

**Porter County Board of Zoning Appeals
Regular Meeting Minutes
July 21, 2021**

The regular meeting of the Porter County Board of Zoning Appeals was held at 5:30 p.m. on Wednesday, July 21, 2021, in the Porter County Administrative Center, 155 Indiana Avenue, Suite 205, Valparaiso, Indiana. Debbie Cook presided.

Members present were: Luther Williams, Jim Clarida, Brian Damitz, Luther Williams, and President Debbie Cook. Also present were Kristy Marasco, Attorney Scott McClure, citizens, and representatives of the press.

MINUTES:

Marvin Brickner made a motion to approve the June 16, 2021 minutes as submitted. Jim Clarida seconded the motion. A voice vote was taken and unanimously carried 5-0.

CORRESPONDENCE:

Kristy Marasco noted that any emails or letters received prior to the meeting were submitted to the Members in their meeting packets.

OLD BUSINESS:

UV-16-0037 – Virgil DiBiase, c/o Todd A. Leeth, 380 E Tratebas Road, Valparaiso, IN in Jackson Township in the RR, Rural Residential District. Motion to deny. The petitioner no longer needs a Use Variance to permit a Horse Stable and Therapeutic Riding Clinic. Attorney Todd Leeth presented. Dr. DiBiase has retired and no longer needs the variance.

Motion: Marvin Brickner made a motion to deny UV-16-0037. Jim Clarida seconded the motion. A voice vote was taken and unanimously carried 5-0.

NEW BUSINESS:

UV-21-0035 – Gary & Mary Dunlap, 467 North 475 West, Valparaiso, IN in Union Township in the I1, Light Industrial District. The petitioner is seeking a Use Variance to permit residential living on a legal nonconforming lot and allow for a two (2) car attached garage addition to a residential structure. Mr. Gary Dunlap presented. We have lived in the home since 1989 but it is zoned I1. We want to add a two-car garage on to the house.

Public Hearing: Debbie Cook asked if any of the public would like to speak in favor of or in opposition of this petition. Debbie Cook also asked that the public address their questions to the BZA while at the same time the petitioner will take notes and respond at one time. No one spoke; therefore, the public hearing was closed, and questions/comments were heard from the Members.

Q: Was the area staked?

A: Yes.

Q: Will the Pine tree have to be removed?

A: Yes.

Motion: Marvin Brickner made a motion to approve UV-21-0035 as presented. Luther Williams seconded the motion. A ballot vote was taken and unanimously carried 5-0.

UV-21-0038 & DV-21-0037 – Trust 6047 c/o Fran Delgado, 240 West Division Road, Valparaiso, IN in Porter Township in the R1, Low Density Single-Family Residential District. The petitioner is seeking a Use Variance to allow business equipment for a construction company to be stored in an existing pole barn at petitioner’s residence. The petitioner is also seeking a Developmental Standards Variance to allow a reduction in the side yard setback from 15 feet to 2.8 feet for a proposed (4,992 square feet) addition to an existing pole barn. Attorney John Craig presented. There is an existing barn on the property. The owner owns a construction company, and he would like to store his daily company vehicles in addition to his personal vehicles on the property. The existing barn was built in 2005 and is 2.8 feet off the property line. They would like to build on to the existing barn versus having another additional building. There are no employees and no work done at the property.

Public Hearing: Debbie Cook asked if any of the public would like to speak in favor of or in opposition of this petition. Debbie Cook also asked that the public address their questions to the BZA while at the same time the petitioner will take notes and respond at one time.

Mr. Ted Saballa, 12 South State Road 2, states there is an animal habitat behind this property and a church on the corner with a large parking lot. This area is residential. How large will the building be, and will it go into the wood line?

Attorney John Craig’s rebuttal:

- The addition will be connected to the exiting barn and go to the East.
- The woods will not be affected and will be 900 feet away.

The public hearing was closed, and questions/comments were heard from the Members.

Q: Are you a licensed contractor?

A: Yes.

Q: Do clients come to your home?

A: Yes.

Q: You are not running a business from your home?

A: No. He meets at the customer’s homes only. Vehicle storage only. Mrs. Delgado is the only person that helps. There are no employees.

Q: No materials?

A: No.

