

## **Zoning Case RZON #000804-2022; CUP #000803-2022**

Public hearings were conducted by the Lake County Zoning Board of Appeals on April 19, 2023 and May 10, 2023 on the application of Chicago Title Land Trust Company, Trustee under Trust Agreement #8002382433, record owner, with Kyle Davis, of 617 Deerpath, Lindenhurst, Illinois, being the sole beneficiary of the trust, requesting a rezoning of a parcel from the Residential-3 (R-3) zoning district to the General Commercial (GC) zoning district and a Conditional Use Permit (CUP) for a Planned Unit Development (PUD) for a 5,000 square foot office/storage building, and the associated parking and grading for contractor's equipment storage building and future office space. The subject property is located at 39660 N Illinois Route 59, Lake Villa, Illinois (aka PIN 02-30-100-082) and is comprised of 1.95 acres.

### **Summary of ZBA Testimony – April 19, 2023**

Brad Denz, Lake County Planning, Building & Development Department, provided opening comments and presented the application details. John Morrison, of Manhard Consulting and applicant's representative, stated the site is located along Illinois Route 59 with the adjacent property to the north being residential; the property to the west is residential, and under the ownership of the Davis family, which is the same as the subject property; and to the south is residential open space and not buildable. A wetland is present on the property, so the development's proposed location is at the northeast corner of the property to avoid any environmental impact. Connection to Bishop Court was not considered as it would impact the wetland. The applicant has worked with IDOT to obtain access approval. Lake County Public Works approved the utility plan which contains a force main. The applicant worked with the property owners on the north side to obtain a landscaping agreement to modify requirements to just an eight-foot board-on-board fence. The applicant obtained an additional landscape agreement with the property owner to the south which waived all requirements. The plans meet the County's lighting /photometrics requirements. The building floor plan is a garage space/warehouse. The site will be used for storage and a portion of the site used for office with the future development potential to dedicate a portion of the building to a second user, subject to conditional approval. The proposed building will have the appearance of a storage shed, to maintain the integrity and look of the neighboring area. The staff comment letter indicates a conditional approval from Lake County Public Works, and no objections from the Health Department, Engineering or Building Division. Planning staff indicates no objection to rezoning and Conditional Use Permit and PUD plan provided that the application complies with the recommended CUP conditions from Exhibit A. The applicant agrees to adhere to the conditions. Regarding the question of "spot zoning", there is a series of general commercial zones interspersed between residential uses all along Illinois Route 59 within the general vicinity of the subject property. The parcel to the south is unbuildable due to HOA ownership.

### **Board Comments/Questions**

Member Bell asked if the PUD was needed only for the unknown additional uses on the property and expressed a concern with the request not meeting a change in condition in the area. Brad Denz stated the applicant worked with staff to determine the PUD is an appropriate mechanism to establish an office use. Mr. Morrison stated the CUP criteria and conditions of approval would equate to a low adverse impact to the area. IDOT indicated that they would not permit a residential access from Illinois Route 59.

Member Starkey asked a series of questions related to on-site features and aspects of the proposed business. Mr. Morrison replied they have been in discussions with Lake Villa Township to install a cul-de-sac at the end of Bishop Court (off-site and unrelated to this project). The sanitary sewer will be placed

south and east of Bishop Court and will not impact the wetlands. The fence will be placed on the north property line. Kyle Davis stated they fabricate their own sheet metal inside the shop. The hours of operation will be 7:00 p.m. to 3:30 p.m.

Member Peterson asked questions about the noise of the equipment. Kyle Davis responded that it will be standard work vans and nothing exceeding 50 decibels is allowed. Eric Waggoner provided some examples of noise that is consistent with a 50-decibel threshold: as loud as a quiet conversation, a quiet office, or quiet refrigerator, so 50 decibels is a relatively benign level of noise at the property line.

Member Henderson asked questions about metal fabrication, spot zoning, and storage. Kyle Davis stated the metal folding machines are not loud. They have a refrigeration license everything has to be locked and stored inside of a locked bin. Bob Springer, Lake County Building Official, stated the International Building Code and the International Fire Code both address storage of hazardous materials. The PB&D Department would review the proposed storage with the fire department and require the applicant to follow all fire and the building code requirements. Mr. Morrison stated that given the existing conditions that exist along Illinois Route 59, they believe the proposed use would be consistent with the overall character of the area and would be a suitable development with no impact to the neighbors.

