

**BOONE COUNTY BOARD OF ADJUSTMENT
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
BUSINESS MEETING
OCTOBER 14, 2015
6:00 P.M.**

Mr. George Whitton called the meeting to order at 6:00 P.M.

BOARD MEMBERS PRESENT:

Mr. George Whitton, Chairman
Mr. Frank Bednar
Mrs. Sherry Hempfling
Mr. Richard Miller
Mr. Bradley Shipe

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

APPROVAL OF MINUTES

Mr. Whitton stated that the Board members received copies of the minutes of the Boone County Board of Adjustment meeting of September 9, 2015. He asked if there were any comments or corrections? There being no changes, Mr. Shipe moved that they be approved as written and Mrs. Hempfling seconded the motion. Mr. Miller said he would abstain because he was not present at the last meeting. Mr. Whitton called for the vote and it carried unanimously.

ACTION ON REVIEWS

1. **Request of ASI, Cincinnati for Toyota for two Variances to increase the permitted height and square footage of directional signs in an Industrial One (I-1) zoning district. The approximate 86.3 acre site is located at 3675 North Bend Road, Boone County, Kentucky.**

Staff Member, Todd K. Morgan, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Ray Siegel, with ASI Signage, said the variances are needed because the truckers are 9 feet off the ground. The increased sign height and square footage will help the truckers view the signs and navigate the site. Lot A signs will be color coated green, lot B signs will be colored coated blue, and lot C signs will be color coated purple. The color coatings will also help the truckers navigate the site. The larger A, B, and C's on the signs have been sized to be seen from 200 feet away. There are over 300 trucks per day that navigate the lot so it is important that they don't make wrong turns. He offered to answer questions.

Mr. Whitton asked if the Board had any questions? There was no response.

Mr. Whitton asked if anyone else in the audience wanted to speak regarding the request? There was no response.

Mr. Miller made a motion to approve the request as presented. Mr. Bednar seconded the motion.

Mr. Whitton asked if there was any additional discussion before the vote? There was no response. He called for the vote and it carried unanimously.

2. Request of Richard and Kelly Bowlin for a Conditional Use Permit for an automotive repair facility in a Suburban Residential One/Small Community Overlay (SR-1/SC) zoning district. The approximate 1 acre site is located at 6766 McVille Road, Boone County, Kentucky.

Staff Member, Todd K. Morgan, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Miller asked for confirmation that the business was currently operating illegally? Mr. Morgan responded that was correct.

Mr. Miller asked if the school had any concerns about the noise coming from the garage? Mr. Morgan said he did not hear from the school or any other neighbors.

Mr. Richard Bowlin and Mrs. Kelly Bowlin introduced themselves. Mrs. Bowlin said the camper that is located in front of the garage is temporary and will be removed shortly. It is there because their home caught on fire on March 30th and repairs are still ongoing. The larger side of the garage is currently being used to store all the furniture they have bought over the last seven months. They are hopeful that the Building Inspector will allow them to start moving back into their home tomorrow.

Mr. Bowlin said four of the cars that are shown in the garage driveway photo are his. The reason they are parked there is the residential contractors have been using the other driveway. Another car is his Uncle's. His Uncle helps him as needed but is not a paid employee.

Mrs. Bowlin said that they have only been using the one bay on the far left side of the garage for repairs. They will begin using the second bay once they get all the furniture moved out from the storage side of the garage. She indicated that Rick is the only full time worker. Their daughter is in Vocational School at Conner and she helps out. They also have a Grandfather and Uncle that help out. They get parts and move vehicles around. She does the recycling for Boone County and wants to do everything right. She knows it doesn't look pretty now but that is because of the fire and ongoing repairs.

Mr. Whitton asked for clarification that they don't have any conventional paid employees? Mr. Bowlin said that was correct.

Mrs. Bowlin said the rollback truck is 30' long and 9' wide. They indicated that it could be stored inside the southernmost garage bay.

They indicated that out of all the cars that were shown in the photo only two were being worked on or waiting to be repaired. Mr. Whitton how many such vehicles there would typically be? Mr. Bowlin said it normally varies between 1 and 4. He said he could start keeping 2 cars in the garage once they move back into their home.

Mr. Whitton asked if they saw the Staff comment regarding vehicles being parked in the grass? He asked if that would be a problem? Mr. and Mrs. Bowlin said it has been a problem because of everything that has been going on with their home. He stated he didn't want to incur the expense of adding a bunch of blacktop until this Board acted. She added that they have received an Encroachment Permit from the Kentucky Transportation to widen the driveway.

Mr. Whitton reviewed the recommended Staff conditions on pages 5 and 6 of the Staff Report and asked them to address them.

