

June 8, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, June 8, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Jeff Kutch, Michelle Mieras, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the May 11, 2021, meeting was submitted to the board. Mr. Berger made a motion to approve the minutes as presented, Mr. Miller seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-31 DE LA TORRE, Oscar - A request for a Special Use to allow a small home-based business; located at: (Yoon, Jae O) Spruce Tr. Plymouth (50-41-16-000-008-001-011), Polk Twsp., Zoned A-1. Mr. Oscar De La Torre and Italia Gordillo, 11133 ShadyLaneDr. Plymouth, were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is looking to purchase vacant ground in interest of moving to the property and relocating his business with him. The applicant is a concrete contractor with a self-identified medium sized business, four employees, four truck and four trailers. The plan is to build a 30x40' building to store the equipment within.

The applicant would like to purchase all adjacent 24 acres. The area on the southern most portion of the properties is where they would like to build their house and building. The plan is to build the house first. Then he plans to build the barn later in the rear of the property and plant arborvitae to screen the building. Once the barn is built, he plans to keep all the vehicles inside. Mr. Del La Torre said at his age he has no plans to increase the size of his business or start up a concrete plant. His plan to purchase the ground was to have something to give his family someday.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Steve Engle 5285 Spruce Tr. His property is directly south of the proposed. Does not believe this is a good idea because he has not seen a business plan, what is he doing with all the 24 acres, and believes it will be a detriment to his property values. He asked, "Why does this have to be right next to me when he will have to look at it nine months." Believes his business is going to expand and is opposed to the request.
2. Iaan (?) Dunfee 5019 Spruce Tr. Speaking on behalf of his father who

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- is the hospital. With the lender requiring this to be a commercial project and for it to be required to be approved by the board this leaves a great concern. The following are of concern to Mr. Dunfee: growth potential, no business plan, if there is a violation how will that be handled, impact of environmental concerns, loss of property value, added traffic and wear & tear of the roads. Objects to the request.
3. Sara Sarber 5242 Sage Rd. In person and read a letter that she is against them applying for a Special Use Permit on a property that they do not own. Three points she wanted the board to consider: Mr. De La Torre's standing to make this request, the impact his type of business will have on the roads in the area and, lack of a current residence at the property to permit the board to grant a "Home Based" special use permit. Opposes the request because he does not own it.
 4. Dooley Spitznagle 5119 Sage Rd. Has same concerns as others plus: Questioned the time frame to build the house, roads, if there will be a future concrete plant, are there going to be hazardous materials stored on the property, noise, smoke, odors, explosives stored on property, water pollutants, restroom facilities in the barn and where will there be parking for the business. Prefers a much more in depth business plan. Opposes the request.
 5. Clarence Shively 18115 5th Rd. Has a beautiful view of nature and doesn't want the area to be commercialized. Concerned with the setback so close to the neighbors and thinks there should be a tree line to hide the property. Is against the request.
 6. Wade Salyer 5378 Sage Rd. Would not have a problem with the request if the applicant owned the property. Opposes it while he doesn't own the property.

Mr. Miller made a motion to close the public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

Mr. De La Torre's business plan stated that he has a medium sized concrete business, four trucks, 4 trailers, 4 employees plus one office person, a 30'x40' building and that his hours are from 7am – 5pm.

The following is additional business information was discussed:

- Their job consists of tearing out existing concrete at people's homes and replace it.
- When concrete is removed from a worksite it is taken to Alligator Aggregate and they crush it at their site. There are other sites as well that take concrete and crush it.
- Near the new proposed barn there will be concrete blocks stacked to hold gravel, topsoil and fill dirt.
- No sign. Advertisement has been by word of mouth.
- There will be different kinds of trees planted around the building so the building is not visible.
- Purchasing land to be able to give to his kids someday.
- All the forms will be stored in the barn.
- Barn will have bathroom and small office for secretary.
- There will be a septic system for the house and when they build the barn there will be a septic system for the barn as well.

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- Has had office space for the past year and nobody has come to the office. All meetings are done at the jobsite.
- Has been in business for seven years. Works around Lake Latonka, Pretty Lake, Lake Maxinkuckee and for the City of Plymouth.
- Do additions, driveway's, sidewalks, patios, and concrete stamping.
- At his age he does not have a desire to see the business grow. At this point children have not shown a desire to be a part of the business.
- Daughter is secretary.
- The proposed building will be 30'x40' with 3 overhead doors.
- The house will have 4 bedrooms.
- The proposed side yard setback will be approximately 30.'
- There will be noise when building the house and barn, but not for the business.
- Hours of business 7am to 5pm.
- There are no chemicals. Everything is done at the jobsite.
- Might be one delivery a month.
- Dump truck is a 750 truck.

