

Violet Township Board of Zoning Appeals

May 22, 2019

Mr. Collins called the meeting to order at 7:36 p.m. and roll was called.

Members present: Mr. Rector, Mr. Dellinger, Ms. Schirtzinger, Mr. Kluczynski and Mr. Collins. Also present was Kelly Sarko, Zoning Inspector and Jennifer Huber, Township Legal Counsel.

Mr. Collins swore in those wishing to speak. It was noted for the record that Ms. Sarko had also been sworn in.

Case Number 03-CU-2019 (continued from May 16, 2019)

An application for Conditional Use Permit for Home Occupation filed by Rob Hewitt, 8006 Allen Road, Canal Winchester, for property located at 8006 Allen Road owned by Robert Kull, 8193 Carroll Northern Road, Carroll, Ohio. Pursuant to Violet Township Zoning Resolution Sections 3B1-02(9) and Section 3AA5, this application requests a Conditional Use Permit in order to conduct a home occupation from the residence located at 8006 Allen Road.

Rob Hewitt, 7434 Joy Avenue, Canal Winchester, acknowledged he had been sworn in. Mr. Hewitt said he is requesting a Conditional Use Permit to use the property at 8006 Allen Road to operate a business. He said he has had some time to reflect on some of the things the neighbors had stated from the last meeting.

Mr. Hewitt reminded the Board that Fee Corp is across the street from this property. Mr. Hewitt's company has 1/5 of the equipment, 1/5 of the trucks and 1/6 of the manpower that Fee Corp currently has. He gave the distances from five closest neighbors to the pole barn and the distances from Fee Corp. He noted Mr. and Mrs. Skaggs' property is 550 feet from Fee Corp and 1,150 feet from the pole barn at 8006 Allen Road. Timary's house is 806 feet to Fee Corp and 1,000 feet to the pole barn. Mr. Landis' property is 600 feet from Fee Corp and 1,350 feet from the pole barn. He said they are all closer to Fee Corp than the pole building. He said once construction is done, the noise will be reduced tremendously. They are installing siding on the pole barn and things are going on during the days.

He plans to mound soil and plant trees along the property to create a barrier and minimize the noise. He told the Board there are three adjoining neighbors who operate businesses from their properties and more if farms were included. In an effort to appease the neighbors, he said he has tried to help wherever he can. His driveway is shared by Timary and Elvis and Tim and Mary Skaggs share his driveway. They have posted signs where they did not have to, graveled the driveway, hung lights and are trying to be good neighbors. He said nobody has contacted them in the year they have been there about the noise.

In researching the property, he said it does not appear there is an easement for the driveway or the driveways from the drive. He cares about Mrs. Skaggs' dogs as well and understands their concerns. If needed, he said he could install a fence along the driveway to protect the dogs and aid in privacy. He has tried to come to an agreement with them. This agreement would consist of limiting traffic on the driveway from Allen Road to the property to only residential vehicles. He would purchase additional land from Mr. Kull and install a driveway. It would cost him as much as \$200,000 to do this. By doing this, the Landis' would have less traffic, the Skaggs' would retain their privacy, and it would help Mr. Hoffmeister's concern with the traffic and the road wear.

He said he believes he would need a variance to reduce the frontage on Carroll Northern from 125 feet down to 50 feet. He said that equates to 5 acres of land he would have to

Violet Township Board of Zoning Appeals

May 22, 2019

purchase and then over \$80,000 in gravel for a driveway. The only neighbor this doesn't affect or apply to is Mr. Osborne. He said Mr. Osborne has clearly been running a business from his property and it has been going on for quite a while.

He said the packet that Mr. Osborne supplied to the Board last week had many allegations in it and said most of them are false. He noted that the amount of gravel he put into the driveway had to be just as much or maybe not even as much as Mr. Osborne has put into his own driveway. Mr. Hewitt has been working on the property for over a year and not once did Mr. Osborne have a single concern. Mr. Osborne said he had to relocate his cows and Mr. Hewitt can count on one hand the number of times his 6 and 2 year old kids approached his fence to look at the cows and Mr. Hewitt didn't understand how that scared them.

