

Public Hearing of Planning and Zoning Board
OCTOBER 25, 2021

Board Members Present in person were Mr. Eubank and Mr. Emmert at the Village Hall at 108 W. Main Street. Chairman Van Sickle attended remotely by phone, Mr. Booker and Mr. McDougall attended remotely via the GoToMeeting link. Meeting was held on Monday, October 25, 2021.

Guests in Person: Attorney Gaziano, Kellie Symonds

Guests attending Remotely: Chad Insko, Seth Gronewold, Jason Ackerman and Teresa Ackerman.

EUBANK: So, it is 6:55 p.m. on Monday, October 25, 2021. We are here for the Public Hearing of the Zoning Board that was previously published and was continued over from the last meeting to tonight. And Chuck before you get started with the agenda I would just like to state that we are meeting virtually as allowed by Governor Pritzker's Executive Order that has continued the declaration of disaster for COVID-19 that is in effect at least until November 14th of 2021 and based upon that declaration it involves certain statutes and one of those allows us to be virtually and I'm here physically in the village office as well as our village attorney which satisfies more than satisfies the requirement to have a virtual meeting. We also did provide the login information on the agenda so anybody in the public would have the ability to join the meeting and with that the only other thing is any vote we have a roll call, and Chuck I will go ahead and turn the meeting over to you.

VAN SICKLE: The way I understand the agenda tonight is to hear from the petitioner where he presents his case, for the different items that we have to consider first thing being the pavement and I would ask that the petitioner present his case so that the board can understand why he deserves this variance.

EUBANK: And Chuck on of the of the things that Mary, the village attorney, brought up is the procedures that we will follow. There are a couple of things that have occurred or have been discovered that may impact how we conduct the hearing tonight and then also the regular board meeting. Mary, I do not know if it's alright just bring up the situation going on with the village board in terms of what they're acting on which made them change what we're doing.

GAZIANO: Sure.

EUBANK: And also what Mr. Emmert brought up to you. The first item is the village board consider on October 11th 2021 at its meeting not requiring parking spaces for mini storage or self-storage units and they approved for the village attorney to draft an ordinance to that effect modifying the UDO, and so what I would recommend it's that the variance request for the parking space item be set over either to the next zoning board meeting or sometime after so that the village board can take action in November so that we don't need testimony at this point and we may never need to have testimony if that comes to fruition, does that make sense.

VAN SICKLE: That makes sense.

GAZIANO: The board has discussed the concept and of course they were passing an ordinance that night but the idea was to determine if that was something in which they would be in favor and they were so it's anticipated that the upcoming November board meeting that they would vote on so I think

that that's a very good suggestion to and that's just such that over so there's no, no reason to discuss something that may not need to be discussed, and may be a non-issue.

EUBANK: So, we would make that recommendation that the actual zoning board meeting but right now we don't need to have any testimony for that right now.

GAZIANO: Correct, assuming again because it is the petitioner who is the one who has the right to call forward, so it would be the Ackermans based on that information, should they indicate to us that they would be in essence not wanting to go ahead with that at this point in time, and the zoning board also has the right to say they are not considering it, and since it is their petition I think we should hear from them on that issue.

EUBANK: Jason Teresa since you're here online are you in favor of waiting until a later date to hear what the village board will do with the parking space issue, or would you like to proceed tonight with testimony regarding the parking space variance?

Mrs. Ackerman: We are in favor of waiting.

EUBANK: Are there any board members that feel they might object to anything like that? We have one, Mr Emmert.

EMMERT: Are the Ackermans ready to proceed to present what evidence they may have with respect to meeting and qualifying for a variance for parking? If you are, we could still have that evidence come in. If the village Board passes an ordinance, it just becomes moot why schedule and second hearing if they're all ready, if they're ready proceed now let's just proceed and see what the evidence is.

EUBANK: My thought is is that we will be taking up extra time for something that may not come to fruition, so if we take 10 or 15 minutes to hear about a parking space we don't need to hear about, I would rather set off for a later date and may never need that later date. So, if we set it for November zoning board date, we may not have to have hearing for that variance, because the board is already acted.

EMMERT: I guess with respect to the Ackermans, how long do have. Do you have anything other than your own testimony that you would be submitting for parking.?

Mrs. Ackerman: No, we just have our own testimony, and we would prefer to wait.

EMMERT: Okay, then you prefer then.

GAZIANO: Well, then I think to just to make it clear discussion was had at the village board not that people can't change their minds, but I can tell you that the idea was that yes, they wanted to go forward with that type of amendment just understanding they had to have an ordinance.

EMMERT: I was not anticipating there wasn't going to be lengthy testimony, so let's just get the public need time to get more evidence I'd have no problem giving them more time to get more evidence, but if all they have is their testimony and their ready to proceed now, why have a second hearing if one has to happen, I do not see anything new coming up.

EUBANK: Do they have the ability to withdraw their request and put it up for another date?

GAZIANO: They can at any time withdraw their request for a variance.

EMMERT: But can they reapply for the same one?

GAZIANO: I do not believe there is anything have anything in our ordinance that gives a time period that says they can't apply within so long of a period of time.

EMMERT: The county has.

EUBNAK: There is not a payment requirement at this point so they wouldn't have to reapply and make a payment.