### **Public Questions**

Ed Pill asked questions about the cul-de-sac, if the property was red tagged, and the petitioner's separate future house project to the west of the subject property. Brad Denz stated there was tree removal, which was not designated as a protected tree area, and therefore not a violation, but noted that the property was red tagged for some junk and debris, along with earth moving and grading. Kyle Davis stated the tree removal was of dead ash trees on the residential property he owns adjacent to the subject property.

Matt Nietfeldt asked questions about truck noise, future building rental space, and the wetlands. Eric Waggoner responded by stating if the applicant were to obtain the rezoning and CUP and the CUP was subject to the conditions specified in Exhibit A, if a future use were proposed and the use would be allowed by right in a general commercial zone, that use would also be subject to the condition related to the administrative review process where any additional requirements could be imposed by the PB&D staff related to operational aspects like noise, hours of operation, lighting, or other items that may present an impact on the surrounding properties. However, if the future use is not allowed by right within the general commercial zone, establishment of such use would be contingent upon a CUP approval by the Zoning Board of Appeals after the required public hearing process and would be subject to any conditions that the ZBA would impose. Mr. Morrison stated a flood study was completed and there was no impact due to the proposed development. Eric Steffen, Engineering Division, PB&D, stated the violation was posted due to temporary wetland crossings and site disturbance in excess of a thousand square feet. The results of a follow-up staff inspection indicated the applicant removed and remediated the site disturbance. Mr. Waggoner stated the Department wetland specialist (not present at hearing) is trained in assessing wetland impacts to existing wetlands and was able to determine that following the removal of any material and restoration of the wetland that it was effectively remediated. In addition, the applicant volunteered a number of additional BMPs, to enhance the delineated wetland on the site which would be part of the overall approval if the ZBA were to recommend approval of the application.

Robin Aerne asked about a similar zoning request on a different property located in the area, several years prior. Krista Braun, Zoning Manager, replied that the other property had obtained a Delegated Conditional Use Permit to allow a landscape contractor and he did include a fence in his site plan. The property was already zoned General Commercial to allow a landscape contractor's use in that case, so a rezoning was not required.

### **Public Statements**

Maryann Pill provided public comment stating her concerns with the applicant's use of the property and storage of chemicals, the violation, drainage, wetland/wildlife protection, and having a commercial property adjacent to her home. She stated her opposition to a cul-de-sac on Bishop Court and presented a petition with 71 signatures.

Nathan Brock provided public comments with concerns about the on-site chemicals and hazmat materials, the noise level of the metal fabricating and an unease about the proximity of this building to his property.

Matt Nietfeldt expressed concerns about spot zoning, tree removal, traffic, noise, wetlands, and the flooding already occurring in the neighbors' backyards. He doesn't believe the commercial building would have any benefit.

Robin Aerne stated the previous development proposed 36 homes on eight acres, with all of that associated of the traffic impacting Bishop Court as they could not access Route 59. Conversely, the proposed new building will be at the northeast corner next to Route 59 and will not impact the wetlands and approves of the new development request.

### **Conclusion**

Member Peterson made a motion to enter into Executive Session, which was seconded by Member Roche. The motion passed by a vote of 6 – 0. At the conclusion of the Executive Session, and the opening of the Regular Session, the meeting was continued to May 10, 2023.

### **Summary of ZBA Testimony – May 10, 2023**

Bruce Davis stated the hours of business operation are Monday through Friday from 7:00 a.m. to 3:30 p.m. Employees arrive on site to load their trucks with the material needed for the day and clock in before leaving for the job site. At the end of the day currently, employees return to the site only to clock out, and nothing is unloaded. However, employees will soon be using scheduling software that allows them to clock in and clock out from their phones, so they will no longer be returning to the shop at the end of the day. The business does provide emergency service in the evenings and weekends during the seasonal extreme temperatures (mid-summer and mid-winter), however, there are no operations/activities occurring at the shop during these after hours. Services requests are transferred to his phone after hours and are handled off-site. There is no afterhours activity.

The proposed business on the subject property will use technicians that work directly out in the field in the customers' homes. It is seldom they have customers visiting on-site. The truck equipment hours are the same as business hours, 7:00 a.m. to 3:30 p.m. but generally the trucks are only there from approximately 7:00 -8:00 a.m. until materials are loaded for the day, after which then the trucks are out in the field the

remainder of the workday. The business accepts deliveries from two major suppliers during the day, generally between 10:00 a.m. to 1:00 p.m. The business also received deliveries of materials ordered online which are shipped through FedEx and UPS, which is the same process for deliveries made to private residences.