Mr. Hewitt said Mr. Osborne indicated there were footers poured for an addition to the barn. He said they did consider construction of an office area and dug a trench but decided to wait until they got variances and had the money to build the offices. He said they filled the trench.

Mr. Hewitt said he completely understands and appreciates Mr. Osborne's interest. He appreciates Mr. Osborne checking to see if they pulled permits. The fact that he looked into it made Mr. Hewitt look into Mr. Osborne's. Of the six (6) structures on Mr. Osborne's property, there is only one permit and Mr. Hewitt is curious why. He said a barn on Mr. Osborne's property is unfinished and is open to the elements and the wood is gray. Never mind the trailers, building materials, multiple trucks, debris, etc. He also feels like this is enough. There is also a Bobcat on Mr. Osborne's property with the same beepers. Mr. Hewitt has yet to see a Conditional Use Permit for him.

Mr. Hewitt said for someone not running a business out of their residence, Mr. Osborne has had a business listed at that address for the last fifteen years. He said the Ohio Construction Licensing Board have no record of Mr. Osborne's business or credentials. He is not sure that the neighbors know that someone will be moving into this property. Someone will be taking permanent occupancy and his business has not moved in.

He asked the Board to consider all the money and time which have gone into mitigating the issues that everyone has been complaining about. Mr. Hewitt closed with asking why is it acceptable to the Board to allow other businesses to operate around him but not allow him to operate there.

Ms. Huber said it is up to Mr. Hewitt as to what information he wants to provide to the Board. She said if he has images for the Board, it has to be accessible to everyone and at some point in the near future; we have to have the emails provided in hard copy form. Mr. Hewitt said the pictures he has are aerial shots of the property and the neighboring property.

Mr. Richard Ricketts, Counsel on behalf of Joe Osborne, said the pictures were irrelevant and if this goes to court, he will challenge it.

Mr. Hewitt showed photos to the Board. The file names were as follows:

1. Property ID
2. Kull Farm
3. Driveway remedy 1
4. Driveway remedy 2
5. House and patio remedy 3
6. Driveway remedy 6
7. House – Allen Road

Violet Township Board of Zoning Appeals

May 22, 2019

8. Osborne Property 1
9. Osborne Property 3
10. Osborne Property 1.1
11. Skaggs Property 4

Ms. Schirtzinger asked the date of the aerial photography. Mr. Hewitt said May 21, 2019.

Mr. Kluczynski said Section 3AA5-03(2), the definition of Home Occupations are the guidelines the Board uses when considering applications and making decisions and it is defined as “a use which is a revenue producing activity, profession, occupation, service, craft or hobby which is clearly incidental and subordinate to the principal use of the premises at the dwelling”.

Mr. Kluczynski asked about the size of his business. Mr. Hewitt said they do about \$1 million a year and he has between nine (9) and fourteen (14) employees. They are unable to do patios and landscaping during the winter and business is typically March through December. He said business drastically slows down in the winter.

Mr. Kluczynski asked what he meant when he said they did not want a commercial parking lot. Mr. Hewitt said they have not installed a commercial parking lot and have only installed driveways to this point. When it comes time, they do plan to extend the gravel lot to allow parking for his employees and allow space for their materials.

Mr. Kluczynski asked how much parking would be needed. Mr. Hewitt said he submitted a diagram showing the outline of the gravel lot. They are looking at 400 tons of gravel. Mr. Kluczynski asked how much parking this would accommodate. Mr. Hewitt said 10 to 12 (10-12) vehicles as well as an area to store materials. Mr. Kluczynski asked how many would be for vehicles related to his workers and how many would be vehicles for his job. Mr. Hewitt said he has eight (8) company vehicles, one of which he drives, and two that go home with employees.

