

# *WABASH COUNTY PLAN COMMISSION*

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**Wabash County Board of Zoning Appeals**

**Wabash County Court House**

**Wabash IN 46992**

## **BZA MEETING MINUTES**

**TUESDAY, JUNE 28, 2022**

BZA MEMBERS: Dan Dale, Patty Godfroy, Mark Milam, Joe Vogel, Jerry Younce, and Attorney Larry Thrush

PRESENT: Dan Dale, Mark Milam, Patty Godfroy, Joe Vogel, Jerry Younce, Mike Howard, Larry Thrush, Libby Cook, David Terflinger, Heather Terflinger, Byron Weitzel, Joe Cook, Gary Burnau, Marthene Burnau, Mitchell Johnson, Jerry Sutter, Linda Sutter

The Wabash County Board of Zoning Appeals met on Tuesday, June 28, 2022. Board Chairman, Joe Vogel called the meeting to order at 7:00 pm. Mr. Vogel asked if there were any additions or corrections to the minutes of the May 24<sup>th</sup> meeting, there being none he asked for a motion to approve the minutes as written. Motion to approve by Mr. Milam, second by Mr. Younce, motion carried.

Mr. Vogel: The first item on the agenda is Special Exception #7, Daniel Schul for construction of a pond in Liberty Twp. Mr. Howard reviewed the following specs for the pond: Mr. Schul resides at 6809 S 390 E; a 3.7 acre parcel; the Plan Commission Board and the Wabash Co. Drainage Board have reviewed the specs and both gave a favorable recommendation; requesting a variance from the west property line, it will be 25 feet from the property line to the base of the dam; Brainard Excavating is the contractor; meets the road setback requirement; no floodplain or flowage easement; .5 acre water surface; dam will be 160 feet in length, 45 feet base width, 10 feet top width; overflow pipe will be one 8 inch outlet; outlet drain is surface type drain; maximum depth 14 feet; no emergency overflow; 2 acre watershed into the pond; no geothermal feed; the closest certified/non-certified drain is the non-certified Revere Speicher Drain which is approximately 650 feet; the dam is to the west of the pond and is where they are asking for the variance from the property line setback. Mr. Howard noted that Mr. Dawes informed the Plan Commission Board members of the work that the county had done on the Revere Speicher drain and that Mr. Schul might be required to put in rip rap if the pond causes any problems for the drain. Mr. Vogel asked if there were any questions or comments, there being none the Board proceeded to vote on the Variance followed by the Special Exception request. Mr. Thrush tallied the votes, both were approved.

Mr. Vogel; The next item on the agenda is Special Exception #8, Optimum Construction (Jason Robinson) for construction of a pond in Chester Twp. Mr. Howard gave the following specs for the pond: the property is located at 386 E 950 N, N. Manchester; parcel size is 1.91 acres; the application received a favorable recommendation from the Plan Commission Board and approval from the Drainage Board; Mr. Robinson will be the contractor; no variances required; no floodplain or flowage easement; approximate water surface area is .05 acres; no dam required; no overflow; outlet drain is natural flow; maximum pond depth will be 7 ft.; no emergency overflow; no geothermal feed; Staver Eckman ditch is approximately 1360 feet to the south west, that would be the closest county ditch. Mr. Vogel asked if there were any questions or comments. Mr. Howard said that Mr. Robinson said that he has talked with the county highway department about the water because the water is basically running from the roadside onto his property, they disagreed with him but the Drainage Board reviewed it and determined that he is correct and the water is running that way. He felt like this was the best way to contain the water in that area. As opposed to just having a wet spot in his yard. Mr. Dale asked if they are planning to run a tile from the wet part into the pond. Mr. Robinson said no, our plan is , we have already filled part of that a couple of years ago and we are going to take some of the dirt and fill that low spot so that it will drain into the pond. Mr. Robinson said they have done some testing, he then asked if it would be any problem if they took ½ of the pond deeper than the 7 feet, no more that 11 or 12 feet max. We are hitting gravelish clay down to about 4 feet and then from below there we are getting a pretty decent clay base. My thoughts are to do a 20 degree pitch and then just a drop off to a deeper hole; the Board said they saw no problem with that. With no further questions the Board proceeded to vote, Mr. Thrush tallied the votes, the request was approved.

Mr. Vogel: The next item on the agenda is Variance #5, John Gotschall, seeking a variance from the required road setback for a residential structure in Lagro Twp. Mr. Howard provided the following information on the property: ; Mr. Gotschall resides in Grant County; property address in Wabash county is 71 S St. Rd. 524 Lagro; it is a 1.40 acre parcel; the property is located along the Salamonie River and is north of the outlet for the Salamonie Dam; noted for the Board that there is a speed limit of 40 MPH on this part of State Rd 524. Mr. Howard noted the FEMA maps and the blue area which is designated by the Federal DNR and FEMA, you will notice that the mobile home is sitting in the floodway, a structure is not permitted in a floodway however this mobile home was there prior to that floodway being determined. Anything there that they want to do with the mobile home or building they cannot do in the floodway. The yellow portion of the maps is the floodplain that is determined by the state or FEMA, but is regulated by the county. You are not permitted to build in a floodway. Mr. Gotschall wants to move the mobile home to the west or closer to the highway to get it out of the floodway, but it would still be in the floodplain. He will have to move the mobile home approximately 35-40 feet just to get out of the floodway, plus the width of the mobile home and he would still be in the county floodplain. That would put him approximately 75 feet from the center of State Road 524, our state road setback is normally 105 feet. He is requesting a variance from road setback requirement. Mr. Gotschall has had a survey completed and has the required elevation certificate. He plans to pour concrete pillars, bring in a crane and have the mobile home set on the pillars so that he would be above that required elevation. Mr. Gotschall has inquired about putting a room addition on the mobile home, this cannot be done due to the manufacturing specifications for mobile homes, so we can't issue a permit for that. If you wanted to add a deck or porch that was freestanding that would be

