



LEGAL NOTICE

The Campbell County & Municipal Board of Adjustment will hold a special public hearing on Tuesday, April 20, 2021 at 6:00 PM (EST) at the Campbell County Fiscal Court, located at 1098 Monmouth Street, Newport, KY 41071 for the purpose of hearing testimony for the following cases:

FILE NUMBER: BA-21-004

APPLICANT: Dori Schweitzer

LOCATION: 7897 Tippenhauer Road, Unincorporated Campbell County

REQUEST: Waiver for number of non-resident employees at home-based business

FILE NUMBER: BA-21-005

APPLICANT: Ricky Schweitzer and Dori Schweitzer

LOCATION: 7947 Tippenhauer Road, Unincorporated Campbell County, KY.

REQUEST: Appeal of Zoning Administrator's decision of home-based business to cease and desist

This meeting will be held in person with social distancing and mask measures in place. For your convenience, a live stream of the meeting will also be viewable on the Campbell County Fiscal Court Facebook page in partnership with Campbell Media.

Information concerning this case is available for review at the Campbell County & Municipal Planning & Zoning Office, 1098 Monmouth Street, Suite 343, Newport, KY. Monday-Friday during normal business hours. In addition, a staff report for the case is available on the county website <https://campbellcountky.gov/meetings/>

We invite persons interested in these cases to be present and/or submit their comments in advance by emailing pzadmin@campbellcountky.gov or calling 859-292-3880 no later than noon (EST) on April 19, 2021. For record keeping purposes, comments should also include the name and address of the person(s) commenting. Comments regarding this case will be taken by email, phone and person.

SPECIAL PUBLIC HEARING:

Tuesday, April 20, 2021 at 6:00 PM 1098 Monmouth Street, Newport

April 14, 2021

Campbell County and Municipal Board of Adjustments

An application was submitted to the zoning administrator for the Campbell County and Municipal Planning & Zoning for the operation of a Home-Based Business at 7897 Tippenhauer Road in Unincorporated Campbell County.

A zoning decision was issued regarding the operation of an office at 7897 Tippenhauer Road and a staging area for construction equipment at 7947 Tippenhauer Road (see Attached).

After the zoning administrator's decision, two applications have been submitted to the Campbell County Board of Adjustments for the properties, including:

