

Hamilton County Board of Zoning Appeals - North District
April 28, 2021

Mrs. Johnson called the official meeting of the Hamilton County Board of Zoning Appeals - North District to order at 8:11 p.m.

Members Present: Gerald Kirby, Frank Habig III, Kristin Johnson, Ron Hall, and Tim Clark. Also present: Byron Settles, Interim Director; Aaron Culp, Legal Counsel; and Linda Burdett, Secretary.

Declaration of Quorum: Mrs. Johnson declared a quorum with five out of five members present.

Guests: See sign-in sheet.

Communications/Reports: Mrs. Burdett stated that everything had been passed out.

Approval of Minutes: ***Mrs. Johnson identified the minutes from the March 24, 2021 meeting.*** Could I have a motion please?

Mr. Habig motioned to approve.

Mr. Hall seconded.

With no comments or corrections... Mrs. Johnson called for the vote. ***5 yes votes... 0 no votes.***

Old Business: Mrs. Johnson began with ***NBZA-L.U.V.-0014-12-2020*** a Land Use Variance. It was tabled at the December meeting and the petitioner requested to table until April. This is concerning allowing the petitioner time to continue the extraction of soil, sand, and gravel for the creation of a wetland. ***Location: 13070 Strawtown Avenue, Noblesville, Indiana.*** Mr. Leeman, would you please come forward and tell us about your petition and any updates?

Andrew B. Leeman, of 13070 Strawtown Avenue, Noblesville, Indiana, stated his name and address for the record. I had petitioned last year for a change in the zoning. I think a variance. I had to leave in December and go out-of-state. I came back in April. Since then I've had two surgeries and a rib injury. I would be happy to answer any questions.

I miss Chuck. (Referring to Mr. Kiphart who retired April 16th.) He was a good friend. I hope he enjoys his retirement.

Mr. Hall stated that last fall we had talked about outside storage. Can you tell us what has happened with the outside storage since we met the last time?

Mr. Leeman stated that he had reduced the amount of outside storage by more than the 20 % Mr. Kiphart asked for. I've gotten rid of several automobiles and things of that nature. I think one of the board members even stopped by to look at it. One of you said you wanted the piles of asphalt

removed or screened and the old metal trailer thing removed or screened. I made arrangements to have the asphalt removed. We removed about a third of it. We took out all the saplings that were growing in the metal trailer to have it ready to be removed. The scrap man has not come to pick it up yet.

I was all set to remove the rest of the asphalt until the surgeries. Mr. Kiphart presented me with, and I think Mr. Settles has a copy, of the 17 or 18 line items and I agreed to all of those except for one and then there were a couple of grammatical things that we changed. But as far as everything on that list... I have not removed that trailer – it is in the process of being removed. And I have not removed all of the asphalt. We are planning on getting rid of the rest of it within the next two weeks.

Mr. Hall asked if in the process of getting rid of the outside storage... are you bringing other material or storage onto the site for sale? (2) I drive by there frequently and it seems like it ebbs and flows a lot. (3) I was pleased to see that the asphalt millings are being moved. I think that's a great improvement. (4) I understand from the testimony before and the papers we have that you are Andy Leeman, LLC. (5) There are no employees, correct? (6) I know you have read the list and talked at length about all of the surveyor's requirements and the state's requirements... are you prepared to meet all of those?

Mr. Leeman stated that he had some stuff in those U-lock-Its. With money being the way it is, I was shutting those U-lock-Its down. But I was not adding to the net. We still have met the 20 % reduction or more. (2) It looks like it in the parking area. I will meet that five year plan. (3) I fell over one of the trailers and cracked a rib. Once I'm able to climb up in the machine I will get rid of the rest. (4) I am Andy Leeman Topsoil, Inc. (5) I have no employees other than sometimes I need somebody to fix something. I do not plan on having any employees other than day labor or occasional labor. I'm not wanting to make a monster business out of this. (6) Yes, I am. I have filled the documents out for the state. They said to wait until zoning is complete or it would be a moot point. It's all filled out. I have a cashiers check for the fee in my pocket. I did talk to the county surveyor's office right after the meeting with Mr. Kiphart and Mr. Settles. I talked to Andy Conover and told him what you guys wanted and showed him that list.

