Page 6 Line 3 to correct "Robert Schafer" to "Robert Stephen".

Glen Minich seconded.

All Approved. Motion carries 4-0

Petitions:

1. Petition for Variance of Developmental Standards for Richard C Weller and Debra Weller (Owner) and Tyler and Kylie Weller (Buyer) represented by counsel Anthony Novak of Newby, Lewis, Kaminski, & Jones, LLP to split a parcel. Parent parcel will have two hundred feet (200') of frontage and approximately five (5) acres of land. New parcel would have one hundred (100') of road frontage on approximately three (3) acres. The property is located 7158 E. 200 N., Rolling Prairie, IN., Wills Twp., zoned A on 8.264 acres. Parcel 46-08-29-100-006.000-068.

Attorney Biege stated notice is adequate.

Anthony Novak stated he is an attorney with Newby, Lewis, Kaminski, and Jones in LaPorte at 916 Lincolnway. He is here on behalf of the Weller family. The owners of the property, Debra

and Richard Weller who are in the back and then their son Tyler and his wife Kylie are also here as well. They are joint petitioners. They own eight (8) acres with currently three hundred feet (300') of road frontage. Tonight, what they are asking for is a split of the parcel with the new parcel having a hundred feet (100') and the parent parcel having two hundred feet (200'). This might look familiar to them all or at least to Glen, Vern, and Deb as they were before them back in March asking for a variance on road frontage. At the time, the new parcel would have fifty feet (50') and the parent parcel would retain two hundred and fifty feet (250'). He believes Vern asked at that time why it was split that way and it was mainly because, as shown on Exhibit A, the primary structure sits smack dab in the middle of the property and then there is a barn that sits near the east property line so they were trying to comply with setbacks on that. Ultimately, he believes Vern motioned to approve, but it failed 2-1. Vern and Deb in favor and Glen opposed. Tyler had asked if something could be done and Glen explained that one (1) of the main issues was the inequity of the split there. Fortunately, they waived the requirement to wait a year and now here they are six (6) months later. What they are doing here is a little unique; it is shown on Exhibit B, but it is their effort to have a more equitable split. This obviously is not a survey as they rightfully didn't want to spend the money on the survey if it be denied, but they plan on getting a survey if ultimately approved. With this plan, they would have a hundred feet (100') of road frontage for the first sixty feet (60') on the new parcel. It would ultimately angle back along the driveway and then be thirty-five feet (35') wide going nine hundred feet (900') back and the last three hundred feet (300') would then expand where the actual structure would be and that would be the new shape of the lots. Obviously, this is pretty peculiar, but it is strategic. Section 3.03 C of the zoning code talks about minimum lot frontage being a certain amount needing to go back at least the front yard setback of sixty feet (60'). They have a hundred feet (100') wide going back that minimum depth of sixty feet (60') then angles in to thirty-five feet (35') wide which is also strategic because then that will maintain a thirty-foot (30') setback from that barn ultimately going back to the structure. They are here again asking for approval now of a new lot with a hundred feet (100') of road frontage and hoping for their blessing. He has the Wellers there if they have any specific substantive questions on the split.

No remonstrators present.

Vern Schafer made a motion to approve the Petition for Variance of Developmental Standards for Richard C Weller and Debra Weller (Owner) and Tyler and Kylie Weller (Buyer) represented by counsel Anthony Novak of Newby, Lewis, Kaminski, & Jones, LLP to split a parcel. Parent parcel will have two hundred feet (200') of frontage and approximately five (5) acres of land. New parcel would have one hundred (100') of road frontage on approximately three (3) acres. The property is located 7158 E. 200 N., Rolling Prairie, IN., Wills Twp., zoned A on 8.264 acres.

Deb Vance seconded.

Approved. Motion carries 3-1.

2. Petition for Variance of Developmental Standards for Kurt J. Denman and Elliot G. Fishburne, IV represented by counsel Andrew Voeltz of Howes & Howes, LLP for an addition to a non-conforming structure with a front setback of eight feet (8') instead of the twenty-five feet (25') and a porch with a setback of four feet (4') instead of

the fifteen feet (15'). The property is located at 7136 N. Chicago Rd., New Carlisle, IN., Hudson Twp., zoned R1B on .17 acres. Parcel 46-04-28-379-007.000-050.

Attorney Biege stated notice is adequate.

Andrew Voeltz stated he is an attorney with Howes & Howes at 717 Indiana Ave., LaPorte, IN. He is representing the petitioners in this matter specifically relating to E. G. Fishburne and Kurt Denman. He will note that there has been some further research that has been done on this and the setbacks are actually increased from what was indicated in the notice of public hearing and the petition. The setbacks are actually instead of four-foot (4') will wind up being nine-foot (9') on the porch side and then eight-foot (8') on the other side next to the utility pole. His clients provided a presentation that he believes they all have. This might be one (1) of the most precise presentations he has ever seen. He's thinking of hiring them at this point. What they are asking for is congruent with what that area is with regards to goofy little setbacks because nothing was ever adhered to with the way the road is. They have made substantial improvements to that property as they can see the differences between the images from 2008 and 2023. They have made substantial improvements to the property at 7150 N. Canal St. including a refaced seawall, exterior painting, new lakeside deck, patio including a gas firepit, and new water well. What they are requesting is a variance of the current non-conforming structure, which is quite frankly every house on every property out there, with a small addition in order to upgrade their mechanicals, improve livability, and further enhance curb appeal. He doesn't believe in his opinion that any of the items specifically mentioned in Article 15.05 or Article 28.11 with regards to the requirements, that the approval will not be injurious to the public health, safety, morals, or general welfare of the community. The use and value to the area adjacent to the property involved will not be affected in a substantially adverse manner and in fact, it will be benefitted because this will be the nicest house on the block. The strict applications of the terms of the zoning ordinance would result in a practical decrease for the use of the property. He will note that in the drawing that was presented, he believes on Page 4, the shed that was on the property has already been moved to the side lot so that is gone. If they look at the fact that the shed was only three-foot (3') off the property line and there will be eight feet (8') now and on the other side nine feet (9') because of the way that Canal Street jogs to the southwest. They are asking for approval of this petition with regards to an addition to a nonconforming structure with a front setback of eight feet (8') instead of twenty-five feet (25') and nine feet (9') instead of fifteen feet (15'). His clients are present if they need to entertain any questions.