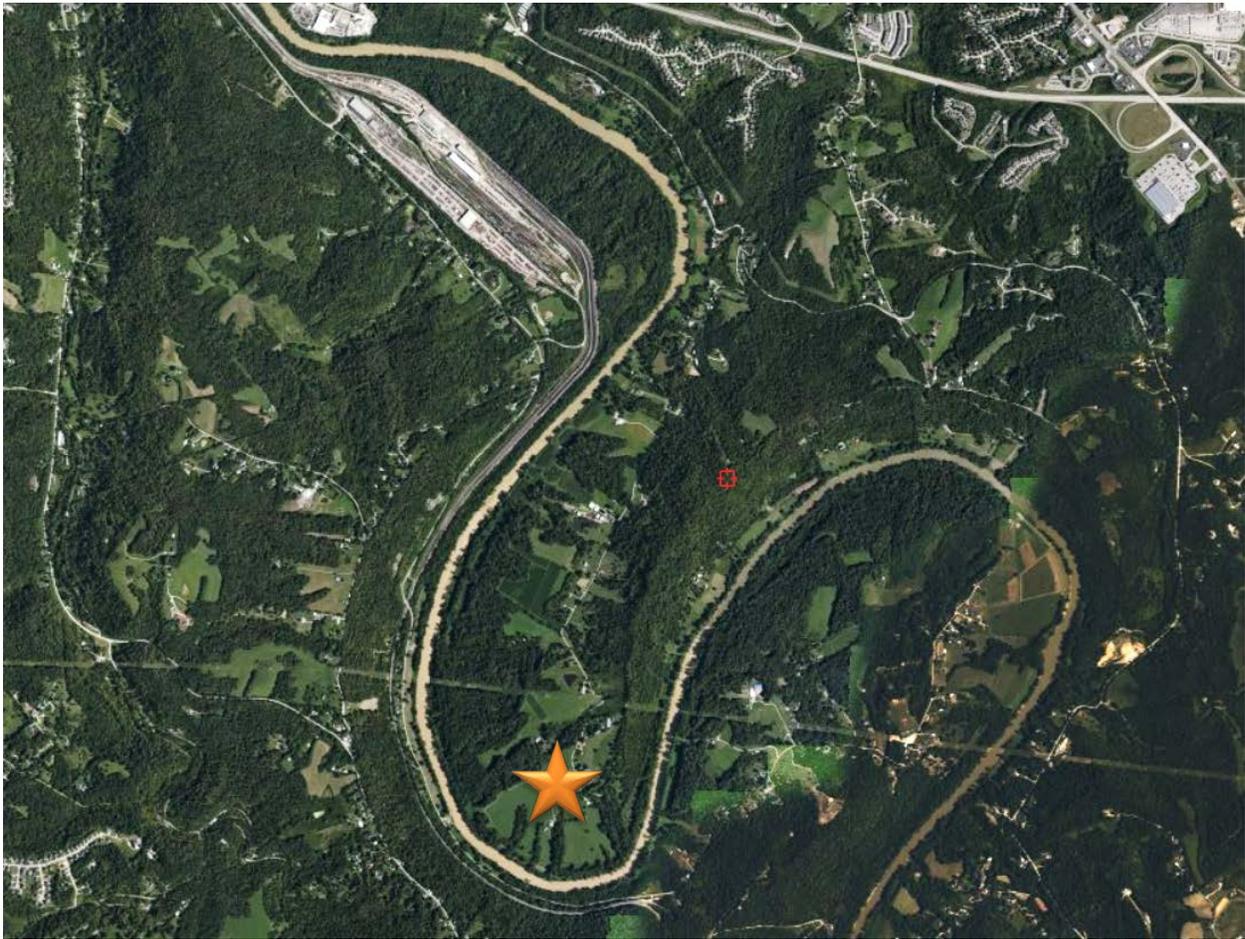
- **Request:** A Waiver for number of non-resident employees at home-based business for the office at *7897 Tippenhauer Rd. Unincorporated Campbell County*
FILE NUMBER: BA-21-004
APPLICANT: Dori Schweitzer
LOCATION: 7897 Tippenhauer Road, Unincorporated Campbell County
- **Request:** Appeal of Zoning Administrator's decision to cease and desist based upon the proposed modifications to the operation of home-based business at *7947 Tippenhauer Rd. Unincorporated Campbell County*
FILE NUMBER: BA-21-005
APPLICANT: Ricky Schweitzer and Dori Schweitzer
LOCATION: 7947 Tippenhauer Road, Unincorporated Campbell County, KY.

Hearing Notice:

Notice of this hearing was placed in both the Campbell County recorder, Kentucky Enquirer, and published through the County's social media. The notice was also mailed to 53 neighboring property owners along Tippenhauer Road.

Copies of this report were also placed on the County website, and made available at the Planning & Zoning Office.

General Vicinity:



The site is located in the in a largely agricultural / rural residential community along Tippenhauer Road. This area is Zoned Agricultural-One (A-1). Home-based businesses are permitted as accessory uses and subject to Article IX, Section 9.11 of the Campbell County Zoning Ordinance.

Tippenhauer Road is signed as a no-outlet road. The County Maintained Road List identifies this road as blacktopped, approximately 2.13 miles in length, and a width of 18 ft. The road is posted at 25 MHP. This road gradual decreases in width across its length. Several signs exist along the road depicting special conditions such as sharp curves, blind humps and soft shoulders.

Overall pavement conditions reflect the need for a future pavement repair. There are no plans to widen or upgrade the road as part of the County roadway maintenance.

The Home-Based Business under consideration is known as Andis LLC. Its location is split onto 7897 Tippenhauer Road (office) and 7947 Tippenhauer Road (Construction Equipment Staging). These are two contiguous parcels that share a common owner Ms. Dori Schweitzer. Ms. Schweitzer is the owner of Andis LLC.

Collectively these two parcels span over 71 acres of agricultural land. Cattle farming is present on

the 60-acre parcel:

- 999-99-20-004.00, 7947 Tippenhauer Road - Approximately 60 acres owned by SCHWEITZER RICKY and SCHWEITZER DORI
- 999-99-20-004.01, 7897 Tippenhauer Road - Approximately 11 acres owned SCHWEITZER DORI

The land uses surrounding the property consist primarily of agricultural land, open space and large lot residential.

There is an existing unrelated non-conforming home-based business adjacent to the parcels under investigations which is subject to KRS 100.253 (3).

100.253 Existing nonconforming use, continuance -- Change -- Effect of nonconforming use of ten years' duration -- Application.

(1) The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it, may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.