I contacted Nathan Stacy of Stacy Construction who is one of the biggest people that do erosion control in this county. He met with me down there and he looked at everything that I was doing and said, "Seriously, Andy, what I would do, would do more to destroy the environment than what you've done. I could put a silt fence in but with my machinery, I would have to clean an 8 ft. wide strip. That 8 ft. wide strip does more good than the silt fence. Besides the first time the snow melts and we have a flood it would rip out." He suggested that I do nothing. I contacted Mr. Conover by phone and told him what Mr. Stacy said. That is the last I've heard from Mr. Conover.

Mrs. Burdett just handed me an email copy and I just read through it. That is the first contact that I've had since then.

Mr. Kirby asked Mr. Leeman about the one on the list that he didn't agree with.

Mr. Leeman stated it was the employees.

Mrs. Johnson read the list of suggested commitments for the record.

Suggested statements / conditions on the Land Use Variance requested by Andy Leeman.

- 1) The Land Use Variance approval will remain with Andy Leeman Topsoil, Inc.
- 2) Andy Leeman covenants and agrees that these conditions shall survive the expiration or earlier termination of the Variance and shall run with the land and apply to landowner, landowner's heirs, successors, assigns, and any other party claiming an interest in the real estate by or through landowner.
- 3) The 2021 extraction season will not begin until all conditions are met.
- 4) Mr. Leeman will be the only one working on this project. No full-time, part-time or casual employees with the exception of equipment repair personnel and contractors removing the topsoil.
- 5) The outside storage will be reduced by 20 % each year.
- 6) Mr. Leeman may stay overnight in the RV no more than 35 days per year otherwise the RV is only to be used as an office.

According to an email from Jon Eggen dated October 28, 2020 Mr. Leeman cannot do anything without a DNR permit.

- 7) A permit is approved and issued by the Indiana Department of Natural Resources for mineral extraction in the floodway.
- 8) A copy of the state permit will be kept with the plan commission's Land Use Variance file.
- 9) The state permit must remain current.
- 10) A proposed operations plan is to be submitted to and approved by the Hamilton County Surveyor's Office.
- 11) A Storm Water Pollution Prevention Plan is to be submitted to and approved by the Hamilton County Surveyor's Office that would comply with the Hamilton County Stormwater Management Technical Standards Manual.
- 12) A letter is to be issued to the Hamilton County Plan Commission by the Hamilton County Surveyor's Office indicating that these requirements have been met.

- 13) The steel girder formerly used as a house trailer frame will be removed from the property by April 05, 2021.
- 14) The asphalt millings are to be removed from the property by July 01, 2021.
- 15) Any fuel stored on the property must be stored in strict compliance with all applicable federal, state, and local laws and regulations.
- 16) All excavation and reclamation work shall be conducted in compliance with federal and state laws, regulations, and standards governing wetlands and wetland reclamation. This includes obtaining all necessary permits, registrations, and inspections from the federal and state agencies. Copies of all such permits, registrations and inspection reports shall be submitted to the Hamilton County Plan Commission within 30 days of their receipt by the property owner.
- 17) Landowner and/or other agency shall complete the conversion of 20 % of the property to wetlands each year until project completion. This shall include making necessary plantings, drainage and water flow adjustments, and take other required steps.
- 18) The land use variance ends five years from December 9, 2020. Should the operation end earlier than December 9, 2025 then the dates listed below will be moved up accordingly.
- 19) No outside storage shall be permitted as of May 01, 2026.
- 20) All excavation/extraction equipment is to be removed from the property by April 30, 2026.
- 21) All asphalt millings not used for soil bank stability during the extraction process will be removed from the property by April 30, 2026.
- 22) The RV is to be removed from the property by no later than April 30, 2026.

Mrs. Johnson stated that is the end of the conditions and suggested statements.

Mr. Leeman stated that was the way he thought he had worked it out with Mr. Settles and Mr. Kiphart.

