

The North Royalton Board of Zoning Appeals met in the Council Chambers, 13834 Ridge Road, on Monday, August 26, 2009, to hold a Public Hearing. The meeting was call to order at 7:30 pm by Chairman Neil Price.

Present: Chairman Neil Price, John Ranucci, Councilman Dan Kasaris, Tony Caraballo, Prosecutor Donna Vozar, Joe Hartman, City Engineer Mark Schmitzer and Secretary Julie Broestl.

(BZ09-10) Jessica Development / DiGioia Suburban Excavating, LLC, requests a variance to Chapter 1270 "Industrial Districts", Section 1278.04, paragraph (a)(2), of the City of North Royalton Codified Code, for relief from the required accommodations for a portable concrete crusher that they wish to locate and run outdoors on their property which is located at **11293 Royalton Road, PPN 483-20-001, PPN: 483-20-001.**

Chairman Price: Before anyone comes up to the microphone, I would like to have Donna say a few words about how we are going to work this meeting tonight. It is going to be a little different tonight.

Donna Vozar: Yes. Thank Mr. Chairman. To the applicant and to the audience here tonight, we have before us a use variance. A use variance pursuant to our Code under 1264.08(e)(2), requires the applicant prove by clear and convincing evidence that they will suffer unnecessary hardship if strict compliance of our Code is not applied. As such, the Board is reminded that this is a heightened level of proof that has to be illustrated rather than the usual one that comes before the Board as an area variance. The applicant will be presenting their application and their evidence that they want the Board to hear. Part of that is going to be, rather than them having coming in and just discussing and letting the Board know what they are planning on doing, they have agreed to have a field site where we will actually go out and view it tonight as a group. Normally the Board individually goes out for a variance request and look at the site on their own. In this case it would be too hard to do that because we would have them turning the machine on and operating it in violation of our Code and all the members would be present at the same time, neither would the audience. So, the applicant has agreed that we will take an adjournment and go down there and start the process and everyone will have an opportunity to hear and see how the machine will operate, what noise, what issues will come up as a result of that. However, it is something akin to a jury view. We will not take any testimony. We will not have any questions or any discussion down there what-so-ever. Everything is recorded here for our meeting. Because of that, what we are going to do is, and with time constraints and with night fall coming, I feel the need to go down there soon. What we will do is have the applicant give a short presentation and we will adjourn this meeting and we will all go down there and the only thing that will happen when we are down there is have the machine being operated. The secretary will take a video of it so that we will have it for our purposes, and then we will come back and have the applicant come forward and present additional information and anyone who wishes to be heard can be heard at that time with sworn testimony. So, with that being said, Mr. Chairman, if the applicant could please come forward, be sworn, and present whatever initial information needed, and then we will adjourn and head down.

Nick DiGioia approached the microphone.

Chairman Price: Name and address please.

Mr. DiGioia: My name is Nick DiGioia. I live at 13382 Mohawk Trail, Middleburg Hts.,

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. DiGioia: I do. I wasn't ready to make a presentation because I didn't know we were going to make a presentation. Basically what we are doing is recycling concrete at our yard on Royalton Road. It is a simple procedure. It takes a very short amount of time to recycle this concrete. Most of this concrete came from North Royalton streets. We allowed a North Royalton contractor to dump it there in our yard, thinking that we would recycle it and use it back on your jobs and other jobs in surrounding neighborhoods. Right now we have a city job in Parma Heights. We are doing Independence Blvd. This crushed concrete will be used there for that job. We have bid it that way, not knowing that we wouldn't be allowed to use it. We bid the job that way so that it wouldn't be a major dollar problem if we weren't allowed to use the crushed concrete for backfill of the sewers. You allow it in your City, crushed concrete, to be used in your sewers. Most of your neighboring cities allow it. It is a recycling operation. What

we are doing now is green. We have been using recycled concrete for about 25-years. There is a crusher in the neighborhood, right down the street. We didn't realize that it was going to be a problem. That is all I really have to say.

Chairman Price: Okay, thank you. We will adjourn and go down to the property in question which is?

Mr. DiGioia: 11293 Royalton. I think what we better do is go around back, because the parking lot is very small in front. So, if you will follow me around the back of the building I will pull you right back in and there will be plenty of parking for everybody. The crusher is already running. So, when you get out of your vehicles you will see it running right now. It's not crushing but it's idling.

People asking questions from the audience that was not picked up on the recorder.

Donna Vozar: When we come back you will

Mr. DiGioia: The machine that is there we EPA permit, so that is licensed to crush concrete on that site by the EPA.

Chairman Price: We will answer all questions when we come back after seeing the operation of it.

Donna Vozar: This is merely a visual.

Chairman Price: We are adjourned.

The public and Board exited the Chambers.

Chairman Price: We are back to order for the Board of zoning Appeals for August 26, 2009. Would you like to expound on your explanation at all or add anything to it?

Mr. DiGioia: I think I would like to hear some comments and then I will expound, because I don't know what everyone is looking for. So, if they talk then I will.

Chairman Price: Anyone have anything to say?

Noise from the audience.

Donna Vozar: Mr. Chairman, just so everyone is clear. It is not a question and answer opportunity. What we do is take testimony here and the Board makes a decision. So, if you have any testimony that you want to give, you will come up here and be sworn in and then have the opportunity to raise any questions or concerns. The Board then can call the applicant back up and asks those same questions. So, that is the process that we will need to go thru. Thank you.

Chairman Price: When you are up here at the microphone you are addressing the Board.

Mr. Bob Hanna approached the bench.

Mr. Hanna: Before I get sworn in I would just like to ask a question about the procedure here. From my reading of the statute it is his burden to prove by clear and convincing evidence, all of the elements here, so that we can actually respond to his points, not the other way around.

Donna Vozar: That is the correct standard. The burden is on the applicant. We take testimony during this time. The applicant has proceeded and he does not have to proceed with any more information. None of the residents have to come forward either. It is your choice rather you would like to come forward with testimony. There will be a discussion that the board will have later on.

Mr. Hanna: I would like to reserve some time to talk after I hear from some other residents. But I can just tell you that I do not believe given the burden.

Chairman Price: Sit down then and wait for somebody else to speak. You don't speak unless you are sworn in.

Mr. Hanna: Even to ask a procedural question?

Donna Vozar: You have asked it and we answered it sir. If you have other questions I will be happy to tell you legally, or actually, I advise the Board legally on what they need to do. The Board takes testimony and then after they have hear it there is a burden and they have already been advised on what that burden is as I previously indicated when the Board was first convened.

Chairman Price: Would you like to come up to the microphone.

Mr. Richard Balata approached the microphone.

Mr. Balata: My name is Richard Balata. I live at 11136 Royalton Road. Which is across the street from this operation.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Balata: I do. Give you a little history here. I have lived there since 1981, before they ever started operations over there. Actually, in the front of that place was a realtor office. A house and they tore it down before they started this business. Now, I have to say this for them, they keep a nice looking property out front. They keep it cut and it looks all very nice. But, I do realize that they are running a business there, and there are various noises there and stuff that goes on early in the morning, late at night, mud on the road, and I never said anything about nothing. Never made any complaints to anyone about that. The other day, you have the general noises going on and I am in the backyard and I heard this noise going on and I thought they were just working on something. It annoyed me and it kept going on and on. I walked out there to look and they, at that time, were running the machine and grinding that concrete. It was more noise than usual. I ain't saying there was a whole big cloud of dust but there was a certain amount out of there. The other thing you have to consider, you have a place right down the street that does all that concrete grinding, what's the name of it there? Tri-County! I forget things. Anyways, when they put that thing in, I know the people living in the back street over there were really up in arms over that one going in. Now you have two places within a quarter mile grinding concrete making more noise, making more dust, without all the trucks in there. I realize it's a business, and I did put up with the other stuff, but I think this is going a little far. That is all I have to say. Thank you.