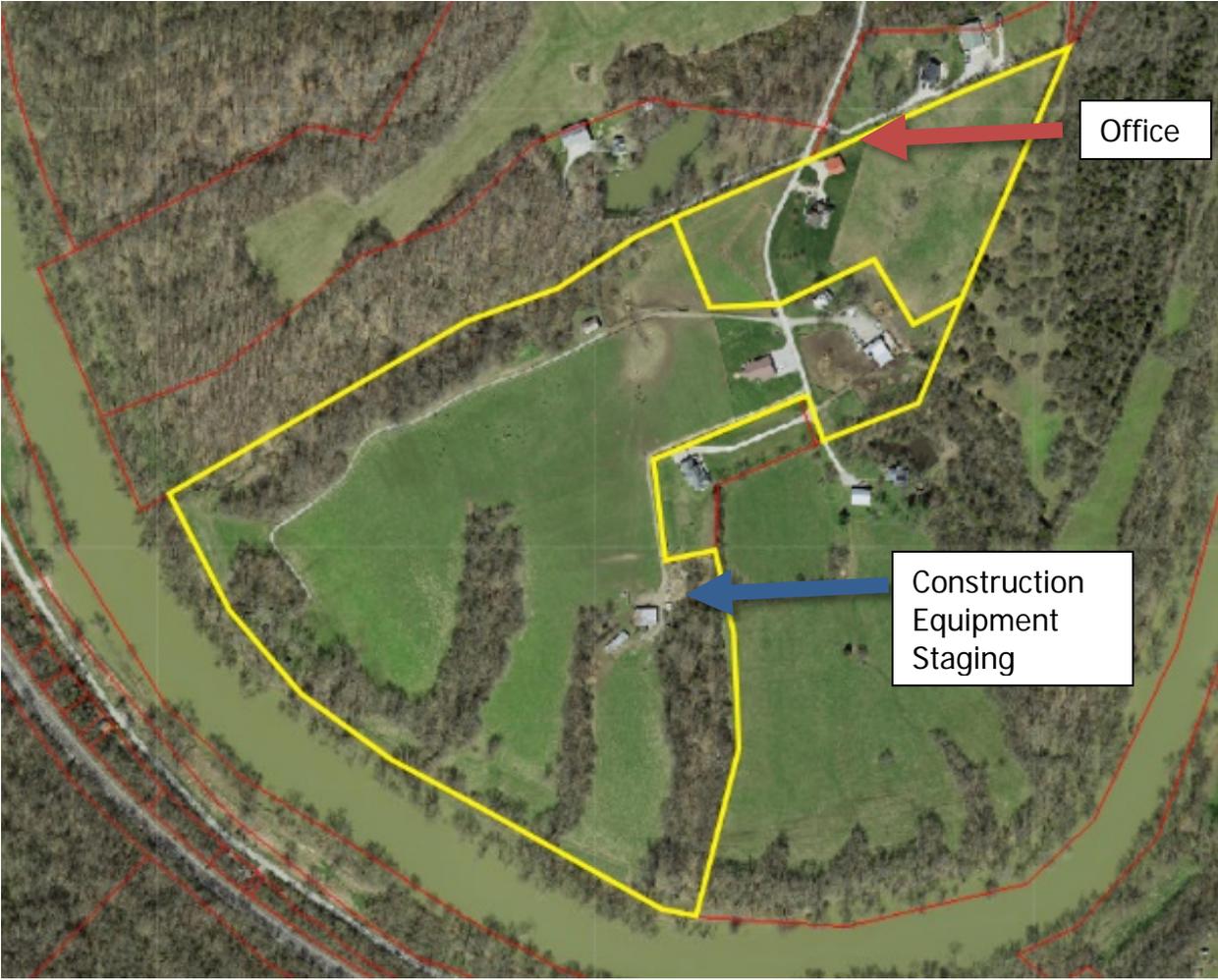
(2) The board of adjustment shall not allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements or extensions, made or to be made, of the facilities of a nonconforming use, where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.

(3) Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a nonconforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

(4) The provisions of subsection (3) of this section shall not apply to counties containing a city of the first class, a consolidated local government, an urban-county government, or a city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census.

On December 5, 2020, a site visit was conducted on Tippenhauer Road regarding an ongoing Home-Based Business. It was found that ANDIS LLC was operating at both 7897 Tippenhauer Road and 7947 Tippenhauer Road the site.