Mr. Clark stated for clarification. Mr. Leeman, I was not out there inspecting your property. I was working for a woman and she saw on Facebook that you had a door she wanted. So I came out to buy it.

I was impressed. The trailer was full of numbered items. You had gone through everything. The guys could look it up by the number and tell me what it cost and where it was. You have gone to a lot of work.

Mr. Leeman stated that he had two of his friends covering for him.

Discussion followed on some of the earlier deadlines.

Mr. Leeman stated that he has not come up with the Stormwater Pollution Control Plan. I don't pollute anything. All my machines run on hydraulic oil that is organic. I did that because I used to work as a contractor for the railroad. The work I did was cleaning up around the piers of the railroad tracks. In order to do that kind of work all my hydraulic oil had to be vegetable based.

I've lived here ever since I was born. This is my county. This is my home. Why would I tear it up? Spent months when they had the fish kill cleaning 53 miles of the White River from north of Winchester to south of Indianapolis.

Mr. Habig stated that he felt the board should change the date to July 05, 2021 on the steel girder just to make it official.

Mr. Clark brought up the asphalt millings under number 21. (2) You said you removed 1/3 of it already? (3) Are you still using it for stabilization? (4) So you're not going to need it in the future?

Mr. Leeman stated that the millings were to be removed or screened. (2) Yes, I have. (3) Right now, I don't have any stabilization problems. (4) I don't anticipate having any stabilization problems because then we're getting back to erosion. I thought there were 20 tri-axle loads there. I thought I would keep maybe 4 tri-axle loads just in case and get all the rest completely off the property.

Discussion followed on changes to numbers 13, 14, and 21.

Mrs. Johnson asked about number 11 with the pollution prevention plan.

Mr. Hall stated that we would rely on the surveyor's office at that point. He would have to work with the surveyor's office to say he doesn't need one and they sign off on it.

Mr. Leeman stated that with the State of Indiana... where the driveway goes down to the river bottom there is a giant cottonwood tree. They said from that giant cottonwood tree on downstream they did not want me disturbing anything because that made a grass filter area so that if there was anything where I was digging it would get filtered out before it gets into the river.

With no further questions from the board... Mrs. Johnson opened the hearing to the public at 8:49 p.m. and invited anyone who wished to speak for or against the petition to please step forward. And with no one stepping forward to address the board... Mrs. Johnson closed the public portion of the hearing at 8:50 p.m. Any motions?

Mr. Habig made a motion to approve this variance with the 22 conditions that were read with the correction to number 13 – steel girder formerly used as house trailer frame will be removed from property by instead of April the 5th, 2021 to June 5th, 2021; number 14 – all asphalt millings are to be removed from the property by July 1st, 2021 all but 4 tri-axle loads and they need to be screened from the view.

Mr. Hall seconded.

Mr. Hall stated that he felt that Mr. Leeman needs to be commended for his willingness to meet all these conditions to help maintain his business and keep it in compliance with our ordinance. The best resolve for cleaning up this property is Mr. Leeman and I think we want to support him to get that done and I'm impressed with his willingness to all the things necessary to do it. I am in favor of going forward with it like this.

Mrs. Johnson stated that she agreed. We've very impressed with the work that you have done and your willingness to work with us.

With no further comments... *Mrs. Johnson* called for the vote. **5 yes votes... 0 no votes.** Your variance is approved. Good luck.

Mrs. Johnson continued with **NBZA-R.V.-0004-03-2021** a Requirement Variance. This was tabled at the March meeting. We have an email from the petitioner dated Monday, April 26, 2021 requesting that we table this again. Could I have a motion to table?

Mr. Culp advised all those present that the May meeting would start at 8:30 p.m. because the South BZA has five items on their agenda.

Mr. Habig made a motion to table until Wednesday, May 26, 2021 at 8:30 p.m.

Mr. Kirby seconded.