permissible but he cannot put it on the east side because that would still be in the floodway. Mr. Younce asked, so that would still be in the floodplain. Mr. Howard said yes, but in the floodplain the floor has to be at least 2 feet above the base flood elevation. Ms. Godfroy asked about the elevations, Mr. Howard said the current elevation is at approximately 674 and base flood elevation is 682.2, so he has to be 2 feet above that so he has to be at 684. Mr. Howard said to get out of the floodway he would be moving the mobile home about 40 feet which would put it at about the current driveway. Mr. Vogel asked how high the pillars would have to be. Mr. Howard said about 7 feet. Mr. Vogel asked about anchoring the mobile home to the pillars. Mr. Gotschall said yes. Mr. Vogel clarified with Mr. Gotschall that it is the Salamonie River behind him and that it is below the dam, he asked Mr. Gotschall, you don't flood very often? Mr. Gotschall said yes, it is, Mr. Gotschall said quite a few years back when we had the big flood it got right up to the floor. Mr. Vogel asked so you will be gaining height, Mr. Gotschall said that is right so we won't have to worry about it anymore. Mr. Vogel asked how they will enter the mobile home, Mr. Gotschall said stairs. Mr. Vogel asked if he can use the same septic and well as he has right now, Mr. Gotschall said yes.

Mr. Dale asked if Mr. Gotschall would use the 7 foot area underneath the home for storage. Mr. Gotschall said probably. Mr. Howard said no that 7 foot area is in the floodplain and would still have to stay empty. Mr. Howard noted that air conditioning or anything like that has to be 2 feet above the base flood elevation. Mr. Dale noted that 7 feet is taller than most basements, that is a lot of space.

Mr. Howard said if he wants to put anything underneath it, I won't say that he never could, but he has to go to the state and get permits and you have to have ventilation skirts that allow water to go in and out both ways and the cost would be very high. Mr. Vogel asked if it can have skirting under it. Mr. Howard said there can be skirting but it has to be so that water could flow through it. Mr. Vogel asked, most trailers would require skirting, so for this one we wouldn't? Mr. Howard said I would require skirting; I would just not allow storage of stuff underneath it. Mr. Vogel asked so then it has to go all the way down the 7 feet, Mr. Howard said yes, and it has to have the ventilation to allow water to flow through it. Mr. Milam noted that the form date for the elevation certificate is expired, is there more information we should have? Mr. Howard said this is what the government terms as his certificate. Mr. Vogel asked if the DNR has any objections. Mr. Howard said that once it is out of the floodway they have no problem with it. When it is in the floodplain it is ours to deal with. Mr. Younce said without the dam it would be a no, but with the dam it could be okay but you just never know what is going to happen with the rain. Mr. Vogel asked Mr. Gotschall if he uses it as a residence or part time as a recreational home. Mr. Gotschall said it is for his family use for recreation.

Mr. Howard said that he talked with Jared Mobley with the Army Corp of Engineers, when I started here if they ever do anything with the mobile home, the former plan director stated that it had to be elevated 2 feet at that time, and that was 18 years ago. At one time the Army Corp of Engineers considered buying the ground and remove the mobile home so that way they didn't have to worry about how much water they were releasing from the reservoir. In 2015 water did get to the bottom floor, for the record we went to the Health Department and requested them to condemn it then, but they wouldn't do it. At this time the Army Corp didn't express any interest in purchasing the property.

Mr. Byron Whitesel asked what is the age of the trailer. Mr. Gotschall said that he didn't know for sure, it is older and everything is good on it. Mr. Whitesel said that he has lived in that area for 11 years and it has flooded twice. With the damage to the structure from the water how are you going to get it up the 7 foot to put it on the pillars. Mr. Gotschall said by a crane, he has an estimate on this.

Mr. Howard said just to be clear all that you are voting on is the setback from the road., instead of 105 feet it will be approximately 75 feet.

Mr. Dale asked if any neighbors have voiced any concerns. If it is that close to the road is it going to affect the view of any of the neighbors? Mr. Howard said no he didn't feel it would interfere with the vision from other driveways.

Mr. Vogel asked if there were any other questions or comments, there were none. The Board proceeded to vote, Mr. Thrush tallied the votes, the request was approved. Mr. Vogel asked if this mobile home could be replaced with another one at a later date. Mr. Howard said that the application process has always permitted replacing an existing mobile home with a newer unit.

Mr. Vogel: next on the agenda is solar discussion. Mr. Howard told the Board that at this time we have not heard anything new from Next Era Solar. I have been contacted by Paul Carlson with NOVIS Renewable asking about our setbacks for solar projects. NOVIS is an American front for two Italian companies, most of the small scale projects they have been doing are out on the east coast.

Mr. Vogel: Next is the County Zoning Ordinance draft. Mr. Howard said for the most part the Ordinance is done. I will e-mail copies to Board members for review and would like to have a joint meeting of the PCB and BZA hopefully in August or September for any questions you might have on it, then it should be ready to present to the Commissioners.

Mr. Vogel: Imagine One 85 comprehensive plan. Mr. Howard gave the Board 2 copies of resolutions, he said that when we (PCB) passed the comprehensive plan on June 16, 2022. Mr. Downs orchestrated this resolution, I looked through it and wasn't happy with some of the wording in it so I sent it to Mr. Thrush to look at. You have a copy of the draft from Mr. Downs, and a copy of a Resolution from Mr. Thrush. In my opinion the first one says that we have a new county-wide comprehensive plan and we are doing away with our comprehensive plan, I don't agree with that, I feel it is to supplement our plan in our decision making process. Look through this and give your input, the Plan Commission Board will review it at their next meeting. The Resolution is to be presented to the County Commissioners on July 18<sup>th</sup>.

