



BOARD OF ZONING APPEALS FINDINGS OF FACT

APPLICATION(S): BZNA-0084-2019

PROPERTY ADDRESS: 16336 Cherry Tree Road, Noblesville, Indiana

A Variance of Use application was submitted to the Noblesville Department of Planning and Development for the above referenced location. The application, submitted by Church, Church, Hittle & Antrim for Beaver Gravel Corporation on behalf of property owner Carlene P. Mallamo, requested that approval be granted to a Variance of Use application seeking relief from UDO § 8.B.2.B and Appendix C to permit Mineral/Sand/Gravel excavation on an "urban" property in an R-1 (Low-Density Single-Family Residential) zoning district. The Noblesville Board of Zoning Appeals conducted a hearing regarding this application on August 5, 2019. After testimony was given and evidence was presented to the Board, a motion to approve, with conditions, was made, and the motion carried 5-0.

In its deliberations, the Noblesville Board of Zoning Appeals weighed the evidence associated with the following criteria and made the following findings in granting the request for a Variance of Use. Indiana Code 36-7-4-918.4 states that a Variance of Use may be approved only upon a determination in writing that the following are true:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

There is no indication that approval of the proposed variance will be injurious to public health, safety, morals, and general welfare of the community. The proposed operation is heavily regulated at the State and Federal level. The incremental expansion continues a use, already existing on adjacent property, which has not been shown to be harmful. The use could have significant impact on the local drinking water supply based upon its location within a five-year time-of-travel in a wellhead protection zone. However, local wellhead protection regulations are in place regarding excavation techniques, and these, along with State and Federal regulations, have proven effective in the past.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

It is likely that the use and value of real estate adjacent to the subject site will NOT be affected in a substantially adverse manner by allowing the requested

variance. The site will not be accessed from Cherry Tree Road and a reclamation plan is required to be submitted. Nearby property owners had the opportunity to remonstrate against this petition. Expressed concerns are deemed to have been addressed by explanation of the details of the operation, by State and Federal oversight, and by the conditions placed on this approval by this Board.

3. The need for the variance arises from some condition peculiar to the property involved:

The need for the variance does arise from a condition peculiar to the property involved. The geological characteristics of the subject site are comparable to the conditions of the property to the east from which aggregate is currently being extracted.

4. 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 strict application of the terms of the zoning ordinance would prohibit acquisition of the aggregate resources of the property. As the lower level of the property is vacant of a primary use and will ultimately be required to be restored to its pre-excavation state, the lying unclaimed of the aggregate resources is considered to constitute an unnecessary hardship. The complete prohibition of mineral/gravel/sand extraction on the property means that the resources on this property may not be depleted without grant of a variance.

5. The approval does not interfere substantially with the Comprehensive Plan adopted by the Noblesville Plan Commission and Common Council:

The property is shown on the Comprehensive Plan as a residential area; however, the petitioner's proposed use would be a relatively short term use, leaving the site open to development following the completion of the excavation. It is intended that the owner's future use of the site will be for residential purposes, and the required reclamation plan promises to restore the site to pre-excavation conditions. Therefore, it is considered that the approval does not interfere substantially with the Comprehensive Plan.

The Findings of Fact contained herein are adopted by the Noblesville Board of Zoning Appeals on August 5, 2019.

Mike Field, Chairperson



Sarah Reed, Secretary