- A. Business Hours shall be limited as follows:**
 - 1. Monday through Saturday – 8:30 AM to 5:00 PM**
 - 2. Sunday – Closed for business.**

Mr. Bowlin added that he works those hours Monday through Friday. He will only work those hours on Saturday if he is behind on a job.

- B. Auto body, paint work, and vehicle impounding shall be prohibited.**

Mr. Bowlin indicated he would not do auto body, paint, or impounding.

- C. Commercial vehicle repairs shall only be permitted in two northernmost garage bays. The other 2 bays can be used for part storage, scrap material storage, fluid storage, office work, etc.**

Mr. Bowlin said he was okay with the condition.

- D. All vehicle repairs shall be made inside the garage.**

Mr. Bowlin said he was okay with the condition.

- E. No vehicle shall be stored outside in a disassembled state.**

Mr. Bowlin said he was okay with condition. Operating two repair bays would give him the flexibility to work on another car if he was waiting on a part.

- F. Outside display of vehicle accessories is prohibited.**

Mr. Bowlin said he was okay with the condition.

- G. There shall be no outside storage of parts, tires, scrap materials, or fluids that are associated with the business.**

Mr. Bowlin said he was okay with the condition.

- H. The business shall not be operated as a junkyard (see definition in Article 40 of the Boone County Zoning Regulations).**

Mr. Bowlin said he was okay with the condition.

- I. No vehicles shall be sold from the property.**

Mr. Bowlin said he was okay with the condition.

J. Parking lot lighting shall be prohibited.

Mr. Bowlin said he was okay with the condition.

K. Business signage shall be limited to the building mounted sign that already exists on the garage. A Sign Permit will need to be obtained if the sign is more than 6 square feet in area.

Mr. Bowlin said he was okay with the condition.

L. All vehicles associated with the business shall be parked in paved, striped stalls at all times.

Mr. Bowlin said he was okay with the condition.

M. Street frontage landscaping shall be required between the garage/parking area and McVile Road right-of-way. The trees shall be 6' evergreens and selected from Plant List D of the Boone County Zoning Regulations.

Mr. Bowlin said he was okay with the condition.

N. A condition requiring a certain amount of parking (minimum of 4 spaces is required with the first stall being a van accessible handicapped stall) and setting the maximum number of vehicles that can be waiting to be repaired or picked up at any given time.

Mr. Bowlin said was okay with striping the parking lot.

O. A condition regarding the rollback truck.

Mr. Bowlin said the rollback truck could be kept inside the garage.

P. A condition requiring repairs to be made with the garage bays closed.

Mr. Bowlin said he could agree to that condition if it is an issue. He is currently looking into air conditioning. Mr. Miller asked if he had an exhaust system to get fumes out? Mr. Bowlin replied that he did.

Mr. Whitton asked if the Board had any questions?

Mr. Bednar asked Mr. Bowlin if he knew how much old oil would be generated on a monthly basis? Mr. Bowlin said he has an old waste oil furnace that he will be utilizing on site. He keeps the waste oil in a drum inside the building until such time that it is used. He knows Boone County Fleet Services will take used motor oil if he can't use it all. Mr. Bednar asked if he knew the regulations for burning waste oil? Mrs. Bowlin said they are currently looking that up. He is converting his old oil furnace into a waste oil furnace. There is a lot more EPA regulations because they are a commercial business. Mr. Bednar asked if they would be considered a small quantity generator? Mrs. Bowlin said they are.

She added that she is a solid waste coordinator for Boone County and will make sure that everything is taken care of. Mr. Bednar asked if they have a scrap metal vendor that they use? Mrs. Bowlin said they would use the highest bidder. He asked how often scrap metals would be picked up? Mr. Bowlin said he has a trailer that will be kept inside the building and will take it for recycling as needed. Mr. Bednar asked how often Best Way will pick up trash and what size the containers will be? Mrs. Bowlin said they have two 75 gallon containers. One is used for the house and the other is used for the garage. They will not use a dumpster and will recycle all the cardboard the parts come in.

Mr. Bowlin added the Belleview Bottoms used to have a garage when he was younger. There are currently no garages in Petersburg, Rabbit Hash, or Belleview.

Mr. Miller asked if people will be waiting for their cars? Mrs. Bowlin said people drop off their cars and are called when they are ready for pickup.

Mrs. Hempling asked if they have a contract with someone if the county will not take the excess fluids? Mrs. Bowlin said they have one with Environmental Enterprises in Cincinnati. Mrs. Hempling asked if they come to the site now? Mrs. Bowlin said they do not because they have not been generating much waste oil. They will certainly contact them if needed.