Mr. Kluczynski asked him to describe his storage. Mr. Hewitt said they do lots of pavers, patios, and walls and have leftover materials from a job that would come back to the site. He estimates they have about thirty (30) pallets of extra materials and maybe a bit more during peak season. They would also have bins that would hold mulch and gravels.

Mr. Kluczynski asked him about delivery of materials from his supplier. Mr. Hewitt said 90% of the material orders are delivered straight to the jobsite. The leftover materials are hauled back to his location and they use the leftover materials at some point.

Mr. Kluczynski asked about the accessory buildings, how many, their size and their use. Mr. Hewitt said the plan right now is to renovate the pole barn at the farm property. They updated the 5,200 square foot pole barn that was built in the 1970's to bring it up to code. The plan is to park the equipment and the trucks inside to keep them out of sight and out of the elements. As for other storage on the property, they would have the bins and they may put a roof over the bins for topsoil or salt or something like that. In the future, they want to put one (1) more accessory building that may be used for offices.

Mr. Kluczynski asked about the “office barn” and asked how big of a facility this would be and how many potential employees that will house. Mr. Hewitt said the office barn or office building might have three offices in it, maybe a bathroom and maybe a conference room. It would primarily be an area where he and his employees could meet in the

Violet Township Board of Zoning Appeals

May 22, 2019

morning to go over the jobs they are doing. It might be a place for a sales person or a designer to sit and design. It would be a place for him to have a real office.

Mr. Kluczynski asked if he plans to do that and have a home office. Mr. Hewitt said he did. Mr. Kluczynski said he does not live on the premises so would he be living in the house and doing the office work from the home or will he only start with this pole/office barn. Mr. Hewitt said he does not intend to put an office in the existing barn. The additional barn would have offices in about two years down the road. He is currently running his design and appointments out of his basement office on Joy Avenue and if the Board feels it necessary, he is prepared to move into the house, if that is one of the conditions.

Mr. Kluczynski asked about safety and traffic patterns if he had given any consideration on the movement of the employees and trucks between his home and the jobsites. Mr. Hewitt said they screen all of their employees. Their insurance does not allow DUI's and other issues. He said none of his vehicles requires a CDL. He said they are taking every effort they can to minimize the safety issues and the traffic.

Mr. Dellinger said he had mentioned mounding and natural sound barriers and asked him to talk about it. Mr. Hewitt said along the north property line, which would separate Mr. Osborne and his pole barn side, they intend on mounding soil along that property line and installing a variety of Birch trees and Evergreens and nice foliage that would create a nice sound barrier between the two of them. Mr. Dellinger asked if there was a lot of water in that area. Mr. Hewitt said there was not, but there is down further, closer to the creek.

Mr. Dellinger said Mr. Hewitt made mention of 60 vehicles a day at some point and asked him to explain. Mr. Hewitt said in speaking with Timary Skaggs she had indicated that by doing the math there would be approximately 60 trips back and forth along the driveway.

Mr. Dellinger said Mr. Hewitt mentioned he had been on site for over a year and he is wondering why we are just hearing about this Home Occupation now. Mr. Hewitt said he and Mr. Kull went into contract about a year ago and they initially went into the property and went into the house to try and start doing some of the remodeling and they were going to increase the appraisal value and get things brought to code so his in-laws could move into the house. They wanted to get that done before they applied for the variance and then in the process of getting that completed, Mr. Kull's wife filed for divorce and things were put on hold. They continued to try and modify the house and the property with or without the business, and once they got to the point of doing the pole barn that is when they sat down with Ms. Sarko and discussed their options. Mr. Dellinger asked if the Home Occupation were turned down would he still move onto the property. Mr. Hewitt said it is hard to tell. It would be very difficult because of the money he has already put in to the property and he does not know if he would be able to at that point.

Ms. Schirtzinger said Mr. Hewitt mentioned he was going to try to keep the traffic down when coming from Allen Road, whether he would have deliveries scheduled a certain time each week and then he said 90% of the deliveries are to the jobsite. She asked him for clarification. Mr. Hewitt said the deliveries of pavers that require 20 or more tons of gravel are delivered straight to the job site. If they require less than 20 tons of gravel, they load the gravel on trucks at their site. They would have some deliveries of gravels and that would be, probably, a couple times a month.