Mr. Howard updated the Board on complaint issues:

- The PCB agreed at their last meeting to have Mr. Thrush go ahead and file in court on the Kowalczyk property at Lagro.
- The Matthew Miller property at Sandy Beach, we have a court hearing on July 1<sup>st</sup>. I went there and spent some time with him going over what needed to be cleaned up. I will check the property again before the court date and give the judge my approval or disapproval.

Mr. Vogel: next is any other business for the Board. Mr. Howard said that Mr. David Terflinger has asked to speak before the Board. I have given you copies of what he wanted to present tonight.

Mr. Terflinger asked Mr. Howard to look into the property at W. Lakeside Drive and 275, Mr. Howard said that he is already working on that property. Mr. Terflinger shared some photos with the Board and then proceeded to introduce himself and his daughter Heather as the owners of 66 W. Lakeside Dr., N. Manchester, IN. I personally have a bit of a history with this Board as I divided some marginal farmland a few years ago and applied for a variance from this Board to do so, I followed the restrictions that this Board asked for and placed as part of that variance and I enforced them. We put three \$400,000.00 homes in there. My daughter and I were here last year and applied for a variance and built her a new home last year. We filed the variance in the R2 zoning, we matched the existing grades of the surrounding properties and the floor heights so as not to disturb water patterns or change the aesthetics of our neighborhood we gave great consideration to the location of our approved plan in setting the garage and the home to be workable for us and to have the smallest impact on our neighbor to the west. We set the garage far enough to the north to not block his existing window in his garage and only partially limited the home window even though we could have with our granted variance. We had planned to match the Burnau's drive grade that joins our property when it was discussed before construction. Their plan has changed since this Board granted them a variance in November 2019 significantly. I come before you tonight to ask for immediate relief of noncompliance with R2 zoning involving the Burnau's variance granted on November 26, 2019 which was #14 on the agenda by this Board. The building permit issued in May of this year clearly states that their project is a remodel. See the pictures & the minutes of that meeting, there is no mention of a walkout basement in the variance here or the building permit. There is no mention of a change in finished floor height or changing the finished grade of the lot in either on the building permits which there really isn't a place for it or in the minutes of the hearing. There is also no mention of a variance of R2 zoning that limits building & impervious materials to 30% of lot size. This project appears to be right now between 70 – 75% with the home addition, reconstruction and proposed garage construction. The raised floor height is a distinct change in the aesthetics of the neighborhood which I would like to point out the US Supreme Court has upheld the right of zoning boards to use aesthetics as a stand-alone legitimate governmental purpose in land use regulation. The photos clearly show in my view this underway construction is clearly changing the aesthetics of the community. The elevated floor height is going to make surrounding properties look like they are built in a hole. This will clearly devalue adjoining properties. The building permit or minutes do not address elevation changes or grade changes. This Board is charged with zoning to accentuate neighborhoods, in my opinion. When you drive around the Long Lake community from the road or lake side everyone has followed due diligence in respecting grade/elevation with enhancements to properties. The photos in my view clearly show this project is not in line with the rest of the community. Under Indiana Code chapter 4 this clearly falls under public health, in talking about that their proposed paved driveway up to the lot line will be paving over sewer line, the sewer line out to the road. Laketon sewer district has had some issues already with check valves putting main line pressure on service lines to houses, so that is a big concern for us. Also, under Indiana Code Chapter 4 the broader and less defined category of general welfare include protection of property values that's the reason we are here, lower public costs, enhancing the livability of residential neighborhoods. These are clearly, I would point out, the responsibility of this Board. The meeting

minutes and the building permit in this span of time of 2 ½ years between the variance hearing and the actual permit, maybe that should have been revisited, I don't know. The relief I am seeking is to enhance the neighborhood without damaging adjoining property values.

Request 1: I would like this Board to issue a stop work order until this project and its effects on the community are clearly understood by all or revoke the building permit, which is clearly within your power and require a new hearing with detailed plans.

Request 2: Require a new variance hearing with detailed plans for grade and elevation changes to the residence. Relief could be to finish removing the existing flooring of the Burnau's original dwelling. This would allow them to excavate a crawl space as needed and remove the 2 ½ rows of block recently added to the old foundation resulting in a 30 " increase in finished floor height. This puts the home closer to existing neighboring properties and gives the Burnau's the access they need under the old section of the house. The current grade of the earth or lot can then be maintained so as not to change the natural flow of water from street side to lakeside.

Request #3: I would ask the Board to limit the variance needed but not asked for in R2 zoning in November 2019 to no more than 50% of the lot size. This may require the Burnau's to reevaluate their project.

The 30% rule is to allow portions of the land to remain permeable. I mean we are talking lakefront property here and we are talking a 9 foot ceiling in the basement, I just see a disaster coming. We spent \$200,000.00 to build a new home to have it look like it is sitting in a hole because of this raised elevation. There is no place in the permit, there is no mention of the water plan, the pavement plan, all of this stuff has come up in the last 2 ½ years after we built. I do not want to deny anybody the right to improve their property. However, I do not think they should be able to ignore zoning and depreciate other's property while exercising their right to improve their property.

I ask for relief from this Board because we have no enforcement officer or building inspector employed in Wabash County. The stop work order or revoking the building permit would protect all of us until we can get these issues resolved. Mr. Terflinger noted that he had drawn on some of the photos, a 24 x 24 walk out basement was never discussed in the variance hearing, I don't know if that floor is going to come all the way out, there is one picture there to show, you can see from a place 2 doors down that his property is going to disappear. From the grade you can see where the water is going to go, there is a reason the zoning in R2 is 30%. Heather and I went to great lengths when we built our home, there are 2 drains in the front yard, our gutters tie into a drain, our neighbor to the west I even tied his drains into the tile system, our slope goes to the property line and his slope goes to the property line and even if the lake is 2 feet higher than it is supposed to be and it is frozen the water can still run across the frozen water. When we get those 4 inch rains in February and March, we did everything we could to not drain water on the neighbors and didn't change the grade and value. We did put one row of block in our home and the reason that we did that is her old home, there is a step right in the middle of the house between the kitchen and the living room so we put one row of block in to eliminate that step. As you can see in the photo it is compared to the property next door. We tried to be very cognizant of the aesthetics of the neighborhood.