EMMERT: I guess I am thinking more on the behalf of the Ackerman's that it would save them from having to do a second hearing. But, if they would prefer, I won't object. I just think it was better to get the public hearing done and out of the way so that the evidence is matter of record. Then we can deal with everything else that we have, that was my thought. But, if they want to proceed, go and take a vote, that was just my thought.

EUBANK: Is anybody in objection that is on the Zoning Board to laying the Ackerman's, with their permission having it continue to another zoning board date.

EMMERT: That would be Public Hearing.

GAZIANO: For continued Public Hearing.

EUBANK: For a continued Public Hearing, does anyone have an objection to them asking for a different to continue the Public Hearing.

MCDUGALL: No.

BOOKER: (was seen on camera shaking his head no)

GAZIANO: And speaking of the public hearing before I forget, as you know was advertised for the initial public hearing that was set in December, I mean September and then it was continued over to today's date which does not require additional newspaper notification, but the Zoning Board had asked that I give courtesy notification be given to all of the property owners within 250 feet, and I did that right after the meeting, so they all are aware of the continued date.

EMMERT: So, if we are going to continue I would think that we should do the same courtesy, so the only thing I can tell the Ackermans is that right now nobody is here, if you continue it someone might show up.

EUBANK: Okay, so with that then the only other item is we have the landscaping variance and Mr. Emmert did bring to the attention (unclear exchange).

EMMERT: We have the deposition of the.

EUBANK: Right, I want to bring the other one up.

EMMERT: Oh, I thought you said one.

EUBANK: So, we have another issue, the second issue is prior to the hearing being conducted for the third issue. The second issue is with regard to the landscaping requirement and MR. EMMERT had read through this in more detail and I'll let you explain your thoughts, but it sounds to me like it made sense.

EMMERT: I do not know that the ordinance requires landscaping for the type of use that the Ackermans are intending. I would still suggest that like the other request for variance that we proceed and hear their evidence, and the Village Attorney would then have time to research the issues I raise. It is the wording of the ordinance, the landscaping requirements caused by the creation and operation of parking and loading areas and parking and loading areas are referred to a number of times in the landscape requirements section. When you get to surfacing improvements, it talks about off street parking areas and driveways. Driveways are not included in the landscape requirement. Myself I don't know if there is any parking on the lot with respect to it being used as a storage facility other than the parking that might be required by ordinance now which will probably be rescinded. So, I think there is a question of, legally does the landscape ordinance apply? If it doesn't, you don't need a variance. I just thought of this about forty-five minutes ago when I was reading through everything Frank sent out and I just bounced it off of Mary and Frank and I think Mary should be given some time before she has to rule on it. But again, I do not see it taking lengthy testimony. So why not get the facts out, and then we may not have to vote on it, depending on what Mary says.

GAZIANO: And just for everyone's reference when you are reading what Mr. Emmert is referring to when he is talking Landscape Requirements, it is under 12.16 of the UDO (*Unified Development Ordinance*) that is Article 12.16, and the Surfacing Improvements is Article 12.15 of the UDO. Another thing too is that I think we would want input from the village engineer as well. Obviously, I am giving the legal opinion after looking at that, but I know that the village engineer had had thoughts previously as what was required, and I would at least want his input as well.

EMMERT: And so the other members know, those were attachments to the email that Frank sent out late this afternoon. So, if you print those out, you will see the 12.16 and 12.15.

EUBANK: And as Mr. Emmert pointed out, Article 12, the title of it says 'Off-Street Parking and Loading Requirements'. So, when you are looking at Article 12 you are reading what is in there it does appear to just strictly be for those items, so again we will want to read through that and make sure that how it applies and make sure that our attorney has the same reading of it. But as MR. EMMERT said and MR. VAN SICKLE, we will turn it back over to you, but we may want to move forward with the hearing on the landscaping just so we have it on the record, and if we decide it is not needed then the variance is moot, the request for it, but if it is needed then we have the testimony and make that decision.

VAN SICKLE: I think that is what we should do.

EUBANK: So, then the other thing, sorry Chuck, Mary mentioned before that we should read into the hearing record the procedure for the hearing or not, Mary what do you think.

GAZIANO: I think that, I sent an email as you know on September 28 to Jason and Teresa Ackerman, that all of you were copied on and that was information that all of you already had, but in more lengthened form. But, I had indicated in there procedurally how the hearings have to be conducted in accordance with our UDO. And so, I would like to read into the record these requirements, and then I can tell you at

least procedurally how I think it should go in terms of you know in what order. This is pursuant to the provisions of the UDO 15.03.03 and these are the hearing procedures that apply to the hearing itself