Mr. Miller asked if they have oil traps underneath the lifts? Mr. Bowlin said it falls to the concrete floor and he has spill pads and floor dry. Mrs. Hempling said there has been some waste issues with repair garages in Belleview in the past. Mr. Bowlin asked which facility? Mrs. Hempling said there was a repair garage located behind a yellow house near the general store. There was an issue with waste that was left on site. Mrs. Bowlin said that will not be an issue for them because they live on site.

Mr. Whitton asked if they had any concerns regarding the listed conditions? Mrs. Bowlin said they would need to get air conditioning before they could keep the garage bays down. Mr. Bednar said OSHA requirements do not apply to businesses with less than 10 employees.

Mr. Whitton asked if anyone in the audience wanted to speak regarding the request? Keith Peel and Amanda Peel said Planning Commission Staff presented a lot of their points. He indicated that they live at 6720 McVille Road, which is the historic schoolhouse to the north of the subject property. He submitted a hard copy PowerPoint slide show, GIS Map, and guidelines regarding the prevention of groundwater pollution from small repair garages (see Exhibits 1-3). Their first concern is the parking and clutter that exists on site. They generally do not see less than 9 vehicles at the property and have seen over 20. They believe this activity will depreciate the value of homes in the area. This is addressed in the second page of their PowerPoint. They do not believe that the applicants will be able to put in enough parking to accommodate all the vehicles. Prior to submitting for zoning approval they had been parking vehicles in the grass. Since applying they have cleaned the site up and have been parking all the vehicles in a straight line on the driveway. They did not know they were operating illegally until they saw the sign posted on the property.

Mr. Peel said the noise coming from the garage is very loud and can be heard inside homes. He said Planning Commission Staff noted the noise in the Staff Report. They have a video demonstrating the noise if the Board would like to view it. He said the noise comes from the equipment being used in the shop, revving engines, and people doing burnouts

on the road. Mrs. Peel questioned if the garage was souping up engines because there is a lot of engine reeving and burnouts. A lot of neighbors have complained and they have had cops sitting at BB & T Bank. Mr. Peel showed one of the Staff PowerPoint slides and it shows a burnout coming out of the driveway onto McVilleville Road. They have additional burnout pictures in their PowerPoint.

Mr. Peel said that Kelly Elementary sits at a lower elevation than the garage and is one of the few schools in Kentucky that uses a well. He is very surprised that someone from Kelly Elementary is not here tonight. He stated that the garage was originally built as a residential garage and it does not have the grease traps and other things that would normally be put into a commercial garage.

Mrs. Peel said their house is a historical building, which used to be a school. They will be trapped between two commercial uses if the request is approved. Mr. Peel added that their house was Boone County's first graded school house and was built in 1903.

Mr. Peel stated that the commercial garage is located very close to his property line. As a result, the noise dumps right on them. He referred to his GIS exhibit to demonstrate this.

Mr. Peel said they would like to have the following questions answered:

- Where will the floor drains be?
- Will this property be rezoned?
- Who does the inspections to verify they are in compliance with all the rules?
- What is the plan for groundwater protection?
- Who will make sure no oil goes into the ground because they use well water? He knows from the previous owner that the well head for the property is located right at the corner of the building. If oil gets in there it could easily contaminate their drinking water.

Mr. Morgan informed Mr. and Mrs. Peel that it was their choice if they wanted to play the video for the Board.

Mr. Bednar asked where the Preventing Groundwater Pollution article came from? Mr. Peel responded that it came from www.ky.gov.

Mr. Shipe asked how long Mr. and Mrs. Peel lived in their house? Mr. Peel responded 5½ years.

Mr. Morgan said he would answer one of their questions while they got the video ready. The subject property is located in Small Community Overlay (SC) zoning district and a commercial automotive repair facility is a Conditional Use in that zone. This Board will determine if the automotive repair facility is appropriate or inappropriate. The application will not change the zoning of the property.

Mr. and Mrs. Peel played the video to demonstrate noise coming from radios, air guns, etc. Mr. Morgan informed Mr. Peel that he would need a copy so it could be part of the record.

Mr. Peel said the video is being played from the corner of his house. He indicated that the noise can be heard inside his house as well.

Mr. Whitton asked them what was located inside the garage when they moved in? Mr. Peel said it was just a residential home. One of the owners was a police officer and the other was a nurse. They didn't realize the Bowlin's didn't have approval to run the automotive repair garage until they saw the sign go up.

Mrs. Bowlin said that isn't true. Her sister-in-law and another guy were looking into renting their house. Once that fell through, they notified her that they would be opposing them tonight.

Mr. Peel said he would end by stating that they are opposed to the request because of the noise pollution, environmental pollution, and visual pollution. Mrs. Peel said they are not trying to disrespect them but they do not want the business located next door to their home. Mr. Peel added that there is another repair garage not too far from his home.