Ms. Terflinger introduced herself and stated that she teaches and talks in front of students all day but this is pretty intimidating so I am going to do my best and you can bear with me. One of the biggest things that I try to impress upon my students is to cooperate and get along with others. That is all I want to do. I want to be able to look my neighbors in the face. I don't know what the right solution is, I don't know the logistics that is way beyond my realm. A lot of questions were asked during the construction process of my house, they were concerned about my grade and where my water was going to go. It was determined we're the same we're good as far as our grades matching, there was no concern. Mr. Terflinger asked her to explain who made that comment, she replied, Gary and Marthene. There was no mention at this time of them raising the grade drastically nor was there the suggestion that I should plan accordingly to match their plan. My brand new house and the house to the east of them, there is a huge concern about the potential for runoff the flooding of crawl spaces, you can see from the photo of my patio compared to grade where they are coming out. I am very concerned about what is going to happen to the value of my brand new home. So, moving forward if you deem this grade level and ground cover acceptable you are setting a precedent. What will be the impact of the surrounding properties if others choose to do the same thing moving forward? Who bears the cost of breaking brand new concrete if my sewer ever needs fixed, because their plan is to be 6 inches off the line with concrete, is that on me is that on them? These are questions that I think need to be considered, I want to compromise, I want to get along. I don't want to keep people from bettering their homes and their situations.

Mr. Terflinger asked if the Board has had a chance to review the minutes from the variance hearing. He stated that he has a copy and it says that the Burnau's are seeking a variance from the east side property line setback, they are planning to tear down the current structure and build a new home using the existing footer that is there. The original structure was built in 1958 and the ordinances weren't in effect and that is why they are asking for this variance. I am going to summarize here and jump ahead, it says the new home will be the same distance from the side lot line as the current house, they plan to extend the new home towards the lake and add a garage on the south side of the roadway, nobody had a problem with any of that. Setback from the road 75 feet, they will be 24 feet from the edge of the street. This is included in your minutes; I am reading this right out of your minutes. Mr. Burnau stated that they will be putting in a new foundation where the existing one is. Mr. Vogel asked if there would be able to park their car outside of the garage, Mr. Burnau replied yes they would. Mr. Vogel then asked if the garage would cause any visibility problems, Mr. Burnau said that it would not affect visibility. Mrs. Burnau replied that it will not, it would be in line with the other garages along the road. Mr. Vogel asked if there were any questions from the board members or the audience, there were none.

Mr. Terflinger said there was nothing about elevation, nothing about a 9 foot ceiling basement, nothing about percentage of the lot, this is wrong. I am here to help defend my daughter and the money that we invested. The very first day we done the excavation, my contractor stated in a hole right here, I am down in a hole on my hands and knees at 66 years old with a string and we are trying to figure out how we can take the step out of this house without raising the grade and changing the aesthetics of the neighborhood. The next thing I have is a hood and a face between us stating and I quote "how many blocks are your going up, we're concerned about your water coming on us", and it got worse from there. All I am asking for is relief, there needs to be some studies and some engineering. You can see from some of the pictures, how are you going to marry block and poured wall? You've got block hanging there in the foundation of this thing and all

that is holding them there is mortar. We don't have a building inspector, so that is why we are here asking for relief. This project needs to stop before they spend any more money and until we can get all these issues resolved, that's all we are asking for. Mr. Howard asked Mr. Terflinger if we could keep the photos, he replied yes.

Mr. Vogel thanked Mr. Terflinger. He then asked Gary & Marthene Burnau if they would like to speak. Mrs. Burnau said we are equal, we are 6 inches above, our property was lower in the beginning than what the Terflinger's property was. When we went to set the basement we found water so we went up a block and a half they laid our blocks and we were out of the water, that is what we did there. Mr. Burnau said that the basement is only 8 feet, we dug down in the basement area until we hit water then we came up a foot and a half. It turned out to be an equal measurement by putting in two and a half courses of blocks on the old foundation. We hadn't done any grading, as far as water, all the water from the neighbor to the west has been running to us for the last year and a half. We haven't done any grading yet; our grading is going to be matching his so it will all look the same. Mrs. Burnau said we were quite a bit lower than he was, there was almost a 5 foot variant out the front of our house to his previously so that is why we went with a basement, that way we weren't building as much wall anyway, why not do it? Mr. Burnau said as far as the walkout, it is a single door that walks out, with the foot and a half raise we were able to contour the yard so it is all aesthetic, this goes out to our dock, it doesn't affect anybody else. Mrs. Burnau said we don't have any sheds sitting in our front yard, it's all connected to the house. As far as to the east of us they have no problem with it, we have talked to them all along. Their grade is very low so it looks odd at the moment, once we get it graded and the dirt put in it is going to look amazing, everybody's yard is going to be. We have 10' 5" from our side to the to the property line to the east so we have plenty of room there to grade to make it go to the lake. Mr. Burnau said as far as the sewer under the concrete, he had to pay \$500.00 so that he could move his sewer over onto his property so I don't know what they are talking about. He does not have a sewer line underneath what would be my property. Mrs. Burnau said his house sits close to the property line and then we have almost 10 1/2 feet from our house to his property there is no problem with water or anything like that and we will be within inches of his house from the bottom once we get it set. It looks odd now because of the way it is set. All of the water has run to us for years.