Q: How many vehicles? One dump truck, one equipment trailer, and a skidster. There are also personal vehicles such as an RV and a boat. The barn will allow him to store everything inside and improve the look the property. The pole barn has been on the property since 2005 for his personal storage.

Q: Was the area staked indicating the addition?

A: Yes.

Q: Is the petitioner committed to all commercial construction related equipment is stored inside?

A: Yes.

Motion: Marvin Brickner made a motion to approve UV-21-0038 to allow business equipment for a construction company to be stored in an existing pole barn at petitioner’s residence for a period of two (2) years. No construction materials are allowed and no storage outside. Motion fails due to a lack of a second.

Motion: Brian Damitz made a motion to approve UV-21-0038 to allow business equipment for a construction company to be stored in an existing pole barn at petitioner's residence with the condition that all commercial business-related vehicles and equipment are stored within the structure. Jim Clarida seconded the motion. A ballot vote was taken and approved 5-0.

Motion: Marvin Brickner made a motion to approve DV-21-0037 to allow a reduction in the side yard setback from 15 feet to 2.8 feet for a proposed (4,992 square feet) addition to an existing pole barn. Brian Damitz seconded the motion. A ballot vote was taken and unanimously carried 5-0.

UV-21-0040 - Crisman Sand Company Inc. c/o Attorney Todd A. Leeth, 736 North 400 East, Valparaiso, IN in Jackson Township in the RR, Rural Residential District. The petitioner is seeking a Use Variance to allow the crushing of concrete in a rural residential district. Attorney Todd Leeth and Ms. Glenda Snyder presented. Crisman Sand is a sand mining company on approximately 85 acres that has been mining since 1978. As part of the operation concrete crushing takes place from clean fill from construction sites that is then recycled and sold as gravel. Crushing is not a full-time process and we do not own the crushing equipment. It is done typically over a two-week time twice a year. This requires its own variance. The Indiana Department of Environmental Management performed onsite inspections and requested an air permit be applied for. That has been done and approved by IDEM. Crisman sand has distance, screening, and elevation changes to abate noise. On the decibel meter, concrete crushing equipment averages 77 decibels. Less than a riding lawn mower. The crushing area is not adjacent to a neighbor. It is adjacent to 70 acres of land and densely wooded areas as well as a north property line berm. We will 850 feet from homes and 940 feet from CR 400 East. Crushing will not exceed 300 hours per year and will take place Monday through Friday 7:00 am to 3:00 pm only.

Public Hearing: Debbie Cook asked if any of the public would like to speak in favor of or in opposition of this petition. Debbie Cook also asked that the public address their questions to the BZA while at the same time the petitioner will take notes and respond at one time.

Attorney Deborah Lynch Dubovich, representing Thomas and Joan Lynch, 725 N 432 E. Mrs. Lynch has submitted an affidavit stating she hears loud and startling noise during sand mining.

This is a rural residential district. Sand mining and concrete crushing does not belong here. They are opposed.

Dr. Michael Spence, 754 N 400 E, states this is not a benefit to the area and creates a nuisance. Safety, air pollution, noise are all concerns. He is opposed.

Mr. Roger Smith, 764 N 400 E, states he contacted an environmental science that gave access to equipment to measure air particulates. When measured air pollution was greatly increased during Crisman Sand business hours. He is opposed.

Mr. John Davies, 773 N 400 E, states he is concerned with the long-term effects to the community. He is opposed.

Ms. Anne Spence, 754 N 400 E, states that business is happening well outside the Monday through Friday 7:00 am to 3:00 pm hours that were agreed to. Noise and constant vibrations happen all the time. She is opposed.

Attorney Todd Leeth's rebuttal:

- Attorney Leeth did not receive an affidavit from Mrs. Lynch.
- It is responsible to recycle concrete.
- This parcel has been used for mining and industrial use since 1978.
- INDOT delivers to Crisman Sand and is an approved INDOT site.
- This is not a Special Exception case. We are seeking a Use Variance. The purposes of a Use Variance is there are no standard, we deviate from the Code and we are seeking approval to deviate and have the standards requested.
- We have an air permit from the Office of Air Quality through IDEM. We are approved by IDEM for what we are doing including concrete crushing. Our permit is valid until March 2026.
- We were not provided any evidence of Mr. Smith's air pollution findings. We provided evidence of an IDEM permit from the Office of Air Quality approving our operations.
- Crisman Sand has done a responsible job of restoring their land over the years.
- We have followed the Mineral Extraction Ordinance requirements.
- We are restricted to 7:00 am to 3:00 pm for sand mining. We stated that there are contractors that have no option but to deliver during off hours. These are more emergent issues.
- Any issues can be addressed by calling Glenda Snyder directly at Crisman Sand.