In response to a question the Plan Director explained that if Mr. De La Torre ever wishes to increase the business the applicant would have to come back before the board.

Mr. De La Torre plans to screen the barn with trees on the south and north.

Mr. Kutch made a motion to approve 21-BZA-31 DE LA TORRE, Oscar - A request for a Special Use to allow a small home-based business; located at: Spruce Tr. Plymouth (50-41-16-000-008-001-011), Polk Twsp., Zoned A-1 with the following conditions:

1. No storage of waste materials (tore out concrete from jobs) on the property,
2. Variance is contingent on Mr. De La Torre owning the property,
3. Screening the building,
4. Limit size of business to 5 employees, vehicles, and size of building
5. Storage inside building,
6. Additional variance if any changes are made,
7. If there is a property ownership change this approval is void,
8. Work parking will need to be behind the screened area by the barn,

Seconded by Ms. Mieras. Motion carried with a voice vote 4-0-1 with Mr. Gustafson abstaining.

The second item of business was 21-BZA-32 RAMER, Harley - A request for a Variance of Developmental Standard to allow a hog barn that does not meet the distance requirement of 1,320 from a residence; located at: 20702 Michigan Rd. Argos, IN Walnut Twsp., Zoned A-1. Harley & Treva Ramer of 20639 Michigan Rd., Argos were present to represent their request. Mr. Adley presented the findings of fact.

The applicant currently operates an 850 head hog operation on the property and are seeking to add 1,400 to total an estimated 2,200. The threshold from and Animal Feeding Operation (AFO) to a Confined Feeding Operation (CFO) for hogs is 600. The threshold from CFO to a Concentrated

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Animal Feeding Operation (CAFO) is 2,500 swine above 55 pounds and 10,000 swine below 55 pounds. The CFO regulations require that there be 1,320' from any residence not on the subject property. There is an existing CFO approval for the property, but due to the proposed additional building, a variance is required. There is a drain that goes through the middle of the parcel.

This has been a hog farm since 1976. Since the lower building was approved for 600 head, they are looking to keep the hogs in there temporarily until the new building is built.

The size of building is based on the plan to go organic in a couple of years. This waste allows it to be composted outside in a three-sided building.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Janet Johnson 20410 S. Michigan Rd. Argos Does not understand the address and why she can't look up the address on Beacon. Is this one barn being put up or two? Has a concern about where the waste will be going. Saw online that there is a violation and that needs to be checked into. The board explained that IDEM controls waste and encouraged her to go to the IDEM hearings. This meeting is only for the setbacks.
2. Eugene Hensley 20290 Michigan Rd. Argos Is against the request as it will degrade his property values.
3. Shelton Hensley 20270 Michigan Rd. Argos Does not want more smell. Has a concern about the decrease in property values. Does not know how they will get rid of all the waste. Is opposed to the project in addition to the steel wheels on our roads.
4. Joyce & LB Robinson ? Does not want this in their area due to the smell it will create. In addition to that there is a concern about run off in the ditch and eventually the river.
5. Brian & Janet Johnson 20410 Michigan Rd. Argos Has many questions about their request.
 - How many hogs they intend to have?
 - How large will the barn be?
 - How large is the property, and will they add to it in the future?
 - How they intend to remove the waste?
 - Where will the waste go?
 - How will it affect our well water?
 - They have found young calves dumped within 15' of their property into the woods behind their home. Is this what they will plan on doing?
 - Hog remains have been found near their property as well.
6. Harley & Treva Ramer, Timothy & Lori Overmyer, and Earl & Sarah Zimmerman all signed waivers in support of the Ramer's request.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Kutch.

Mr. Miller asked how many barns he plans to put up. Mr. Ramer said one. Once the new building is built the temporary barn will be emptied as they must comply with numbers. Dairy calves will

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not be allowed in that building per IDEM regulations.

With the organic/gap program all the hogs will be kept inside. The hog business plans to be for Harley Ramer's son.

Mr. Miller made a motion to approve 21-BZA-32 RAMER, Harley - A request for a Variance of Developmental Standard to allow a hog barn that does not meet the distance requirement of 1,320 from a residence; located at: 20702 Michigan Rd. Argos, IN Walnut Twsp., Zoned A-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The third item of business was 21-BZA-33 JENNEY, James & Cindy - A request for a Variance of Developmental Standard to allow a rear yard setback reduction from the required 20' to 10' for a greenhouse; located at: 14832 Maple Rd., Argos, IN Zoned A-1. Mr. James Jenney of 14832 Maple Rd., Argos was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a greenhouse in the rear of the property and after discussions with the neighboring farmer, they came to an agreement to adjust the location of the structure, but the location is partially within the required setbacks. The proposal is to reduce the rear yard setback from 20' to 10'.