FILE NUMBER: BA-21-004
APPLICANT: Dori Schweitzer
LOCATION: 7897 Tippenhauer Road, Unincorporated Campbell County
REQUEST: Waiver for number of non-resident employees at home-based business



Background of Office Operations – Case BA-21-004 is in reference to the office component of this business located at 7897 Tippenhauer Road. This site is the primary residence of the business owner, Ms. Dori Schweitzer.

Ms. Schweitzer submitted an application for a Home-Based Business (HBB) permit highlighting the use of the property as office space at the December 5th site visit. The accessory structure which shares a driveway with the home was being converted into office space at the time of the visit.



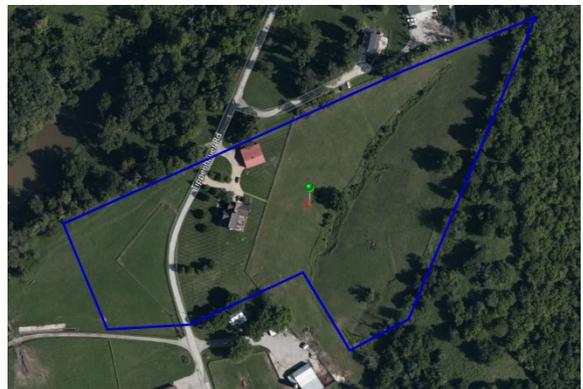
This accessory structure was initially constructed in 2005 as a farm exempt building.

Permits for construction, HVAC electrical and plumbing were required and obtained by Ms. Schweitzer. These construction applications were not provided until after the renovation was well underway and following submission of the HBB permit application.

Construction for the office space is permitted and ongoing.

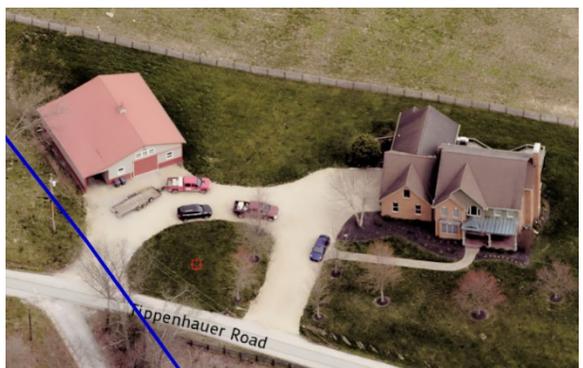
It was found that the use of the accessory unit could be in compliance with the Zoning Ordinance with the exception to the number of employees.

Article 9, Section 9.11 states – “No more than one (1) employee other than those residing on the premises shall be engaged in a Home-Based Businesses on the premises at any one point in time.” The application submitted by Ms. Schweitzer indicates three (3) non-resident employees currently working on the property. The office has a physical plumbing capacity of five (5) persons.



Ms. Schweitzer has subsequently applied for a waiver of this regulation and requested to be allowed up to three (3) non-resident employees for the office-type portion of this home-based business.

The application for a waiver states “I am operating a home-based business from the site. I renovated a barn for the purpose of using it as an office. I am requesting a waiver because I have up to three non-related / non-resident employees who work in the office”.



Considerations:

Variance and Waiver request must also submit a statement in their own words to reflecting the following:

- A. That the requested variance/waiver arises from special existing circumstance, which does not generally apply to land in the general vicinity.*
- B. That the manner in which the application of the provisions of the Zoning Ordinance would deprive the applicant of a reasonable use of the land, or would create unnecessary hardship for the applicant, or that the circumstance is the result of actions taken following the adoption of the zoning regulation from which relief is sought.*
- C. That the variance will not allow unreasonable conditions of the requirements of zoning regulations and will not alter the essential character of the neighborhood.*
- D. That granting the waiver/variance will not confer on the applicant any special privilege that is not conferred by this ordinance to other land, structures or buildings in the same zone.*

The applicant has provided the following additional information.

Applicant's Statement:

I, Dori Schweitzer, own the property located at 7897 Tippenhauer Road, Cold Spring, Kentucky 41076. The waiver would permit me to conduct business from an office for a company by the name of Andis, LLC. Andis is a certified Disadvantaged Business Enterprise (DBE). It performs contracting work for Duke Energy. The office is a renovated barn on my property from which we perform the administrative work necessary to conduct the operations of Andis, LLC. The employees who will work from the office would drive to the office in the morning and leave in the evening. The employees would not be running in and out of the location during the day. The site contains 10.8304 acres. Its best use is residential and farming activities. It is most suitable for a home-based office as there is plenty of space for parking for the employees as well as the residents. In the event the waiver is not granted it would deprive me of a reasonable use of my land and would create an unnecessary hardship for me as a Disadvantaged Business Owner. If the waiver is granted it will not create a hardship or any inconvenience to either the residents on Tippenhauer Road or any damage to the roadway itself. It is my understanding that there are other home-based businesses on Tippenhauer Road that have employees who are coming and going throughout the day. The use of the barn as a home-based office would be less impactful to the area than the current activities conducted on other properties sitting on Tippenhauer Road. In addition, it is the intention that the employees will work Monday through Friday at the location.