Mr. Roger Smith, 764 N 400 E, states he will be happy to provide evidence to the Members via email.

Attorney Todd Leeth's rebuttal:

- We have no issue with Mr. Smith's comments. We take issue with him representing another person.

The public hearing was closed, and questions/comments were heard from the Members.

Q: This is a unique property. Concrete crushing can be done anywhere. It is not necessary at this property. INDOT and others can deliver elsewhere. Why not find a site specific for concrete crushing elsewhere?

A: There is nothing available within Porter County. We did a study and found 16 parcels. All were either too small or already developed. Contractors will not drive the extra miles because it will not be cost effective. They will bury it instead and that is not what anyone wants to see happen. We respect the comments. The evidence, however, from IDEM states that we are within a safe range to continue operations. We recognize and addressed dust and noise.

C: Concrete crushing can be done anywhere but you have to have the material. You have to be able to store the concrete. It is not practical to just put on someone's property and wait for it to be crushed. We have been INDOT approved to accept clean fill construction material. It is not economically feasible for INDOT and others to truck their materials anywhere. They bring concrete and take sand. The business goes hand in hand. The other option would be to

just bury the concrete and not recycle it.

C: This is a difficult case. Although we might not live near an industry, we certainly can understand noise, vibration, and dust, but we have dealt with it.

Q: How many weeks a year are you going to be crushing concrete?

A: No more than 300 hours per year.

Q: To be clear, you were crushing before you were notified a variance was needed correct?

A: Yes. We did it twice before. Once in 2019 and once in 2020. 132.5 hours of actual crushing time the first time and 123 hours the second time.

Q: How close were you to the neighbors?

A: At that time 650 feet. We are moving it an additional 150 feet away.

Q: Is the proposed area further down?

A: No. It is farther away and has some fall, but it is not low. There is a berm and trees.

Q: You spray water to help with the dust?

A: Yes.

Q: Truck traffic will remain the same regardless of the crushing.

A: Very similar, yes.

Motion: Marvin Brickner made a motion to approve UV-21-0040 to allow the crushing of concrete in a rural residential district for a period of two (2) years with the conditions of only 300 hours per year maximum per year and only during the hours of Monday through Friday 7:00 am to 3:00 pm and with the maximum dust control. Luther Williams seconded the motion. A ballot vote was taken and carried 4-1 (Damitz).

UV-21-0041 – Resto, LLC, Thomas Riggs, Cool Springs Estates, Cool Springs Drive (Lots 22 & 23), Valparaiso, IN in Union Township in the R1, Low Density Single-Family Residential District. The petitioner is seeking a Use Variance to allow a storage unit business in a R1 zoned

district. Mr. Tom Rigg presented. This development was established in the 1960's and still have not been developed. He is proposing a storage until development. No water. No sewage. Some will be temperature controlled some will not. Landscaping will be extensive.

Public Hearing: Debbie Cook asked if any of the public would like to speak in favor of or in opposition of this petition. Debbie Cook also asked that the public address their questions to the BZA while at the same time the petitioner will take notes and respond at one time.

Attorney Aaron Medley representing Dean and Natalie Klinger, 238 Cool Springs Drive. The Klinger's object to the proposed Use Variance. The area is residential and is surrounded by residential homes and properties. The proposed use is a commercial business and will negatively affect the adjacent property owners. There is no peculiar condition to the property to warrant the granting of Use Variance. The petitioner notes being too close to US Highway 30. There are many homes on or near US Highway 30 and the petitioner was aware of the proximity when he purchased the property. There is no unnecessary hardship. The petitioner can build a single-family residential home on the property and use the property within the restrictions of the Ordinance and the Zoning requirements. Economics are not used when determining hardship. The petitioner states there will not be employees however this will increase traffic and members of the public in the subdivision regularly. Drainage, lot coverage, safety, garbage, runoff, etc. are all concerns.