Ms. Schirtzinger asked about the size of the building that Mr. Kluczynski was referring to. Mr. Hewitt said either a 30 x 40 or a 40 x 50 or probably around 2,000 square feet.

Violet Township Board of Zoning Appeals

May 22, 2019

Ms. Schirtzinger asked Mr. Hewitt if he was going to have a sales office there or somebody on the property for sales and what type of sales would be occurring. Mr. Hewitt said right now, all of their sales consist of him going to a customer's home. He said he would get a job, go to the residence and get measurements, put together an estimate and have them to his place so he could show the job on a big screen. He said this would happen between 7:00 a.m. and 4:00 p.m.

Mr. Collins said the Conditional Use is separate from the variance as in the number of employees and the running of the business and number of people coming to the property. He asked if the Conditional Use was not approved, or, if it were approved, would that affect the number of employees and other activities he will have at the house or would they still have the same number of employees and running the business from the house without worrying about vehicles and other things. Mr. Collins asked if he would move forward with the purchase of that property would he still want to move his business. Mr. Hewitt said trucks are not at his Joy Avenue location, so if he were to do his business at the location without the trucks, the short answer is no. He thinks the purpose of him purchasing this property is to get out from underneath where he is now and be able to have something his family can call home. He said he would think the Home Occupation would have to be approved before the variances could.

Ms. Schirtzinger asked if he had anything such as a receipt that shows the aerial photography was done yesterday. Mr. Hewitt said Mr. King could authenticate the photos and he was in attendance.

Dave King, 460 Stone Hill Road, Gahanna, Ohio, was present. Ms. Schirtzinger asked him if he did the pictures. Mr. King said it was not a business but a recreation, where they do pictures of properties.

Jennifer Hewitt, 9434 Joy Avenue said, regarding the property where her husband is keeping his equipment, when they first started renting they were being charged a certain amount. Then, after they moved in, ran electric and built some offices inside the building to make it suitable for their business, the landlord increased the rent because he said the improvements increased the value.

Chris Buskirk, 9640 Schoolhouse Road, Pickerington, said he does not know anything about the current property. He said he has been Rob's neighbor for 12 years. He said if you had to pick one, he would be the one. He has never had a problem with him.

Ms. Schirtzinger asked if he ever had any problem with the workers at all. Mr. Buskirk said he has never had any problems with any of the employees ever. He said Mr. Hewitt was the neighbor you want to live next to you.

Randy Hawk, 8006 Allen Road said he came to work for Rob just about a year ago. Rob is his son-in-law and Mr. Hawk said he could not have picked a better son-in-law.

Dave King, 460 Stonehill Road was present and said he sees that Mr. Hewitt is trying hard to make this work.

Rich Griffith of 8338 Allen Road said there have been some serious accidents in his yard. They have seen an increase in volume and types of vehicles since U.S 33 has become a limited access. He said there is no shoulder, so you have a hard time getting back on if you go off the road. He said a gravel truck overturned in his yard. Last year, he had over \$5,000 worth of insurance claims to fix his yard. He said they don't need any more traffic. He said it is not safe.

Violet Township Board of Zoning Appeals

May 22, 2019

Mr. Collins asked what time of the day most of the accidents happen. Mr. Griffith said the one last week was at 3:30 p.m. in the afternoon.

Mr. Collins said one of the options earlier was building a separate road not from the driveway and asked if that would alleviate some of the issues on Allen Road. Mr. Griffith said he spoke to Mr. Butcher about it and everyone will confirm it is an issue.

Ms. Schirtzinger asked Mr. Griffith if he was opposed to it because there was additional traffic. She asked if Mr. Hewitt proposed he would have all the commercial traffic coming from Carroll Northern and asked if he would still oppose the Conditional Use. Mr. Griffith said he would not want to see any additional businesses there until the condition is fixed on Allen Road.