Staff Comments:

According to PVA Records , the home is approximately 3,172 square feet of finished space. It includes a two-car garage. This is roughly 25% larger than the average home of 2,500 square feet. It is not uncommon for a home of this size to more than two resident cars.

Prior to the conversion of the barn to an office, the office employees were working out of the home. Vehicles common to office employees are also common in size to residential use.

There is sufficient off-street parking for the residents of a single-family home and 3 non-employees in the vicinity of the Home and the Barn/Office structure as requested.

Staff Recommendation:

That Home-Based Business permit for the operation of and office at 7897 Tippenhauer Road, Unincorporated Campbell County with a waiver of Article 9.11 (A) (1) to allow up to three (3) non-resident employees working as part of an approved home-based business, subject to the following conditions:

- 1) The primary use of the property remain agricultural / residential.*
- 2) Only one home-based business be served by this property.*
- 3) The home-based business use be restricted to office-type work hours from 8:00 to 5:30, Monday through Friday.*
- 4) No external storage related to the home-based business is permitted.*
- 5) No expansions of the office are permitted without additional approval by the Board of Adjustments.*
- 6) Advertisements for the business remove mapping to the site which could encourage traffic.*

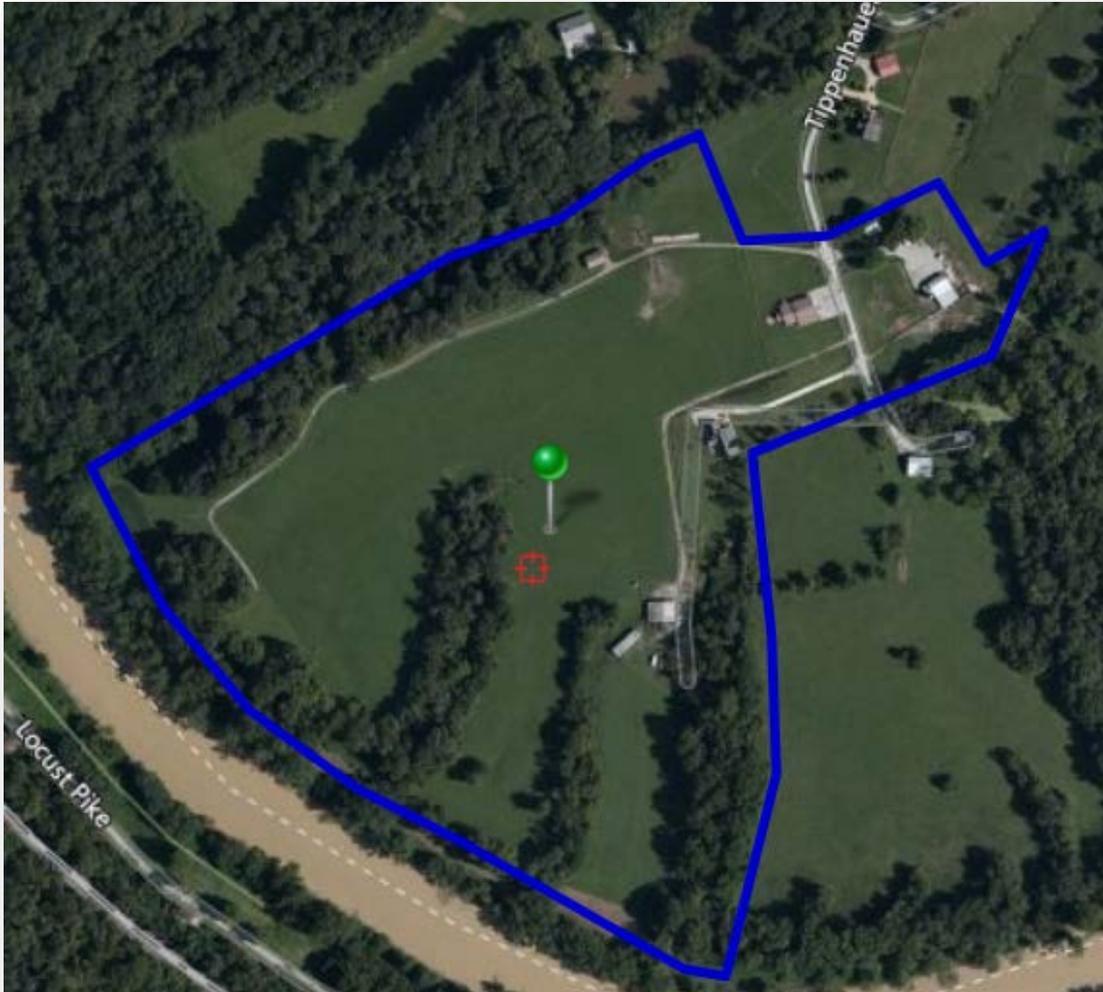
Failure to remain in compliance with Article 9, Section 9.11 Home-Bases Business of the Campbell County Zoning Ordinance with the above waiver and conditions may result on the Home-Based Business being revoked.