Mr. Whitton asked if anybody else in the audience wanted to speak regarding the request? There was no response.

Mr. Bowlin said their neighbor on the other side is a 70 year old man. He is not opposed to the request and has had repair work done at the garage.

Mrs. Bowlin said there is a large fence and a tree line between them and the Peels. She added that she is a solid waste coordinator for the county and is familiar with environmental regulations. They have a secondary confinement system, which is regulated by the EPA. The secondary confinement system will contain the oil if the drums leaked. She said the average car has 4 to 6 quarts of oil and if something leaks they have stuff right there to clean it up. They will dispose of things properly. She added that the whole area is zoned commercially. Mr. Morgan said the whole area is zoned Suburban Residential One/Small Community Overlay (SR-1/SC).

Mrs. Bowlin said she has a 16 year old daughter that has friends. They do not like the burnouts but have no way of stopping them. They use well water and will not contaminate the water.

Mr. Bowlin said he left his job with the county in August and that is why he started working out of the garage.

Mr. Miller asked if they have the proper licenses? Mr. Morgan said they have applied for their Occupational License but the Planning Commission is holding it until they get all their zoning approvals.

Mr. Miller asked what happens if the Board approves the request with conditions? Mr. Morgan replied that their engineered Site Plan will need to address any conditions that are imposed by the Board. Once they start operating, the Planning Commission would handle enforcement if they are not in compliance with the conditions.

Mr. Miller asked if the Board could restrict business operations until such time that the conditions were met? Mr. Morgan asked if he could explain that further. Mr. Miller said the business was currently operating illegally. He asked if they could be restricted from

operating until such time that they were in compliance with all conditions. This would guarantee that they are in compliance with the Board's conditions at the time the Occupational License is granted.

Mr. Wilson said enforcement staff can issue citations for any use that has not been properly licensed. At this point, citations have not been issued and the applicants have been given a certain amount of time to cure the violation. Mr. Morgan said that was correct. Planning Commission Staff made them aware that they needed to be on this agenda or they were going to start zoning enforcement action.

Mrs. Hempfling asked if the vote needed to occur tonight? Mr. Morgan said they could table the request for a month if they wanted the applicants to provide more information or if they wanted to visit the site.

Mrs. Hempfling said she is concerned about the drainage area for spills. Mr. Whitton asked if that is something that would normally be under Site Plan review. Mr. Morgan said it would not be. He added the Site Plan is just addressing zoning regulations. They are still required to get permits or approvals from all other appropriate agencies.

Mr. Miller asked if there were noise regulations? Mr. Morgan responded that the zoning regulations do not contain noise regulations or permitted decibel levels for businesses. A person could call the Sheriff's Department if they felt that noises were disturbing the peace.

Mr. Shipe asked if a condition could be drafted, which would give the applicants a certain amount of time to get proper air conditioning and heating installed in the garage so repairs could be made with the doors closed. Mr. Wilson said the Board has the right to impose reasonable conditions without agreement from the applicants. The Board should consider if conditions are reasonable to enforce.

Mrs. Hempfling asked if there were any square footage limitations on working in a closed off working area? Mr. Morgan said he didn't know the answer to the question because it would be a building code issue. Mrs. Hempfling asked if the Building Department has issued approval? Mr. Morgan said they have not granted approval to turn the building into a commercial repair garage. The Building Department will not start their review until the Site Plan application is approved. He spoke with the Building Department about this project and he knows that they will require a fire rated wall.

Mr. Whitton said that winter will be here soon and the garage bays will be down while repairs are being made. The Board could look at a date in the spring for them to get air conditioning installed. The air conditioning would allow them to keep the doors down year around.

Mr. Peel said he in a construction manager and a sheet metal garage door is going to do very little to reduce noise. Mr. Whitton said it is safe to assume that there will be much less noise if repairs are made with the garage bays down.

Mr. Bednar said he feels that there are a lot of questions that they cannot answer. They are talking about noises from air compressors, revving engines, etc. He feels that they are getting into sticky areas if they impose conditions on keeping the garage doors down or requiring sound insulation.

Mr. Miller asked if the garage doors were insulated? Mrs. Bowlin said they are insulated with foam. Mr. Miller asked Mr. Peel if the noises were recorded with the garage bays open or closed? Mr. Peel said he wasn't sure. Mr. Peel said that he does sound baffling for medical clinics that do MRI's. The ask for two layers of Armiplex, which is 3 inches thick, and two layers of $\frac{5}{8}$ inch sheet rock and that will bring down the noise level 30 decibels. A garage door with a $\frac{1}{2}$ inch of foam will not reduce that much noise. The shop Mr. Bowlin is working in is uninsulated with lap board siding and wood. The fire rated wall will be constructed with $\frac{5}{8}$ inch sheet rock and glass insulation. The noise will still transmit through the walls, door, and roof. There will be a lot of noise coming out of the shop and it will impact the residential area.

Mrs. Bowlin said they will be operating from 8:30 AM to 5:00 PM and most people will be at work during these hours unless they work on a Saturday. They will not be making repairs at night or on Sundays. Mr. Bowlin added that the part of the garage that he will be working out of is constructed with block. The blocks will not burn and the Building Department informed him that he will only need to address the eaves. He will not keep his compressor outside. It will always be located inside. He indicated that no other neighbors have complained about the noise. He feels they would have heard more complaints if noise was an issue.

Mr. Peel said that Mr. Bowlin used to work for Boone County Public Works and Mrs. Bowlin still does. He feels they have a lot of ties with the Sheriffs Department. He feels like there were more complaints that weren't recorded.

Mr. Shipe made a motion to approve the request with the following conditions:

1. **Business Hours shall be limited as follows:**
 - **Monday through Saturday – 8:30 AM to 5:00 PM**
 - **Sunday – Closed for business.**
2. **Auto body, paint work, and vehicle impounding shall be prohibited.**
3. **Commercial vehicle repairs shall only be permitted in two northernmost garage bays. The other 2 bays can be used for part storage, scrap material storage, fluid storage, office work, etc.**
4. **All vehicle repairs shall be made inside the garage.**
5. **No vehicle shall be stored outside in a disassembled state.**
6. **Outside display of vehicle accessories is prohibited.**
7. **There shall be no outside storage of parts, tires, scrap materials, or fluids that are associated with the business.**
8. **The business shall not be operated as a junkyard (see definition in Article 40 of the Boone County Zoning Regulations).**
9. **No vehicles shall be sold from the property.**

10. **Parking lot lighting shall be prohibited.**
11. **Business signage shall be limited to the building mounted sign that already exists on the garage. A Sign Permit will need to be obtained if the sign is more than 6 square feet in area.**
12. **All vehicles associated with the business shall be parked in paved, striped stalls at all times.**
13. **Street frontage landscaping shall be required between the garage/parking area and McVile Road right-of-way. The trees shall be 6' evergreens and selected from Plant List D of the Boone County Zoning Regulations.**
14. **The commercial repair garage shall have a minimum of 4 parking stalls and a maximum of 8 parking stalls (with the first stall being a van accessible handicapped stall) The number of vehicles waiting to be repaired or picked up at any given time shall not exceed the number of striped parking stalls on site.**
15. **The rollback truck shall be parked inside one of the garage bays at the end of business hours.**
16. **The garage doors shall be closed while vehicle repairs of any kind are being made inside the garage to reduce noise pollution.**

Mr. Miller seconded the motion.

Mr. Whitton asked if there was any additional discussion before the vote?

Mr. Bednar asked Mr. Shipe if he would be willing to amend the motion? Mr. Bednar said he thinks the request should be tabled so some sort of Environmental Impact Study could be done. This Study would allow them to evaluate some real data. They are talking about decibel levels and engines revving in a residential area. He thinks this warrants more observable data so they can make an informed decision. Mr. Whitton said he believes this is a small garage and not a big commercial enterprise so he would not be in agreement with that amendment. Mr. Miller asked what level of Environment Impact Study was Mr. Bednar seeking? He does not believe the garage will be a big enough generator. The floors do not have drains and spills will not get into the groundwater. He would be more worried if there were drains. Mr. Bednar said he is concerned if oil seeps into the topsoil because there could be a well or aquifer under it. The site is close to the Ohio River so there could be some EPA regulations. Anytime there is oil on site, there is supposed to be a spill prevention and countermeasures plan. Mr. Miller said that is why he was curious about the licensing process for this type of business. Mr. Morgan said it is the applicants responsibility to get the approval of all appropriate agencies. Mr. Miller asked if they have applied for their Occupational License. Mr. Morgan said the Planning Commission is holding it until they receive all zoning approvals. Mrs. Hempfling asked what other permits they need? Mr. Morgan said they need Conditional Use Permit, Site Plan approval, a Commercial Building Permit, and an Occupational License from the County. Mr. Whitton asked if the Health Department would be involved? Mr. Morgan said he didn't think so because they are not looking to put a bathroom in the garage. Mrs. Bowlin said the EPA

could be contacted in Florence but she does not think Permits will be required because they are a small generator. Mr. Miller asked if all vehicle repairs were made in the bays? Mr. Bowlin said they were. Oil changes are done on a lift and waste oil goes into a bucket and then goes into a 55 gallon drum. Mr. Morgan said the Board could impose a condition requiring the applicants to contact the Division of Water and EPA to verify if permits are required from those agencies. Prior to Site Plan approval, the applicants would provide Planning Commission Staff with a letter or email identifying which Permits are required from those agencies.

Mr. Shipe he would like to add Mr. Morgan's recommendation as another condition.

- 17. The applicants shall contact the Division of Water and EPA to verify if permits are required from those agencies. Prior to Site Plan approval, the applicants shall provide Planning Commission Staff with a letter or email identifying which Permits are required from those agencies.**

Mr. Miller said he would second that amendment.

Mr. Whitton called for the vote. A roll call vote found Mr. Whitton, Mr. Miller, and Mr. Shipe were in favor, Mr. Bednar was opposed, and Mrs. Hempfling abstained. Mr. Whitton said if she does not abstain for a conflict reason her vote would be counted towards the majority. Mrs. Hempfling said she was abstaining because she has too many unanswered questions. Mr. Wilson said her vote would be counted towards the majority. The motion carried 4-1.

- 3. Request of John and Susan Pittman for a Change in Nonconforming Use for the use of a property to be changed from a concrete plant to an excavation company with the accessory retail sale of mulch, gravel, sand, etc. in a Commercial Services (C-3) zoning district. The approximate 10 acre site is located at 8351 Dixie Highway, Boone County, Kentucky.**

Staff Member, Todd K. Morgan, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Miller asked if his recommendation for storage bins for the mulch, gravel, and sand would be three sided concrete bins? Mr. Morgan responded that was correct.

Mr. John Pittman said the site is a big hole in the ground and they want to improve the site. He said they want to fill the site and construct a new building. They would also like to do something additional that is related to their excavation business to generate extra income. He is not sure what the additional activity would be. It could be recycling concrete or trees. He knows that he wants to sell topsoil because it ties in nicely with the business. He doesn't have definite answers because he doesn't own the property and has not hired an engineering firm. Until he hires the engineering firm, he will not know how much space he has to work with or what direction he wants to go with the business.

Mr. Whitton said one of the elements the Board needs to look at is if the proposed business is any more objectionable than the pre-existing nonconforming business. It going to be difficult for the Board to make that determination if they don't know the exact nature of the business being proposed.

Mr. Pittman said his business is an excavation company with an office, storage of materials, and light maintenance. Eventually he would like to expand it to include another side business.

Mr. Whitton asked him to explain the nature of his current business. Mr. Pittman said they do commercial and residential excavation and demolition. They have approximately 25 pieces of equipment and 5 trucks. The shop normally has one person there. He would want to put in two 2,000 gallon fuel storage tanks. He said they could put the equipment anywhere but his initial thought is it will be kept behind the building on the south side of the property. Mr. Morgan's report recommended keeping the equipment on the eastern side of the site and that may be possible after they fill the property. He said the equipment is normally out at job sites so it is really irrelevant where it is stored.

Mr. Whitton said his application mentions taking down some trees. He asked if that was true? Mr. Pittman said they would like to use as much space on the site as possible so they would like to take down trees. They would not be opposed to keeping some trees. He will need to speak with an engineering firm before he knows the fill limits and what trees can be preserved. Mr. Whitton asked if he would be okay with maintaining a buffer zone around the perimeter of the property for privacy. Mr. Pittman said he would like to maintain a buffer.

Mr. Wilson said this is not a matter where the use is principally permitted as a matter of right under the zoning code. This is an application is to allow a substituted use, which still does not comply with the zoning code. The burden is on the applicant to show that the new substituted use is of the same or more restrictive classification of what was there before. The Board needs guidance from the applicant and a definite proposal so they can weigh if the new use is no more objectionable than what was there before. The applicant may need more time and have to come back if they can not provide the Board with the information. Mr. Whitton said he agrees. It is hard for the Board to determine if the new use is no more objectionable than what was there before with the information they have.

Mr. Pittman said he thinks the concrete plant had a couple hundred trucks coming and going per day and they may have five to fifty coming and going per day. Mr. Morgan said he didn't know the number of trucks that came and went from the concrete plant on an average day. Mr. Wilson said the Board cannot look at assumptions with this type of evaluation. The applicant needs to come in with aerial photographs, state what was there before, and state what is being proposed. Many time applicants will bring in witnesses that lived in the area or are familiar with the nonconforming activity. Mr. Pittman said he did not have that information.

Mr. Miller asked if the application could be withdrawn or tabled? Mr. Wilson said the application could be tabled and scheduled to come back in a month so the applicant could provide more information.

Mr. Whitton asked Mr. Pittman if he understood the Board's dilemma? Mr. Pittman said the way he understands it is the Board is asking him to explain what the pre-existing business used to do and what his business does. Mr. Morgan added that he also needs to show where the business activities will take place on site. Mr. Pittman said he would have a maximum of 5 trucks and 20 pieces of machinery on site at any time. Mr. Morgan said he also brought up potential future business activities which have not been defined. He also needs to show how much of the tree lines would be preserved. Mr. Miller asked what the

building would look like? Mr. Pittman replied it would be a pre-engineered steel building and would contain offices and a warehouse. He cannot address the buffers until he hires an engineer. He knows he wants to remove considerable portions of the trees to give him more usable space. Mr. Whitton said the Board needs to know how much more usable space there will be and how it will be used.

Mr. Pittman said they are given large amounts of topsoil from job sites. He would like to bring the topsoil back to this site, shred it, and sell it. He would like to bring fill dirt back to the site, stockpile it, and sell it. Mrs. Hempfling asked what that would do to the number of trucks coming and going? She asked if they would deliver dirt? Mr. Pittman said he would probably never deliver. They hire trucks to move their dirt. These trucks would deliver the dirt back to the facility, it would be stockpiled, and someone would eventually come in and buy it. Mr. Miller asked how high the stockpiles would be? Mr. Pittman estimated they would be 20' high and would be visible from the road. Mr. Whitton asked how many stockpiles there would be on site? Mr. Pittman said there would one stockpile of topsoil and one stockpile of fill dirt.

Mr. Pittman said the back end of the property is high and is largely comprised of concrete. They want to take all the concrete from the back, relocate it to the front, and put fill dirt over top of it. The back of the property will be lowered initially but will then be raised back to about the same elevation with stockpiles. He said the property is a big hole in the ground and the overall filling process may take 10 years.

Mr. Miller said generally when people come before the Board, they have plans and elevations so they can make a judgement on the proposal. He said in this case they are speculating what they are looking at. Mr. Pittman said he can go to the expense if it is needed. He can tell them factually that the site looks like a hole in the ground now and will look a level field when he is finished with it.

Mr. Whitton asked Mr. Pittman to speculate if his business activity would be more or less than the concrete plant. Mr. Pittman said his business would have considerably less activity. Mr. Whitton asked what that answer is based on? Mr. Pittman responded that concrete is poured year around. They do not work when it rains and there is little activity in the winter months. They will have high activity in the summer months but he does not believe it will match the activity of the concrete plant.

Mr. Whitton asked if anyone in the audience wanted to speak regarding the request?

Mrs. Laura Lindeman-Lorenz said her mother owns the property to south. She applauds Mr. Pittman's desire to improve the property because it has been a mess for a long time. There used to be a fishing lake on the property before it was destroyed by the concrete plant. What does concern her is the removal of the tree line because it provides an awesome buffer for their tenants. Mr. Pittman's proposal isn't clear because he may tear down trees and use more property near their property line. He has not defined the use in this area and it concerns her because there could be 20' tall stockpiles of fill and less trees to buffer his operation. She acknowledged that the concrete company was very loud, however, they worked regular business hours and were not there on weekends. She would like to know Mr. Pittman's hours of operation and if her tenants will be awakened early in the morning, late at night, or on weekends by the loading and unloading of heavy equipment.

Mr. Scott Maddox, said he owns the property across the street. He said he has mixed feelings about the project. He is all in favor of the site being cleaned up because it has been an eyesore for years. He said the concrete company has not been operating regularly for 10 to 15 years. It has been a sporadic back up plant when there is a big project going on. Since the economy tanked, the property has changed hands many times. He believes Ernst Concrete owns it now but is not sure if they operated since they owned it. The property has kind of been of dumping ground since L&N owned it. When L&N closed their Erlanger site they took everything and dumped it on this site. He said the traffic level at the facility has virtually been nothing for a number of years. If it were a fully operational plant, there would be considerable traffic.

Mr. Jason Yarbrough said he was representing Ernst Concrete. The plant has not run for about 3 years. Three years ago it was owned by Central Ready Mix and they ran it sporadically. Central Ready Mix bought it from Moraine Materials and Moraine Materials bought it from L&N. He has been associated with the property for approximately the last 10 years. All the way up to the recession, the plant ran from April to Thanksgiving each year and was highly productive. All the concrete on Toebben Drive came out of the plant. The plant would be open 20 hours straight at a time. They had a least 20 trucks stationed at the facility before the economy collapsed. There are mature trees on the southern end of the site. The trees at the back are scrub trees and have been there for 3 to 4 years. He said it used to be hard to get out of the site with all the trucks they had operating.