Chairman Price: Thank you. Anybody else?

Tom Jordan approached the microphone.

Mr. Jordan: Good after noon. My name is Tom Jordan, and I am the Community Development Director for the City of North Royalton. Do I need to be sworn in?

Chairman Price: No.

Mr. Jordan: As the Community Development Director, my job is to promote business investment and also to manage some of the growth within the city of North Royalton. One, DiGioia is one of our largest employers. They have made a significant investment within the City. Also, B and B Wrecking is one of our long standing families that have also made a significant investment in the City of North Royalton. That said, the issue this evening is about cement crushing. Typically, in my experience in development in northeast Ohio, cement crushing is usually handled in heavy industrial areas. The City of North Royalton's light industrial zoned area on Royalton Road continues to develop out and also the neighboring

residential areas adjacent to it continues to develop out. We have an activity that is going to occur in a light industrial area, a use, that is more suitable for a heavy industrial area than it is for a light industrial area which main use is office or light industry. Typically, when a business moves here, we do get calls when there is a noise issue, possibly in manufacturing, we do bring out the Code and investigate whether or not it will be fully enclosed, or whether all the activities will be in an area that has some sound containment. Typically, this type of activity, sometimes, cities do provide temporary portable rock crushing activities on a large public works project or large development project. It is my general understanding, I really only heard about this subsequent to a stop work order, and that we were hearing testimony this evening, which part I am hearing for the first time. But, typically, if it was temporary, it was associated with a development project the City, thru its powers, may be able to extend it, but it is my general understanding from the limited amount of information I heard this evening that it is an indefinite and permanent activity they are asking to be established for the current use or an accessory use, and that is just from the development from the development standard, that's not an activity that we would like to see there permanently and indefinitely. That's really all from a development standpoint that I can give you this evening. Again, if it was temporary and associated with a specific development project, possibly the City might be able to extend some special permission. But, an indefinite established use, given the current zoning, and with the City's current growth patterns and neighboring uses are, we have a problem with it. Thank you.

Chairman Price: Thank you.

Mr. Matthew Kairouz approached the microphone.

Mr. Kairouz: My name is Matthew Kairouz and I live on 14761 Lancelot Lane.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Kairouz: I do. First of all I would like to say that the demonstration today is an insult to our intelligence. I walked back in there and I am in the construction business too, and I know how these machines sound and how they operate when the big chunk of concrete goes in. Even at that time my wife had called from the house when the operation was going she thought it was a helicopter in the backyard. I'm concerned about the dust. In addition to the noise and the sound decuple, which is already unacceptable at my house, from the sound of the beep, beep, and the bang, bang, that we hear at odd hours. I understand that it could be from the City or DiGioia, I don't know where it is coming from but I know it is coming from that side. The dust from this operation, when the leaves are gone, it is going to settle mostly in our homes. I have two kids, a year and a half, and a four and a half year old. We are very careful to give them a good environment, and this is to me pretty alarming.

Chairman Price: Thank you. Anybody else?

Charlene Shugar approached the microphone.

Mrs. Shugar: Charlene Shugar, 14751 Lancelot Lane, East. I am directly behind DiGioia.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mrs. Shugar: I do. I gave the secretary a letter and I would like to read too. I'm really not that great at talking out in public. So, I will just read it. Letter is attached to the back of these minutes.

Chairman Price: Thank you. Next.

Mrs. Shirley Boyer approached the microphone.

Chairman Price: Name and address please.

Mrs. Boyer: Shirley Boyer, my address is 11398 Royalton Road.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mrs. Boyer: I do. I'm directly across the road from DiGioia Company. My property is the portion of 50-acres deeded by John Granger to Charles Rumrey in 1852. It originally was 50 acres from Abbey east to the Charles Johnson property, now known as the Tractor Place and north above the Ohio Turnpike. My home has been here since 1853. That is 156-years. It probably the only one of the North Royalton Century Homes still remaining with its original construction in its original location. I have owned it since 1966. That is some 43 years. The home together with its original owners are prominently described in the book The History of North Royalton 1811-1999 which was published by the North Royalton Historical Society in 1992. When I purchased my property this area was country. The Royal Redeemer Lutheran Church and the IM Track Farm, which is where the Building Department now stands, were the only structures, other than a few scattered homes between West 130th and the Royalton hill. Over the years I have attended more city meetings than I wish to count. I then watched, faithfully, the happenings of City Council while they were televised. In all these meetings I heard over and over that companies and construction being moved into North Royalton would never be permitted to conflict with the remaining resident's ability to enjoy their homes in peace and quiet. Certain hours have been set for the pick up of trash. It took a while but no longer does the rubbish truck pull in at 5:00 am to pick up the windows replaced by Air Tite Company. Company's like Joe Golubic, Royalton Landscaping, and the Building Department, open around 7:00 or 8:00 am and they are closed by 5:00 or 6:00 pm. However, DiGioia Company appears to thumb their noise at such practices. Trucks begin arriving at 5:00 am in the morning and are still pulling in as late as 2:00 am. During the night one can hear the bruutt of their tiles are wheels being changed, and the beep, beep, beep, of the backing of their trucks. That is perhaps excusable after a snowstorm but certainly not on a summer day. My homes is 80-feet from Royalton Road. Every one of their trucks that pulls in or out generates unbelievable dirt and dust. Some days there are hundreds of trucks. Some bringing in dirt and construction materials in, and some brining it out. With the prevailing wind coming from the south and west that dirt and dust blows directly across the street, I can not open a window or door without ingesting volumes of dirt and dust, certainly not a helpful practice. In addition to having windows, one can not even see through. At various times I have called DiGioia, and after being transferred from this person to that person to another person, sometimes I end up with someone entitled the yard boss. I have asked "can you put your traps on your truck loads to cut down on the pollution of the dust and dirt", they say "I'm told that the trucks do not all have tarps". "Can't you get tarps on all the trucks?", "Well, no it would not be practical". It is not practical for me to be confined inside my house, where I can barely see outside, to avoid their pollution either. So much for keeping resident's peace and quiet. On special occasion, and I am very far apart occasions, perhaps at most once every month or two they will bring out a road sweeper and sweep their drive and about twenty feet of Royalton road. This practice, however, is done about 6:00 in the evening after a full day of pollution, and hardly of any value as winds generally died down at dusk. Now adding to all this pollution DiGioia wants to and has been crushing concrete outside in direct violation of the North Royalton Codified Code. Essentially thumbing their noise again at regulations established by the City. This is just what we need, more pollution and more noise. I wish all of you had been there Monday morning started up that gigantic machine. The sound just lifted you right up off your table chair. I urge the BZA to hold firm to their regulations and to deny this appeal. It is long past time for DiGioia to seize and desist their offending practices. Rules are made for everyone, not just for those who wish to pick and choose which rules they wish to abide by. Does anyone have any questions?

Audience clapped.

Chairman Price: Anyone else? Come on up.