Melissa Mullins Mischke asked for the new setbacks again.

Andrew Voeltz stated Page 4 with the yellow, what had previously been petitioned for was a setback of four-foot (4') instead of fifteen feet (15') and that actually turned out to be nine feet (9') because of the way that the road jogs that direction. It increased the setback even more than what it previously was.

Melissa Mullins Mischke stated so nine feet (9') instead of four feet (4').

No remonstrators present.

Glen Minich stated his question doesn't concern the setbacks so much as the change. They took from one (1) plot and moved to another plot part of the property, but doesn't Canal Street come out to Chicago Road?

Andrew Voeltz stated no, it does not. He's not going to call it a road; that access point is not a road. If they look on Beacon or Google, if they google the address it doesn't show up as a road it is simply a driveway. It relates to an easement that existed years and years ago between the two adjacent parcels that have now been joined. If they note the pin with regards to Canal Street being shown as a dead end at nine-foot (9'), that is accurate. If they are trying to go there using GPS or Google, they are taking you all the way past and then around on the south side. It is not a County Road.

Vern Schafer asked if people use that access and have they been using that access passed the dead end to go out to Chicago Road.

Andrew Voeltz stated there are occasionally people that have done that, but that is not what is subject to the petition here tonight because they are still maintaining the setback from what is called North Canal Street. It is not impacting that area. He doesn't know what to call it; he's not going to call it an alleyway or a road; it is simply gravel. Again, it was many, many moons ago, an easement between the two (2) parcels that are now joined.

Vern Schafer stated the actual maps for tax purposes show that it is part of their property with the easement possibly.

Andrew Voeltz stated yes. Possibly.

Vern Schafer stated he isn't an attorney here, but adverse possession laws would cause some issues there if people wanted to pass through that area and they try to close it off, but that might not be involved with the petition here today.

Attorney Biege stated it's not going to be involved because anybody that is going to insert the right to use that has to do it on a continuous basis for over a period of twenty (20) years and that ultimate result would be court ordered. Nothing exists right now.

Vern Schafer stated nobody has used it for that period of time and he doesn't see any remonstrators.

Attorney Biege stated even if they were using it, they don't have a right to use it until the court says so.

Glen Minich stated it would be hard to turn a bus around or do anything.

Vern Schafer stated it was just a question he had.

Andrew Voeltz stated he appreciates his question.

Vern Schafer stated the drawings are quite detailed more than the sketches they normally get. He appreciates that.

Vern Schafer made a motion to approve the Petition for Variance of Developmental Standards for Kurt J. Denman and Elliot G. Fishburne, IV represented by counsel Andrew Voeltz of Howes & Howes, LLP for an addition to a non-conforming structure with a front setback of eight feet (8') instead of the twenty-five feet (25') and a porch with a setback of nine feet (9') instead of the fifteen feet (15'). The property is located at 7136 N. Chicago Rd., New Carlisle, IN., Hudson Twp., zoned R1B on .17 acres.

Glen Minich asked if the nine feet (9') is the side setback because it's not really written in there.

Andrew Voeltz stated it is the front setback. He will refer to Page 4 of the presentation with the yellow. They are both front setbacks as related to Canal Street and the property lines. The side setbacks are already grandfathered in is the best way to put it. They are not addressing that here at this point.

Glen Minich stated the porch setback should have either a front, a side, or a back.

Attorney Biege stated it's the front. He could have written front twice, but both are from the front. When he drafts the finding they will both be for the front.

Glen Minich seconded.

Approved. Motion carries 3-1.

3. Petition for Variance of Use for Olo Auction Holdings LLC represented by counsel Andrew Lucas of Martz & Lucas LLC to operate an online auction business. This property is located at 11201 S. 1025 W., Wanatah, IN., Clinton Twp., zoned R1B on 5 acres. Parcel 46-13-32-226-003.000-044.

Attorney Biege stated notice is adequate.

Andrew Lucas stated he is representing Olo Auctions at 105 Lincolnway, Valparaiso, IN. They have a twofold request this evening and they have a Power Point that they brought along with handouts. The first is that they were told that they had to apply for the variance which is a decision that they don't necessarily agree with because they believe the property is grandfathered in. They will explain that and the first thing is that they are asking the Board for a Finding of Fact that there is no change in use and it is properly non-conforming. In the alternative, not to waste anyone's time, they will also present why they meet the elements of a variance for an online auction at that site.

Attorney Biege stated he should take a break in his presentations so they can vote on the first matter before the second.