Support for the Recommendation:

- 1) The request for the waiver is not an unreasonable circumvention of the zoning ordinance given the proposed use, size and location of the property.*
- 2) Operated within the confines of the with Article 9, Section 9.11 Home-Bases Business, the waiver will not adversely affect the public health, safety, or welfare; and will not cause a hazard or nuisance to the public.*
- 3) That request for the waiver is not unreasonable with respect to the requirements of zoning regulations and will not alter the essential character of the neighborhood.*
- 4) That granting the waiver will not confer on the applicant any special privilege that is not conferred by this ordinance to other land, structures or buildings in the same zone.*

ACTION BY THE BOARD IS REQUESTED

FILE NUMBER: BA-21-005
APPLICANT: Ricky Schweitzer and Dori Schweitzer
LOCATION: 7947 Tippenhauer Road, Unincorporated Campbell County, KY.
REQUEST: Appeal of Zoning Administrator's decision to cease and desist based upon the proposed modifications to the operation of home-based business at 7947 Tippenhauer Rd. Unincorporated Campbell County



Background of Construction Equipment Staging Area – Case BA-21-005 is in reference to the Appeal of Zoning Administrator's decision of home-based business to cease and desist located at 7947 Tippenhauer Road. This site is the primary residence of the Mr. Ricky Schweitzer. Mr. Ricky Schweitzer and Ms. Dori Schweitzer are co-owners of the property.

The operation of this portion of the business was not detailed in the Home-Based Business (HBB) permit submitted at the December 5th site visit.

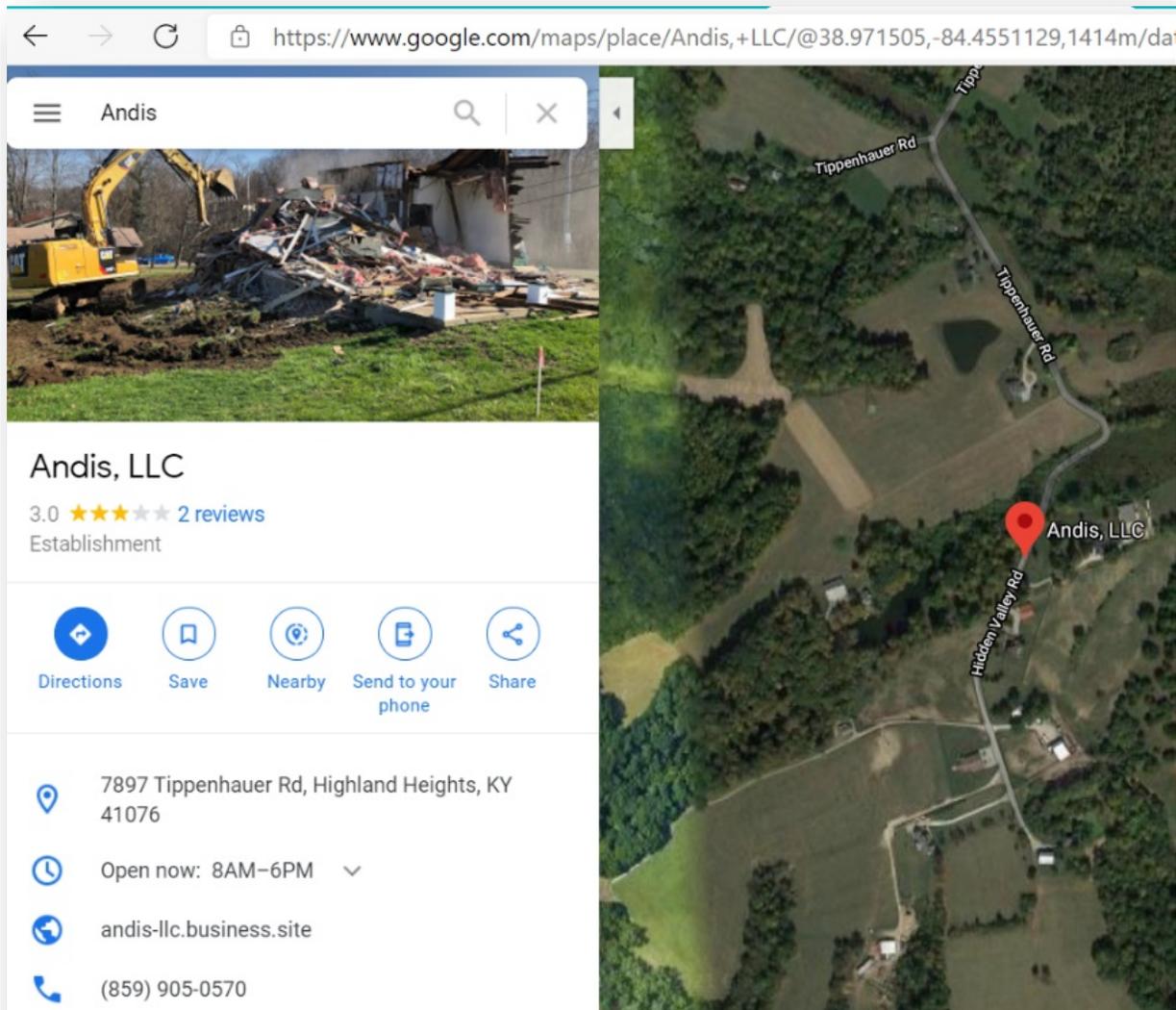
In March 2018, the property was clearly used as a farm.



In 2020, evidence of fill being placed on the site which later became the equipment staging area.



In 2021, the site is being advertised as the location of Andis LLC.



Mr. Ricky Schweitzer and Ms. Dori Schweitzer, as co-applicants have appealed the decision of the zoning administrator based upon the modifications that they have made to the operation of the business at this site and request a reevaluation and relief from the current cease and desist order.

The applicant has provided the following additional information.

Reason for Appeal:

The Applicants assert that they are in compliance with the home-based business ordinance in that they are modifying their operations so that they will comply with the ordinance. Prior to receipt of the cease and desist letter (“Letter”), the Applicants had hauled in materials from time to time to backfill a gully. (1) the Applicants will no longer be hauling in materials unless they are necessary for land management, i.e. bringing in more gravel for the driveway, (2) the Applicants would not have employees on site other than up to five individuals picking up or dropping off equipment in the early morning or at the end of the day, (3) all large equipment will be stored at another location, specifically 11111 Guard Lane, Cincinnati, Ohio 45052, (4) the equipment which will be stored on site will not be any larger than equipment stored at other locations at home based businesses on Tippenhauer Road and will be stored in an enclosed facility, (5) the fuel dispensing unit which is on site is present for the benefit of the farming activities at the location, (6) noise should be greatly reduced with the storage of the larger equipment off site.

The Applicants propose with the modifications that have been made relative to operations at the home based location that it will be in compliance.

Additional clarification were requested and supplied as follows:

1. The five employees referenced in the Appeal are in addition to the three employees who would be working from the office at 7897 Tippenhauer.
2. The equipment which be stationed at 7947 Tippenhauer Road are as follows:
 - One single axle dump truck
 - Two crew trucks (GMC 2500/ ¾ ton)
 - A skid loader trailer
 - A skid Loader
 - A mini excavator (approx. 10,000 lbs.)
3. The employees who would be travelling to the location at 7947 Tippenhauer Road would be arriving between 6:30 am and 6:50 am. They would be leaving the facility with any equipment needed for a particular job around 6:55 am. The gentlemen would be returning around 5:30 pm and would be leaving the Tippenhauer address at approximately 5:45 pm
4. The onsite fuel dispensing unit is there for farming purposes only.

Staff Comments:

Based upon the information provided and a review of the additional modifications to the business and review of the supplemental information staff does NOT recommend lifting the cease and desist of the non-compliant business operations at 7947 Tippenhauer Road.

