

The Westfield Washington Township Board of Zoning Appeals met at 7:00 p.m. on Tuesday, April 8, 2014, at Westfield City Hall. Members present included Randy Graham, Martin Raines, Ron Rothrock and Bill Sanders. Also present were Jesse Pohlman, Senior Planner; Ryan Clark Associate Planner; and Brian Zaiger, City Attorney.

### **APPROVAL OF MINUTES**

Graham moved to approve the February 11, 2014, minutes.

Rothrock seconded, and the motion passed by 4-0 vote.

Pohlman reviewed the Public Hearing Rules and Procedures.

### **NEW BUSINESS**

#### **1403-VS-07**

(PUBLIC HEARING)

#### **15276 Nashua Circle**

*John and Donita Hiatt*

The petitioner is requesting Variances of Standard from the Westfield-Washington Zoning Ordinance for reduction in the minimum rear yard setback line from thirty (30) feet to twenty three (23) feet in the Single-Family 3 Cluster (SF-3) District (WC 16.04.030.E.6)

Clark presented an overview of the requested Variance of Standard for a reduction in the minimum rear yard setback line from thirty (30) feet to twenty-three (23) feet.

Tony Sweat, on behalf of the petitioner, presented an overview of the proposed home addition.

Public Hearing opened at 7:04 p.m.

There were no public comments.

Public Hearing closed at 7:05 p.m.

If the Board finds adjacent property values will not be affected in a substantially adverse manner, then the Department recommends approval of Petition 1403-VS-07.

Graham motioned to approve 1403-VS-07.

Sanders seconded, and the motion passed 4-0.

Sanders moved to adopt the Staff's findings of facts.

Rothrock seconded, and the motion passed 4-0.

**1404-VS-08**  
(PUBLIC HEARING)

**18737 Joliet Road**  
*Salin Bank & Trust Company*

The petitioner is requesting modifications to conditions of approval for previously granted variances (0506-VS-033, 0506-VS-034 and 0506-VS-0353) to remove the conditions requiring the construction of a residence (greater than or equal to 3,500 square feet) to commence within two years and a Certificate of Occupancy to be issued within three years.

Pohlman presented an overview of the requested modifications and explained that action is required by the Board because the property is currently in violation of the previously granted variance conditions.

Peter Pizarro, on behalf of Salin Bank & Trust Company, presented an overview of the Petitioner's acquisition of the property and obstacles the bank is having in selling the foreclosed property because of the existing violation and that a modification of the conditions is necessary.

Sanders asked why they needed to make modifications to this property in order to sell it.

Pizarro responded that the challenge in selling the property is because of the restriction requiring a home and potential buyers don't necessarily want to build a home on the property after making a substantial investment in the existing riding stable.

Pohlman explained even if buyers wanted to build a home, the time frame established in the original conditions of approval have since passed. Pohlman further explained the nuance that if the Board was inclined to approve a modification that no longer required a home, then the riding stable becomes a special exception use because the primary use of the property would no longer be residential.

Public Hearing opened at 7:14 p.m.

Kay Lancaster, 19069 Joliet Road. She expressed she had no concerns with the current use of the property; however, would have a concern it was used commercially or if the property would no longer be used as a riding stable. Lancaster further noted this is a residential area and if the stable became a business it would increase traffic and noise and not fit within the neighborhood.

Stuart Davis, 3924 West 186<sup>th</sup> Street. He agreed with the previous public comments and noted the property was currently clean and well maintained and he does not want to see it changed in its classification. Davis reaffirmed he does not want commercial coming into the neighborhood and a home should still be required.

Kerry Davis, 3910 West 186<sup>th</sup> Street. He also agreed with the previous public comments and

inquired that if house condition was removed, could the property be used for commercial use? Additionally, he inquired whether a subsequent property owner at a later time could file for a variance to create a different kind of business and is home square footage condition the minimum standard per the zoning ordinance. Davis expressed concern about removing any conditions limiting the number of horses on the property.

Pohlman responded the condition regarding a minimum home size was a condition of the granted variance, which exceeded the zoning ordinance's minimum home size requirements.

Ed Little, 19115 Joliet Road. He explained the nature of the corridor and that he likes the neighborhood with all the horses, barns and other critters that are around and that commercial would change this character. Little handed out a list of twenty-three properties in the Joliet Road corridor with equines and twenty-two of those have homes. The subject property is the exception. Little commented he would like the Board to still require a house on the property, but suggested extending the time frame in which to require it, to allow the realtor to advertise for someone to get in a position to be able to acquire this unique property.

