

November 9, 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, November 9, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, Dan Voreis, David Hostetler, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties. Member absent was Mr. Kutch.

The minutes from the October 12, 2021, meeting was submitted to the board. Mr. Hostetler made a motion to approve the minutes as written, Mr. Miller seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-55 MCMAHAN-OCONNOR CONSTR - A tabled request for a Special Use to allow the expansion of asphalt plant hours of operation; located at: 11246 King Rd., Plymouth, Center Twsp., Zoned A-1. John Gaden 319 Juniper Lane Plymouth and Kip Chandler 2254 S. 50 W. Peru were present to represent E & B Paving. Mr. Adley presented the findings of fact.

During the time since the last tabled meeting the plan director visited the site and used a decibel meter to check the sound levels during business hours.

- The average decibels was 50-52 decibels
- The part that drops the material into the truck which is usually the loudest part of the operation read 49-52 decibels
- Walking on gravel on the shoulder of the road read 42-53 decibels
- While getting closer to the plant on the northern portion of the subdivision which is south of the plant it read 66-68 decibels pre-muffler post muffler was 63-66 decibels.
- The southern edge of the plant read 72-77 decibels
- Within 50' of where the silos were 82-85 decibels post muffler, pre muffler was 83-95 decibels
- The northern property line pre decibel was 55-58 decibels which is where the asphalt milling pile is located as well as a buffer of trees.
- The northern intersection reading was 50-54 decibels
- Decibel comparisons – A quiet office would be about 40 decibels, a dishwasher runs about 50 decibels, conversation is about 60 decibels, and a vacuum cleaner is about 70 decibels and a hair dryer is about 80 decibels.

E & B Paving submitted a letter listing some of the changes that are important between 1994-2021

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1. Strict conformance with new trucking route that eliminates through trucks on King Road north of 11th road.
2. The previously required tree planting has fully matured helping with noise, emissions and aesthetics.
3. RAP processing is limited to approximately 2x per year limiting the noise emissions at the plant.
4. Noise reducing policies that include:
 - a. Limited stockpile times 7am -4pm
 - b. No tailgate banging
 - c. Reverse lights in lieu of backup alarms. Non daylight hours (dawn to dusk)
5. Paved entrance and exit reducing the amount of material tracked onto the public roads. Daily maintenance and cleaning is required.
6. Daylight savings time requires a need to shift starting and stopping times.
7. Improved emissions standards and rigorous testing and compliance with INDOT and IDEM.
8. Warm Mix package reducing the amount of energy consumptions and helping compaction effort.
9. By performing this operation in this way, we can reduce overall noise levels.
10. All plant components meet the previously required setbacks.
11. Increased sponsorships, outreach participation in the area. We have many employees in the area and we continue to be proud of our community and company.

The asphalt plant has been before the board previously in 1993 and 2001 to permit the use of testing trailers and at the same time were given hours of operation to stay within. The applicant is before the board today requesting the expansion/removal of the restrictive hours in order to meet the potential scheduling requirement of INDOT and the safety of the traveling public. Historically a case in 1993 was applied for 2 laboratory or testing trailers because all asphalt plant site for all state and federally funded contract. Referring to the analysis from the above mentioned case there was a comment from the Plan Director of the time that "The Neighbors to the south have phoned our office with complaints that E&B Paving has increased their hours of production. I inspected these complaints and found soot/ashes on lawn furniture, etc., on the neighboring property. I have no way of proving what their hours of operation were before the BZA recently allowed their expansion, but there does appear to be a problem with ashes from the asphalt plant." In 2001 there was an application for INDOT testing trailer due to safety considerations and new INDOT requirements for testing trailer locations at asphalt plants. Under the findings of fact from this case, the Plan Director of this time (It had changed between the 90's case and early 00's case), that they had not seen evidence "that this request would adversely affect the neighboring properties. There were concerns at the 1993 hearing that there were obnoxious smells and ash from the plant. I do not believe such is the case now. The plant has been changed and the new plant is cleaner." Later in 2001 there would be a second case in attempt to extend the hours of operation from the set hours of 6:00am to 7:00pm. It is within this analysis by the Plan Director that they detailed the history of the applicant and their legal nonconformance with the code (being in existence prior to 1974). Then detailing the case in 1993 and the earlier case 2001. The second finding from 01-BZA-40 indicated "There has been evidence presented in the past that this use does pose a threat to the use and enjoyment of permitted uses in the area. There are noises of trucks and truck traffic, the noise of the plant,

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smells and dust all associated with the operation of the plant. IF these uses were undertaken at night, there would be the added problem of light on the property. All of these things have the potential of reducing the use, enjoyment, and value of residential property in the area permitting the expansion of hours so that this use could take place at night would greatly increase impacts on the area." The case was ultimately denied for the expansion of the hours in 2001. It is with this historic information that the case needs to be set in place and establishment of what has transpired over the last twenty years of operation and whether or not the improvements warrant the ability to expand the hours. Per the application in an attempt to demonstrate commitment to the community and previous neighbor concerns they have done the following; 1. strict conformance with new trucking route that eliminates through trucks on King Road North of 11th road, 2. the previously required tree planting has fully matured helping with noise, emissions and aesthetics, 3. RAP processing is limited to approximately 2x per year limiting the noise emissions at the plant, 4. noise reducing policies that include; a. limited stockpile times 7a-4p, b. no tailgate banging, and c. reverse lights in lieu of backup alarms - non daylight hours (dawn to dusk), 5. paved entrance and exit reducing the amount of material tracked onto the public roads. Daily maintenance and cleaning, 6. daylight savings time requires a need to shift starting and stopping times, 7. improved emissions standards and rigorous testing and compliance with INDOT and IDEM, 8. Warm Mix package reducing the amount of energy consumptions and helping compaction efforts, 9. by performance this operation in this way, we can reduce overall noise levels, 10. all plant components meet the previously required setbacks, 11. increased sponsorships, outreach participation in the area. We have many employees in the area and we continue to be proud of our community and company.

Recommendation: Based on the review by the Technical Review Committee and previous analysis by staff, staff and TRC would recommend approval of the proposal with the following conditions.

1. Crushed asphalt and material drop off to the site is limited in hour of operation to 7am to 6pm.
2. Loader and other vehicles with back up alarms be equipped with osha approved alternatives a light was discussed as an option to reduce noise while operating.
3. Screening (trees) needs to be extended along the southern boarder of the facility including screening below the existing trees as they continue to shed their lower branches exposing the plant, a screening plan needs to be approved by the plan director including timeframes and the buffer in its entirety shall be maintained into the future should some of the trees die or need to be replaced for various reasons.
4. Shall be restricted from operation on major federal holidays (Memorial Day, Labor Day, Thanksgiving, Christmas, New Years, and July 4th).
5. If the plant is to run at night, written notice in advance of night operations shall be provided to the residences to the south of the plant property (as a measure of being a good neighbor) as well as the Plan Commission for record and should an emergency cause the plant to run longer or into the night due to unforeseen circumstances door hangers and letter explaining the situation should be sent to same neighbors and Plan Commission office for record.
6. Should the portable plant be removed from the property in the future, it must return within a year otherwise the facility must be reapproved and to make clear of when the date of removal is, the Plan Commission shall be notified, and the plant must receive

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- building permits to ensure safe erection and connection of the plant.
7. It is a note from staff that the adjacent neighbors should be taken into consideration as to any issues that have occurred over the last 2 decades of operation as these operational improvements have occurred or are planned to occur. If items remain to be addressed, tabling the request may be in the best interest in order for the applicant to present a plan on how to address said concerns.

After review of the recommendations the applicants feel that they can meet those requirements. It was also said that they would like to remind the board of all the updates the site has made over the years.

Mr. Gustafson went to the site and walked different areas from the residences to the south up to the intersection. He noticed where there were trees to buffer, it really seemed to make a big difference. The area where there were no trees which is in line with the loudest machine the blower seemed to be the loudest.

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

1. Ruth VanVactor 11410 King Rd. They are located at the second house south of the asphalt plant. She opposed this variance request asking for an expansion of hours at the asphalt plant. They did purchase their property knowing there was a temporary asphalt plant at that location which was later closed down. The applicants later requested to re-open the plant permanently and was granted their request. When they came back to the board to ask to run 24/7 they were forced to compromise with hours of 6am – 7pm. Each time the applicant proposes changes they are the ones having to compromise having to show why they feel their home, land, and quality of life is important. If they wish to be good neighbors, they wouldn't subject them to the type of hours they wish to run this plant. When the applicants stated they contacted neighbors in the past Mrs. VanVactor said that they have never been contacted by them. The existing trees are not a substantial buffer. Even if they plant more trees it will take a number of years for them to mature. The plant runs not only during the week but also on Saturday. It is disruptive while all they want is to enjoy their family time on their property. What if the board approves this request and they don't get the bid for these proposed projects...what then? While doing research on sound decibels Mrs. VanVactor stated she read that average decibel meters for a residential area recommendation was from 45-55 and is evident that all readings were above this level. They would like to trust that policies are put in place for a reason and wish that this board deny the request to expand the business hours of E & B Paving and retain the hours of 6am – 7pm.
2. Jon VanVactor 11410 King Rd. Is opposed to this request as it is a hardship on his family and the neighborhood with the proposal of a 24/7 plant. It will have a negative impact on the quality of life. Would like to ask the board a couple questions. 1. Has this plant been in continuous operation since it's been there. 2. If it hasn't been when was it removed? 3. When it was removed when did it come back and how did it come back? They understand that we need asphalt companies. What they are opposed to is increasing the plant that is already there. What they are asking the board is to

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- protect their quality of life by restricting them to the hours of operation that they currently have. Commended the board for coming out to see the operation. They don't object to the current hours of operation. They do object to the proposal. They have not come in asking it not to be in their backyard. All they are asking is to keep it so that they can maintain their quality of life. They don't want to put E & B out of business they just want to live out there. Please consider their view.
3. Wallace Lambie 10836 Cardinal Circle Lives in Southfield Subdivision. First questioned 300' notification. Is against the request due to all the traffic with the trucks and the safety of this kids.
 4. Marshall County REMC 11299 12th Rd. The increase in hours of operation will have no negative impact on Marshall County REMC or their property. In fact, because Marshall County REMC provides the electric service for the asphalt plant that is asking for expansion of hours of operation, they are in favor of granting them approval.
 5. Rick & Debra Powell 10856 Cardinal Circle They are a resident of Southfield Subdivision and are voting against the extension of hours for the asphalt plant. There is a high amount of truck traffic on 11th Road. Adding to the hours takes away their right to use and quiet enjoyment. The truck traffic if increased will certainly have an impact on the condition of the roads as well.
 6. Jeff Molnar Sent a letter and is in favor of the request to extend hours. Believes the request can potentially have a good effect on his family and wages.
 7. Julia Stockman 10870 12th Rd. Keep the hours as they are now. Crops, deer and turkey need some quiet time to grow and wander as God intended.
 8. Jon & Ruth VanVactor 11108 12th Rd. Requested that they be notified when anyone from the board came to the site to visit as they would like to be present.
 9. Ethan VanVactor 11410 King Rd. Is opposed to the expansion of hours of the asphalt plant located at 11246 King Road. There is already the noise of truck traffic and the furnace on the equipment that he must listen to and cannot enjoy being on the patio with the plant running due to the noise and smell. They cannot have their windows open for the same reason. This is a working-class neighborhood, hoping to get a good night's sleep to be ready for their jobs the next day. If this plant is allowed to run during the nighttime hours the noise will certainly affect their ability to have a good night's sleep. Please deny the request.

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

Brian of Summitville, IN E & B Paving came forward to assist with questions. He is not exactly sure of the date when the plant moved out, but knows it came back in the spring of 2016. The oldest records they could find from McMahon O'Conner was that it began in 1974. At that time it was a batch plant. This is a continuous drum plant that is continuously mixing. From 1974 to 1994 there were no restrictions on this plant. The restrictions came into play when they moved the testing trailer in to support the operation and it was too close to the right away and needed a variance. At that time the hours were set to the testing trailers themselves. In 2001 Mr. Booker wrote that if the hours of operation are not allowed the only recourse the BZA is to remove the testing trailer.

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It seems as though the operation was not running from 1993 to 2001. During the vacancy timeframe there were silos, foundations, electric hook up and pile changes at the facility.

Mr. Crum asked if the board would consider taking the TRC's recommendation contingent on the Plan Director reviewing their proposal?

The board expressed their concern over the fact that the applicants haven't attempted to put up some sort of a sound barrier to reduce the decibels to the south. The consensus of the board was that they needed to apply some sort of a sound barrier before they make a decision.

The applicants requested to table. Mr. Hostetler made a motion to table the request, seconded by Mr. Miller. Motion carried with a voice vote 4-0.

Mr. VanVactor asked if his questions were going to be answered. Mr. Gustafson said that they would give the applicants time to make their changes and they would go back out to visit the site once the changes were made.

The second item of business was 21-BZA-59 ALBER, Mitchel & Kaley - A tabled request for a Variance of Developmental Standard to reduce the road setback from the required 60' to 20' in order to build a pole barn; located at: 12964 Muckshaw Rd., Plymouth Center Twsp., Zoned A-1. Mr. Mitchel Alber of 12964 Muckshaw Rd. Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to reduce the setback from 60' from right of way to 20' from edge of road in order to construct a 42x60' or 52x60' pole building for storage. The building is placed on top of a large hill that drops 30-40 per the applicant.

Recommendation: Based on the information provided and review by the Technical Review Committee, staff and TRC would recommend approval of a reduction to 50' from the edge of road with condition that no doors open towards the road.

The width of the existing house is 34' and is located 60' from the edge of the road. With the previous meeting being tabled it allowed board members to go out and look at the site. The consensus of the board was that there was enough room for the building to be moved back some with some additional excavating work.

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

The applicant measured off his neighbors building and said that it is 30' from the road and asked the board if his building could be the same.

Mr. Miller made a motion to approve 21-BZA-59 ALBER, Mitchel & Kaley - A tabled request for a Variance of Developmental Standard to reduce the road setback from the required 60' to 40'

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from the edge of the road in order to build a pole barn; located at: 12964 Muckshaw Rd., Plymouth Center Twsp., Zoned A-1, seconded by Mr. Hostetler. Motion carried with a voice vote 4-0.

The third item of business was 21-BZA-62 RIFFEY, Craig & Rhonda - A request for Steve & Randall Miller for a Variance of Use to allow a finishing business for wood products including primarily kitchen cabinets and RV parts; located at: 1818 5th Rd., Bremen, IN German Twsp., Zoned A-1. Mr. Charlie Zercher of Kindig & Sloat 102 Heritage Parkway, Nappanee and Lonnie Helmuth 6490 Chestnut Road, Bremen were present to represent this request. Mr. Adley presented the findings of fact.