Barbara Price approached the microphone.

Chairman Price: Name and address.

Mrs. Price: Barbara Price. 14742 Kings Arthurs Court, North Royalton.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mrs. Price: Yes, I do. I just recently retired after working for 45 years. I have a front porch that faces DiGioia property. In the 17 years that my husband and I have lived there. I use my porch Saturday and Sunday mornings, when I was working to drink my tea and to sit out there and to read the paper. It was quiet. Now that I am retired, I sit out there every day. Now it is just horrible. It is loud. It is dirty. You hear the beep, beep, beep, beep, of the trucks backing up. You hear clunk, clunk, I guess the trucks dumping material. Trucks putting in material. You hear the telephone ringing. It rings outside their PA system is outside. That all travels into our development. I'm not really close to where his portable concrete machinery is, it is more over where Char is, which is at the end of the cul-de-sac. The noise is unbelievable. After 45 years of working, I just want to enjoy peace and quiet. I think as a neighborhood, we have that right to have peace and quiet. Light industrial, okay, but what he is doing is not light industrial. Thank you.

Chairman Price: Thank you. Next?

Mrs. Price: Wait. I have one more question. I know some people presented letters to you, are you going to read those this evening?

Board: Yes.

Mrs. Price: Okay.

Mr. Bill Rampbert approached the microphone.

Chairman Price: State your name and address.

Mr. Rampbert: Bill Rampbert. 14879 Lancelot Lane, West.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Rampbert: I do. We live a couple houses from Akins. We are all the way at the far end of Lancelot Lane. We hear the noise. We made the mistake of buying black cars. We couldn't keep up with keeping them clean anymore with all the white dust. So, the crap is in the air and blowing up over. Just like tonight while we were over there the wind is out of the north and it is carrying it. It would have a carried a lot more dust if there hadn't been such a heavy dirt mix in the concrete that they were grinding up especially for us tonight. We didn't see any of the really large chunks that were sitting back. They are probably working on those right now while we are all here. We are the furthest away and we hear the noise. We get all the dirt and the dust. The thing that you need to do or have someone do is take a sound meter there and make them run the big pieces there. Get readings. The things needs an enclosure, a sound enclosure with barriers and it would keep the sound and dirt in. If they want to keep it there it needs to have an enclosure. He can use some of that crushed concrete to make a foundation for it. That is all I have. Thank you.

Chairman Price: Thank you. Anyone else?

Mr. John Leonie approached the microphone.

Chairman Price: State your name and address.

Mr. Leonie: John Leonie, 14883 Merlin Oval.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Leonie: I do. I just kind of wanted to reiterate some of the stuff that was said today. We moved in about 18-years ago and we use to sit out at night and hear a sound. Then we started hearing turnpike noise, and then Tri-county somehow got in their and started crushing concrete. It was not suppose to be done at night but all hours of the night and morning we hear trucks and concrete. Now we have TVs and motorcycles. All we got is noise. Now you are gonna the

possibility of letting another person get a variance on zoning to create more noise. It has been said before. Property values are going to drop. If this is what North Royalton wants then they can zone the whole of 82 as General Industrial. But, if you want to stop it now the time I to do it because it is starting to get out of control. If you let this guy go then another guy is going to come in and another, and then get noisier and noisier. No one is going to want to live here. The other thing that I would like to say my Councilman isn't here today, which is maybe just a coincidence.

Chairman Price: He had a scheduled out of time commitment.

Mr. Leonie: Well, it seems obvious that the Councilman for the area that this is effecting is not here for this meeting.

Donna Vozar: Mr. Chairman, if I could address that. Because this was a special meeting and wasn't scheduled because we normally don't meet in August, and he was previously scheduled for out of town. He has submitted an affidavit, which was his testimony that will be presented. We have other letters also of people that couldn't be here and all will be read tonight after everyone is done talking here. We did send a letter and we will read that later tonight.

Mr. Leonie: Will he vote?

Chairman Price: He never does.

Donna Vozar: He never has a vote. He can come and do the same thing that you are doing and voice his opinion, which he has. Only the members of this Board have a vote. Again, just so everyone understands, every resident is free, our Code provides for them, to come and seek a variance. This Board hears evidence and will makes determination based on the Code and the evidence and the criteria they are bound. That is was you have a right to come here and be heard.

Mr. Leonie: Even though the demonstration tonight was a bit lacking for reality, even at this low level it was heard by my wife, who was at home, and my neighbor that was at home, still were able to hear what was going on. Still there was quite a few amount of dust also. They were just trying to make it with very little noise, just image when they are full up what it would be like. Thank you.

Chairman Price: Thank you. Come on down. Name and address please.

Mr. Bill Bartinelli approached the microphone.

Mr. Bartinelli: Bill Bartinelli and I live at 14771 Lancelot Lane, East.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Bartinelli: I do. I guess this is the forum to say anything of any issue we might have. I have heard the 3:00 am dump trucks dumping stuff and this property borders my property in the back of my property. I just think that that is unnecessary. I never called. I never complained. I own a business and I understand that he has a job to do but the 3:00 in the mornings, I thought that there was a code that stated dusk until dawn or I don't know exactly what the code is. I have heard the beep, beep, and slamming of all that stuff back there at 3:00 in the morning. The yard light with the trees right now doesn't bother me, but in the winter when the leaves are down from the trees, my backyard glows. In order to get sleep I have to close my blinds at night to get it dark in my room. There is an orange glow from the yard lights. I think that if this goes in, I have a tendency to believe that it is going to run at night when it shouldn't be running. During the day, I know he has a job to do, and I know that it will make noise. I don't know what the decuple level the City allows. I think that should be addressed. Other than that, somehow or another keep the dust down. The wind does come from the northeast from where we are because the compost facility, when they are turning that over, wow, it is unbelievable. We get that in the winter time coming through. It does blow from the northeast and that is my point. If there is

someway that they can maintain the noise. I never said anything in the past because I thought maybe it was a City project going on, brining dirt in, and they do have to work on the roads at night. The freeways are sometimes shut down at night to work on. I just always thought that it was a temporary thing, but it does happen so. I guess that is all I have to say about it.

Chairman Price: Thank you. Anybody else?

Dorothy Gillen approached the microphone.

Chairman Price: Name and address.

Mrs. Gillen: Dorothy Gillen and I live at 14741 King Arthurs Court.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mrs. Gillen: I do. I wrote a letter and I just wanted to read my letter so that you don't have to read it. (Letter attached to the back of these minutes)

Chairman Price: Thank you. Is there anyone else who wishes to speak?

Mr. Rob Hanna approached the microphone.

Chairman Price: State your name and address.

Mr. Hanna: Rob Hanna, 14806 Lancelot Lane, East.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Hanna: I do. As you could probably guess I am an attorney, and as an attorney I deal with burdens of proof and clear and convincing evidence and all of those kinds of things that matter in terms of trying to convince somebody that one side or another should prevail. I am also a citizen and a resident to this area, and as a citizen and a resident I really want you to follow what is in our Code. I want the burden to be on Mr. DiGioia to show why this concrete crusher should be in here. When I read the statute it says that he has to prove by clear and convincing evidence. That is a pretty substantial burden that is. He has to prove that not only was there not another way to perform or get some economic gain out of this area, but it is not going to work a hardship to the neighbors. There is a public hardship. One of the elements here is that there should not be any material detriment to the public. You have heard pretty compelling evidence today that there is a material detriment to the public. I think the most compelling that I heard and most important thing I heard today was from Mr. Jordan. Part of the application here requires that there not be accept ional circumstances or that this property can only unique to do one thing. Well, you heard Mr. Jordan say that this property and this employer is one of the biggest in town, which means to me that has other ways to make money. So, it doesn't need this rock crusher. Finally, the variance can not be contrary to the general purpose of our City and to the Master Plan. Again, what Mr. Jordan said is pretty important. It is contrary to the Master Plan. We do not want to be a City of concrete crushers. That is all I have to say. Thank you.