Ginny Kelleher, 3920 West 166<sup>th</sup> Street. She commented she has an equine property and had applied for and received a variance for a riding stable and agrees with the neighbors that this property should stay what it is and not to be sold for commercial use. Kelleher explained that to not require a house is not a good idea because trainers and managers come and go it becomes a place for transients and an eye sore, versus an owner-operated riding stable. She noted she does not understand how this is up for a variance without proper advertisement of a special exception. Kelleher agrees with the staff recommendations, but wants to see a condition that a house be added within a certain amount of time to allow the property to still be sold as solve the zoning violation problem. The original conditions were not unreasonable, there were just there to protect the neighborhood with some consistency. Kelleher understands that this property is unique and hard to sell, but does not think the solution to sell it is to not put a house on it and that most equine farms have homes offsite and barns on the property. She noted although those that spoke live in the country, they are still a neighborhood and the comprehensive plan realizes that this is a neighborhood that will become residential in the future so a commercial venture is not appropriate. She would like the Board to approve staff recommendations with a condition that they still build the house.

Public Hearing closed at 7:30 p.m.

Sanders noted he visited the property and had a concern when they improved the stable and pasture area it looks like they did not pay much attention to drainage. He is not sure there is a dry place in that pasture. Something needs to be done about drainage for the pasture and probably for the barn. Believes the residency requirement needs to be kept as part of the variance in some way and he is not sure about the number of horses kept there is required.

Rothrock has a concern about this area becoming commercial and the uniqueness of the property.

Pizarro responded that the bank wants to work with the neighborhood to keep the property like it is, which they have allowed the previous owner to stay on the property, in order to keep it

maintained, but they do not believe it is reasonable to have a person buy the land and then have to build a house because this would cause a financial hardship that most people could not handle and that would make it harder to sell the land.

Martin inquired what period of time for a buyer to build a house would be reasonable.

Pizarro responded five years would be better than the discussed two years.

There was discussion amongst the Board with regard to consideration to modify the time frame of the condition requiring the construction of a home and the timing with regard to obtaining a building permit and completing construction.

There was additional discussion amongst the Board about how a future property owner will know of the restriction requiring a home to be built.

Pohlman responded that one of the recommended conditions is that an acknowledgement of the variance be recorded against the property and the Board could require that the acknowledgement be recorded prior to the bank's sale of the property so future property owners are given notice in the title work.

Pohlman noted if the Board approves Petition 1404-VS-08 to still require the construction of a home, then the special exception conditions and findings are no longer relevant and staff recommends the following modified conditions to replace those conditions of approval with the previous variance:

1. No boarding of other horses shall be permitted on the Property;
2. There shall be less than or equal to nine (9) horses on the Property;
3. A building permit for the construction of a residence on the Property shall be issued by April 8, 2018, and a Certificate of Occupancy shall be issued by April 8, 2019;
4. The residence shall be greater than or equal to three thousand five hundred (3,500) square feet;
5. Fiberglass and/or asphalt shingles shall be required on buildings located on the Property;
6. There shall be zero (0) candle-lighting on the Property; and
7. That the Property Owner records an Acknowledgement of Variance with the Hamilton County Recorder's Office prior to the sale of the Property and returns a copy of the recorded instrument to the Economic and Community Development Department.

Staff also recommends the adoption of the same findings of fact adopted with the original variance.

Pizarro inquired if the property could be used as it is today with the revised conditions being discussed.

Pohlman responded yes, the property can continue to be used pursuant to the previous variance and that the modified condition simply extends the time frame in which the home is required to be built, allowing the bank to sell the property without an outstanding zoning violation.

Rothrock motioned to approve 1404-VS-08 with the revised Staff conditions.

Sanders seconded, and the motion passed 4-0.

Rothrock moved to adopt the Staff's recommended findings of facts.

Raines seconded, and the motion passed 4-0.

**REPORTS/COMMENTS**

**APC LIASON:**

Degnan provided a report of the Plan Commission's last meeting activities.

**EDC STAFF:**

No report.

The meeting adjourned at 7:40 p.m.

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Chairperson  
Dan Degnan

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Secretary  
Matthew Skelton, Director