There are four pieces of equipment used in business operation. Two of these items are motorized, while the other two are worked by hand to bend metal to the different directions (A video of metal cutting equipment was presented to the Board). The business has four work trucks that are commercially labelled for recognition. An overview of truck usage was provided to the Board. If the recommendation landscaping condition is approved, the County will visit the site at a later date to determine if any additional screening is appropriate. For the color of the building, it will be bright white for the majority of the building. The doors and trim around the doors and windows will be black and the soffit and fascia will be black as well. The chemicals stored on site and in the trucks are used only for residential heating and cooling and include R-410 which is the current refrigerant of choice for air conditioners and R-22 which is the old refrigerant from units that were used 15 to 20 years ago. As of 2020, R-22 is not permitted for sale, so storage is limited to the remainder in stock. R-410 is predominantly in all current residential air-conditioning systems whether it be a window unit or whole house air-conditioning.

With regard to spot zoning, the parcel to the north of the subject parcel has a residence on it and the parcel to the south is zoned residential but is owned by the homeowner association land and designated open space so it cannot be developed. Along Route 59, there are three residences and there are twelve commercial businesses in that area. The commercial properties have all been developed in the last 10 to 30 years. It appears to have trended more commercial than residential. The wetlands cause the property to be inaccessible other than direct access to Route 59. The only way to obtain access permission from IDOT is if it is nonresidential.

### **Board Comments/Questions**

Member Peterson asked if any chemicals were stored on the trucks. Bruce Davis stated, yes, two types of chemical refrigerants, but those are also the trucks that go home at night. The trucks are not stored there at night, but some extra supply will be stored inside the building.

Member Roche asked if they have any large amount of chemicals stored on-site. Bruce Davis stated the chemicals are stored in a tank (approximately the size of a barbeque propane tank) with one tank on each truck and two spares in the building.

Member Bell asked if the applicant spoke with IDOT when they purchased the property and what was the intent for the entire tract of land when purchased. Bruce Davis stated they spoke with IDOT, and they cannot obtain access to the parcel from Bishop Court due to the wetlands and bringing commercial traffic onto a local road. Their intent was to split the original parent property, with the subject property comprised of two acres along 59 for the commercial building and the other six acres to the west is going to be single-family residential which Kyle Davis to build his home.

Member Henderson asked if there will there be access to the residential property from Bishop Court. Kyle Davis stated the driveway for the single family residence would connect from the Bishop Court cul-de-sac (proposed), west of the wetlands.

## **Public Statements**

Ed Pill stated the applicant does not live at the subject property. A cul-de-sac is not needed. A barricade at the end of the road would be appropriate.

Maryann Pill stated the businesses on Highwoods and Route 59 are not open at 7:00 a.m. and are not fabricating sheet metal. The Forest Preserve, bank, and church do not have access to Route 59.

Allisson Pill stated buses don't enter the subdivision. The bus stop is off Route 59. The traffic coming and going from Route 59 is bad in the morning so this would be even worse if there was another business near where kids are standing on Route 59.

Robin Aerne stated the previous developers wanted to place 18 to 36 homes on the tract of land. Commercial uses should be adjacent to Rt. 59. This use would allow the opportunity to use the land and avoid impacting Bishop Court.

Toni Woodmaster stated she practiced real estate for 30 years and in regard to access to the property, a previous buyer did propose to have several homes on that parcel of land, ingress and egress was proposed through Bishop Court and that access point would have been a major impact to the neighborhood. This type of commercial business is really the best use of this parcel.

## **Conclusion**

Member Koeppen stated the following: Judy Garcia is a new member of the Board, who listened to the audio and read the transcript of the April 19, 2023 hearing and is eligible to vote.

Member Peterson made a motion to enter into Executive Session, which was seconded by Member Starkey. The motion passed by a vote of 7 – 0. At the conclusion of the Executive Session, and the opening of the Regular Session, Member Starkey made a motion to close testimony, which was seconded by Member Henderson.

At the conclusion of the Executive Session, and the opening of the Regular Session, Member Peterson made a motion to recommend approval of rezoning case 000804-2022 with stated findings that it is consistent with ordinance rezoning standards. The motion was seconded by Member Starkey. The Board voted in favor of a positive recommendation 6-1 for the rezoning request.

Member Peterson made a motion to recommend approval, with conditions, of the Conditional Use Permit for a Planned Unit Development application number 000803-2022 with stated findings that it is consistent with Ordinance standards. The motion was seconded by Member Starkey. The Board voted in favor of a positive recommendation 6-1 for the CUP-PUD request.