Andrew Lucas stated they would be happy to handle it that way. They will start with some background of the property at issue. Its' address is 11201 S. 1025 W., Wanatah, IN. They are half of a mile West of 421 and about two (2) miles North of Wanatah. As far as they have been able to figure out, this property was built by REMC in the 80's. It has had warehouses on it since at least the early 90's and they believe into the 80's and has been continuously been used as a commercial warehouse property since that time. His client Olo Auction Holdings, which is a subsidiary of Kraft Auctions, which is located in Porter County, bought the property about a year ago and was approached after the purchase and told they had to apply for a variance. They will start with why they don't believe a variance is needed. To understand that, he thinks they need to understand a little bit about the owner. Kraft Auction Services is a company located on Highway 30 in Porter County. This is actually there Porter County facility. To the extent that any business is run, it is run out of Kraft's main business office located in Porter County which is a fairly extensive facility. To the extent that an online auction is run or there are checks cut, that occurs at the Porter County facility, not at the LaPorte County facility that is up for petition tonight which he thinks is important. What the LaPorte County facility that they are here to talk about tonight is used for is storage of items that are being sold on the online auction that is run through the Porter County facility. There will be no in person auctions at this site; it is not a traditional hundred (100) cars and guys standing around all day. That is not what the facility is going to be used for. It will simply be used to store items that are being sold online being run through the Porter County facility. Their first request is why they don't believe a variance is needed. Zoning Ordinance 29.01 talks about if the use is lawfully existing, but made non-conforming by a new ordinance then it may be continued. They believe that these structure pre-date the current Zoning Ordinance in LaPorte County and that therefore it was proper before the new ordinance came into place and can be continued. The second part of that; is there a change in use? Obviously, a non-conforming use that sees a change in use can then expire and a variance is needed. They don't believe there is any change in use on the property. Section 31.24 defines a warehouse under the zoning code – a building used for . . . short-term storage . . . includes truck loading and unloading . . . outdoor storage of trucks and trailers that is nor more than the area of the warehouse being used. They believe that is exactly how Kraft is using the property. It is being used to store items on a short-term basis. If there were live, in-person auctions being held there he would see why it would be a change in use, but they don't believe there is a change in use thus no variance needed. On a very short-term basis there may be a pick up of items less than four (4) days a month, but again the definition of a warehouse contemplates that those items will be picked up. Their first request is an up or down vote on the idea of whether a variance is needed. They believe it was a prior non-conforming use with no change in use and therefore no variance is needed.

Attorney Biege asked Madam President if he may ask a question.

Melissa Mullins Mischke stated yes.

Attorney Biege asked if that use continued until the transfer of the real estate or was there a break in the use.

Andrew Lucas stated no. There was no break in the use. There were tenants in that space using the warehouse for storage when Kraft bought it. He believes the most recent one (1) was a lawn

company and then someone before that. They don't believe there was any break in use of the property when Olo bought it.

Attorney Biege stated he said there were tenants renting it for storage; how many?

Andrew Lucas asked how many tenants?

Attorney Biege stated he wants to make sure this wasn't a self-storage and that it was a warehouse.

Andrew Lucas stated no, it was not a self-storage. It was being used by a landscaping company up until the point of the sale. He believes they were keeping equipment indoor and outdoor at that point.

Attorney Biege stated okay.

Vern Schafer stated he knows where the property is and they haven't asked for remonstrators yet, but is there any intention of storing anything outside of the buildings for that purpose. There are trailers obviously.

Andrew Lucas stated he believes there are and there would be things stored outside. They believe it would fit the definition of a warehouse so that the outdoor storage would be less than the indoor storage off of 31.24 which it states the definition of a warehouse.

Vern Schafer asked if the particular trailers are for sale.

Andrew Lucas stated yes.

Vern Schafer asked what the kind of turn around is on this stuff. How long does it sit before it is moved.

Brian Schuck stated his address is 48 N. 450 E., Valparaiso, IN. The product turns every thirty (30) days. Once the monthly goes off, that product goes out and new products comes in. The online auction goes off, again and again.

Deb Vance stated she wants to ask a vacation because they are looking at petition for a variance of use to operate an online auction business. It doesn't say storage there. Then when she looks it up online it says that the location will host monthly consignment auctions. That is a little different than what they are hearing.

Andrew Lucas stated he has the petition in front of them that first of all, there is no change in use and if they want to ask Mr. Schuck, he is sure he'd be happy to tell them that it is items that are being sold online. By consignment it means that Kraft doesn't own the items, it is simply being sold, but it is not a live, in-person auction.

Deb Vance stated it doesn't say online on their website.

Attorney Biege stated if he can clarify, this is a procedural issue because they are saying they don't need a variance because they are grandfathered. That would not be a petition for variance. He is allowed to make the argument that he doesn't need to ask them and they can keep going. That is the only part he is asking for at this stage. Their determination is if this use is the same use as it was before and if that is the case then they are grandfathered in and they don't need a variance.

Michael Polan stated it was his decision to require this to appear before this Board and appear at a public hearing. The reason he made that decision was because he determined that it was similar use, but not exactly the same use. He also knew that there would be incoming remonstrance so in the interest of transparency and public involvement he made the decision to require them to petition for the variance and appear before this Board at a public hearing. Whatever they decided he is good with; he just wanted it to be done in public.

Melissa Mullins Mischke asked Attorney Biege if their remonstrance is going to be whether or not they are in favor of it being grandfathered in or not?

Attorney Biege stated there shouldn't be remonstrance on a procedural decision. If they choose that it is not grandfathered in, then the next phase is if they can get a variance, but it is a fact finding by the Board. Unless there is evidence that there was a break in the use, that would be relevant, but anything else would not be relevant since they are making a procedural decision first.

Melissa Mullins Mischke stated thank you. Is that clear to everyone?

Vern Schafer stated it is clear to him. From what he is hearing, if the use doesn't change from what it has been in the past then they aren't making any ruling except for the fact that it shouldn't change from what they have been doing. If it was used as a storage facility then that is what it has been used for, for years so there is no change.

Glen Minich stated if that is true, then they should have evidence of continuous leases. Otherwise, how do they know. They need leases to say that it was continuously used.

Attorney Biege stated unless there is somebody that is going to stand up and say that it was not. That's where the remonstrators can speak if they know it was used for this, or this, or this, but that is the only thing that they can speak to at this stage.

Melissa Mullins Mischke asked for remonstrators on continuous use.