Mr. Jenny purchased his property from his neighbor. The neighbor would like to retain the view to his child's property on the other side of the property. Which is the reason it needs to be closer to the parcel line.

Mr. Miller made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Berger seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Kutch made a motion to approve 21-BZA-33 JENNEY, James & Cindy - A request for a Variance of Developmental Standard to allow a rear yard setback reduction from the required 20' to 10' for a greenhouse; located at: 14832 Maple Rd., Argos, IN Zoned A-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The fourth item of business was 21-BZA-34 BORKHOLDER, John & Esther - A request for a Variance of Use to allow an aggregate stock yard for limestone and dirt along with concrete removal and recycling for repurpose intermittently; located at: 476 Plymouth Goshen Tr. Nappanee, IN (50-54-21-000-011-000-005), German Twsp., Zoned A-1. John Borkholder 476 Plymouth Goshen Rd Nappanee, IN and Doug Geissinger 10399 Shively Rd. Nappanee, IN were present to represent their request. Mr. Adley presented the findings of fact.

The applicant has been operating an aggregate stock yard for limestone and dirt. They do recycle concrete from time to time with a crusher. Indicates that the yard has been in existence for 30+ years and was unaware of any approval required.

This request came before the board due to a complaint. While researching this property there were no approvals to run such a business. To get this approved we needed to get this request

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before the board.

This business was originally started by John Borkholder's grandfather over 30 years ago. At that time there was no crushing. Crushing only started about 5 years ago.

Mr. Geissinger stated that he believes rerouting traffic between Beech Rd. and US 6 and Plymouth Goshen Tr. will cause more issues going out and around when more than 50% of the traffic drive south after being at the location.

Crushing is not done all the time. It is usually not even a month-long process. They only come to the property when there is 5,000 ton to be crushed. The crushing would be the loudest operation done at the facility. It is not nearly as loud as it used to be as the crushing company has different equipment that is not as loud. The crushing times are no earlier than 6am to 6pm.

Beech Road is a county road and Plymouth Goshen is a collector road which is built to withstand heavier traffic. Loads that leave the facility are weighed and run usually between 21-22 ton.

Mr. Miller expressed that he does not feel the Board of Zoning Appeals has the right to require them to drive on specific roads that is the responsibility of the Highway Department.

This Variance of Use is to decide whether they can run a stockyard from this site.

Mr. Berger made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

1. Marvin & Cathy Hochstetler – 675 & 681 1st Rd., Nappanee, IN – The crushing operation that is 500' from their house is disturbing. It is early in the morning and late at night. There are back-up beepers, banging of tailgates and concrete being dumped that is extremely loud and annoying. There is also a lot of truck traffic. The view of huge mountains of dirt and piles of concrete are unsightly. They do not believe this business is in the best interest of the neighborhood.
2. Douglas Scott – 1421 Beech Rd. Nappanee, IN - When they moved to this location in 1977 it was a dumping ground that later turned into a gravel pit. At that time, they called the Plan Commission Office and explained their concern. Over the last three years hauling has increased. It will be 4-5 trucks hauling 8 loads each back and forth all day. They do not believe their road was made for this traffic. There have been large pieces of concrete that fall out of the trucks. The road also has potholes and ruts from buggies. Believes these sorts of businesses and others that are approved have a direct affect on the people that live their and their quality of life. Opposes this variance request.

Mr. Miller moved to close the public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

Mr. Kutch expressed that he didn't have a concern with the original business but had questions regarding the crushing portion of the business that started 5 years ago. Mr. Geissinger talked to Mr. Borkholder about 6 or so years ago about the burying of limestone and proposed crushing it

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instead as a better alternative.

When planting trees were mentioned, the applicants stated that the Hochstetler's already have trees that would be a screening.

Mr. Miller made a motion to approve 21-BZA-34 BORKHOLDER, John & Esther - A request for a Variance of Use to allow an aggregate stock yard for limestone and dirt along with concrete removal and recycling for repurpose intermittently; located at: 476 Plymouth Goshen Tr. Nappanee, IN (50-54-21-000-011-000-005), German Twsp., Zoned A-1, with the following regulations:

1. Hours of business 7am-5pm

Seconded by Mr. Kutch. Motion carried with a voice vote 4-1 with Ms. Mieras voting against.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller