

The Noblesville Board of Zoning Appeals met on Monday, August 5, 2019. Members in attendance were as follows:

- Mike Field..... Chairman
- Dave Burtner..... Vice-Chairman
- James Hanlon Citizen Member
- Dan Mac Innis Citizen Member
- Barry McNulty Citizen Member

Others in attendance included: Assistant Planning Director Caleb Gutshall, Senior Planner David Hirschle, City Attorney Mike Howard, and members of the general public.

Chairman Field calls the meeting to order at 6:00 p.m.

Mr. Filed announces that the first item on the agenda, for 15720 Hazel Dell Road, has been continued at the request of the petitioner and will not be heard this evening.

APPROVAL OF MINUTES

Motion by Mr. Burtner, seconded by Mr. Hanlon to approve the July 1, 2019 Minutes as presented. AYE: Burtner, Hanlon, Mac Innis, Field. ABSTAIN: McNulty. Motion carries 4-0-1.

APPROVAL OF FINDINGS OF FACT

Motion by Mr. Hanlon, seconded by Mr. Burtner to approve the July 1, 2019 Findings of Fact as presented. AYE: Burtner, Hanlon, Mac Innis, Field. ABSTAIN: McNulty. Motion carries 4-0-1.

OLD BUSINESS

1. BZNA 000078-2019	
Location:	15720 Hazel Dell Rd
Applicant:	Steven Ramos (THINK Holdings, LLC) (applicant)
Description:	UDO §8.B.1.B, Appendix C – Variance of Use to permit an early learning center in a Suburban Residential zoning district.
Staff Contact:	Oksana Polhuy

Mr. Field reiterates that this item has been continued at the request of the petitioner. It will be heard at the September 9, 2019 meeting of the Board of Zoning Appeals.

NEW BUSINESS

2. BZNA 000084-2019	
Location:	16336 Cherry Tree Road
Applicant:	Church, Church, Hittle + Antrim for Beaver Gravel Corp. (applicant)
Description:	UDO § 8.B.2.B and Appendix C - Variance of Use application to permit Mineral/Sand/Gravel extraction on urban property in an R1 (Low Density Single Family Residential) zoning district.
Staff Contact:	David Hirschle

Mr. Hirschle provides the location of the site as one-quarter-mile north of 161st Street on Cherry Tree Road. He states that the petitioner has entered into a purchase agreement for the property, which contains a single-family homes with accessory buildings. He states that the petitioner seeks a land use variance to allow expansion of an extraction operation, currently located on the eastern adjacent property, onto the southeastern one-third of the subject property. He states that the topography of the property falls off over a distance of 65 feet from the 785-foot elevation at which the residence sits to the 770-foot elevation on the portion of the property where extraction is proposed. He explains that the location of the property within the 5-year time-of-travel in a wellhead protection district dictates the use of wet excavation techniques and replacement with clean fill.

Mr. Hirschle indicates that, at the time of writing of the staff report, it was unclear to staff whether two of the five State Findings of Fact had been met. He states that he met with the petitioner after the staff report had been issued. He adds that the details of the operation were adequately explained, leaving staff in a position to recommend approval of the application this evening after amendment of some of the conditions listed in the staff report.

Mr. Field asks which conditions are to be amended. Mr. Hanlon states that these conditions need to be in writing. After some consternation caused by Mr. Hirschle's not having the amended conditions in writing for Board members, Mr. Field agrees with Mr. Howard's recommendation that the amended conditions be described at this time.

Mr. Hirschle states that recommended Condition #2 in the staff report is changed to require only groundcover for the recommended earthen mound. He states that, since the earthen mound to be placed will be only a temporary one prior to implementation of State-required reclamation plan improvements, the planting of trees on top of the mound is not required. He states that all wording after the word "landscaping" is to be removed.

[This changes the staff report requested condition:

"Mounding shall be established along the entire angled western excavation line and shall be at least six (6) feet in height higher than the elevation at which the residence sits. Mounds will be seeded with grass or similar form of landscaping and be planted with 2 staggered rows of evergreen trees, each row planted 15 feet on center, with a height of 5 feet at time of planting."

to:

"Mounding shall be established along the entire angled western excavation line and shall be at least six (6) feet in height higher than the elevation at which the residence sits. Mounds will be seeded with grass or similar form of landscaping."]

Mr. Hirschle states that Condition #7 [prohibiting excavation within one hundred feet of the northern property line] is recommended to be deleted. He states that Condition #11 is recommended to be amended to require submission of a reclamation plan within six months of undertaking any activity on the site rather than being submitted before undertaking any activity. He states that Condition #14 [minimum separation of 1000 feet between excavation and a public drinking water source] and Condition #16 [provision of a copy of the excavation plan required by the State Department of Natural Resources] should be deleted [the latter because DNR is not the State agency that requires the reclamation plan for mined lands outside of a floodway].

Mr. McNulty recalls that the Board has not seen recommended conditions that included submittal of a reclamation plan for these types of applications in the past. Mr. Hirschle responds that he initiated the recommended condition. He states that a reclamation plan is required by the State, but that it would be in the best interest of the City if a copy of that State-required plan was submitted to the Planning Department.

Mr. Hanlon asks if the Board is ever going to see a written copy of the amended conditions. He states that he would like to know what the Board is approving. Mr. Field responds that the Board can put the amended conditions in a motion. Mr. Howard adds that the motion would include the words, "with staff conditions, as amended." Mr. Field states that the Board would then approved the Findings of Fact at the next meeting. He directs Mr. Hirschle to provide the Board with written amended conditions if a similar situation arises in future cases.

Mr. Andy Wert with Church, Church, Hittle & Antrim, 2 North 9th Street in Noblesville, representing Beaver Gravel Corporation, states that this application is similar to an application by the same petitioner in February of this year for property adjacent and to the south. He begins by explaining how the aggregate industry is regulated. He states that it is Federally regulated by MSHA (Mine Safety and Health Administration), which typically conducts unannounced site inspections twice a year. He adds that, at the State level, IDEM (Indiana Department of Environmental Management) is chiefly involved with air quality, necessitating application for air permits and filing of periodic reports regarding air pollution. He states that the Department of Natural Resources is only involved when a mine is in a floodway, which is not the case with the subject site. He also cites IMAA (Indiana Mineral Aggregates Association), which is not a government agency but a trade association for the aggregate extraction industry. He explains

that, to be a member of this Association, a company must abide by their standards, one of which is the filing of a reclamation plan. He states that the petitioner this evening has filed with the State a reclamation plan for their existing excavation operations, but not yet for the subject site or the site considered by the Board in February of this year. He states that if this application is approved, Weihe Engineers will amend the reclamation plan for the existing extraction operation to include the subject site and the site approved in February.

Mr. Wert describes the site currently under review, pointing out the triangular excavation area proposed, bounded on the west by a proposed earthen mound to act as a visual and noise buffer. He confirms that the meeting with staff last week led to agreement with most of the conditions and the rewriting of others. He relates that the property does not fall within the "non-urban" classification regulated by State statute, which means the Board has sole discretion to decide on the land use. He points out that expansion of an existing operation is preferable to establishment of a new facility purely on the grounds of economies of scale and degree of impact on surrounding properties.

Mr. Howard asks if the house "west of the triangle" is owned by the petitioner. Mr. Wert responds that the petitioner has closed on that house. Mr. Howard also asks if the approval granted in February for the southern adjacent property would allow excavation up to that property's northern property line to enable connection with the excavation proposed on this site. Mr. Wert responds that this is the case.

Mr. Mac Innis asks if the same conditions were attached to the property to the south as are requested for this property. Mr. Wert recalls some of the conditions imposed on the previous approval. Mr. Gutshall interjects, relating that all of the conditions that were in the staff report for the southern adjacent property in February are present in the staff report for this case, with the exception of one condition that was peculiar to that site's northern property tree line.

Mr. Paul Murzyn, 16213 Cherry Tree Road, owner of adjacent property at 7212 East 161st Street, states his concern about the increased noise and dust that the expansion of the operation will create. He states his concern that future approvals may be granted to allow expansion of such operation onto residentially-zoned properties. He voices further concern about the effect on his well and water supply, and the water's quality. He states his belief that there was to have been additional information presented by the petitioner this evening addressing Findings of Fact #1 and #5. Mr. Field responds that his staff report relates staff's opinion that "approval will not be injurious to the public health, safety, morals, and general welfare" and that "the approval does not interfere substantially with the provisions of the Comprehensive Master Plan." Mr. Murzyn asks if anything new pertaining to those Findings of Fact was presented this evening. Mr. Field responds in the negative.

Mr. Murzyn asks that the Board consider continuing the matter until the petitioner supplies information adequately addressing all of the Findings of Fact. He adds that he would like to have the opportunity to review such information. He asks that, if the Board intends to approve the application, these stipulations be considered: First, that the conditions requested in the staff report be imposed; second, that he and the adjacent neighbors, along with the City, be permitted to enforce the conditions; and, third, that the petitioner be required to bring city water to his property if the extraction operation either contaminates his well or lowers the water table, leaving the well dry.

Mr. Wert begins to address the concerns of Mr. Murzyn, stating that there will not be ingress or egress by trucks from or to Cherry Tree Road, and all extraction will be done below the water table, there being no dewatering of the site proposed.

Mr. Chris Beaver, President of Beaver Gravel Corporation, 16060 Cherry Tree Road, states that there would be no pumping of water off of the property. He states that the regulation of gravel extraction requires that it be a "wet" process, most often requiring either a barge or a crane to remove aggregate below the water line. He states that his crane operation digs sixty feet below water using a computer-controlled clam collector and that any water brought up with the aggregate is removed from the aggregate and returned to the water table before the aggregate is moved by conveyor to eventual transport. He addresses possible further westward expansion, stating that the land west of the expansion proposed this evening is underlain by stone, not gravel, and that he has no intention of expanding any further west. He states, "So, as far as anything west, we are not going west because there is nothing for us to do. This, more than

likely, unless a neighbor would want to be bought, would be one of our last properties that we buy for sand and gravel. The sand and gravel reserve on River Road is getting very limited, and that's why you see us buying these small parcels of land at a very elevated price to try to get as much as we can while that is left."

Mr. Beaver addresses Mr. Murzyn's water well, informing him that if it is proven that his well has been disturbed by Beaver Gravel Corporation's excavation activity, the Department of Natural Resources would require that the well be replaced by Beaver Gravel Corporation.

Regarding Findings of Fact #1 and #5, Mr. Wert summarizes that, although the petitioner stands by his Findings of Fact answers provided, as required, on the Variance application form, it was staff's opinion based on all information provided with the application that Findings of Fact #1 and #5 had not yet been met at the time the staff report was written. Mr. Wert states his understanding that, following staff's meeting with the petitioner, staff's opinion had changed so that all five Findings were met. Mr. Hirschle confirms that this is so.

Mr. Howard addresses Mr. Murzyn's request to add a condition that would allow he and his neighbors to enforce any conditions imposed by the Board on the petitioner. He states that the citizens have legal rights, but the city cannot grant them more. Mr. Field supports, stating that the Board cannot assign the City's enforcement powers to private citizens.

Motion by Mr. Hanlon, seconded by Mr. Burtner to approve Variance of Land Use application BZNA 000084-2019 based upon the following Findings of Fact:

- The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- The need for the proposed variance arises from some condition peculiar to the property involved;
- The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought;
- The approval of this variance does not interfere substantially with the provisions of the Comprehensive Master Plan for the City of Noblesville, Indiana.

With the following Staff-recommended conditions, as amended to the language below during the meeting:

1. Blasting or explosives shall not be used on the subject property.
2. Mounding shall be established along the entire angled western excavation line and shall be at least six (6) feet in height higher than the elevation at which the residence sits. Mounds will be seeded with grass or similar form of landscaping.
3. Stockpiles within 500 feet of any residence shall not exceed 50 feet in height.
4. Hours of operation shall be limited to two shifts.
5. All excavation at or below the elevation of the water table shall use wet excavation techniques. De-watering shall not occur on the subject property.
6. A metes and bounds description of the proposed excavation area shall be provided to establish a limiting line of excavation advancement.
7. No form of solid waste (as defined at 329 IAC 10-2-174) or any other form of waste material of any kind, including but not limited to construction/demolition debris, shall be used on the site. Clean natural earth fill materials may be used.
8. Only portable lighting will be used, which will not exceed six (6) feet in height.
9. Trucks shall not exit the property onto Cherry Tree Road. The Applicant shall find an alternate exit from the site.
10. The Petitioner shall submit a reclamation plan for approval within six months of undertaking, on site, any activity proposed with this application. The plan shall indicate the following:
 - 10a. Reuse of the affected lands, after cessation of all mining operations, which is compatible with the Comprehensive Plan.
 - 10b. Methods of anticipated topsoil removal, storage, re-application, stabilization and conservation that will be used during reclamation.
 - 10c. Topographic contours of the site prior to excavation, expected after completion of excavation, and expected after completion of reclamation, in 2 foot intervals,

and any water impoundments or artificial lakes planned to support the anticipated future use of the site.

- 10d. Reclamation, in accordance with the approved Reclamation Plan, shall begin within 6 months of the completion of all mining on this property and shall be completed within 2 years after cessation of the mining operation on this property.
- 10e. A safety ledge shall be required around the perimeter of all water bodies. Safety ledge width shall be a minimum of 10 feet; and the maximum depth shall be 25 inches to 30 inches below the normal pool water level. Maximum ground slope above the safety ledge for a distance of 10 feet shall be six to one (6:1) horizontal to vertical incline.
- 10f. Final reclaimed slopes shall not be steeper than a three to one (3:1) horizontal to vertical incline. The top of slope shall be no closer than 125 feet from adjacent lot lines.
- 10g. A minimum of 4 inches of clean topsoil shall be re-applied, and vegetative groundcover established, on all affected land during reclamation activity. Vegetative groundcover used in reclamation shall consist of native grasses or native wildflowers.
11. A minimum separation of 200 feet shall be maintained between any excavation and any drinking water supply that is a point-driven or dug well and that was in existence prior to the excavation.
12. A minimum separation of 100 feet shall be maintained between any excavation and any drinking water supply that is drilled into saturated bedrock and that was in existence prior to the excavation.
13. All petroleum products or highly flammable or explosive liquids, solids, or gasses to be stored on-site shall be located in bulk, above-ground, anchored tanks or containers having a roofed, secondary containment system adequate to contain 110% of the full contents of the container, and shall be located at least 75 feet from any lot line or right-of-way. The use of underground tanks shall be strictly prohibited.
14. The Petitioner shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
15. Any alterations to the approved land use or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

AYE: Burtner, Hanlon, Field, Mac Innis, McNulty. Motion carries 5-0.

ADJOURNMENT

Meeting is adjourned at 6:35 p.m.

Mike Field, Chairman

Sarah Reed, Secretary