Remonstrators:

David Amber stated he is an attorney located at 601 State Street, LaPorte, IN. He will be back up if they move to the second part of this meeting.

Melissa Mullins Mischke asked how many remonstrators is he representing.

David Ambers stated he is simply representing one (1). He is representing Rebecca Hall as listed on the tax rolls now known as Rebecca Fagen since having been married at 11232 S. 1025 W., Wanatah, IN. It is directly across the street from this property. First of all, counsel really simplifies this. If they go back and look at the schedule of uses going all the way back to the previous code, the current code came into effect January 7, 2012. That code made this property R1B. The previous code, which he has with him, the property was R2. He was talking with his law clerk today, and they really think 1 and 2 became A and B the way it appears by the ordinance. So, it's always been zoned residential. Counsel over simplifies the use of warehouse by REMC because that was not the use that existed at that property. If they look at the schedule of uses throughout the various districts, there is a separate provision for utility buildings. That is what REMC used that property for. Did they store some poles out there? Did they store some wire out there? Yes. Those buildings were not warehouses. He believes there was a mechanics shop and some offices. He had his farm down by the river years ago and went there a couple times, but the buildings weren't used as a warehouse and that's what they are trying to pull passed them is to say that the whole property was warehousing and it wasn't. They have to go to under the current Ordinance, the Central Business District, or Industrial Business District to have an auction house and just about any of the zoning classifications allows for utility buildings. He thinks that is a distinguishment they have to make considering non-conforming use. The second is, which one (1) of them alluded to, is there has been absolutely no proof what has happened since REMC sold the property to the seller of their petitioner. REMC sold the property in 2006. His clients advised him that the most recent person in there was a landscape company. A landscape maintenance company is not generally a user of warehouse space. It is a real tough pull just to go there, not to mention the fact that they have no proof going back to 2006 that there was a continuous use of this property and that under Article 29.01 E that there was not a one (1) year break in the use of the property which would have killed any non-conforming use. He would like for the Board to consider that information before they jump and simplify that it has always been a warehouse, but they can't say who was there or when, but they think it was a warehouse and they want to use it as a warehouse so grandfather them in and then they'll never have to come back. He thinks their initial vote needs to be to deny the grandfathered non-conforming use because there has been no proof of continuous use since 2006 and move to the second portion of the petition.

Melissa Mullins Mischke stated thank you. Are there additional remonstrators?

Arlene Koontz stated her address is 11141 S. 1025 W., Wanatah, IN. She lives right next door to the property. Since Kraft Auction has come in, she has had continuous cars turning down her driveway, driving through her property, and to the access road in the back. This has been continuously since they have come in and she doesn't like it. They have lots of cars flying up and down their road. They have the access road that backs up to Clinton Ballpark where they do their leagues there and they have traffic coming through because Kraft has directed all traffic to go up to 1100 and not use the entrance on 1025. She doesn't understand why they aren't using it, but they are using the access road instead and her property backs up to the access road in the back. They are coming in through the back gate and into their property, picking up their stuff, and then going back out. They are coming back down their road. Why they don't go to 421 and come in from 421 she has no idea, but she doesn't like all of the traffic especially down her driveway.

She now has to block her driveway to prevent people from turning because her driveway is right there at the end of their fence. She does not like it. She doesn't like the traffic. They can't go walking down the road because there are just way too many cars. They went through this for a variance several years ago with Todd Anson (Flat Rock) and he didn't win because they all fought it. It should be a residential area and it should remain that and not a business coming in and doing what they want or having hazardous waste. She is not for it.

Evenell Hornsby stated her address is 11122 S. 1025 W., Wanatah, IN. She lives across the street and one (1) house down from the fence. She thinks when they were here in 2012, they came in here for a variance when Mr. Anson tried to get the property changed from residential to commercial. What they were fighting at that time was the fact that if it's changed to commercial, God knows what could come in there. They found out there was like two hundred (200) different businesses that could come in there. They could have a recycling plant that is running twenty-four-seven (24/7). She doesn't know if the Board knows, but there are fifteen to twenty (15 – 20) houses right there in that area. They are just over the line from the Town of Wanatah. They fought it because they didn't want commercial in there. It isn't set up that it could be made into homes or anything, but then again maybe it could she guesses. The thing of it is though, when REMC had run their business all those years and they never had that changed and they stopped it and all of a sudden, it's now listed as commercial. How did that happen?

Glen Minich stated it's not.

Evenell Hornsby stated if they go on Beacon Schneider, it is listed as commercial. It is not commercial; it is residential. The business that is there now. . . When they say an online auction, the stuff still has to come in to be auctioned so there will be trucks coming in. Great big flatbed trucks hauling cars, and trucks, and furniture and everything coming. There is an access road that they can use, but they don't. It's down this road and it's speeding. They are a residential area. They don't want commercials in there simply because it is too much traffic. She has lived there sixty-seven (67) years. They were the first family to build a house there other than the farm houses that are there. She doesn't like it either. It's too much, way too much.

Melissa Mullins Mischke stated for clarification, on Beacon the commercial designation refers to the Assessor's use of the property, not the zoning. The zoning is R1B. They are two (2) separate issues.

Evenell Hornsby stated it is still listed as residential.

Melissa Mullins Mischke stated it is being used as a commercial property currently. That is what the Assessor's say so that is where that commercial designation comes from, but it is zoned residential.

Evenell Hornsby stated thank you.

Melissa Mullins Mischke stated she would like to hear something new.

Kathryn Soller stated her address is 11152 S. 1025 W., Wanatah, IN. She lives diagonal from the property in question. Her biggest concern is actually safety.

Attorney Biege stated point of order Madam. He is sorry, but these remonstrators should go to the second phase. They are only talking about if someone has knowledge of what that building was used for. He is not discounting what she is saying; it's just the wrong part. That goes to everybody. They are only deciding if the building was used and how the building was used before the petitioner.