Chairman Price: Thank you. Anybody else?

Mr. Warren Douglas Price approached the microphone.

Chairman Price: State your name and address.

Mr. Price: Warren Douglas Price, I live at 14742 King Arthur Court.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Price: I do.

Chairman Price: Before you start do you spell your name P-r-i-c-e or P-r-y-c-e?

Mr. Price: P-r-i-c-e, Scotts Irish. Probably not related.

Chairman Price: Probably not, I know my relatives.

Mr. Price: I do have a past acquaintance with another Price that has spoken this evening. However, my point that I would like to make is that I respect and honor Mr. DiGioia and his family, the economic benefits and the employment that they bring to the City. However, I think that tonight's demonstration was a bit of a stretch. I have been around rock and concrete crushers and that is the quietest one I ever heard. Whether we might have had pillows collected up off curbside today to put in there with some dirt and some aggregate, okay but tell us please. The other thing that I would like to reiterate is that we have the problem of several kinds of pollution and or intrusion. We have light intruding when we don't want it; it is a little bit unilateral. I choose not to live in an area with spotlights at all hours of the night. I leave to go to work rather early in the morning and I hear the operation up and running. I'm not there all day to hear the total effect. Back to my point, intrusion of light, and possibility of pollution to the water tank. Pollution from dust and pollution from noise. It directly affects the people who live in Camelot Estates and on King Arthur Court particularly, and I can attest that everything that everyone here has said this evening is very true and I have sworn to tell the truth. Thank you very much.

Chairman Price: Thank you. Anybody else?

Mr. Brian Bauman approached the microphone.

Mr. Bauman: My name is Brian Bauman and my address is 11300 Boston Road, North Royalton.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, and nothing but the truth, so help you God?

Mr. Bauman: I do. How I am related to this whole thing is my company is B & B Wrecking. We own the crusher. We have been doing crushing all over the state of Ohio and different municipalities, residential, industrial, commercial places, since 1997, so that is twelve years. I have been a resident of North Royalton since 1974. Basically, I lived here my whole life. I am with my peers here. As far as the demonstration, I know that everybody has doubted that that is the way it runs, well, I am here to tell you that there are all different kinds of rock crushers. There are some that are a lot bigger, some smaller, but all are different. Mine is a portable crusher. It is not designed to be anywhere longer than 30-days, because if you have 30-days of crushing you would need a much larger one. And for people to come up here and say that I was running it at half idle or a quarter idle, or wasn't running it at an all full go, the concrete crusher works that it has to achieve a certain RPMs on the crusher, inside of that box. It is basically a spinning disc massive steel that takes the concrete, crushes it, and puts it over the screen, and that screens it out and makes it a 304, and then recycles it and makes it what the product is. So, the stuff that came off the belt that everybody saw, if you don't run the thing at full-go and you run it at 1/2 or 3/4 go the crusher will get jammed up. So, it wouldn't have run. It would have just stopped. The theory out there that we didn't run it at full go is simply not true. My crusher, the one that is there, is an Eagle Crusher, and it is designed to be in urban areas. That is what I do. I am a demolition contractor all over the city of Cleveland, the County, and I take it all over the place. That is what it is designed for. It is not designed like the big crushers you see at the bottom of quarries. It just isn't what I have. That thing can move in and out within one day. I heard other complaints as well about how the dust has been terrible for years and years and all hours of the night, and all I can tell you is that we ran the crusher for three days, so if that dust was there it didn't come from the crusher. Tonight we are here to talk about the crusher not really about the other stuff. I know you have complaints about other stuff, but the crusher only ran for three days. So, I can't be responsible for dust if it was there. As far as an economic impact, I myself, B & B Wrecking, like Mr. DiGioia is a contractor. We all know how the theme of the political realm is, everybody wants to be green and everyone wants to recycle. That is all good and well that we do our curbside recycling, but as contractors we are actually put through much stiffer tests. On jobs right now if we can not prove on lead projects, I'm sure many of you

know what a lead project is, it's a sustainability type project and every municipality and government tries to implement these on all the jobs. The public jobs, the private jobs, the ones that we bid on that allow us to make a living. On these projects they require 80-90-100% recycled products to be used during the construction and to be used during the job itself. All the dumpsters used on the site they all have to be recycled. So, without recycling the materials and using recycled materials we can't meet their criteria as contractors. So, to say that it is not essential and that we are just doing something to feel good about ourselves that is not the case. We recycle concrete as contractors because we are required by public jobs, by private jobs, it is just the way it is. Recycling concrete is one of the best and easiest ways to achieve that goal, because it is a very heavy material and it is used on all aspects of construction. It is used as building foundations. It is used as backfill for pipe. It's used to make roads. It is used to make bedding underneath asphalt, driveways, and parking lots and roadways. It's a very good tool and an asset to a job to prove that you are getting your 80% recycling or 90% recycling. Without that they can either reject your billing or not give you the next job or you just can't be competitive, you can't bid on it. So, that in itself is the main reason why it is essential to contractors like me and like Mr. DiGioia. As far as the noise at night and so on and so forth, my crushing operation runs from 8:00 to 4:30. We just run one shift and there is not a lot of work there to do. If I were to start tomorrow and do the entire pile that is there I would have it less than 30 days. I don't know how long it took Nick to get it there but I know it didn't get there over night. For this to be considered an on going operation, that's just not the case. It is meant to be done by bringing in the concrete and crush it so that it can be used on the job, so that you can get the work and keep the businesses in North Royalton working and it gives Nick a competitive edge. And we all need a competitive edge in this business as contractors, I can tell you that. The other thing is that my crusher, besides the fact that I paid a lot of money for it, and I have to make everyone happy where I am working, I also have to buy a license permit from the EPA. When you buy that license permit we have to also notify them that at all times where it is at. We also have to put something in the newspaper, which you all saw, as to when it is going to be there ahead of time, and what that does is it lets the residents know its coming. If they hear noise, I don't think it's that loud because I am probably biased, they know what the noise is. Secondly, when I buy that permit I'm subject to and inspected on a regular basis. They bring out their fancy meters with their noise decuples and also measure the dust visible and to up little vacuums around the area and if I exceed those dust emissions I have to stop immediately. Now, I know that there are different opinions of what you guys saw out there, some people acted like there was a dust storm, and others said it wasn't that bad, but of course Brian was running it at half pace. That is not the case. When the crusher is designed it is built with a dust suppression system. There is water going to it at all times. Inside of the crusher there is basically a series of spray nozzles similar to a car wash that are going on at all times. It is needed for more than one reason. It has to control the dust because if I make to much dust the EPA will shut me down faster than the City of North Royalton or anybody else. I'm simply not allowed to create the dust. The other thing that it does is makes a better material, the 304. If the material comes out and you crush you will make the dust, but the material will be very dry. If the dry material does not compact well, and if you don't compact well you can't build on it, if you can't build on it you can't pass your inspections, if you can't pass your inspections you can't get the job done. These are the things that I heard as far as concerns here. Of course I am biased because this is what I do for a living, but at the same time I don't know what else to say other than this is what we do. Any other questions for me or the Zoning Board go ahead.