Mr. Wilson asked Mr. Yarbrough how many years ago was it that 20 trucks were operating from the site? Mr. Yarbrough responded that is somewhere about 2007 or 2008. Mr. Morgan added that would fall in line with the Google Maps photo from 2007 that is in the PowerPoint slide show. Mr. Yarbrough said the plant was operating at that time and the photo shows two tankers, the batch man, and the loader operator's vehicle. All of the trucks must have been out at that time.

Mr. Whitton asked if the use had to be present 10 years or more to get pre-existing nonconforming status. Mr. Wilson responded that was correct.

Mr. Shipe asked what was to the north of the subject property? Mr. Morgan reviewed the PowerPoint slides to the north. Mr. Pat Kelly said there is commercial parking and a cell tower. Mr. Kelly added there are a lot of trees that buffer the plant from his property. Mr. Morgan reviewed the approximate tree line depths from the PowerPoint show. Mr. Shipe asked Mr. Kelly if he would be okay with all the trees being removed between the subject property and his property? Mr. Kelly responded that some green space should be kept.

Mr. Whitton asked Mr. Wilson for his opinion on whether they had enough information to act? Mr. Wilson said he thinks they have a pretty good base line of what was there based on the 2007 Google Map but he is not sure if they know exactly what Mr. Pittman is seeking approval for. He really has not defined the future use. Mr. Morgan said he agrees with Mr. Wilson because Mr. Pittman will need to submit a Site Plan if the Change in Nonconforming Use application is approved. He will need very specific information regarding the buildings, structures, grades, tree lines. that are to be preserved before he could approve such a plan. Mr. Miller said he would not be able to vote right now because there is not enough information.

Mr. Whitton said Mr. Pittman could work with Staff and they could advise him on what information is needed for the Board to act. Mr. Whitton said he does not need full engineered drawings but does need a good Concept Plan so the Board can make a judgement on the proposal. Mr. Morgan said his only concern with that is grading because the grading is going to set the tone for the whole site. The grading plan will show the expansion areas and determine how many trees can be preserved. Mr. Morgan said he would need to get an engineer involved to prepare that plan. In the end, a Site Plan would need to be approved and he will need to know how wide the tree preservation limits should be.

Mr. Pittman asked exactly what the Board is looking for? Mr. Morgan said as far as the perimeter buffers, he needs to show the Board how much of the tree lines would be preserved. Mr. Pittman said he can do whatever is required. Mr. Morgan said it his application to make and he needs to inform the Board of his proposed usability of the lot and how much of the tree lines would remain. Mr. Whitton said the Board would also like to know the proposed size and location of all buildings and structures and how there going to be used. Mr. Morgan said he also needs to show the equipment parking area, stockpile areas, and storage bins. Mr. Shipe said the Board also needs to know how much of the driveway system will be paved, the location and height of stockpiles, and if the stockpiles will be open or placed in three sided concrete bins? Mr. Pittman needs to provide a sketch or Concept Plan so the Board can see what is proposed immediately and in the future. Mr. Miller added that they do not need final grading but they do need a Conceptual Site Plan showing the various uses and tree save limits on the lot. They also need a better understanding of when things will be done because his earlier statement indicated that the improvements could occur over a 10 year period. Mr. Whitton added that Mr. Pittman needs to put on paper a Concept Plan of what is being proposed so the Board can determine if the proposal is more objectionable than the established pre-existing nonconforming use.

Mr. Whitton asked Mr. Pittman if a month would give him enough time to provide the information they are seeking? Mr. Pittman said it would. Mr. Morgan said that the Board typically meets on the second Wednesday of the month but the second Wednesday in November is Veteran's Day and this building will be closed. He recommended scheduling the meeting on November 12th, at 6:00 PM, if that worked for everyone. Mr. Whitton asked if everybody was agreeable to that date and time? The Board agreed. Mr. Morgan said if the Board tables the request it would be the first item on the November 12th agenda and no more legal notice would be provided to the adjoining property owners.

Mr. Miller made a motion to table the request until November 12, 2015, at 6:00 PM. Mr. Shipe seconded the motion. Mr. Whitton called for the vote and it carried unanimously.

ADJOURNMENT

Mr. Whitton asked for motion to adjourn the meeting. Mr. Miller made the motion to adjourn and Mrs. Hempfling seconded the motion. Mr. Whitton called for the vote and the meeting was adjourned by unanimous consent at 8:10 p.m.

APPROVED

Mr. George Whitton, Chairman

ATTEST:

Todd K. Morgan
Senior Planner, Zoning Services

Exhibits

1. Hard Copy PowerPoint Slide Show
2. GIS Map
3. "Preventing Groundwater Pollution - Auto Repair Shops" - Guidelines