GAZIANO: Number one all witnesses shall be sworn, and parties or person who are not attorneys shall be sworn. And, two the petitioner is to present his or her case at the public hearing, which may include the presentation of documents, etc., and the calling of witnesses for examination by the petitioner. Three, the objector shall have an opportunity to cross-examine all witnesses of the petitioner after each has testified and examined all documents. Four, the objector shall present his or their case which may include the presentation of the documents, etc. and the calling of witnesses for examination by the objectors. Five, the petitioner shall have an opportunity to cross-examine all witnesses of the objectors after each has testified and examined all documents. Six, the petitioner shall be given fifteen (15) minutes to summarize as shall the objectors, in that order. Seven, a representative of the Village may testify as an individual for either party or appear on behalf of the Village. Eight, any person who is not a party to the hearing as a petitioner or objector, or not a representative of the Village, shall not have a right to testify unless formally called by a party to the hearing or the Village at the appropriate times mentioned above. The Zoning Board of Appeals reserves the right to call expert witnesses or postpone a hearing date until such time as said witness may be contacted to testify. Number nine, the Zoning Board of Appeals reserves the right to question the petitioner, objectors, and/or witnesses who may give testimony at any time during the hearing. And then ten, the Zoning Board of Appeals reserves the right to impose time limits upon any party giving testimony. So, that is procedurally, and as I see it would be the petitioner coming forth and presenting testimony on the petitions for the variance, and that we would take one at a time, obviously we would not be dealing with three tonight, but however many, and take one at a time and as was contained in that September 28th of 21 email that went to the Ackermans again information the Zoning Board already had. I listed out what the required findings are from the UDO, and what the required statutory findings are, such that when the Ackermans present their testimony upon being duly sworn that they should be addressing those particular matters that are contained in that email as to what the circumstances are for the granting of this variance. Typically, the petitioner, the Ackermans is the petitioner, would go forward and they would present their testimony and if there were any objectors here then they would have the right to cross-examine them. Then any objectors, which I understand are not here, but if there were any objectors then those objectors would give testimony, and then Ackermans would have the ability to cross-examine them in the form of questions. Then it is generally opened up to the Zoning Board, should the Zoning Board have any questions either of the petitioner or an objector, then you can raise those questions. The village also has the right to bring testimony of individuals if they feel if that is needed, as far as to help clarify things for the Zoning Board. Then questioning by the Zoning Board would eventually be closed upon a motion, then there would be a vote. I think we need to look at the three, they are numbered, the variances in the packet presented, and it would appear number one is talking about material that is to be used on the driveway.

EUBANK: So, at this point.

VAN SICKLE: That would be the internal drives.

GAZIANO: You said internal drives, is that what you said.

VAN SICKLE: Yes, that would be the internal drives, not the drives, we have two drives one coming into the facility, and then the internal drives, what we are talking about are the internal drives.

GAZIANO: And so, I guess at this point procedurally we would need to have the, whoever is going to testify on behalf of the Ackermans sworn in and, Chuck did you receive from me that brief oath document that you would administer.

VAN SICKLE: No, I haven't received it.

GAZIANO: Because I had emailed it to you.

VAN SICKLE: Why don't you do the swearing in?

GAZIANO: Is it going to be Jason Ackerman, Teresa Ackerman or both who are going to be testifying or possibly testifying?

MRS. ACKERMAN: Teresa Ackerman.

GAZIANO: Okay, and is, just you Teresa are going to testify, is that right?

MRS. ACKERMAN: Correct.

GAZIANO: On behalf, Okay, and actually because the petitioner goes first I think we would wait (unclear conversation). Are you going to call Chad as well?

MRS. ACKERMAN: Yes, I would like to call Chad Insko.

GAZIANO: Okay, then if you are going to do that then, that is it, just the two of you. You and Chad Insko. With that I would ask you both to raise your right hand

EUBANK: Chad, you will need to unmute yourself.

GAZIANO: Okay, I ask you both to swear to tell the truth the testimony you are about to provide shall be the truth, the whole truth and nothing but the truth under penalty of perjury, and so say yes.

MR. INSKO: Yes.

MRS. ACKERMAN: Yes.

GAZIANO: Okay, all right then Mrs. Ackerman you are free to then to proceed on your petition number one, please be mindful that is in doing that you need to address because the board would have to make specific findings as to those variance things that are mentioned, qualifications that are mentioned, in the September 28 of 21 email that I sent to you.

MRS. ACKERMAN: Okay, so for our driveways, our internal driveways we used the IDOT CA6 Recycled HMA to promote drainage. Prior to our February 24th 2020 Zoning Board meeting Jason had already talked to Chad Insko regarding using like a porous material as it was more reasonably priced and would alleviate the hardship of using a solid surface. At the two 24, 2020 meeting MR. VAN SICKLE agreed that material would allow for rainwater to absorb rather than having a solid surface of the pavement. At the September 28th, 2020 MR. EMMERT questioned the need for the milled blacktop. MR. VAN SICKLE explained that the need was due to the stormwater runoff as was recommended by the village engineer and the public works director.

GAZIANO: I just want to I guess to make clear to everyone that if this presentation is for the purpose of summarizing something that you are reading from, zoning board minutes. Then I would ask that you would so indicate to that would then make them part of a public record, but otherwise you cannot testify to what some other individual said without that individual giving testimony because that would be hearsay. So, again.

MRS. ACKERMAN: Yes, those are direct quotes from the minutes of the meetings of those dates.

GAZIANO: Okay if there is anything you are going to be stating from those that isn't a direct quote then please so indicate (unable to clearly hear the end of this statement).

MRS. ACKERMAN: Okay, drainage tile was also installed in all of the internal drives. The porous nature of the material would allow for drainage into the tiles which are connected to the village storm sewer and a solid surface would not allow the tile to do its job. So, I have one question for Chad Insko. Do you feel that the IDOT CA6 Recycled HMA along with the tile were favorable for this project?