The property is currently a secondhand retail store that was initially approved as a home workshop business that was subsequently subdivided by a previous lot owner. There is a purchase agreement in place with condition of receiving BZA approval. The future property owner is seeking to operate a finishing business for wood products namely kitchen cabinetry and RV products. The proposal is to go up to 8 employees but will initially start with less. The hours of operation would be from 5 a.m. to 2:00 p.m. Deliveries and pickups would average about 2-3 times per day. Deliveries and shipments are made by pickup and trailer, box truck and an occasional semi. There would be no outdoor storage and no retail sale in connection with the proposed finishing business. All deliveries and pick ups would be complete off 5th Road.

A petition was presented to the board from area landowners showing their approval of the request which include:

- | | |
|----------------------|--------------------------|
| 1. Galen Lehman | 1800 5 th Rd. |
| 2. Nelson Borkholder | 1740 5 th Rd. |
| 3. John Kuhns | 1860 5 th Rd. |
| 4. Ken Miller | 1835 5 th Rd. |

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

1. Craig - Rhonda Riffey – 7247 SR 331 Bourbon, IN Operates the current store daily. They listed the property for sale and are in favor of this request. The store has been in business for approximately 5-6 years. If there has been a concern about smell, there is a duck barn not far away and cant believe the smell would be any worse than that.

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

The board had discussion about properties where there is a home based business and later businesses are split off from the residence.

Mr. Hostetler made a motion to approve 21-BZA-62 RIFFEY, Craig & Rhonda - A request for Steve & Randall Miller for a Variance of Use to allow a finishing business for wood products including primarily kitchen cabinets and RV parts; located at: 1818 5th Rd., Bremen, IN German Twsp., Zoned A-1 as submitted, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

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The fourth item of business was 21-BZA-63 MILLER, Steven & Norma - A request for a Special Use to allow a home workshop for a woodworking business construction wood cabinetry and wood RV parts; located at: 7781 Elm Road, Bourbon, IN Bourbon Twsp., Zoned A-1. Mr. Charlie Zercher of Kindig & Sloat 102 Hertiage Parkway, Nappanee and Lonnie Helmuth 6490 Chestnut Road, Bremen were present to represent this request. Mr. Adley presented the findings of fact.

The applicant has been operating a woodworking business since 2003 from the property, initially starting part time and eventually going full time. Their supplemental documents indicate that they were unaware at the time that they were required to receive approval for the business. The business employs 3 family members with hours of operation from 5am – 5pm. Deliveries and pickup average about 1 per day and are picked up by pickup truck and trailer. When semi's deliver material they are able to pull off of Elm Rad completely. The total space used on the property is below 4,000 sq ft. There is also minimal outdoor storage behind an accessory structure.

When the buildings were built there was no floodplain at that time.

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

Mr. Miller moved to approve 21-BZA-63 MILLER, Steven & Norma - A request for a Special Use to allow a home workshop for a woodworking business construction wood cabinetry and wood RV parts; located at: 7781 Elm Road, Bourbon, IN Bourbon Twsp., Zoned A-1 as proposed, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

The fifth item of business was 21-BZA-64 MILLER, Philip & Sheila - A request for front yard setback reduction from the required 50' to 36' in order to add on a living room addition to the front of the house; located at: 18088 Douglas Rd., Tippecanoe, IN A-1. Mr. Josh Ramer, contractor, was present to represent the request. Mr. Adley presented the findings of fact.

The applicant is seeking to add onto the North side of their house. Due to the house location, the existing structure currently sits 36' from the right of way. The proposed addition is to add onto the living room and would remain flush with the existing house. The addition measures 18' across and 40' deep from the roadside.

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

1. Fred R. Jones As an owner of nearby property they have no objection to the request.

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

Mr. Hostetler made a motion to approve 21-BZA-64 MILLER, Philip & Sheila - A request for

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front yard setback reduction from the required 50' to 36' in order to add on a living room addition to the front of the house; located at: 18088 Douglas Rd., Tippecanoe, IN A-1, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

2022 Proposed Board of Zoning Appeals Calendar

Mr. Miller made a motion to approve the proposed calendar, seconded by Mr. Berger. Motion carried by acclamation.

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