Kathryn Soller stated she can only speak to the fact that it was not used in the way in which it is being used now. Should she hold her peace for the second part?

Melissa Mullins Mischke stated thank you.

Attorney Biege stated he isn't trying to cut anybody off; he is trying to make sure they have a clear record for if down the road there is an appeal so the people reviewing what happened here are clear about what they are talking about.

Melissa Mullins Mischke stated if there are not other remonstrators, and thank you Attorney Biege for getting her back on track, she will entertain a motion on whether or not they think the variance is needed.

Glen Minich made a motion that the evidence does not support the property being grandfathered in.

Deb Vance seconded.

All Approved. Motion carries 4-0.

Melissa Mullins Mischke stated onto part two (2).

Andrew Lucas stated let's talk about the elements of a variance. The variance would not be injurious to the public. Value to adjacent property owners would not be affected. The variance needs to be peculiar to that property. The strict application of the zoning would be an undue hardship. The variance does not interfere with the Master Plan. Moving on to Page 11. Property values would not be affected. They actually believe that property values would not be affected because they don't see this as a substantial change in use. In other words, they are not building a commercial facility next to homeowners, they have a commercial facility that has clearly been commercial for years. They believe the current use will actually be less on the homeowners in the area. They heard some testimony early about how people are driving in from the north, but let's go back to Page 10 where it is not injurious to the public which is the first element. They believe it is actually less impact on the public because Kraft has taken steps to try and limit the amount of traffic through the major residential areas. If they look at the property on the bottom left of the page, the road to the left is completely lined with houses and the road to the north is only half of a mile off of 421. The reason Kraft changed the traffic pattern in from the north versus coming in from the west is because they have an easement through that property and they

felt there would be fewer homeowners impacted by having traffic come in from the north versus having to come in from the west side where they would have to pass several homes. They think that Kraft has already taken steps to decrease the impact on the public. There is a gate along 1025, but the reason they are not using that is because it would create traffic up and down the road that is residential versus coming in from the north which would create less traffic. They believe it is not injurious to the public because there is less impact based on that current pattern. Property Values is the second element to the variance. The property values would not be affected. Again, this is not them trying to build a commercial property in the middle of these houses. This is utilizing what is clearly a commercial property and has been for at least the last forty (40) years. There may have been one (1) current homeowner before that was built. They don't believe it would have a negative impact on the values as they sit the day before they requested the variance. He will handle the third and fourth element together. The variance is peculiar to the property and strict application would be a hardship. They believe that it's peculiar to this property because it is a property that is already again used as commercial and already has commercial warehouses. It is not something that could be built in the middle of a residential area or that they are even asking to be built or expanded in the middle of a residential area. Strict application would make the property certainly useless in its current form. It is not designed to be residential. Buildings would have to be torn down and it would basically have to be sold as a vacant lot after all of that was cleared off and that rises to the level of an undue hardship of the property owner. Finally, it does not substantially interfere with the Master Plan. They are not asking for a change that if granted down the road would lead to other major problems in the County Zoning Ordinance. They are asking for a property that is commercial, has been commercial for forty (40) years and simply is allowed to continue to have a commercial use. They may think that meets the elements for a variance to run an online auction. They request that the variance be granted.

Melissa Mullins Mischke stated pick up is four (4) times a month. How do the items get there?

Andrew Lucas stated items are generally brought in by Kraft staff from either a clean out or something like that. Bringing items in is generally done by Kraft.

Melissa Mullins Mischke asked by pickup trucks? Box trucks?

Brian Schuck stated they have eight by twenty-four (8' x 24') enclosed trailers.

Melissa Mullins Mischke asked if they are the trailers that are stored out there.

Brian Schuck stated correct. That is where the personal property is stored and then it is unloaded into the warehouse and then those trailers would then get filled on another pick-up subsequently at a later date and loaded again.

Melissa Mullins Mischke asked if that happens multiple times a month and not just four (4) times like pick-up is.

Brian Schuck stated just once a month that they unload. Those trailers then go back to be loaded and are brought back to that facility.

Melissa Mullis Mischke stated once a month.

Brian Schuck stated correct.

Melissa Mullins Mischke stated they wouldn't have an estate sale or something that they are getting from on a Tuesday and two (2) weeks later a different truck or trailer coming in with additional items.

Brian Schuck stated they are all the same trailers that are on the same site. He isn't understanding correctly what the question is.

Melissa Mullins Mischke stated he said people pick-up four (4) times. Is that their pick -up or somebody bought something on the auction and they are coming to pick it up.

Brian Schuck stated that is if somebody bought something and they are coming to pick it up.

Melissa Mullins Mischke stated items can show up at the auction location there in Wanatah any time during the month, not just four (4) times.

Brina Schuck stated by appointment only, correct.

Melissa Mullins Mischke asked if the fence is currently around the entire facility.

Brian Schuck stated yes, it is.

Remonstrators:

David Ambers stated he has given them a set of pictures which his client's husband took today. Picture 1 obviously shows several automobiles, many that are parked on grass, which is an Ordinance violation in the City of LaPorte. He didn't have a chance to look up to see if it is in the County. If they flip to the second page, they can see a row of items. One man's item is another man's treasure. They are out beyond the gravel parking area. He does not know if that is property to be sold or property to be disposed of, but it does not look really orderly. He's not sure how they could argue that does not affect the property values of the folks across the street. It would appear to him to be a distinct assault on the property values of the people across the street. The third picture shows further more property outside. There is a motorhome in back. They couldn't even put the dumpster back behind the building; it is right where it is visible from the remonstrators. They have a definite assault on the property values. The grant of the variance would certainly be injurious to the public health, safety, morals, and welfare of the community. With all of the items sitting outside, two (2) of them are farmers, and they know what happens when they leave items sitting around outside. Pretty soon there will be bugs, mice, and rats living under them. Increase traffic as one (1) of the remonstrators mentioned; the address for this property is that gate that faces these residences. People coming there, unless they are a continuous customer, are first going there, finding the closed gate, seeing the sign on the gate that says to use the north entrance so it is increasing the traffic on the road. They talked about the

use and value of the property will be affected in a substantially adverse manner. The need for the variance doesn't arise from conditions peculiar of the property. It arises from a condition peculiar to what they want to use it for. Had it been REMC and then the whole issue of the break and chain of use, that would be hard to argue against, but if they grant this variance, they would be granting it for something that is not a condition peculiar to the property. Strict application would not be an undue hardship to the petitioners. They should have looked into this before they bought it and should have made some zoning assessments at that time. More importantly, they only need one (1) of the five (5) to deny this variance. The grant of the variance does interfere substantially with the Master Plan. There is no use even close to this that is allowed in the R1B zoning classification; they would have to jump up to the Industrial and the one (1) Business District to even find the classification for an auction house. When that Ordinance was revised, specific thought was given to where they would want an auction house and it was not in an R1B area. On behalf of his clients, he would ask that they deny the variance. He also has a letter of remonstrance from Eva Grzelak. Was it received by Michael Polan?

Michael Polan stated no.

David Ambers stated it was a letter that was sent by an adjoining property owner who couldn't be here tonight. Thank you.

Kathryn Soller stated her address is 11152 S. 1025 W., Wanatah, IN. She does feel that this company going in here is an issue as far as safety and privacy. The gentleman before her was absolutely correct when he said that everyone is using their GPS and it is sending them to that west gate. They are stopping in front of their houses, coming into their properties, and using their driveways as turn around points. Herself in particular, she works from home and it is a giant distraction because they are not the typical cars; they are flat bed trucks, trailers, vans, and some people even have U-Haul vehicles they are bringing in. It's a safety and privacy concern for herself. It's a distraction from her work that she does. She also has another safety concern. When they are turning around and using that area that goes through the Clinton Tee Ball Field. In the spring and summer, there are giant baseball games there. Her husband and their nephews play on that team and she has been to many of the games and there are children everywhere during these games. The amount of traffic that is going through there is significant. It has genuinely affected their day-to-day activities when this is going on. She does fear that in the spring and summer a child will get hurt because they are playing everywhere as their siblings are playing baseball and there is a continuous line of traffic during these pickups. They said it is four (4) days a month, but it is Wednesday through Saturday and there are hundreds of vehicles coming through. This does not include that the week prior that the same people can come and view all of the times prior to the week of pickup in addition to the items being shipped to there. She asks that they deny the variance for those reasons. It has been a giant disruption and much more so than the landscaping company that was there prior. Thank you.

Michael Polan stated the letter that was given to him was not part of the record or provided to the Board ahead of time and it had not made its way to him so he will bring it up now.

Melissa Mullins Mischke stated thank you.

Evelyn Eads stated her address is 11241 S. 1025 W., Wanatah, IN. She lives just south of the fence on the south side. They agree with Arlene. They have traffic turning around in their driveway all the time and tearing up the grass. She too is concerned about the ball field. They can hear the kids out there back and forth from the game, but also the traffic going back and forth. She doesn't know how many times a day they see flat bed trucks that have cars and washing machines and other things that they have for the auction. They go by the house and turn in the driveways all the time. She thinks it is a safety issue. It shouldn't be zoned for Industrial or a Business or Commercial thing because it is Residential because of all the people that do live there. It is a safety issue and she is real concerned for the neighborhood.

Melissa Mullins Mischke stated thank you. Any other remonstrance? Anybody for or against? Hearing and seeing none, he may come back up.

Andrew Lucas asked if he could get a quick rebuttal.

Melissa Mullins Mischke stated no, he may not. He may stand at the podium. What kind of questions do they have from the Board?

Vern Schafer stated from what he is hearing, they are not really looking to use this as a warehouse; it looks to him like a little more than that. Obviously, he is familiar with the property because his grandsons play on that baseball field too. It gets pretty crowded during baseball games. The other problem that he sees there is that there is no way to change the address of the property because they don't have frontage on the east-west road. Because of the address of the property, it gets very confusing for people that are wanting to deliver things there. It causes excess traffic, like the remonstrators said, resulting in people turning around in driveways. It becomes a real big issue there. The zoning obviously is residential. That's the way that he is seeing it right now unless they can convince him otherwise and he doesn't think they can.

Deb Vance stated she was thinking the same as Vern. She is hearing four (4) pick up times and one (1) time with their trailers, but then she is hearing that it seems like there is really a lot more than that. That is her concern is that there would be a lot of that.

Vern Schafer stated obviously, judging from the pictures Mr. Ambers presented today, there are quite a few vehicles parked there and he doesn't believe they are for sale so there must be some activity going on there and that makes more traffic.

Vern Schafer made a motion to deny the Petition for Variance of Use for Olo Auction Holdings LLC represented by counsel Andrew Lucas of Martz & Lucas LLC to operate an online auction business. This property is located at 11201 S. 1025 W., Wanatah, IN., Clinton Twp., zoned R1B on 5 acres.

Vern Schafer stated because of where the property is located in a Residential District and the traffic that would be created, it would be a hardship on the people in the area.

Deb Vance seconded.

Approved. Motion carries 4-0

Melissa Mullins Mischke asked if they need to have a motion for how long before things need to be removed?

Attorney Biege stated he didn't hear that anything was on the property that shouldn't be.

Melissa Mullins Mischke stated he is absolutely right, but she is gathering from the photos that they saw from Mr. Ambers that maybe there are items there.