MR. INSKO: I do.

MRS. ACKERMAN: Okay, that's all. Thank you Chad and that is all I have to present for the internal driveways.

GAZIANO: As to, you did you receive, correct, the September 28th of 2021 email that I sent to you and Jason, correct?

MRS. ACKERMAN: Correct.

GAZIANO: Are there any, anything you wish to address. The burden is on you as the petitioner that address any of those areas that are listed as the required findings that come from the UDO, and in addition to the statutory requirements, is there anything in your testimony that you wish to address that answer or respond to any of those areas that are listed?

MRS. ACKERMAN: I feel like we have addressed all of those areas in my summary.

GAZIANO: Okay, and does that conclude the testimony then of you as the petitioner and any witnesses you may have?

MRS. ACKERMAN: Could you repeat that last part?

GAZIANO: Does that conclude any testimony of yourself as to the that particular variance as well as any witnesses you have?

MRS. ACKERMAN: Yes.

GAZIANO: And we do not have any physically present objectors, and doesn't appear that there are any objectors that are online, is there anyone who is appearing virtually who wishes to object to this variance request?

Time was given for a response, there was no objection was made.

GAZIANO: Then, before we open it up to questions by the board members, it was stated at a prior meeting that the board wished for Seth Gronewold, the Village Engineer, to also be present for any

questions that they might have of him and also that Chad Insko be present and that is why we had asked them both to be present. So, is there, before we get into the questioning, is there any testimony that any of the board members would like to hear from either the Village Engineer, or Chad Insko who is Public Works Director, where you may direct your questions to either of them or to the petitioner?

EMMERT: I do have questions. I do not know who is going to answer it, if Mr. Ackerman could be sworn, I would like him to be placed under oath, and then also Mr. Gronewold. I am not sure who has the answers to the questions I am going to ask. I think it would easier for me to ask the Ackermans, Jason may know something, if you wouldn't mind Jason.

GAZIANO: So, Mr. Ackerman and Mr. Gronewold as well, if you would raise your right hand. Do you solemnly swear that the testimony that you are about to give to be the truth, the whole truth and nothing but the truth under penalty of perjury? If so, please say yes.

MR. ACKERMAN: Yes.

MR. GRONEWOLD: Yes.

EMMERT: Jason, there is a, directly to the north of the subject property I think there's some grain bins on it. Do you know the property I am talking about?

MR. ACKERMAN: Yes.

EMMERT: OK the drives on that property are gravel, correct?

MR. ACKERMAN: Yes, as far as I can tell it is. Yes.

EMMERT: Okay, Thank you. Now there some property immediately to the east of the subject property. Are you the owner of the property, east?

MR. ACKERMAN: I'm sorry what now?

EMMERT: Are you the owner of the property directly east of the subject property?

MR. ACKERMAN: No.

EMMERT: Okay, are you familiar with that property, directly east of the subject property?

MR. ACKERMAN: Yes.

EMMERT: The drives on that property, some of those drives are gravel?

MR. ACKERMAN: Yes, but some of those are recycled HMA as well.

EMMERT: At the present time there is no parking area or drives to the immediate east, which are 6" thick asphalt, correct?

MR. ACKERMAN: How would I know if they are 6" thick?

EMMERT: Is there any asphalt really in good shape on the property to the immediate east to your knowledge?

MR. ACKERMAN: As a non-professional, I would say no. But I, I again, I don't know, but I believe it is HMA.

EMMERT: To the best of your knowledge, to the best of your knowledge there is not 6', not 6" thick asphalt on the property directly east of the subject property, which is used for the drives, and for any parking on that property.

MR. ACKERMAN: No.

EMMERT: What I said was correct?

MR. ACKERMAN: HMA, mostly. Recycled HMA.

EMMERT: Okay.

GAZIANO: Is there any on that property that is just asphalt, and if so (unclear at the end of the question).

EMMERT: To your knowledge?

MR. ACKERMAN: No.

EMMERT: Thank you. With respect to the drainage, I guess do not know if this would be Chad or Seth, does the stormwater, am I using the correct term, would this be stormwater drainage pipes in the area concerned about not being able to handle the water flow from the subject property if it is blacktopped?

MR. INSKO: Your reference is stormwater, and that is correct. I don't fully understand quite your question of it, other to answer it that our stormwater inlets in that area, but to answer your previous questions, all of the adjacent commercial or industrial properties are covered in Recycled HMA.

EMMERT: Okay, thank you. Right now I am going just for stormwater, and I have heard testimony that one reason we need, the Ackermans need the subject property need to have the HMA is so the water can soak down through the material. If it was hard surfaced hot asphalt there would be a lot of runoff, a lot of water runoff and that would cause a problem with the stormwater pipes, because the stormwater pipes cannot handle that much runoff. Is that correct?

MR. INSKO: Recycled HMA allows some level of infiltration, which is kind of a buzz word right now for stormwater management. There is some infiltration with crushed aggregates.

EMMERT: Okay, let's say that the entire subject property had hot mixed asphalt. Given the amount of roof space on the building would the stormwater drainage in that area be able to handle that much runoff, if it was solid paved hot mix asphalt?