Chairman Price: This is the public hearing. When we adjourn this than we may have questions. If anyone has anything to say say it now whatever you are testifying to.

Donna Vozar: You need to come to the microphone sir.

Mr. Matthew Kairouz approached the microphone

Chairman Price: You are speaking to us remember. Name again please.

Mr. Kairouz: Matthew Kairouz, 14761 Lancelot Lane. Again, I have been around the construction business and from what I hear you saying that this is a temporary thing or a permanent thing? Plus, how if you can not put those big concrete chunks in this machine, how will you break those concrete pieces? When we went back and close to the machine and there was dirt there, no concrete slabs. How do you plan to break those large concrete slabs? I've

been around this machine before and if you run it at operational speed and what you put in is my concern.

Chairman Price: Thank you. Anybody else?

Mr. Nick DiGioia approached the microphone.

Mr. DiGioia: Okay, so I'm the bad guy here.

Chairman Price: You must address the Board please.

Mr. DiGioia: I'm sorry. I'm the bad guy.

Chairman Price: Your name and address please.

Mr. DiGioia: I'm Nick DiGioia. I have been at this location for approximately 25-years. I've never asked anything out of North Royalton. I am your largest employer at this time, except for the school board. Maybe I haven't done everything right at that location and I didn't know that I was breaking any law. I know most of these people personally in this room. I have been to North Royalton fund raisers with them. I went through a death with one of them. I have never received any complaints. I heard everything from light in their windows. No one has ever come to me and said your lights are in my windows. I've heard that I am blowing dust a mile down the Street. I've never heard that. You have the engineer sitting right there that nobody has ever come to me and said I ever did anything wrong. Now I'm asking for a variance because it is an important part of my business and everybody comes here and adds negative stuff which is going to help this not get approved. They have all done it. Some of it is lies. We ran the crusher for three days and nobody knew it was running. It was three weeks ago and people testified here that it was running on Monday morning. They shut me down three weeks ago with a stop work order and I shut down. The crusher has not run. Do I dump at 3:00 in the morning? There may have been an occasion where I may have dumped at that time, but my business is not 3:00 in the morning. They could be mistaking with the City Service garage next store. They run dump trucks in and out of there for salt all night long. They run salt in the conveyor. They make dust and do a lot of what I do also. We all have a problem with this valley because of the smell down through there. That doesn't come from me that comes from North Royalton. There is a terrible stink that comes from the valley. We all know what that is for and we don't need to go into that. We leave that one alone. It is part of doing business and that's what North Royalton has to do, run a business. DiGioia Suburban has to run a business. We are important of this City. We want to continue to be an important part of this City. I have been there longer than Camelot Estates. I installed Camelot Estates and I dug all your basements. I put the sewers in. I put the streets in and I dug the basements. When I would dig sub-lot twelve, sub-lot thirteen would complain about the mud on the streets. Well, there is nothing we could do we were under construction. DiGioia Suburban is a business that operates daily. We are in an industrial area. We have trucks that back up and the law says we have to back up alarms. I'm sorry I can not do without them. The city's trucks have back up alarms. Their loaders have back up alarms. We all do. But I'm put in the situation that they could hear it which I have been there 25-years, approximately, not one person, I go to Saint Albert the Great fund raisers these people were all there in the room and not one person has ever said anything or could you turn your lights off? Can you turn your telephone off? I'm hearing it tonight, it's great. One person said well I called the Service Department and they never talked to me about it. No one has ever talked to me. I live in Middleburg. I'm here from 6:00 to 6:00 during the day and there is no operation that goes on past 6:00 pm. We have night mechanics that work until midnight, and I am allowed to do that. There is no dumping. There is nothing that goes on there after 6:00 pm. I know that because I leave there. On occasion I dumped a load of dirt at night. Did I have an emergency, a sewer repair for the City of North Royalton, or Broadview Hts., and I had to bring lights in, I think I did do that. Char reminded me of that, and I remembered it while I was sitting here. I brought lights in because of the emergency sewer repair. I'm sorry, that happens. There is nothing I can do about that. I didn't mean to do it but people were out of sewers. I fixed all your sewers. When you guys sewer backs up in your basement you call us and we go out and fix it. We taught the City how to repair their own sewers. Now you guys do it very well yourself. I have to make a living in this City, okay. My industrial land was there before your houses were there. The house across the street when it sells now will become industrial. It is in an industrial area. Once your house sells it will go industrial, no more residential. This is an industrial area. I

have done a good job. When your kids came out of Camelot Estates and stole my equipment and did their own paintball court, the cops came to me and said you have to prosecute these kids. I said I'm not prosecuting the people of North Royalton, I go to fund raisers with these people. I do a lot with these people. Just have the kids return the stuff that they stole out of the back of my property. I understand where all this animosity comes from. I understand that you don't want this here, it is a temporary thing, okay? Like he said about the 30-days not any longer. I don't have enough concrete for more than 30-days. It is dedicated to a job. It has taken me 20-years to build up this amount of concrete. I am not into the concrete recycling business. To build up enough concrete to have somebody come in on a temporary basis and crush it. The City Engineer came over when the plant was running and said I didn't even know you were running the plant. I am the one that called the City and said am I doing anything wrong by running this? They told me they would get back to me. Nobody came and shut me down. I called the City. I didn't know if I was allowed to run this operation. Donna called me on a Monday and said I will check into it. When she checked into it she said no Nick stop. I said okay. My man told me he had a state permit and he thought that we were allowed to run with that permit. We found out that you had something beyond that. So, I am the bad guy and that's okay. I live in Middleburg that is a City over, you all live in North Royalton. I understand. If you people had come to me with a problem, even once, and said light is shining in my windows in the winter time, I would have turned those lights off. Or we are having dust right now. Lets find out where the dust is coming from because it's not coming from me. I crushed concrete for three days and I have been there for 25-years. People move in and out of your developments and they never came to me and said your radio is too loud, the telephone is too loud. I do everything I am supposed to do that I know of to be a business in North Royalton. I have a little problem with it. Maybe North Royalton doesn't need a contractor like DiGioia Suburban and we don't need to pay all these taxes. We can go to another city whose taxes are cheaper. That is what we are doing in this country. We pushing our businesses and putting such high demands on our businesses that they are moving out. They move to China, they don't care. They will do whatever they want to do. Stop and think about what you are doing to your businesses. Just keep our cost increasing and pretty soon we are Ford Motors and we can't make cars as affordable as the Japanese. I'm sorry, I am a very political man and I hate what is going on with the economy right now. I hate what is going on with our congress and senate. I think that I have said enough. I think it will be up to you guys. I was not prepared to come here to handle this legally. They told me this was going to be simple. Next time I will prepare and come legally, trust me. Whatever is in my legal rights will happen. I tried to do this on a temporary basis, I don't know where it goes from here. I wasn't prepared to speak legally and I wasn't prepared to make a presentation in front of these people, but I came here as a law abiding citizen to try and solve. Thank you.

Chairman Price: Thank you. More? This is not a question and answer here, you are addressing the Board. Name?

Mr. Rob Hanna approached the microphone.

Mr. Hanna: Rob Hanna, 14806 Lancelot Lane, I was previously sworn and I still can talk.

Chairman Price: It is hard to tell on the tape recorder who is speaking.

Mr. Hanna: Far enough. Again, it is his burden and I hate to be relying on a theme here, but the theme is it is his burden to prove to you that by clear and convincing evidence that he meets every one of the elements, okay. What I have heard, all I have heard is that we haven't told him about our problems. We are telling him about our problems today. Our problems are that this , causes noise, it causes dust, and that is just when the crusher is working. You need to bring the rocks in to make that crusher work. That is another part of the problem. Okay. I think the way I'm hearing this to be coming out is to call us liars, and to call our kids thieves. And I don't think that is the way to overcome his burden.

Chairman Price: Alright. We are done with the testimony.

Donna Vojar: Mr. Chairman, actually we have the letters to read and the affidavits that are a part of our testimony.

Mr. Bauman: I know this isn't a question and answer session, but there was a lot of discussion about how do I get those big pieces of concrete through that crusher. Isn't it much louder, isn't it

much more dusty. The reason I use the bucket on the excavator is that it is a 36-inch bucket. I basically tried to make it, for lack of a better term, idiot proof for my operator so that if it didn't go in the bucket it wouldn't go in the crusher. If it goes in the crusher and it doesn't fit in the bucket it is going to jam it up and stop. That is the main reason why. The pieces that are there that are oversized they are processed with a hydraulic processor not a hydraulic hammer, which basically crunches it in half and that noise is not even a tenth of what the crusher itself is. That is how the oversized pieces that everybody saw, they want to know how I'm gonna manage to get it through the crusher without making more noise. That's it.

Chairman Price: Okay. We are going to read a couple of letters sent in.

Donna Vozar: Mr. Chairman, if I could just add something very briefly before the secretary reads the letters. Councilman Larry Antoskewicz's affidavit, the councilman came to me and indicated that he was going to be out of town and was concerned and wanted to have the opportunity to be heard. The Board knows that he regularly attends all the meetings and is here, and I wanted the audience to be aware of that fact. He did indicate that he had, and Julie will read to you this, that he visited the site and had the opportunity to talk to some of his residents about this issue. He indicated that he wondered if I thought it was necessary that he be here in person, I did let him know that this Board takes testimony, and that testimony can be by affidavit. Based on that he did not cancel his plans and he did present this affidavit. He did make it clear to me that his residents knew that he was here and was giving his testimony to this Board and I assured him that I would relay that on to all of you. If the secretary could please read that now.

Julie Broestl read all the letters attached to the back of these minutes that were submitted to the Board.

Chairman Price: Is that it? Do I have a motion to adjourn the Public Hearing.

Moved by Dan Kasaris, seconded by John Ranucci to adjourn the Public Hearing.

Chairman Price: I have a motion and a second, call the roll.

Tony Caraballo:	Yes.
Dan Kasaris:	Yes.
Chairman Price:	Yes.
John Ranucci:	Yes.

Ayes – all. Nays – none.
Motion carried. (4-0)

The North Royalton Board of Zoning Appeals met in the Council Chambers, 13834 Ridge Road, on Monday, August 26, 2009, to hold an Open Meeting. The meeting was call to order at 9:10 pm by Chairman Neil Price.

Present: Chairman Neil Price, John Ranucci, Councilman Dan Kasaris
Tony Caraballo, Prosecutor Donna Vozar, Joe Hartman,
City Engineer Mark Schmitzer, Secretary Julie Broestl.

(BZ09-10) Jessica Development / DiGioia Suburban Excavating, LLC, requests a variance to Chapter 1270 "Industrial Districts", Section 1278.04, paragraph (a)(2), for relief from the required accommodations for a portable concrete crusher that they wish to locate and run outdoors on their property which is located at **11293 Royalton Road, PPN 483-20-001, PPN: 483-20-001.**

Moved by John Ranucci, seconded by Dan Kasaris, to approve a variance to allow the outdoor operations of a portable concrete stone crusher which is contrary to Section 1278.04(a)(2) of the Zoning Code to create stone aggregate for the DiGioia Suburban Excavating.

Chairman Price: We have a motion and a second. Discussion?

Dan Kasaris: Mr. Chairman, may I inquire?

Chairman Price: Yes.

Dan Kasaris: Mr. Hartman, Mr. Hartman, have you received complaints during the past five years regarding noise, lighting or dust, pertaining to Mr. DiGioia's operation?

Joe Hartman: The only complaint that I received was on 8-24-09 regarding noise that was coming from the property and started before 7:00 am.

Dan Kasaris: How long have you been Zoning Inspector?

Joe Hartman: Twelve years.

Dan Kasaris: Donna, does this Board have the authority to limit the hours of operation of any use as a condition to granting any use?

Donna Vozar: The Board has the authority to impose whatever conditions sees fit under the circumstances. So, absolutely you can impose whatever condition you want.

Dan Kasaris: In theory the Board could say, again in theory that this use can only occur between noon and 4:00, Monday thru Thursday, and only for three weeks?

Donna Vozar: Yes, that is correct. However, I would caution that imposing even a temporary variance certainly opens the door in the future for a second temporary one. Thats unique to whatever conditions that you would impose would have to be unique to this situation. So, we would need to be certain that this would be limited to a one time variance, if that is what you are thinking.

Dan Kasaris: Thank you. Mr. DiGioia, when was the last time you had concrete crushing?

Chairman Price: Excuse me. Could you please come up to the microphone.

Mr. Nick DiGioia came to the microphone.

Dan Kasaris: Prior to three weeks ago when was the last time you had concrete crushing operations conducted on your property?

Mr. DiGioia: Never.

Dan Kasaris: How long have you been on your property?

Mr. DiGioia: I didn't look that up, its got to be 25-years.

Dan Kasaris: The concrete that has accumulated on your property that we all saw this evening has taken 25-years to accumulate there.

Mr. DiGioia: Yes. We had a big push though in the last six months because you took out Royal Valley and your contractor had nowhere to dump it and we allowed it there. We did Royal Valley full width. That is the bottom of 82 hill and dumped all the concrete in my yard.

Dan Kasaris: You allowed the concrete to accumulate for 25-years in the area that it is at right now?

Mr. DiGioia: Yes.

Dan Kasaris: Thank you. Mr. Bauman.

Mr. Bauman approached the microphone.

Mr. Bauman: Yes.

Dan Kasaris: Can you describe how your machine does what it does to the concrete?

Mr. Bauman: Essentially you have a feeder hopper , which is probably about as long as these chairs but double wide. The excavator feeds it in there like we saw tonight into a chamber which has steel about 3 or 4 inches thick, and there is a rotor that spins at 1800 rpms, and then has a series of steel of curtains that when the concrete is fed in there slowly it goes in and breaks the concrete up and between the rotor and the curtains it passes through everything that is 3-inches and minus, goes down to a belt, and once it runs off the belt there is a magnet at the end that pulls out all the steel and that is simply so that you make a good product. Because if you put down 3 or 4 with steel you could back over with your tires and you have a flat tire.

Dan Kasaris: Again, I am looking at the Code here, 127 8.04(a)(2). The process that you described, and I am not in your business, is this process similar to grinding?

Mr. Bauman: I'm not sure what you are talking about, but when you tell me as a construction demolishing contractor, grinding to me is like you do at Kurtz Brothers. You grind trees, wood, and the grinding of concrete really wouldn't work. The concrete is a little to strong for a grinder. This is more of a crusher, that is what it is. The grinding that was referred to in the Code was more for an auto body. It said welding, grinding, and another word which is all more of a shop type grinding, and that is to be done in doors.

Dan Kasaris: It reads welding, grazing, soldering, sawing, sandblasting, grinding, enameling, painting and heat treating.

Mr. Bauman: Yes. I'm a construction person and that is more like an auto body and truck repair.

Dan Kasaris: Your machine crushes, it does not grind. Thank you Mr. Chairman.

John Ranucci: Mr. Chairman.

Chairman Price: Go ahead John.

John Ranucci: I have a question and maybe I am a little confused here. Mr. Bauman you said that this operation is a temporary 30-day?

Mr. Bauman: My permit only allows me to be at any location for 30-days and then I must vacate the property for 30-days. If you want to get technical, I have several accounts throughout the County. I typically go somewhere that actively pursues bringing concrete in maybe once or twice a year.

John Ranucci: Mr. DiGioia or maybe you, the concrete that you have on your property is that a 30-day supply that you are crushing?

Mr. Bauman: Less than 30-days. One shift less than 30, its forty hours a week.

John Ranucci: Since it took 25-years to accumulate that much concrete you shouldn't be back for a long time.

Mr. Bauman: No.

John Ranucci: God willing business is good and we can have this discussion again. But, that is 25-years of concrete. So what we are really discussing here is that less than 30-day operation?

Mr. Bauman: Yes.

John Ranucci: Thank you.

Chairman Price: You might as well stay up there. I'm sorry. How much less than 30-days?

Mr. Bauman: I think that it would be somewhere between 20 to 30 days right in that area. I couldn't do it in three weeks, but by the fourth week we should be rapping it up. Material is ready to go. It has been sized down, its not big stuff.

Chairman Price: Is the crushing operation have any sort of a water spray activity that keeps dust down?

Mr. Bauman: Yes it does. It is a spray nozzle system that is inside the material of the crusher. It sprays it down and I have a hose around also. Concrete has dirt in it and dust really isn't the issue but if you have bone dry concrete where it is just concrete only and not much dirt we have a man spray it down before it goes in the crusher. We also have the ability to have spray nozzles once it comes out. The other dust you see is not from the crusher. It could be from trucks. But the actual crusher itself is the least dusty thing on that site.

Chairman Price: When the crushed product leaves the machine it is piled on the ground?

Mr. Bauman: It is piled on the ground but Nick put up those concrete barricades that are 2' x 2' x 6', basically just big building blocks. We are putting it inside that area to contain it and that serves two purposes. One, if rain water hits it will run off and get stuck against that wall. Two, since he is limited on space he can't load it with a loader and keep pushing the dirt because if he did it it would go all over the yard or down the hill. This is a barrier so that when you scooping it up with the wall the water forces in there and picks it up load it out and you are done. That contains any material that is crushed.

Chairman Price: Question for Mr. DiGioia, where is the valley, creek or gorge, whatever you want to call it, in relation to your property and the development in back?

Mr. DiGioia: I don' know what you are describing, you mean the creek?

Chairman Price: The creek or ravine that the creek flows in I guess.

Mr. DiGioia: It's probably 200-feet off their property and I think I own that gorge. I think you have a sewer easement back through there. The trees that you saw there were their buffer is the end of my property. So, I own to the top of those trees.

Chairman Price: The creek is on your property.

Mr. DiGioia: Yes.

Chairman Price: How far is the creek from the concrete?

Mr. DiGioia: a thousand feet I guess.

Chairman Price: That far.

Donna Vozar: Mr. Chairman. Can interject a few thoughts for the Board to consider. First of all, as Mr. Jordan clearly indicated, the City does want to encourage and promote businesses in the City. And as Mr. Jordan said, both of these business owners are appreciated by us and grateful that they are in the City of North Royalton. We do however have our Ordinances that we have to follow. In this Mr. DiGioia had a stop work order issued and they stopped. At that time they were notified that they did have the option of coming forward and attempt to get a variance and they would need to present evidence. They were given an opportunity to consult with whoever to present whatever evidence they wanted to present. I want the Board to look at the facts that have been presented. When you are looking at the application that was presented I guess that we have to ascertain what the variance is actually for. The question is is this actually a main use? Mr. DiGioia would be able to determine that as the applicant as to whether or not he is seeking to enlarge the main use of his facility and what he does there. If this is merely an accessory use than that is what the variance is. He is seeking to have a use variance on an accessory use. So, I guess we need to figure that out first. Because the way that it is presented before you right now it is a use variance regarding the manufacturing process. Perhaps it is not based on the testimony of the crusher operator. I guess we need to find that out and maybe there has to be more questions because you are going to need to know what provision of our Ordinance are you looking at, is it an accessory use or a main use, because there will be different criteria. Also, I would like the Board to look to 1278.01 under our Industrial Code, Section (f), and it talks about that the Ordinances dealing with Industrial Districts are there to protect the adjacent residential districts by restricting the types of manufacturing uses in the surrounding areas. Only those not creating objectionable influences beyond their district boundaries and by separating it and insulating them from the most intense manufacturing activities supervision of landscape of areas. As Councilman Kasaris had asked before, as you know our Code allows you to grant a variance on a Use variance, but I want to make sure that we are looking at the right Code, The Use variance does require that the evidence be demonstrated by clear and convincing evidence and apply criteria as you well know the many times you have been here before. The Section (g) does again state that you can actually reflect on this that you can actually impose whatever conditions, stipulations, safeguards, limitations, on the duration of the variance if you so choose. If you have any other questions as we proceed I am happy to help. I'm hoping that the Building Commissioner and the City Engineer will be able to give some guidance's to specifically what type of variance we are actually looking at this point.

Dan Kasaris: Mr. Chairman, May I ask Donna one question sort of like on the same type of thinking. Donna, under 1278.04(b), similar main use, if this Board believes that this is a similar main use, from my reading of that Section, it needs to go to Planning Commission and then to City Council.

Donna Vozar: Correct.

Dan Kasaris: This Board may believe that this is not the property Board to hear this issue if the Board somehow finds that this is a similar main use, is that correct?

Donna Vozar: The Board would make the determination that is a similar use. The applicant, if he believes he wants to go that route he obviously can. Obviously, the applicant is here attempting to get a variance under main use or accessory use. Obviously, it is their burden to tell us what it is. I guess we have to figure that out from the applicant what they are trying to do.

Dan Kasaris: I guess my point is that it could actually be three uses and in theory it could follow under A, B, or C.

Donna Vozar: Absolutely. Hopefully the applicant can explain on this.

Chairman Price: How about we ask the applicant.

Nick DiGioia approached the microphone.

Mr. DiGioia: I am so confused.

Dan Kasaris: There are too many lawyers up here.

Chairman Price: Main use or accessory use?

Mr. DiGioia: Donna, you filed this.

Donna Vozar: Absolutely not.

Mr. DiGioia: You did the wording.

Donna Vozar: Absolutely not.

Mr. DiGioia:: Who did the wording?

Donna Vozar: It is the applicants who does it. The only thing that my involvement was that I was there for the stop work order, because I was advised that the work was going forward and it was not a permitted use and I was there for the stop work order. The Building Commissioner did speak with your partner, I believe, but it is the property owner who would do it. I represent the Board. So, I wouldn't do the application.

Mr. DiGioia: So, we are asking whether I am going to do this full time or part time is basically what we are saying.

Donna Vozar: I think we need to know what it is that you do, if this is part of what you do as your general business. Describe to the Board what your general business is, what you do and would this be considered part of your regular business. If you look at the Code it talks about manufacturing processes. One of the things that came up during the discussion of this is whether or not this is a manufacturing process and when it was indicated that it was not grinding than I guess the question is the if it is not a grinding process than it is not a main use. So, it is crushing and no longer a manufactured process that is listed in here. So, I guess we need to find out what it is that you are specifically doing there and the Building Department is actually the one who will make the determination. If it falls within your main use or accessory use. We need your input on that and then the Building Department can opine.

Mr. DiGioia: It is not a main use.

Donna Vozar: It's not a main use. So, it is an accessory use. If it is clearly an accessory to the main use, we can go forward on that if the Building Department hears what is specifically being done and you feel it is an accessory to the main use. It reads accessory use is permitted in the Industrial District, storage of materials and products and processes, and I am assuming this is a process?

Mr. DiGioia: Yes.

Donna Vozar: Clearly an accessory to the main use. That is what we need to verify. It is an accessory to the main use and is it a part of what you do?

Mr. DiGoia: It is not part of what I do.

Donna Vozar: Well than it is not an accessory use.

Mr. DiGioia: No.

Donna Vozar: I think we keep going around with this.

Mr. DiGioia: It is not my main use. That is not what I mainly do. This is something that I am doing temporary. Which is than an accessory. The way you explained it to me.

Donna Vozar: Since it is the Building Commissioner, and the Building Department that actually makes the determination whether or not, because they make the decision and you appeal from that decision, which you are doing here. The Building Commissioner said it is not a permissive use, you came here to request a use variance.

Joe Hartman: If it is not something that he does on a daily basis and something that is going to be an accessory, and I am making an opinion on this, this is an accessory use.

Donna Vozar: In that case, you would need to amend your application. Right now it is under 1278.04 (a)(2), it would need to be under 1278.04 (a)(3)(1). Never the less a variance would still be required. All the same criteria still applies. We just need to know what you are going under. Unless the Board makes another determination.

Dan Kasaris: Mr. Chairman. Mr. DiGioia, for the record what is your main use?

Mr. DiGioia: I'm a sewer water excavating contractor.

Dan Kasaris: And as part of that use do you deal with concrete?

Mr. DiGioia: Correct. I buy crushed concrete and use it in my trenches.

Dan Kasaris: How did this concrete end up on your land?

Mr. DiGioia: You mean how's it there now?

Dan Kasaris: Yes, how did it end up there?

Mr. DiGioia: Doing street projects both my own, and the City.

Dan Kasaris: So, the concrete that is there is not part of what you do?

Mr. DiGioia: No, I'm not a concrete contractor.

Donna Vozar: Mr. Chairman. Just for the record could the City Engineer, if you wouldn't mind, correcting this, this is not city concrete that we moved there, that we in any way participated with the concrete on Mr. DiGioia's property.

Mark Schmitzer: That is correct. The concrete in reference was from a project that the City bid out. Once the contract was awarded to that contractor, all the material that site became the property of that contractor. What he decided to do with that concrete was totally up to him as long as it is within our guidelines.

John Ranucci: Mr. Chairman.

Mr. DiGioia: Maybe to make everybody happy, if I could just crush the concrete that is on my property and then be done with this? A one time deal of 30-days. They are right, it is an eyesore. I hauled it in there thinking I could crush it one day. If we just crushed it all up and we were done will that resolve the situation?

Chairman Price: John.

John Ranucci: Along those lines I have a question for Mrs. Vozar. This sounds to me a 30-day operation that the variance that's requested does it make a difference?

Donna Vozar: Does your standard changed? No. It is still a use variance.

John Ranucci: Okay.

Chairman Price: Donna, when you cited 1278.04(a) (3(1), is that correct?

Donna Vozar: The way that the applicant submitted it and was appealed from the Building Commissioner's determination is from a variance from 1278 (A)(2), originally. Based on the testimony it is not in any way a manufacturing process and my importantly it is not a main use evidently. So, if it is not that, than it has to be either a similar main use variance or an accessory use permitted. This Board doesn't have authority over the similar main use. If he is indicating that it is not a main use you wouldn't apply a similar main use. So, Obviously those two have been knocked out. The only thing we have left now is an accessory use permit is the only thing

that this Board would be looking at. So, it will be (c)(1)(2) or (3), and I'm assuming based on, based on the applicant indication, But it sounds like he is saying it is (c)(1) accessory uses permitted, which would be storage of materials and products and processes clearly accessory to the main use. Within a enclosed area so that adjoining properties or streets can not see the materials. Keep in mind though they would still need to comply with performance standards under 1278.09 which talks about noise and odors.

Dan Kasaris: Mr. Chairman, may I?

Chairman Price: Yes.

Dan Kasaris: So Donna, under (c)(1) if Mr. DiGioia erected a wall behind this pile or fence so that the material is not visible how would that e\ffect the accessory use?

Donna Vozar: Again, it is the Building Commissioners that makes the determination whether or not this an accessory use. That hasn't happened here because right now it's coming in as a main use. So, assuming that the Building Commissioner made the determination that this was a permitted accessory use and if they complied with the Code it wouldn't be before this Board. We are having a special meeting that we do every year, it may well be that this Board may want to table it to give the Building Commissioner the opportunity to review it under the accessory use standard, which will than allow him to make that determination. No offensive to Mr. Hartman it is the Building Commissioners call.

Dan Kasaris: Donna, thank you.

Chairman Price: How would you feel about that Mr. DiGioia, you tabling it until the Building Commissioner makes his determination. You have to agree to it being tabled?

Donna Vozar: Mr. Chairman, Mr. DiGioia doesn't need to agree to this being tabled.

Chairman Price: I know he doesn't.

Donna Vozar: I know. The Board can table this regardless of him agreeing to tabling or not.

Chairman Price: I was just interested in Mr. DiGioia's opinion.

Moved by John Ranucci, seconded by Dan Kasaris to table BZ09-10 until the next meeting to give the Building Commissioner the opportunity to review this accessory use permitting of this project.

Chairman Price: I have a motion to table. Discussion on the motion?

Dan Kasaris: Mr. chairman. I think in light of the fact that the variance was requested was not the correct variance. I think the Building Department and the Building Commissioner needs the opportunity to review the correct request.

Chairman Price: I would agree. The Building Commissioner needs to get this sorted out and then come back to us. call the roll.

Chairman Price: Yes.

Dan Kasaris: Yes.

Tony Caraballo: Yes.

John Ranucci: Yes.

Ayes – all. Nays – none.

Motion carried – variance tabled.

Donna Vozar: Mr. Chairman just so I can let the audience know, what the Board has done is tabled this, meaning it won't be heard until or next meeting to give the Building Commissioner the opportunity time to review it. If you have any feel free to call the Law Department. The next meeting date will be September 28th.

Chairman Price: Donna, that means that the stop work order is in effect and Mr. DiGioia is complying with it. Board have any miscellaneous?

Moved by Dan Kasaris, seconded by John Ranucci to adjourn the Board of Zoning Appeals of August 26, 2009.

Approved: _____

Date: _____

Attest: _____