Glen Minich stated Michael Polan also took evidence of that. There are open pallets with equipment on it.

Attorney Biege stated okay. They can give a period of time in which to remove from the property.

Melissa Mullins Mischke asked if that is something they want to do as a Board.

Vern Schafer asked if that property could still be used for storage only.

Attorney Biege stated they didn't ask for that and they just decided they are not using it for storage.

Glen Minich stated that is the one (1) comment that probably should be made. They could come back with a different request.

Attorney Biege stated he is sure their lawyer can advise to them as to what the next steps would be.

Glen Minich stated thank you.

Melissa Mullins Mischke stated okay, so no motion to remove items. Thank you very much.

4. Petition for Variance of Developmental Standards for H Sean & Tiffany H Mitchell to convert an existing garage into a guest home. This property is located at 4343 W. 300 N., LaPorte, IN., Center Twp., zoned R1B on 40 acres. Parcel 46-06-17-400-002.000-042.

Attorney Biege stated notice is adequate.

Linz Conklin stated her address is 501 Benton St., Michigan City, IN. She is here for Sean as he is out of town. He did say he submitted the petition, but she doesn't know if he adjusted it. It was originally supposed to be on top of the garage, but they changed it to keep the garage and build the home in front of the garage. She doesn't know if he adjusted it when he was down at the office or not.

Melissa Mullins Mischke stated no.

Attorney Biege stated the petition says convert an existing garage into a guest home. Is that what she is asking for tonight.

Liz Conklin stated no. He changed it.

Attorney Biege stated that is why they send notice to neighbors and publish in the newspapers to tell everyone what they are asking for. They can change it, but they will have to do the notices over and come back.

Liz Conklin asked if he will need to file another petition and do all that.

Attorney Biege stated they can amend the petition and pay a filing fee if there is one. Either way, the point of notice is to let the neighbors know what they are asking for and if their question changes then they have to tell them what their question is.

Liz Conklin stated alright.

Melissa Mullins Mischke stated if the rest of the Board agrees, she would like to waive the fee for the second filing.

Attorney Biege stated that's fine. They just need to re-notice and re-publish.

Michael Polan stated an updated drawing or site plan.

Liz Conklin stated he has that. Did he send that to Ashley?

Ashley Kazmucha stated she didn't receive it yet.

Liz Conlin stated she will email it to her.

Melissa Mullins Mischke stated she will want to check them because she may be up higher in the meeting for the next time.

Liz Conklin stated okay, sounds good. Thank you so much for your time.

Melissa Mullins Mischke stated she apologizes that she had to wait.

5. Petition for Variance of Developmental Standards for Trudy L Hull Trust for construction of a fifteen-foot by thirty-foot (15' x 30') shed for personal storage on a parcel without a primary residence. This property is located south of 306 Holton Rd., LaPorte, IN., Center Twp., zoned R1B on 3.04 acres total. Parcels 46-06-28-227-035.000-042 & 46-06-28-276-001.000-042.

Attorney Biege stated notice is adequate.

Donnie Pawlik stated he is with Amish structures at 8555 W. US Hwy 20, Michigan City, IN. They are looking to do a shed. It is on a vacant piece of land that they have across the street from a property that they already have with a barn on it. They are just looking to store a tractor and some implements for some tractors. There is an existing shed on the property. Once the new one would go up, if granted, they would be removing the old shed.

Glen Minich asked if he can show on the map where the old shed is.

Donnie Pawlik stated it is near the front right near the corner.

The Board deliberates amongst themselves.

Melissa Mullins Mischke stated the green shed is coming down.

Donnie Pawlik stated well, they are removing it. They are not tearing it down. The size was at fifteen by thirty (15' x 30'). HE actually shrunk it to fourteen feet (14').

Vern Schafer stated fourteen by thirty (14' x 30').

Melissa Mullins Mischke stated why.

Donnie Pawlik stated a lot of the stuff that they do is pre-fab so to build a fifteen-foot (15') wide building versus a fourteen-foot (14') is saving them some money. He will lose a foot (1') but he will save them a couple bucks.

Melissa Mullins Mischke asked if they saw exactly where it was going.

Glen Minich stated yes.

No remonstrators present.

Glen Minich asked what the shed will look like.

Donnie Pawlik stated standard gable pitch with an 8/12 pitch with a garage door at one (1) end and a service door on the side.

Glen Minich asked if it is shingled.

Donnie Pawlik stated it is going to be a metal roof. They will do more natural colors to try to blend in to the area.

Vern Schafer stated the owners live across the street.

Donnie Pawlik stated they live on the island on Oak Drive.

Vern Schafer stated he searched around Beacon and he noticed the Hull Trust has like four (4) parcels for the same family. There are a lot of people there involved. This property also belongs to that same family. Is that what he is talking about.

Donnie Pawlik stated correct.

Vern Schafer stated he knows he is asking for a variance to put the shed there and obviously the area there has a wetland.

Donnie Pawlik stated they are over fifty-feet (50') away from it.

Vern Schafer stated right, but in the future, they could be coming back looking to put a residence there and it could be an issue.

Donnie Pawlik stated he does know they talked about it, but they know that it would probably not get granted so they are not going to go down that avenue.

Vern Schafer stated they do maintain their residences very nicely on the other side of the street.

Donnie Pawlik stated they do take very good care of their properties.

Glen Minich stated he is concerned about the metal roof because they have had them come before them many times. There is a home to the north of it that has an elevation that they will be able to see it and they have had glare problems with these before. It needs to have a shingled roof.

Attorney Biege stated he can make that part of the motion.

Glen Minich made a motion to approve the Petition for Variance of Developmental Standards for Trudy L Hull Trust for construction of a fourteen-foot by thirty-foot (14' x 30') shed for personal storage on a parcel without a primary residence. The shed must have a shingled roof. This property is located south of 306 Holton Rd., LaPorte, IN., Center Twp., zoned R1B on 3.04 acres total.