MR. INSKO: That's quite a technical question, that would require technical data to respond to it appropriately. Case in point, I would reference when the school district added the parking for the bus garage. Due to them going to paved asphalt, they did have to put in a retention pond. If they had left that site crushed aggregate just to make it more layman's terms for all of us, if that recent project at the school district bus garage had remained crushed aggregate, they would not have had to increase the sizing of some stormwater management. Again, that is a technical question, that would require data to answer appropriately.

EMMERT: Does our village engineer have the answer to that question?

MR. GRONEWOLD: No, like Chad said, you would have to actually have to run the computations to verify. I would say that, provided that if storm sewer installed on the site with hot mix asphalt. I would not see too much issue with drainage in that area.

EMMERT: You would not see a problem with drainage if it was hot mix asphalt, the storm water?

MR. GRONEWOLD: I can't say for certain without having run the calculations myself. But, I would say that if storm sewer piping was installed and connected into the Village's storm sewer I would not anticipate a appreciable difference in what is installed now and what would be installed with an HMA application.

EUBANK: So, if I am asking a question, and getting confused what HMA is then. Because in my mind when I drive by the location, I drove by there tonight before the meeting tonight, I see it's kind of crumbled up stuff, that stuff that's kind of like gravel almost and it's porous so that when water comes down it actually goes into the ground and I'm also hearing hot mix asphalt as being equated to what I have on my driveway which is solid asphalt which is impervious to rain there is no drainage inside of that. It all has to go off of the driveway so I'm getting confused as to what we're talking about, my impression is that if it's cement or if it's complete solid asphalt which I thought was hot mix asphalt that isn't pervious to rain and the rain has to all drain off the roof drain off driveway and drain off the roadway into a sewer. What we currently have on there, which is CA6 recycled, that's different than hot mixed asphalt.

MR. GRONEWOLD: Correct, hot mix is paved and is what you would typically see on roadways and driveways. What is installed is Recycled Hot Mix Asphalt millings, in a CA6 gradation, and that would be the difference there. You are correct that the hot mix, the recycled hot mix asphalt has more of a **imperfi..** more pervious nature to it as it is not a solid mat. In engineering technical world, it is still considered an impervious surface, but it is more pervious than if you were to install hot mix asphalt. So, it is not as pervious as say regular ground or grass seeded areas, but it is more pervious than what hot mix asphalt would be.

EUBANK: I know that we have an in our, we have a chart, but it doesn't actually address that particular ratio. Thank you for explaining that.

EMMERT: My question is were going towards is this storm water drainage pipes in the area are they sufficient to handle that much drainage if it is solid hot mix with all that rooftop and you're saying you do not know unless you would do the calculations, correct?

MR. GRONEWOLD: That's correct, you would, before you say something, you definitely want to make sure you have the numbers in hand to prove that.

EMMERT: Now the drainage, that was installed at the subject property was installed many years ago, correct, the underground pipes?

MR. INSKO: Correct, the practice stormwater infrastructure is very very aged and is part of probably some of the earliest days of the village being improved.

EMMERT: Okay. So, we are talking over 30 years ago, correct?

MR. INSKO: Definitely.

EMMERT: And now if we were to compare that with the current improvements that are made say down towards the corners with the modern technology, the modern way that we're putting in the stormwater drainage. Are the pipes bigger now than what they were?

MR INSKO: That all evolves around the tributaries storm water. It all depends on the feeder, we have much much stricter calculation requirements for stormwater release rates, how many feet per second, and where that area is discharged. Stormwater management is a huge utility endeavor that definitely cannot be covered in tonight's meeting.

EMMERT: I was just wondering if current requirements, if engineering requirement would have pipes be larger now than what they would be in the past, so that they can handle more stormwater than the old pipes could

MR. GRONEWOLD: I would not say that there is any real data that substantiates bigger pipes now than previously. It's a factor of different things, different rainfall events, climate change occurs, and differences in codes, what stormwater retention is required, what the release rate allowed. All of those things factor into the sizing of the storm sewer, so I would not say that there is a consistent, I guess trend that pipes are larger now than before.

EMMERT: Chad, did you tell the Ackerman's that they needed to or could use the, is it the crushed, the recycled hot mix?

MR. INSKO: Going off of memory, this is probably a two- or three-year-old project, I am sure that there was discussion our, my statement would have been we did not see an issue with that, and that we see it used commonly in the existing area down there, and we use it ourselves along roadways with very favorable results. It compacts and does not get lost and drug around out in the streets as easily as traditional CA6 limestone gravel. Again, in layman's terms, it allows some pervious nature verses being impervious, and esthetically it is typically pleasing. I know I would have commented that it would have been being seen as favorable and I do believe it was one of the early findings of Ackerman's engineer that it did not fit the article of the UDO exactly, but it was put to the Zoning Board I understand, due to a later document of August 17th from Jeff Lightenhelm that the Zoning Board had received approval of the recycled asphalt. Again, that existing industrial-commercial area it's used routinely at the existing sites, and as your questions earlier brought to light the immediate neighbors to the east and to the north, I can comment the one to the north is recycled asphalt. Those folks did not have to ask permission, they were existing, but we saw no reason that it is a negative to this development. It is pretty common for storage units in many other communities, I have seen it routinely. Then again,

(brief incoherent overtalking of more than one speaker)

EMMERT: Go ahead.

MR. INSKO: I was just going to say it is has a level of permeability for soaking rains where you will not get ponding and puddling. I agree with the Seth that it is still deemed impervious by definition but in common terms it is more pervious and allows some infiltration.

EMMERT: Jason you just heard Seth, or Chad's testimony?

MR. ACKERMAN: Yes

EMMERT: Do you remember him telling you things like he just said?

MR ACKERMAN: Yes, to the best of my knowledge, we had discussion like that.

EMMERT: Did you relay upon those statements when you put the Recycled milling material on the subject property?

MR. ACKERMAN: Yes.

EMMERT: You had discussions with the Zoning Board about using the recycled milling product previously, correct?

MR. ACKERMAN: Yes.

EMMERT: And, it was your understanding that the Zoning Board had actually approved the recommendation to change the zoning from Two Family to Business, so you thought that project was good to go, correct?

EMMERT: So, when you started using the recycled milling, you thought that you had the approval of Chad and you thought you had the approval of Zoning Board to do that, even though a variance had not technically been given you?

MR. ACKERMAN: Yes, because we had the permits.

BOOKER: Frank, this is

EUBANK: Yes

BOOKER: This is Mike Booker, I have a couple questions. First of all forgive me if these questions have been asked, I am having considerable difficulty hearing the questions from the Village Board room, getting some feedback and auditorium sound. But, I would like Jason and Teresa if in their discussions with Chad Insko, about the recycled HMA did they consider that to be, receiving final approval to proceed with using recycled HMA.

MR. ACKERMAN: I guess, Yes. But, also with the approval of Zoning, or Building Permits we proceeded further, yes.

BOOKER: And, to Mr. Insko did you consider in your conversations with Jason and Teresa Ackerman on the discussion on using the recycled HMA, did you feel like you were giving them final approval for that.

MR. INSKO: I thought as thought that our conversation, that it was an idea, an amenable idea, and as the UDO had recently been passed, it had not been an issue that was in front that it would not going to be allowed. But understanding that I was not the final say on that point, and also made clear I only speak to what is going on in the right-of-way, and that the rest has to go through the review process. I do know it came as a surprise to both parties that at the review process that the requirement that would need to be met or varied. Again, I have a letter of August 17th of 2020 that to my understand from ARC Design, I mean I could read it if you like, "Our client has received approval of the recycled asphalt as a pavement surface at the recent zoning meeting and is pursuing the same approval from the village board". So August 17th of 2020 I was off the impression that that item had moved on I still say

and continue to say that in that area in that application it is a reasonable surface and I will say wholeheartedly with no doubt that when Mr. Ackerman first w

as talking about this project that was one of the things that we discussed and as a matter as a layman's matter would there be anything wrong with that and myself and my staff said no that's common practice it's a good material and for reasons previously stated it works out in a in a good area, in a good way.

GAZIANO: I just want to interrupt. He was reading from a letter from Jeff **Lightenhelm**. It is not something the board will be able to consider because that's hearsay, he has not been brought forth.

MR. ACKERMAN: I would like to add too that the prints were signed off by Jeff **Lightenhelm** and approved by the board.

EMMERT: What is the width east to west of the subject property not including the right-of-way?

MR. ACKERMAN: I do not have that in front of me, I will not have it exact. I will have to look it up.

EMMERT: Where would you look it up at, is it something you can do relatively quickly?

MR. ACKERMAN: Hold on one second. I believe it says here, 128.2'.

EMMERT: Does that include right-of-way?

MR. ACKERMAN: No.

EMMERT: You do not know, correct?

MR. ACKERMAN: No, it does not include right-of-way. But that is East to West and is different on the Main Street end then on the south end, it is a little bit longer on the south end. It is 128.2 on Main Street, and not including right-of-way.

EMMERT: Jason, if you would have used hot mix asphalt that would have increased the cost of paving the drives significantly, correct?

MR. ACKERMAN: I never priced it, but yes, it is much more expensive.

EMMERT: Thank you.

GAZIANO: Is there any other questions from any other Zoning Board members, of any of the people who have testified namely Jason Ackerman, Teresa Ackerman, Seth Gronewold, or Chad Insko.

BOOKER: This is Mike Booker, I have another question I would like to ask of our engineer, if it is his opinion if the strict adherence to using either **portland** cement or asphalt would have precluded the completion of this project or prevented the completion of this project.

MR. GRONEWOLD: I guess I am not quite understanding the question. The only thing that, the only reason that was a discussion is because the code calls for hot mix asphalt or concrete, anything else that needs, that is approved has to be approved by the Board via a variance. That is the only reason why it is being discussed. I guess, I do know if it would have, that is more of a budgetary thing as far Jason and Teresa if they would have been able to afford to install the hot mix asphalt and associated storm sewer.

BOOKER: So, it wasn't the geography, slope or the drainage that prevented the use of a harder surface.

MR. GRONEWOLD: Not to my knowledge. It was not submitted that way for review.

BOOKER: Would you consider the recycled HMA a step down or slightly, or what I mean by a step down, as step down as an acceptable lesser material than asphalt or concrete but better than dirt or gravel?

MR. GRONEWOLD: Yeah, I would that in many applications that the asphalt millings are a middle ground between concrete and hot mix asphalt as opposed to a regular gravel paving surface.

BOOKER: Thank you.

VAN SICKLE: Just so it is a point of clarification. We keep talking about recycled HMA, but Jason has given me his invoices, but he actually bought recycled RAP. I know there is differences, I just want to make sure it is clarified for the record.

EUBANK: Seth, do you know what recycled RAP is and what that stands for?

MR. GRONEWOLD: Yeah, it is reclaimed asphalt pavement, it is essentially the same thing, really. RAP is Recycled Asphalt Pavement, we are talking about the same thing, just different terminology.

EUBANK: Okay, that is good to know, thank you.

MR. GRONEWOLD: There are too many terms, too many different terms for the same thing .

GAZIANO: Any other questions by any of the Zoning Board members?

EMMERT: Jason how thick is the material that you placed on the drives. How many inches?

MR. ACKERMAN: 10 inches.

EMMERT: That would be, if you were to have to remove that 10 inches of material, that be a very difficult job for you, wouldn't?

MR. ACKERMAN: That is correct. As difficult as pulling out the dirt that was there.

EMMERT: And right now you have no place that you be able to haul all that material to, if you did have to pull it out?

MR. ACKERMAN: Correct.

GAZIANO: Does anybody else have any further questions for this particular variance request?

GAZIANO: There are none, then MR. VAN SICKLE do you feel they are ready to take a vote on this particular variance as everyone knows that this is the one thing that variances are decided by the Zoning Board and does not go to the full board. We can close the discussion on that if everyone is finished.

EMMERT: I guess I have one more question. Mr. and Mrs. Ackerman, after hearing all the questions and the answer to those questions, do you feel that you are finished with your presentation, or do you feel like you need more time to maybe to come up with more evidence?

MRS. ACKERMAN: Yes, we are finished.

EMMERT: Okay, that is it.

GAZIANO: Okay. Then I believe if there is no more, we can close the discussion to that particular variance request. Then you know from the material you have, that is in the labeling of #2 of the variance request has to do with the parking which I believe it is going to be put over to another time, if necessary. Then we get to the request for number 3, which is the variance request number 3, which is the landscaping requirement variance. So, with that everyone has been sworn, Mr. and Mrs. Ackerman, whoever would like to proceed on that particular matter. And again, addressing your attention to the email that I provided to you on September 28th of 2021 to make sure that you address as you see fit the how your requests fits into the area that the board has to consider as the required findings. Remember at the end of all this at the regular session there is a vote. It is not just a yes or no vote, but board has to address each of those particular areas. So, please be mindful of that when you are presenting your testimony.

MRS. ACKERMAN: Okay, so for landscaping the utilities along main street existed before we presented our request for the zoning change of the property the utilities in the right-of-way on Main Street limits the feasibility of landscaping. There is no landscaping along other properties in the immediate area. Landscaping would deprive us of the use of the property along that Main Street. Landscaping would impede or obstruct the vision clearance triangle requirements for the intersection which is at Main and Swift. We did do a minimum landscaping of grass seeding along Swift Street to help with drainage as there is only one storm drain in the right-of-way per the site plan. On the September 28, 2020 Zoning Board meeting during the Special Use Permit with the following restriction discussion, the public utilities in the right-of-way limit the feasibility of landscaping between the fence constructed and maintained along the southern lot line of the lot in question and the neighboring yard provided the area between the fence constructed and maintained along the southern lot line in question and the neighboring yard is sodded and seeded for grass no additional landscaping shall be required. And also, from that meeting Mr. Emmert recommended to change it to there are public utilities on Main Street in the right-of-way area of the subject property which limits the feasibility of landscaping. Mr. Emmert also suggested there be a variance on the landscaping on Main Street. The restriction will be on the southern lot line requirement which will be sodded or seeded for grass all were in agreement to the suggested change. And then I just had one question for Chad Insko, "Do you know of one reasons related to the right-of-way which limits the feasibility of landscaping?"

MR. INKSO: I would, yes, respond with following: One, to reiterate the statement you previously made the corner lot visibility, our ordinance 2018-15 has article three regarding corner lots. No fence wall or plantings shall rise over 3' in height above the street curb level within 30' of any street right-of-way corner and so as to interfere with traffic visibility was one. You would be limited with planting options. Secondly, the utilities, I have known there is natural gas in that right-of-way along Main Street. There are two 30" RCP reinforced concrete pipe storm sewers with a very shallow buried depth, meaning as soon as you stuck the shovel in the ground you would be on one of our two concrete pipes. There is also two storm sewer structures and storm sewer laterals, that come over from the North all that go into that right-of-way, so it is a very busy right-of-way. In addition to the underground telephone and telecommunication lines I cannot identify them specifically because both telephone and cable are painted orange. We have done repairs in that block, and there is several utility lines in addition to the two known 30" RCP pipes as well as the previously mentioned storm sewer (unclear word).

MRS. ACKERMAN: Thank you, and we are done.

GAZIANO: Again, there are no objectors present. I just want to make sure online that there are no one that has come into the meeting who is an objector, and hearing none with that we would be open to any questions that the board would have.

BOOKER: This is Mike Booker; I have a question for the Ackerman's.

MRS. ACKERMAN: Okay, (pause). I am not hearing the question.

EUBANK: Mike, you look like you are frozen in place. Mike, I think you are unfrozen now, if you do not mind asking your question again.

BOOKER: Yeah, I lost my connection Frank. But I am back on now, I do not know if my question got through or not, did it?

EUBANK: No.

BOOKER: Okay, bear with me for just a second while I make sure I am connected.

EUBANK: We are hearing you fine right now.

BOOKER: Okay, thank you, can you hear me?

EUBANK: Yes.

BOOKER: Okay, my question is for Jason or Teresa Ackerman. Did they at any time submit a landscape plan from a landscape engineer?

MR. ACKERMAN: No, we did not.

BOOKER: Did you receive a waiver from any building official or public official with the Village of Winnebago to not submit that?

MR. ACKERMAN: No.

BOOKER: Thank you.

EUBANK: I have a question. Chad or Teresa and Jason do you know if there was any statement made to their engineering firm that would, that the firm would believe they did not need to include landscaping such as the board felt that they wouldn't need landscaping or anything like that.

MR. INSKO: I will answer, I will answer that again from the same dated letter. In that letter, letter dated August 17 letter from ARC Design, was a response letter. The village engineer and myself during a review period. The statement we had was there should be landscape, that Seth had upon review that there should be a landscape plan provided after discussion with myself, Public Works Director, the before mentioned reasons stated those requirements would not be expected to be enforced. They did have their own landscape architect from ARC Design. I will read their response, "Our landscape architect concurs. These statements, that after discussions with Mr. Insko, we are anticipating that the village board will agree, no further action on our part is anticipated".

GAZIANO: Again, the commentary that is coming from a third party the board cannot be consider, but if Mr. Insko has anything else that he can elaborate on, as to what he might have said to those individuals that testimony he can (muffled).

MR. INSKO: When asked the validity of a landscape plan, I did point out that I could be asked at anytime if it was reasonable, and for the reasons I previously presented I did not feel, and I felt I would be asked these questions at a much earlier point in time I was, I am, or was totally under the impression that this data got to the right places and this is a long gone part, but the statements I made were the same, that there was no criteria that could be met that satisfy our landscape plan in that area, and secondly the UDO chapter that addresses this does state that, I do not want to say it, outside the school, but basically the final say was up to the Building Inspector, and I do not know if the Building Inspector himself commented on that. I know there was discussion, but I know clearly that I had said to the Ackerman's, to the engineer, and very reachable to the village that I did not feel as though was property as applicable a landscape plan.

EUBANK: So, then it was relayed to the engineers, so the engineers would likely not have put the landscaping features on the plans due to that conversation, correct?

MR. INSKO: Correct. It was not on the original plan set during our review. Seth called out that it was not addressed. Conversation was had with myself, and responded to Seth and, I won't speak for Seth, but these same things were said, and he can tell you, any question you have, but this is an area in our UDO that calls out commercial and industrial, can be viewed as exempt because of reasons like this, if you read into it but, the conversation was had by myself, that there was no room for landscaping in our right-of-way on this project.

EUBANK: You do bring up a good point, Mr. Insko. When you refer to the landscaping ordinance, or landscaping requirements in our UDO. You mentioned about the building official having the right to waive any requirement, and it does state in here under Article 12.16 under Landscape Requirements that all the board members should have received when I sent out this afternoon. Under paragraph four item B that says waiver, that would be on page 12-16 of Article 12, it says "The Village Building Official may waive the requirement for a landscape plan in instances where the engineered site plan is not required, or in instances where the parking lot contains thirty (30) or fewer parking stalls. This does not waive the requirement to install landscaping in accordance with this article". But it does talk about the landscape plan, so there, by the absence of a plan, a landscape plan, by the engineer doesn't mean they did not do what they were supposed to, just means that plan could have been waived by the building official. They would still have to go forward with any landscaping they do not have to provide the plan, so I just want to point that out, they were deficient by not providing a plan in any case.

GAZIANO: Any questions from any Zoning Board members for this particular variance request?

EUBANK: Are we ready to close out this hearing?

GAZIANO: Mr. Van Sickle

VAN SICKLE: It seems so.

GAZIANO: Mr. Van Sickle is there anything else that you feel seems to be considered at this hearing?

VAN SICKLE: I think we have heard everything that needs to be heard. Let's close it out. Do we have a motion for that?

EMMERT: Motion to adjourn

EUBANK: Mr. Emmert moved, Mr. Eubank will second.

VAN SICKLE: Motion made, and second.

EUBANK: Roll call.

VAN SICKLE: Roll Call

MRS. SYMONDS: Booker

BOOKER: Yes

MRS. SYMONDS: Emmert

EMMERT: Yes

MRS. SYMONDS: Eubank

EUBANK: Yes

MRS. SYMONDS: Koning

No response

MRS. SYMONDS: McDougall

MCDOUGALL: Yes

MRS. SYMONDS: Van Sickle

VAN SICKLE: Yes

EUBANK: All right, we are going to stop the meeting, stop the recording now and we will log into the general Zoning Board meeting, and I will see everyone there.

The meeting adjourned at 8:11 p.m.

Charles R. Van Sickle, Chairman

APPROVED: March 28, 2022

Prepared by:

Kellie Symonds,
Deputy Clerk