Beth Thorton, 8374 Allen Road said she is just 4 miles up from the access point. She is neither for nor against. She is a roadway engineer by trade. She said she is coordinating with Greg Butcher to try to do a safety study on Allen Road, because of the recent accidents. She has done some research to prove there is a safety concern. In 2012, the average daily traffic before the interchange went in; on Allen Road were 720 vehicles per day. In 2017, after the interchange there are 1,170 cars a day, which is a 52% increase. She said we have 8-foot wide lanes on Allen Road and the normal roadway width is 10 feet. They are trying to correct this problem and she just wanted the Board to be aware. She said Carroll Northern has about the same situation and said they have more traffic than on Allen Road.

Tom Festing, 8458 Allen Road wanted to know if there had been consideration about an EPA evaluation to make sure they are in line with EPA standards. He asked if there had been considerations for the water and sewer requirements for a business in a residential area. He said he is also concerned about the road.

He asked if there is the need to discuss with the Sheriff's Department, the ability to provide additional security as more businesses are brought to the area. He is concerned that they are a residential area and there are children and school buses. He asked if the Township help with the Post Office to move their boxes to their side of the road.

Richard Ricketts of 50 Hill Road South said he is also resident of Violet Township residing at 8312 Cameron Court. He said he is counsel for Joe and Leslie Osborne. He said the Board made a very good point in that Mr. Hewitt cannot have one without the other. If you look at it in the context of the Conditional Use, it is different than when you add on the variances that are still on the agenda. His presentation and the evidence he has through witnesses addresses everything in a consolidated effort so his preference would be to try to do that after they have taken whatever discussions they want in regards to the variances. It would be his plan this evening to call two witnesses and he also has a significant legal examination of the standards associated with the Conditional Use, the variances and the application and the facts. He said a large part of his questioning is going to go to variance issues. He suggested the Board would be better served time-wise if they looked at everything in a consolidated effort. Mr. Collins said they have not given the people the proper opportunity to speak on both. Mr. Ricketts said his request would be to defer the decisions on everything until we have heard all of the evidence as opposed to doing it in piecemeal.

Ms. Schirtzinger made a motion to take a 5-minute recess at 9:10 p.m. Mr. Kluczynski seconded the motion. Roll call vote: all ayes. The Board reconvened the public hearing at 9:24 p.m.

Violet Township Board of Zoning Appeals

May 22, 2019

Mr. Ricketts asked if he could call Mr. Hewitt up to ask him questions. Mr. Hewitt said without his own legal counsel present he would prefer to defer. Mr. Ricketts asked that the Board deny the Conditional Use since Mr. Hewitt was not willing to give testimony.

Ms. Huber, Township Legal Counsel asked Mr. Ricketts if there was any information he could present or any other testimony he could give tonight and then they would have another opportunity at another hearing to properly present his case. Mr. Ricketts said Mr. Hewitt has already contradicted himself many times. Ms. Huber said we can continue this hearing to another special or regular meeting where Mr. Hewitt can be present with counsel of his choosing, and Mr. Ricketts would have the opportunity at that point to cross examine him. Mr. Ricketts wanted to note for the record that is not proper because everyone is here and if Mr. Hewitt wanted to have counsel present he had the opportunity to have counsel here. He should submit to cross examination this evening and be prepared to answer the questions for this Board.

Mr. Kluczynski said it was not them answering the questions it was Mr. Ricketts and wouldn't it have been advantageous for everyone if he would have given them warning this was going to occur, so the applicant could have been advised to bring his own attorney. Mr. Ricketts said he understood his point but that is not the way the hearings work. When you come to a hearing, you need to be prepared to present your case and in this case, Mr. Hewitt is apparently not prepared to present his case.