Mr. Terflinger asked about the 4 feet they are talking about the difference in grade, is that to the front of the lot or the back of the lot? The Burnau's said lakeside. Mr. Terflinger said there is a difference there when we had ours computed for the final grade. Mr. Terflinger said as far as the sewer line comment, the previous owner of the property and these folks made a deal and put both sewers on their property, I had nothing to do with that. When they drilled the new well they drilled through that sewer and didn't bother to tell me for three months until we were about ready to move into the house not knowing. I approached Gary and he agreed to pay for half of it and then I went to his well driller and said you didn't call 811, you drilled a hole through my sewer I think you need to make me whole so he paid for the other half. I had the sewer installed on my property, the reason that it was originally installed on your property is they didn't want to cut their tree down so they made a deal with the neighbor, now they have cut the tree down, dug the stump up and left a 2 1/2 foot hole in my front yard for 3 1/2 months. Now they did do a gracious thing and let us back a well truck across their driveway, but I had to put 5 yards of stone in the hole that was left from the tree stump. My final grade isn't done either on their side because we were waiting on them to develop it. I did move some of the stone out of the hole so we could try to plant some grass and



put it alongside the house so we could at least walk around the house and not be ankle deep in dirt. Final grade hasn't been done, but when you look at pictures their rough floor height is as high as the window sills on the house to the east and that far below our window sills. Nobody else around the lake is that high. Please just stop them before they spend any more money. I will take you around the lake on my pontoon boat and you can see that there is nobody that has raised their grade as high as they did. There is 2 ½ years between the variance hearing and the building permit, all that's left is the block foundation and the floor, why does the permit say remodel? This is an addition not a remodel, they are building a brand new garage and a 24 x 24 addition, as far as the 9 foot ceiling I guess in my old age my guesstimation is off just a little bit, I didn't go on their property and measure it I just eyeballed it from my property. All I am asking for is relief, let's just stop this. You can take a look at it; you can look at the pictures. What about the monetary loss?

Mrs. Burnau said our basement height, or our top of our porch height is the same as the porch that is on the other side of Mr. Terflinger, within a couple of inches. Mr. Vogel explained to Mr. Terflinger that she is saying that the house that is on the other side of you is going to be very close to the same height. Mr. Terflinger said yeah and he doesn't come out and go down 10 sets of steps to go down to the lake. Mrs. Burnau said that their height is going to be very close to theirs. Mr. Burnau said you will have 15 steps off of our porch to get down to final grade, which won't bother him. Mrs. Burnau said that they were way lower than him to begin with, way lower. Mr. Terflinger said that's not true because if you look at the pictures you can see where the existing grade driveway. Mrs. Burnau said the driveway is, but the front of the house, where we are going out there we were almost 4 feet lower than them. Mr. Terflinger asked what to my front yard, our back yards are still even, when you are talking 4 feet of grade from the front yard to the back, yeah.

Mr. Vogel asked Mr. Howard, what was their responsibility on the permit and have they honored that? Mr. Howard said as far as the variance, it was treated just like any other variance, they were asking for a variance from the setback on the east side of the property and a variance from the center of the street to the garage and that was granted for both. Once we look at a variance we are just looking at the setbacks, we are not looking at the actual structure. The configuration of the structure itself, I go back to maybe some of the permitting things we talked about. When I worked construction, if you kept a 4 foot by 8 foot section of even a footer that was considered a remodel, that is where that comes from. To me, you can call it a remodel or brand new it is all how it would be taxed is the way it would be worked, that has nothing to do with the Plan Commission office or the permit part. When we do somebody's permit we ask for a drawing of the ground floor square footage and that is what their permit is based on. Their permit fee is based on the ground floor square footage. Up until the last year or so 90% of the time we didn't even get house prints, it was just a hand drawn drawing, over the years we have improved on that. We do require a little more information. As far as their permitting process, the drawing they gave me shows the addition of the garage in the front and the addition in the back or toward lakeside. The existing structure is still within the drawing of what they are going to use as far as the old house part. You can call it a remodel or a new home, to me it is irrelevant in this situation to what they are complaining about, what their concerns are. As far as impervious, I will grant what Mr. Terflinger says, we are very close to having the new county ordinance in place, and in trying to use common sense on people's permits and the permitting process in LR 2. In LR2 you are required to have sewers, and this does. In LR 2 you are allowed to be impervious up to 40%, we increased that rate for the fact that it is lake front properties and you have drainage to the lake. People are wanting a little bit larger

home on some of those smaller lots, some of those lots are maybe 140 – 150 X 50, and in order to allow for a more permanent residence we wanted to have a little more leniency, on those lots we went to a larger area, we felt that drainage would not be an issue. I did take the liberty of going through the Burnau's dimensions of the lot, I don't have the total area of concrete that they would like to put in but of the total of 40% they could have 2,749 square feet of impervious area. Without getting into the concrete area, they are talking about the existing structure they are talking about 2,543 square feet, so they are under the 40%. I also did Mr. Terflinger's property and based on his lot dimensions he would have 2,863 square feet of impervious area allowed and with his house and the buildings by the lake he is at 3,074 so he is over by about 211 square feet, with the drainage out there I think he is fine. I calculated both just to have an idea for us to look at as a comparison. Certainly, if Burnau's pour concrete, I would look at it one way if we are going to require them to come in and apply for a variance to exceed the impervious amount then we go back to Mr. Terflinger and have him apply because he is over too. Some of the other properties are going to be over too, even more than the 40% on some of them.

Mr. Thrush asked if there are restrictive covenants, Mr. Terflinger said no, Mr. Thrush continued saying no restrictive covenants, Indiana law adopts a common enemy rule, water is a common enemy, if you're a low property you can build a wall and keep it off of you. Mr. Terflinger said I am just asking that they do what they originally said they were going to do when they started which was leave a swail, their foundation grates are this high off the ground, mine are down here in the first row of blocks. With no communication, if you are going to fill right to the bottom of that thing, and then pave over it so you don't have steps, you are probably going to have to have 3 or 4 steps to get in the house from the west side. You put a garage in the front side, then you are going to pave it and put a curb in, where is all this water going to go? What happens if there is a foot of snow on the ground and we get 4 inches of rain? That curb isn't going to stop the water from going in her crawl space. So, what I am saying is if you look at the pictures I provided of what we did on the west side, we sloped it right to the property line, and Gary is right the natural fall goes to the lake. That is all I am asking for is leave 3 feet of impervious material between the lot line and the edge of your concrete just like we did and we'll put whatever in there, I have stone in there right now. That's all I'm trying to do is to make sure that we don't get our crawl space. Mr. Thrush asked, you said "if they would do what they said they would do" Mr. Terflinger said we had conversation early on that we were going to leave the swail on the west side, now all of a sudden the next thing I know is the house is going to be way up here and this is all going to be concrete. Mr. Terflinger said we just signed a \$200,000.00 mortgage and now somebody is going to make us look like we are sitting in a hole, that ain't right. Mrs. Burnau said if you will look we are only about 4 inches higher on the property on his house. It looks worse now but it's just not graded, we were lower in the beginning. Mr. Burnau said what they don't understand is we don't have any grade established, we had to have an over dig so we could get the walls in, there is no use in back filling, if we get a rain all the mud goes down there and you have to shovel it out. The final grade is not established and I am not going to run my water over on him, I am going to match his grade so there is a common swail between his property and my property that goes to the lake. Now, if he wants to raise his grade up 6 inches, I will raise mine up 6 inches, if he wants to lower it I will lower it. It is just a simple matter of him talking to me and telling me what he wants to do, he won't talk to me, I am at wits end. I can't make it work until he gives me some idea of what he wants. His water runs on us, it has for the last 1 ½ years and I haven't said anything

because I knew I was going to do something and fix it. Mrs. Burnau said we will make it work, it's not a problem, I don't really see why we are here.

Mr. Vogel asked for other comments. Jerry Sutter, said they have been there 5 years, they are the second lot to the east of the Burnau's. He explained how his lot lies, then he has an empty lot beside him that does the same thing. I don't really know these people, but they have a problem on both sides. His problem is, from what I understood is your floor rotted away and you ended up building a new home, and the one between me and them is full of mold. Basically, what I am saying is there is a problem on both sides. The crown of the road is another problem. My crawl space is dust, it has been dry ever since 1960 when that house was built, the water never came down the driveway and into the house. I am a little scared of that happening with this new situation, certainly just the roof water is going to double and it is not going to be able to drain anywhere with the house and the garage on there. I just know there will be a problem for me and that is why I am here tonight.

A gentleman, last name Bradley, stated that he was just present to help Gary and Marthene (Burnau).

Mitch Johnson, the gentleman who lives to the west of the Terflinger's. Mr. Terflinger did do that with my downspouts. I did express to him that I didn't want the garage that close to mine. If their place would catch fire, it would take my stuff down, you are not going to stop it. As far as heights, their original house that they bought was the same height as mine, the one they built now is basically a 2 story, before that I could look out the kitchen window and see the trees and the road, so now I see their house, the east bedroom, the east window you just see the garage. After I addressed to them about the garage being too close, once they had their permit and started building I didn't say anything. They asked me, how would you like to look out your kitchen window and see a concrete wall, I said well it wouldn't bother me. He did bring up about the drive and I did discuss that with him, they said they were going to put a curb on there to control the water runoff. I did say to him, basically that I thought he was going overboard because he is talking about value, their house makes my house look small so it could have the same effect on my house. I didn't do anything, I just let it go. As far as other houses around the lake, across the lake from us there used to be a house trailer, over there they laid blocks and they came up probably 4 foot and then they put a 3 foot crawl space in and brought a sectional home in and put on it. Casper's over on the north corner is up, they have been there for a while, but they are up, their ground is up. they have a big house and barn in there. You can find houses in there that are set in low areas, that is natural for a lake, you are going to have high/low that is natural. If a person is replacing their home or anything of that nature, naturally they are going to want to raise it up higher from the water plain. So, I don't see what the issue is.

Mr. Terflinger said he would like to offer a little rebuttal on this, the place across the lake, he tore out a 1958 trailer that was sitting in a hole and yes they did put in a 3 foot crawl space. When they got all done you could put a level from this property to that property and that property, they didn't change the grade or the water flow.

Mr. Vogel, told Mr. Terflinger that the variance was to maintain the distance from property lines. This development started by making little camping spots, that is why everybody has such small

lots unless they bought another lot and put two together. We've had the septic issues, where you have your septic tank here and your well here and the next guy wanted to put his septic tank by your well, there is no continuity. Mr. Terflinger said there is now, Mr. Vogel said yes, there is the sewer district. Mr. Terflinger said there is not talking about 40 years ago, you've got people investing \$200,000.00 to \$250,000.00 that have to live next door, it's not fair when you've got these people going like this and matching the grade and aesthetics and then you've got one up here. Mr. Vogel asked Mr. Terflinger how can you control your neighbor, basically you want your house say 2 or 3 stories and you've got a one story beside it why would you want to build your house. Yes, you've got a problem, but it just changes your looking out the window. If you really wanted to take and have a nice place like you have, you bought acres you put your home where you wanted it, you're never going to have a problem. Why would you build a house on these little tiny lots and then want to control what is beside you? Mr. Terflinger said I don't want to control what is beside me, what I want to control is the water, I suggested 50%, Mike's got 40% in the new rules, I said 50%. But 75% and you are going to pave over the sewer lines 6 inches from my property line, how am I supposed to get to my sewer line? I didn't find out about this until our foundation was already in and I didn't find out that they drilled through my sewer until 3 months. All I am asking is that you guys either, I put three requests out there, either that or just say that this has to stay permeable, this 6 feet, our 3 feet and their 3 feet. If they pave it and make a driveway to the backyard who is going to pay to replace their concrete when I have to dig my sewer line up, because we have already had three of them explode. Mr. Vogel asked Mr. Terflinger, if his sewer line is on his property. Mr. Terflinger said it is this far off the property line because the house was already built and we couldn't get it any closer. Now they want to pave 6 inches away from that sewer. Mr. Vogel asked Mr. Burnau if that was correct. Mr. Burnau said it will be 6 inches off the property line. Mr. Terflinger said that is why I am here. Mr. Vogel told Mr. Terflinger that his sewer line is on his property you have the right to do whatever you want on your property to take care of that sewer, in my opinion. Mr. Terflinger asked why didn't the Zoning Board ask me what my percentage was in LR2 for the lot size, why didn't anybody ask that question, I would have applied for a variance when we built the house. I didn't come here and complain when they got their variance hearing, I was fine with their setbacks, I was fine with this and that. Now all of a sudden you want to take it from 40% to whatever and you are causing me a problem. If they are 6 inches from the property line put a 6 inch curb up, and we've got a foot of snow on the ground and we get a 45 degree day and it starts melting and then it rains, where is the water going to go? Mr. Milam asked about the percentages of impervious area, Mr. Howard explained that in the current zoning ordinance for LR2 is at 30% of the lot can be impervious, in the new ordinance it will be 40%, and I don't believe that question was brought up from you to me. Mr. Terflinger said that is what prompted the call in the first place is when we heard that this concrete was going to go from the edge of their new house all the way over to the property line, now it's all concrete and I have no way to get to my sewer, am I supposed to tear my house down to fix my sewer? If I would have known that they had drilled a hole through my sewer before we built the house I would have run the thing out the front of the house but I didn't know that. The problem is that the house was already there when we had to fix it. Mr. Terflinger we already know that without this paved driveway they are going over their percentage, all I am saying is cut it back, if she wants a 7 foot wide sidewalk along the side of her house and a set of steps I am fine with that, just leave the 3 feet. Mrs. Burnau said if he would have left the 3 feet on the other side to match it that would be fine too. Mr. Terflinger said I didn't. Heather Terflinger said we asked Mitch (Johnson) what he wanted and that is what we did. Mr. Johnson said I said no I didn't want the garage that close to

my house. Ms. Terflinger said to Mr. Johnson we asked you if you wanted concrete instead of stone and you said no. Mr. Terflinger said that as you can see in the pictures I put stone between Mitch's house and mine so he had a walk around, the runoff goes on him. When he said he didn't want stone, I asked do you want concrete, I will concrete it. I did everything I could to try to appease the neighbors on both sides and I thought we had a deal, I'm sorry but you guys gotta deal with this but again the questions weren't asked by this Board. The simple solution is to say hey I'm sorry but leave the 3 feet, figure out what their percentage is and let them pave 7 feet of it between their house and the property line, but leave the 3 feet along side of me, just like I left the 3 feet from them. That is all I ask for is the variance of 3 feet. I did exactly what I said, we used the old foundation, we did a great deal of work and didn't change the grade level.

Mr. Johnson noted to Mr. Terflinger that he is over (the impervious lot amount) too. Mr. Terflinger said I know but nobody said anything to me, I didn't know. Mr. Johnson noted that the Burnau's aren't done with it yet. Ms. Terflinger said with all this concrete who is paying for it if something happens to my sewer?

Mr. Vogel asked Mr. Thrush, do we really have any jurisdiction over what they are talking about do we? You guys are in a different world up there, you've got trailers, you've got all kinds of things, and I applaud both of you (Terflinger and Burnau) for putting new homes up there because as you put in new homes other people might come in there and buy some of those lots and put in new homes. It started out as a recreational type facility and it has turned into homes, probably the majority of them. Still there are trailers there and junk and we have been trying to take care of the junk we have had dumpsters provided by the Planning Commission, we are trying to help. If the lots had to be 1 to 1 ½ acres we wouldn't have these problems.

Mr. Terflinger said the zoning ordinance we are working with now and is about to be modified and we are both over, how do we resolve this, because obviously we can't do it so I am asking for you guys to do it, make us both come back and ask for a variance. Mr. Howard said we have allowed it to be that way, that is your answer. Mr. Terflinger said so they get to be 75% so that means that I can go out and put more in my yard. Mr. Howard said nobody said anything about 75%, but they are under 40% at this time, depending on how much concrete. Mr. Terflinger said but you didn't include the new concrete they are putting in. Mr. Howard said when we know how much concrete they are pouring we will take a look at it and see. Like I said yours is over, theirs is over there are probably several that are over. Mr. Terflinger asked if the zoning that is in effect right now, does that apply to when they got their building permit? Mr. Howard said that the zoning ordinance that is in effect right now is 30% so they would be over the same as yours. Mr. Terflinger said all I am asking is for us to be made whole. Mr. Howard said I think we have, Mr. Terflinger said I don't think you have, if you are going to let them pave right up to 6 inches from the property line how does that make us whole? Mr. Howard said I didn't say that, we are allowing both of you to be over the 40%, but I don't know what their total is at this point in time. Mrs. Burnau said we don't know what our total is at this point in time. Mr. Terflinger said I just heard him say within 6 inches of the line, and again you are paving over top of a service line to the Laketon sewer system and we have already had two or three, we have had toilets blow up in houses. Mr. Thrush asked are paving over your sewer? Mr. Terflinger said they are paving over their sewer. Mr. Thrush said they are paving over their sewer, so how does that concern you? Mr. Terflinger said if it leaks

out from underneath the concrete then it's going to go into my crawl space. Mr. Terflinger said if the sewer line breaks and that stuff starts bubbling up where is it going to go, it's either going to come out to the street, you are talking pressurized sewer, if the check valve fails it plugs up the surface line. Mr. Thrush said by law I can build a wall to keep the water off of me even if it runs onto you, common enemy, I can't channel water onto my neighbor but surface water that runs onto me at the expense of my own. Mr. Terflinger said that is not right. Mr. Thrush suggested taking it up with his legislator, Mr. Terflinger said maybe I will. Mr. Thrush said that it has been a law for a long, long time. Ms. Godfroy asked so it is lawful for them to pave over their own sewer. Mr. Thrush said if they want to that is fine; Ms. Godfroy continued, even though it is 6 inches from them that is not their problem (Burnau's) even if they have sewer problems and they can't get into their sewer line that is not their problem? Mr. Thrush said if they do something that is negligent and causes them damage then they would have to pay for it, but hypothetically. Mr. Thrush said we are talking about a problem that doesn't exist yet and may never exist. Ms. Godfroy asked, didn't both of you say the same thing about agreeing about the grade that you guys both want it even, so that one is done; there is nothing you can do about the sewer, so that is done. Mr. Vogel said Mr. Terflinger's request is that we issue a stop work order or revoke the building permit; require a new variance; limit the variance needed. Mr. Vogel questioned if there is anything the Board could vote on as far this issue, it is a violation that could come. Mr. Thrush said you two have talked, I don't think there is a contract or if there is a possibility of one, it would have to do with the terms of the contract. Mr. Vogel said I don't think they have done anything wrong. Mr. Terflinger said we are both over the limit in R2 zone, they are at 75%. Mr. Terflinger said in R2 zoning they are 75%. Mr. Milam said that they were at 25 and they had 27. Mr. Thrush asked Mr. Terflinger how has that injured you? Mr. Terflinger said it is the pavement between their new home and the property line that is causing concern about the water. If I want to build a 6 foot wall between my house and my neighbors. Mr. Thrush said that is your remedy, Mr. Vogel added to keep it on your side of the fence. Mr. Thrush said if I am your neighbor and the water is coming in on me, I can build a wall and force it over to you, that is the law. Ms. Godfroy said that you both just agreed that the grade is going to be the same so why is the water the issue, he is saying his grade is going to be the same as yours. Mr. Terflinger said but you also heard him say that he is going to pave within 6 inches of the property line and put a curb on top. Ms. Godfroy said he has the right to do that on his grounds. Mr. Terflinger replied I can build an 8 foot wall and make it look like. Mr. Terflinger said when you make it a solid surface whether it is asphalt or cement you there is not a permeable surface so there is no place for the water to go, if they would have told me what they were doing I would have raised my house up 3 blocks, then Mitch would be in here complaining. Mr. Terflinger asked about a fence in LR2, how far off the property line do you have to be? Mr. Howard said it can be on the property line, one thing I can tell you is that by state law that anything over 8 feet tall is considered a spite fence and that is a violation of state law, I just want you to be aware of that but outside of that you can be on the property line. Mr. Howard said the posts are usually on side of the property owners' side and the fence is on the outside. Mr. Vogel asked if there were any other questions, Mr. Thrush told Mr. Vogel to ask for a motion to vote on this, Mr. Vogel asked for a motion from the Board, no motion was made. Mr. Terflinger thanked the Board for their time

Mr. Vogel asked for any other business. Mr. Howard told the Board that a few years ago Travis Tackett put up a poultry building on his property and Scott Dawes put up a poultry building, each of those buildings has separate deeded owners. Therefore, the number of birds or chickens in

each building were under IDEM requirements so they did not have to get a confined feeding permit from IDEM and they did not have to meet the county confined feeding ordinance setbacks. Travis owns the 14.812 acres and he has asked about selling his building and keeping his farm ground as much as he can. I told him that it could probably be done but I also made him aware that in 2016 after the buildings were built, Mr. Scott Dawes called in asking for the addresses of every property owner within 1 mile, he was going to submit that to IDEM to get a confined feeding permit. I talked with Mr. Thrush and the PCB at that time about it. A letter was sent to both Mr. Tackett and Mr. Dawes, it states: at its June 2<sup>nd</sup>, 2016 meeting the Wabash County Plan Commission Board discussed the property combining your two chicken houses and that to do so would result in the creation of a CAFO and the resulting CAFO would then violate the conditions of the Wabash County Ordinance because it didn't meet the setbacks. Travis just mentioned the buildings being sold to one person; he did not remember the 2016 letter. I told him that if he really wanted to sell his building and the building be combined they would have to come back to the Board and ask for a variance for the things that are not met to be under one ownership. Ms. Godfroy asked, so they are really not going to be changing what they are doing in these buildings, they would just be owned by one person? Mr. Howard said I don't think so, if they can get the financing that the 5.18 acres with the south building is still owned by Scott Dawes, the north building would be owned by somebody else. I would just like to remind the Board, if there was to come a time that somebody wanted to buy both buildings, that potential could be there, and I just want the Board to be aware. Mr. Dale asked if we have a policy on existing buildings being sold? Mr. Howard said these buildings were built after the ordinance went into effect. There should be a paragraph in our new zoning ordinance, that if the Plan Commission Board feels you are trying to subvert the intended means of the ordinance, then you are in violation. Mr. Howard said I am not asking for any decision tonight I just want the Board to be aware.

Mr. Howard told the Board that after the city clean-up of the cars downtown we are getting complaints of junk cars showing up out in the county.

Mr. Howard informed the Board that the office had a scheduled appointment with Molly Boeglen, a former IDEM employee that worked in the southwest part of the state. She is now with an environmental company. She came and talked to us, they are looking at large dairies as far as collecting methane and methane digesters. Ms. Boeglen talked to us about possibly doing one in Wabash County. I am just letting you know because it doesn't follow normal IDEM CFO requirements, so as far as what our requirements would be we don't know yet.

There being no further business Mr. Vogel asked for a motion to adjourn. Motion to adjourn by Mr. Dale, seconded by Ms. Godfroy, motion carried. The meeting adjourned at 9:10 pm.

Libby Cook  
Secretary, Wabash Co. Board of Zoning Appeals  
MTH