Attorney Christian Bartholomew representing Frank and Patricia Kamarado, 243 Cool Springs Drive. The Kamarado's are opposed to the proposed Use Variance. This use will be injurious to the public health and safety. Over the last ten (10) years there have been sixteen (16) accidents at the intersection of Cool Spring Drive and US Highway 30. It is a complex intersection. Cool Spring Road is designed for limited travel and does not have an outlet. Drainage and runoff are concerns and area already issues for the neighbors. The two proposed parcels are elevated and will make the drainage issues worse. The proposed parcels once were very wooded and has been cleared. Developing a commercial business with a large asphalt area across the street from their home will affect their quality of life. What once was a very quiet and beautiful and safe residential street will no longer be the case. Security, light, traffic, runoff, garbage and odor are all concerns. The Kamarado's had their home appraised which showed a potential \$33,000 drop in property value with the proposed use across the street compared to a residential home or empty lot.

Ms. Bonnie Wesse, 245 Cool Springs Drive, states there are only 13 homes in this subdivision, and most have been here for more than 30 years. This is a residential area and will no longer be peaceful if this petition is granted. This proposal will greatly affect the welfare of this community. She is opposed.

Ms. Deb Sava, 226 Cool Springs Drive, states Cool Spring Drive is a dead-end street and does not have room for U-turns at the end. This already creates issues, and more traffic will make things worse. She is opposed.

Ms. Donna Tuefold, 225 Cool Springs Drive, states Cool Spring Drive is a very small road. Those that don't know it's a dead-end turn around in the neighbor's driveways. The intersection at Cool Spring Road and US Highway 30 is very complex and dangerous. She is opposed.

Mr. Franco Kamarado, 2013 Sailfish Place, Lauderdale by the Sea, Florida, states he grew up in the neighborhood and his parents still live here. This project will make the neighborhood unsafe. There is no right turn lane on US Highway 30 to turn onto Cool Spring Lane. He is opposed.

Mr. Anthony Hurley, 241 Cool Springs Drive, states he agrees with the other remonstrators and is concerned with the school bus pick up and drop off being near this parcel.

Ms. Christine Bianco Spero, 228 Cool Springs Drive, states there is only one way in and one way out and no lights. She is opposed.

Mr. Tom Bukur, 239 Cool Springs Drive, states the roadway was not built to handle commercial traffic and questions what type of lightings and signage would be allowed. He is opposed.

Mr. Clark Remington, 218 N 375 W, states the petitioner has not shown that the property can not be used under the restrictions of the zoning district and has not shown that property values will not be affected. He is opposed.

Ms. Patty Russell, 229 Cool Springs Drive, this area is dark, and the neighbors do not want a criminal element in the area. She is opposed.

Ms. Kristin Wesse, 245 Cool Springs Drive, states that the statistic of 16 accidents in ten years is untrue. As a nurse, she is helping accident victims at the intersection very often. The petitioner rents a home off of US Highway 30.

Ms. Daisy Martinez, 252 Garnet Drive, states that she has lived on US Highway 30 for 31 years and there are other homes in the area along and close to US Highway 30. The parcels are buildable for residential. She is opposed.

Mr. Robert Ulman, 237 Cool Spring Drive, states he owns four lots on Cool Springs Drive with two located closer to US Highway 30 and he has been approached to sell them. It is possible to build here. He is opposed.

Mr. Tom Rigg's rebuttal:

- The street being dead end or dark is not something I control.
- The entrance to the storage unit will be big.
- The plan is to have solar lights on the building.
- The average storage renter visits the site four time per year so this will not be creating a lot of traffic.

The public hearing was closed, and questions/comments were heard from the Members.

Motion: Brian Damitz made a motion to deny UV-21-0041. Jim Clarida seconded the motion. A ballot vote was taken and unanimously carried 5-0.

STAFF ITEMS:

None.

ADJOURNMENT:

There being no further business, the July 21, 2021 Board of Zoning Appeals meeting adjourned at 9:10 p.m.

Debbie Kerr-Cook, President

Attest: Kristy Marasco