Ms. Schirtzinger asked if they needed to step away. Ms. Huber was checking with counsel to see what we were able to do. Ms. Huber said there is case law as to whether the applicant is required to testify without counsel present. Technically, the rules of evidence do not apply to these proceedings. If the Board wants to proceed tonight with the information that can be done, or they can continue the hearing to give the applicant time to obtain counsel.

Mr. Kluczynski suggested we defer Mr. Ricketts' questions until the other people in the audience who want to testify against the application have the opportunity and then go into private deliberations. Then, for expediency and time, they should hear the others who are against and see where we are at time wise. The Board agreed.

Melvin Fridley, 8158 Allen Road said he is vehemently against either change Mr. Hewitt wants to make. He said Allen Road is unsafe for any traffic let alone any increased traffic.

Mary Skaggs, 8004 Allen Road said she had pictures. Ms. Sarko said she received them with her email. Mrs. Skaggs said you can see in the picture the Lane that goes back to Mr. Hewitt's is close together. She said it was disconcerting to have his workers going by your door every day. She said she welcomes him as a neighbor, but not as a business.

Mr. Collins entered two photos from Mrs. Skaggs, a total of 3 pages, into the record as Exhibit "C".

Timary Skaggs, 7970 Allen Road said she sent in a video this morning to show how close her house is to the lane. The video was taken this morning and she felt this was a good representation of the sound. The applicant received a copy of the video in Dropbox. Ms. Sarko also has a copy of the video. Mr. Ricketts asked Ms. Sarko to forward to him if she could.

Mr. Collins entered the email and the video from Timary Skaggs into the record as Exhibit "D".

Violet Township Board of Zoning Appeals

May 22, 2019

Jim Dudgeon, 7970 Allen Road said he believes Mr. Hewitt is a great guy and his business will blossom. He is 350 feet from the driveway in question. He said he received a deal to purchase the driveway and would like his legal counsel to review. He said his only issue is traffic and the impact to the drive and Allen Road.

Mr. Collins asked if Mr. Hewitt was to conduct business there without using the driveway would he still be against it. Mr. Dungeon said he would say yes.

Tim Skaggs, 8004 Allen Road said he has lived there for 30 years and has put many loads of gravel down – up to and past the garage. He said he has put 20-30 tons of #2 gravel next to the garage. He said the driveway used to be a road that led to Basil Western Road. He said he loves his family and has to think about his peace.

Mr. Kluczynski made the motion to enter into private deliberations at 9:50 p.m., to include Jennifer Huber. Mr. Dellinger seconded the motion. Roll call vote: All ayes.

The Board returned from private deliberations and resumed the public hearing at 10:12 p.m.

Mr. Collins made the motion to continue the public hearing for Case Numbers 03-CU-2019 and 17-VA-2019 to May 29, 2019 at 7:00 p.m., at the Violet Township Administrative Offices, 10190 Blacklick Eastern Road. Seconded by Mr. Rector. Roll call vote: Mr. Collins, yes; Mr. Rector, yes; Mr. Dellinger, yes; Ms. Schirtzinger, yes; Mr. Kluczynski, yes. Motion carried.

Mr. Collins made the motion to conduct a Special Meeting on May 29, 2019 at 7:00 p.m., at the Violet Township Administrative Offices, 10190 Blacklick Eastern Road, for the purposes of the continuation of the public hearing for Case Numbers 03-CU-2019 and 17-VA-2019. Ms. Schirtzinger seconded the motion. Roll call vote: Mr. Collins, yes; Ms. Schirtzinger, yes; Mr. Rector, yes; Mr. Dellinger, yes; Mr. Kluczynski, yes. Motion carried.

Ms. Schirtzinger made the motion to adjourn the meeting at 10:16 p.m. Mr. Dellinger seconded the motion. Roll call vote: All ayes.

Approved:

Thomas Collins, Chair

Date: _____

Donald Rector, Secretary

Albert Kluczynski, Board Member

Denise Cole, Board Member

Cathy Schirtzinger, Board Member

Stephanie Gillette, Board Member

Rick Dellinger, Alternate Member