The operation staging area for self-identified as Industrial Field Services is inconsistent with the purpose the Home-Based Business as defined in Article 9, Section 9.11 of the Zoning Ordinance: “ Home occupations or a Home-Based Business is a business, profession or other economic activity conducted full- or part-time at the principal residence of the person conducting the business. Home-Based Businesses are frequently used as incubators during the start-up phase of the operation. Existing or new businesses which exceed the regulations of this ordinance may be deemed as ready to transition to a professional environment and are subject to action by the Planning Commission or their duly authorized representative regarding non-conformance with this Section 9.11.”

We congratulate our applicants on the success of their business and deemed them as needing to transition to an appropriately zoned site.

We find that use with the proposed modifications continues to be inconsistent with numerous GENERAL REQUIREMENTS of Article 9, Section 9.11 including:

- a. No more than one (1) employee other than those residing on the premises shall be engaged in a Home-Based Businesses on the premises at any one point in time. - *The applicant has proposed five non-resident (5) employees to be gathering on this site daily.*
- b. The use of a structure for the Home-Based Business shall be clearly incidental and subordinate to its use for residential purposes. The Home-Based Business shall be conducted indoors. - *While the operation does co-exist with a home and farming activities, the operation is not subordinate to its use for residential purposes. The operation of the equipment exceeds that activity common to a farm.*
- c. There shall be no outdoor operations or storage of materials, products or equipment for a Home-Based Business in a residential zone. Accessory structures may be used for a Home-Based Business in the R-RE and A-1 zones but shall be limited to one (1) accessory structure per lot. – *While efforts have been made to shield the vehicles from the road with a shipping container and the existing barns, the equipment and supplies are being stored outside. The outdoor storage of equipment is not addressed in the amended plan. We do note that Ms. Schweitzer was reminded in March 2021 that all construction activity related to a Home-Based Business is not Farm Exempt and requires a building permit. A large quantity of lumber was delivered to the site since the issuance of the cease and desist. Ms. Schweitzer indicated that doors were being placed on the barn for farming purposes.*

- d. No unreasonable traffic or parking shall be generated by a Home-Based Business in greater volumes, location or type than would normally be expected in a residential neighborhood. - *The large equipment traffic is in greater volumes, location or type than would normally be expected in a residential or agricultural neighborhood. The equipment type, and volume is common to a commercial or industrial site.*

Tippenhauer Road is a dead-end road. The road varies in width but is consistently one lane. The speed limit is posted at 25 MPH, with numerous tight curves, blind spots, and soft shoulders.

- e. The use shall not involve the storage or use of hazardous, toxic, flammable or explosive substances, other than types and amounts commonly found in a dwelling. – *An onsite fuel dispensing unit was added to the property near the time of the initiation of this business. The applicant has stated that this fueling system was for farm purposes, however the frequency of the fueling is inconsistent with the farming (cattle) on the site.*
- f. No equipment or process, which creates noise, vibration, flare, fumes, odors, or electrical interference detectable to the normal senses beyond the boundary of the property shall be used in such Home-Based Business. Noise shall be limited to those typical to a residential neighborhood. – *Noise from the moving of the equipment is not typical to a residential neighborhood and interferes with the residential activities on the road.*
- g. Hours of operation, including delivery and receiving, shall be conducted in a way that is not perceptible from beyond the lot line between the hours of 10:00 p.m. and 7:00 a.m. – *Proposed hours of operation are not consistent with the neighborhood environs. Multiple construction vehicles enter and exit the site regularly often before 7:00 am.*
- h. Based upon the potential nuisances of a proposed Home-Based Business, it may be determined that a particular type, intensity, or use is unsuitable. - *The operation is not a home-based business and is of a type, intensity, or use unsuitable for an agricultural or residential zone.*

Staff Recommendation:

That the Board of Adjustment has considered the applicant's proposed modification to the business operation; however, it upholds the opinion of the Zoning Administrator to cease and desist the business operations at 7947 Tippenhauer Road, Unincorporated Campbell County, KY.

Support for the Recommendation:

- 1) *Continued operation of this business is in conflict with numerous elements of Article 9, Section 9.11 Home-Based Business as outlined above.*
- 2) *The traffic operation of this portion of the business has been found to inconsistent with the conditions of Tippenhauer Road and potentially detrimental to the residents and agricultural uses who utilize Tippenhauer Road.*

ACTION BY THE BOARD IS REQUESTED

Please contact our office at (859) 292-3880 with any questions.

Respectfully submitted,



Cynthia Minter, AICP CFM
Director of Planning & Zoning

CC: CC&MBOA Members
Applicant