Vern Schafer seconded.

All Approved. Motion carries 4-0.

6. Petition for Variance of Developmental Standards for Donna Tomak for construction of a deck with a rear setback of eight feet (8') instead of the fifteen feet (15') minimum required. This property is located at 100 Island Dr., LaPorte, IN., Center Twp., zoned R1B on .165 acres. Parcel 46-06-28-277-014.000-042.

Attorney Biege stated notice is adequate.

Donna Tomak stated her address is 100 Island Dr., LaPorte, IN. She is requesting to have a deck put in sixteen feet (16') wide by twelve feet (12') out. It will be a composite decking. The reason why she is asking for the variance for that size is to be fitted with the home. It won't be too small. It is a little kit. She just wants to make it go with the home in the back. As they can see, there is nothing there now. She has done improvements to the home in the back already as far as the sliding glass door and an additional window in the back so it balances out. Now she would like to put a deck in to balance out the rest of the home.

Vern Schafer stated she won't fall out when she opens the door no.

Donna Tomak stated let's hope not.

Melissa Mullins Mischke stated thank you for providing them with a survey and some other drawings to give them a good idea of what their plans are.

No remonstrators present.

Glen Minich made a motion to approve the Petition for Variance of Developmental Standards for Donna Tomak for construction of a deck with a rear setback of eight feet (8') instead of the fifteen feet (15') minimum required. This property is located at 100 Island Dr., LaPorte, IN., Center Twp., zoned R1B on .165 acres.

Vern Schafer seconded.

All Approved. Motion carries 4-0.

7. Petition for Variance of Developmental Standards for Denny M Follis for an addition of a deck with a rear waterway setback of fourteen feet (14') instead of the fifty feet (50') minimum required. This property is located at 314 Oak Dr., LaPorte, IN., Center Twp., zoned R1B. Parcel 46-06-27-326-006.000-042.

Attorney Biege stated notice is adequate.

Denny Follis stated his address is 314 Oak Dr., LaPorte, IN. He is here to ask the Board to grant a variance to allow him to extend his existing deck when he does it four feet (4') further out than it currently is.

No remonstrators present.

Melissa Mullins Mischke asked how far away will he be from the wetland area of the water.

Denny Follis stated he believes they said it was fourteen feet (14') after the addition. He has a concrete break wall all the way around the pond on his property. He would only be putting in four (4) additional posts.

Vern Schafer made a motion to approve the Petition for Variance of Developmental Standards for Denny M Follis for an addition of a deck with a rear waterway setback of fourteen feet (14') instead of the fifty feet (50') minimum required. This property is located at 314 Oak Dr., LaPorte, IN., Center Twp., zoned R1B.

Deb Vance seconded.

All Approved. Motion carries 4-0.

8. Petition for Variance of Developmental Standards for Daniel P and Jody A Bohney for construction of a 2nd accessory building to the side of the home instead of the rear. This property is located at 414 Lakeside Dr., Walkerton., IN., Lincoln Twp. zoned R1B. Parcel 46-12-16-306-017.000-055.

Attorney Biege stated notice is adequate.

Daniel Bohney stated his address is 414 Lakeside Dr., Walkerton, IN.

Melissa Mullins Mischke stated they were given an extra handout. Please give them a moment to review it.

The Board silently reviews the drawings.

Melissa Mullins Mischke asked what the exterior will be. Will it be a metal building? Metal roof?

Daniel Bohney stated yes.

Vern Schafer asked if the variance is because the location of the distance from the property line to the adjacent property.

Michael Bohney stated the variance is to place the proposed structure to the side instead of the rear.

Vern Schafer stated obviously, in the rear it gets closer to the water.

Melissa Mullins Mischke asked how many feet in front of the house is he going?

Daniel Bohney asked in front of the existing home.

Melissa Mullins Mischke stated yes.

Daniel Bohney stated twenty-five feet (25').

Vern Schafer stated according to the drawing it is seventy feet (70') from the road.

David Bohney stated it is from the road and the home is ninety-five feet (95').

Melissa Mullins Mischke stated thank you Vern. She was hung up on the seventeen feet (17') on the drawing.

Vern Schafer stated it's seventy (70'). It's not anywhere near the road, but the adjacent property is owned by relatives. Is that correct?

Daniel Bohney stated it is; his brother.

Melissa Mullins Mischke stated she doesn't see him here as a remonstrator.

Daniel Bohney stated he couldn't make it.

Glen Minch stated what did you do? Tie him down?

No remonstrators present.

Michael Polan asked if they should ask if it's big enough.

Melissa Mullins Mischke stated she does. She wants to honor Dwayne every time they see a garage and he would ask every time if it was big enough. That guy said he was going to take a foot (1') off of the other one (1) and she was perplexed. It looks like a good size structure.

Daniel Bohney stated they are hoping to get their pontoon in there in the winters.

Vern Schafer stated he better measure the pontoon first and make sure they're not going to get a bigger one (1).

Daniel Bohney stated they did.

Glen Minich made a motion to approve the Petition for Variance of Developmental Standards for Daniel P and Jody A Bohney for construction of a 2nd accessory building to the side of the home instead of the rear. This property is located at 414 Lakeside Dr., Walkerton., IN., Lincoln Twp. zoned R1B.

Vern Schafer seconded.

All Approved. Motion carries 4-0.

Melissa Mullins Mischke asked for any old business.

Melissa Mullins Mischke asked for any new business.

There being no further business, meeting adjourned at 7:22 p.m.

Melissa Mullins Mischke

Melissa Mullins Mischke, President

Michael Polan

Michael Polan, Recording Secretary