With no further comments... *Mrs. Johnson* called for the vote. **5 yes votes... 0 no votes.**

Mrs. Johnson continued with **NBZA-R.V.-0003-03-2021** a Requirement Variance. This was tabled at the March meeting. This is concerning reducing the front yard setback from the ordinance required 190 ft. down to 10 ft. in order to construct a covered porch onto the front of an existing home. **Location: 26410 State Road 213, Arcadia, Indiana.** Mr. Cruzan, would you come up and give your name and address for the record, and tell us about your petition, please?

Mr. Culp asked *Mrs. Burdett* if we had been given what we needed on the notice issues.

Mrs. Burdett answered, yes.

Robert Cruzan, II, of 26410 State Road 213, Arcadia, Indiana, stated his name and address for the record. We are not actually adding a porch. We are just putting a roof over the porch that has been there since the house was built in the 60s.

Mr. Kirby asked Mr. Cruzan if he currently had a stoop.

Mr. Cruzan stated that it was a porch with stone sides on it. We are just going to put a roof on it to give some shade to the house.

Mrs. Johnson stated that it looks like it will really improve the front of your house. From the site plan it looks like the house to the north is closer to the road than your porch will be.

With no further questions from the board... *Mrs. Johnson* opened the hearing to the public at 9:00 p.m. and invited anyone who wished to speak for or against the petition to please step forward. And with no one stepping forward to address the board... *Mrs. Johnson* closed the public portion of the hearing at 9:00 p.m. May I have a motion please?

Mr. Habig made a motion to approve as submitted.

Mr. Kirby seconded.

Mr. Habig stated that it will make a nice improvement on the front of that house.

Mr. Hall stated that it classically meets all of our qualifications for a variance.

With no further comments... *Mrs. Johnson* called for the vote. **5 yes votes... 0 no votes.** Your variance has been approved. Thank you.

Mrs. Johnson continued with ***NBZA-L.U.V.-0005-04-2021*** a Land Use Variance. This is concerning allowing the owner to operate a gunsmithing business from his residence. He will be the only employee and the work will be done in the basement workshop. He is expecting one to two customers per month. No machining of parts or firing of guns. ***Location: 1565 State Road 13 North, Anderson, Indiana.*** Mr. Mullins, would you state your name and address for the record, please, and tell us about your petition?

Joshua Mullins, of 1565 North State Road 13, Anderson, Indiana, stated his name and address for the record. My mailbox is in Madison County. I live on the Hamilton County side. I am asking for a variance to have a gunsmithing operation in my basement. I only handle about one to two customers ~~[max.]~~ maximum a month. It's mostly one. Because of the business I'm in, precision shooting, quality is very important, so I only tackle one at a time and that normally takes 30 days and then some.

I don't sell firearms. I don't machine parts. I don't sell firearm accessories. I'm not a store front of any kind.

I just do repair work. If somebody has already bought something like an optic or a scope or something like that, I will mount that for them. If they need something more than that they need to go to a gun shop or something like that.

The operation is in my basement. I don't have any machining equipment there or anything like that. I'm also not constructing a building or anything like that.

A farmer, Mike Swackhammer, he's battled Covid. He wanted to be here. He's a Vietnam Vet and an outstanding guy. He wrote a letter. He supports me and I support him. I let him use my land to access his farmland around me.

I need this variance to obtain certain licenses through the ATF. That's important. I want to do the right thing. I don't want to be working on something for somebody that could be a felon or someone dangerous. Those licenses are very important to me in keeping everybody safe.

I'm not bringing in that kind of income but that is not the goal of the business. That's pretty much it. Do you have any questions for me?

Mr. Kirby asked Mr. Mullins for clarification. You said your hours are from 10:00 a.m. to 6:00 p.m. Is that going to be every day?

Mr. Mullins stated that that was generally when people got a hold of him - mostly by phone or internet. Normally they drop things off and transactions only take seconds. They pull up. They drop what they want off. Normally they talk about what they want done over the phone or via email. Same thing with a pick-up. There is a money exchange and a water-tight case is used because we live in a rural area. I don't want anyone from the road seeing somebody walking with a firearm. It can make people a little nervous especially in today's society. And then they're on their way.

Mr. Hall asked if this was an existing business at this point. (2) The license requirement is what got you on to us? (3) So, there would be not retail sales that includes ammunition?

