

7/19/23 Geiger/Shelly St. Albans BZA

Present: Dean, Fred, Rick and Woody - Colleen recused herself since landowner

Dean called the hearing to order 7:05 and led the Pledge of Allegiance

No court reporter showed up but hearing recorded. Rae Ann called the court reporter just prior to the meeting and was told they informed someone they overbooked and couldn't make it but was not communicated to BZA.

Dean called Tom Frederick one minute before the meeting to ask why he was not at the meeting and Tom said the trustees told him not to attend. Prior to the meeting the BZA was informed by Tom on 6/22 that "I will have to attend this hearing and have no meetings or commitments all of July."

Fred reminded this is a court of law hearing, must be orderly, everyone wanted to speak will have the opportunity and must be sworn in. Rae Ann read the application.

John List at Shelly Co. was sworn in as a witness.

Aaron Underhill, atty for Shelly Co. who leases property, specializes in zoning matters and received 6/6 violation letter from Geigers. Shelly has been mining this property for a very long time and has 2 permits (2003-2018 and 2018-2033) for surface mining. Since the asphalt is not a building or structure, no zoning permit is necessary. He asked Woody is the violation is because of the building permit or because we need to file for a conditional use permit, which we don't agree with. Woody said it was his understanding that the violation was due to the structure that was under construction. Aaron asked if we had pictures of the structure. We shared exhibit 4 and 5. Fred asked what the plant was going to be fueled with and natural gas was the answer given by Paul Rice of Shelly. Paul Rice said he didn't think the pictures were of his property but those of next door, Anderson Concrete. Aaron said he thinks hearing should be limited to expert witnesses and is aware of the opinion of the public but this isn't the venue for those opinions to be heard. Since asphalt plants have no roof, they don't meet the definition of a building. Asphalt plant is not enclosed, the equipment is not fixed to ground but is portable or re-locatable. There will be silos to store materials but for the most part, the majority of the equipment is movable. Fred thinks there has been a lot of bad communication between the Shelly Co., zoning inspector and our town. If Shelly had explained what you were going to fuel it with, what you were going to do, your PR "sucks". Paul said he had conversations with Mr. Frederick and Mr. Altier and Alexandria mayor and tried to reach out. Mr. Frederick and Mayor Jasper were not in attendance. Aaron said they do want to work in the spirit of cooperation, and willing to engage in conversations with our zoning inspector and Mr. Altier and table this appeal on the promise that we will file for a zoning permit under protest, may end up back here but hope to repair our relationship. Mr. Altier appreciates that suggestion and thinks that focusing on the building issue is missing the point. This violation was filed under section 300 and takes issue with the structure that "no building or structure shall be erected, moved, added to, structurally altered or land be changed in use without a permit. Mr. Altier thinks it's a wonderful idea that Shelly make an application for a zoning permit. Aaron said

the violation didn't mention anything about change of use. Mr. Altier said we respectfully disagree with your position of ancillary use and may need to address those issues. But if it's your position that Shelly wants to table this appeal so you can have the opportunity to initiate the process of filing for a permit, that is an idea that has merit. Aaron said he wants everyone to understand that if we are issued a permit, then we're all on our way but if not, we'll be right back here. Mr. Altier said the zoning resolution sets a process for applying for a permit and the zoning inspector will have a period of time (30 days) to make the determination whether he thinks the zoning permit should be issued and if it isn't you have the right to appeal. I'm not sure how you retain the right of appeal on the original issue when you're going to make the other application, but perhaps we'll revisit that if and when we're back here again.

Dean questioned Shelly's response to the second violation dated 6/6 but what happened to the first violation dated 3/15 with no response. He said he wasn't involved at that point and only hired a few weeks ago. First violation letter also sent to James and Colleen Geiger. Dean asked Mr. Altier that isn't the appeal out of the appeal timeline and he said it certainly seems to me yes. Dean asked why are we even here when the appeal is beyond the time frame allowed. Woody said the first violation mentions the flood plain violation. Aaron asked Mr. Altier if they could discuss the accessory use. Mr. Altier said he's not sure tabling is the correct term but maybe continuing this matter for further considering at a later date.

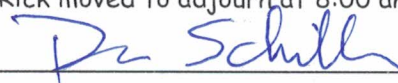
Woody asked if the structure has been removed. Aaron wasn't sure what structure he was referring to. Dean asked Colleen if he could have access to the site and she stated "yes" and Dean took pictures as he went thru the site, but couldn't get them completely displayed. These photos will be available on the township website, prosecutor's office and available to Shelly.

Someone asked if there were going to be any offices. Aaron said none associated with the asphalt plant. If there are offices with the mining part, they will operate out of there.

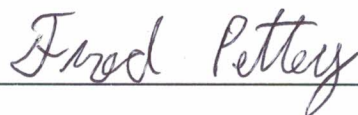
Someone else asked about the gag request, no public input? Aaron said public opinion might influence the BZA so this isn't the place for that. Woody said at the township level if someone wants to speak they have to be sworn in have the right to speak. Mr. Altier said it was up to the BZA.

Dean moved and Fred 2nd that this appeal be continued for 20 days after the zoning inspector makes his determination on a permit application by Shelly. Dean - yes, Dean - yes, Rick - yes, motion passed.


Rick moved to adjourn at 8:00 and Fred 2nd, motion passed.



Dean Schiller, Chair 7/24/23



Fred Pettey 7/24/23



Rick Burkholder 7/24/23