Mr. Mullins stated that he owns a precision rifle company but I'm not doing any work from my home. Obviously, this will make it easier for me and it is going to help me obtain licenses through the ATF. That's what this is all about. (2) Yes. (3) No.

Mr. Habig thanked Mr. Mullins for his service to this country. You were a veteran of the Marine Corps?

Mr. Mullins answered yes. I served 7 going on 8 years in the Marine Corps on active duty. It was my pleasure. Thank you for your support. Thank you for your time.

With no further questions from the board... Mrs. Johnson opened the hearing to the public at 9:08 p.m. and invited anyone who wished to speak for or against the petition to please step forward and with no one stepping forward to address the board... Mrs. Johnson closed the public portion of the hearing at 9:09 p.m.

Mr. Culp advised the board that the plan commission did review this project and they issued a unanimously favorable recommendation.

Mr. Culp asked Mr. Mullins if he does "test fires" when he's working on these guns.

Mr. Mullins stated that what they do is called a "function test." It's what we call "dry fire." There is no live ordinance being expelled. We do a function test on the firearm. That way we know it's assembled and it's going to work correctly. It can be done several different ways. Most of the time especially on bolt guns we will "dry fire" the weapon. Obviously, we will make sure it's safe, inspect it with nothing in it and we'll go ahead and pull that trigger. We'll cycle the

weapon, keep that trigger held down, and then when we release it - that trigger will reset and then we know that the firearm is put back together and is operational.

If there is testing that needs to be done, the customer specifically wants me to do it, I don't do it in this county. You don't have the yardage that we use for precision rifles. We engage up to 1,000 yards and we can't do that in the county with the farmland and the terrain. If any live ordinances are being shot it is definitely not in this county.

After some discussion... the motion was restated.

Mr. Habig made a motion to approve with the conditions no employees, no retail sales, no machining of parts, no signage, no firing of guns, the commercial business is to remain in the basement, and the variance remains with the petitioner.

Mr. Hall seconded.

Mr. Hall stated that there is an argument that could certainly be made that there isn't a hardship here because the property can well be used as a residential property as is, but I think the use that we're talking about is so de minimis that it makes that irrelevant. Minuscule

Mrs. Johnson stated that he could have obviously been doing this in his basement and no one would have known it.

After minimal comments... *Mrs. Johnson* called for the vote. **5 yes votes... 0 no votes.** Your variance is approved.

Mr. Habig commended *Mr. Kiphart*, *Mr. Settles*, *Mr. Culp* and *Mrs. Burdett* on getting that all put together for *Mr. Leeman's* project.

Mrs. Johnson agreed.

Mr. Settles stated that he didn't have anything to do with that.

Director's Report: *Mr. Settles* stated that there was one new item coming up for the May agenda. It's a lot split. The one you tabled tonight may be back on for next month.

Legal Counsel Report: *Mr. Culp* stated that we were still moving forward with the search for a new director. The director of HR has sent out not only through their normal channels but also some planning specific channels to develop a pool of candidates. She will be doing the initial interviews with anyone who submits who meets the minimum qualifications and then will be recommending three people to the plan commission. The plan commission will then schedule an executive session to interview all three people. Then they will choose the one to take over. The plan commission said they do not want to rush this. They want to make certain... our first planning director lasted for 31 years and they would hope that the next person could have that longevity but knowing they could be here that long they want to make sure they get the right person.

One thing that was discussed... if there are members of the BZA who want to participate in that they would like to open that up. I would need to know because if in the executive session there is going to be more than two of you from any BZA the agenda will need to include it as a joint executive session of the plan commission and the BZA.

The next BZA meeting will be Wednesday, May 26, 2021 at 8:30 p.m.

With nothing further to come before the board... Mrs. Johnson asked for a motion to adjourn.

Mr. Clark moved to adjourn.

Mr. Habig seconded.

With no further comments... Mrs. Johnson called for the vote. ***5 yes votes... 0 no votes.*** Meeting adjourned at 9:27 p.m.

Kristin Johnson, Chairman

Date: _____

Linda Burdett, Secretary

Date: _____