



Petition Number: 1407-SE-02

Subject Site Address: 19606 Joliet Road (the "Property")

Petitioner: Jennifer Fodera (the "Petitioner")

Request: The petitioner is requesting approval of a Special Exception to the Westfield-Washington Township Zoning Ordinance (the "Zoning Ordinance") to allow a kennel for the property commonly known as 19606 Joliet Road, Sheridan, Indiana 46069 (WC 16.04.180).

Current Zoning: AG-SF1 (Agriculture-Single Family Rural) District

Current Land Use: Residential / Agriculture

Approximate Acreage: 5.54 acres

Exhibits:

1. Staff Report
2. Aerial Location Map
3. Existing Conditions Exhibit
4. Petitioner's Statement of Intent
5. Petitioner's Site Plans

Staff Reviewer: Jesse M. Pohlman, Senior Planner

Petition History

This Special Exception request is the result of an existing land use violation that was brought to the Department's attention by neighbors. The Department inspected the property on May 27, 2014, and met Ms. Fodera (the "Petitioner"), who recently acquired the property. The Petitioner informed the Department they were operating an animal rescue, "All About Dogs Rescue, Inc.". The Department informed the Petitioner that a dog rescue, or similar use, qualifies as a "kennel" per the Westfield-Washington Township Zoning Ordinance, which is only permitted as a Special Exception.

As a result, the Petitioner, in working with the Department, has made the necessary application for the Board of Zoning Appeals' consideration of the Special Exception use. If the Board of Zoning Appeals approves the requested Special Exception, then subject to any conditions, the property would be in compliance; however, if the Board of Zoning Appeals denies the Special Exception, then the Petitioner will be required to cease the use of the Property as a kennel.



Analysis

Location: The Property is 5.54 acres +/- in size and located on the northwest corner of Joliet Road and 196th Street (see Exhibit 2). The Property is bound by Finley Creek (Emery Clark Drain) on the north and west, 196th Street on the south, and Joliet Road on the east. The Property is zoned the AG-SF1 (Agriculture-Single Family Rural) District and is located within the floodplain (specifically, within the A Zone, where the specific limits of the floodway and floodway fringe have not yet been delineated).

The Property is improved with a single-family home and several accessory agricultural structures, including existing and recently installed fencing (see Exhibit 3). The surrounding properties are all zoned the AG-SF1 District and include agricultural fields immediately to the north, west and south, and rural residential uses immediately to the east across Joliet Road.

Land Use: As summarized in Exhibit 4 (the Petitioner's "Statement of Intent"), the Petitioner is requesting the Special Exception to allow an animal rescue, for the purpose of rescuing and fostering dogs, sheep, goats, horses and other similar animals.

The Zoning Ordinance (WC § 16.04.210) defines a "kennel" as "any lot on which four or more dogs, or small animals, at least four months of age are kept". WC § 16.04.180 (Figure 2) of the Zoning Ordinance provides that "kennels – including outdoor runs", are Special Exception uses in the AG-SF1 District. As a result, the Department has determined the keeping of more than three (3) dogs on the Property is a kennel pursuant to the Zoning Ordinance.

As noted in the Statement of Intent, the Petitioner is requesting to be allowed to keep twelve (12) rescue dogs and six (6) personal dogs on the Property¹. In addition, the use is proposed to include other rescue animals (e.g., goats, sheep, and horses) which are animals typically associated with permitted agricultural uses (e.g., livestock²) pursuant to the Zoning Ordinance.

As shown in Exhibit 4 (the Petitioner's "Site Plan"), the Petitioner is proposing to use the existing structures and fencing and is not proposing to construct any new buildings (see Exhibit 5). The Statement of Intent further describes the operational characteristics of the proposed use.

The Zoning Ordinance provides that the purpose of the AG-SF1 District³ is to "accommodate agricultural land uses and large-lot single-family residential land uses." The AG-SF1 District currently permits uses such as: farms and farm buildings, churches, golf courses, nurseries and greenhouses, schools, stables and single family dwellings. In addition to kennels, other Special Exception uses contemplated in the

¹ The Statement of Intent acknowledges there are currently a total of twenty-eight (28) dogs on the Property.

² The Zoning Ordinance (WC § 16.04.210) defines "livestock" as "[a]nimals and especially farm animals, raised for use, profit or enjoyment including horses, ponies, cattle, sheep, goats and other similar domesticated animals.

³ WC § 16.04.030(B) of the Zoning Ordinance.



AG-SF1 District include: large animal hospitals, private clubs and lodges, schools with dormitories, stockyards, riding stables, and zoos.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan identifies this Property within the "Rural Northwest"⁴ land use classification. Among other uses, the Comprehensive Plan⁵ notes this area of the township includes single-family uses and agricultural areas, including the largest concentration of commodity farms, some smaller artisan farms, and some equestrian uses.

The Comprehensive Plan contemplates this area will remain rural (e.g., farmsteads and individual houses on large lots) for the foreseeable future and that a primary component of this character is substantial natural-appearing open space. The Comprehensive Plan acknowledges that farming is a legitimate commercial land use activity that will produce noise, dust and odors, and occasionally impede traffic.

The development and implementation policies of the Comprehensive Plan for this area includes, among other policies:

- Large-scale commodity farms (crops and livestock) are subject to eventual change due to growth pressure.
- Allow the continuation of the historic rural patterns, including homestead farms, artisan farms, and equestrian uses. New residential development will be accommodated, but only as it fits into the agricultural life style.
- Preserve historically significant buildings and resources (barns, houses, etc.).
- Limit the land uses to those that are consistent with and contribute to the rural character.
- Establish buffering requirements for new development.

Procedural

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Special Exception. This petition is scheduled to receive its public hearing at the July 8, 2014, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

Special Exceptions: The Zoning Ordinance (WC § 16.04.210) defines a "Special Exception" as "...uses entirely private in character but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property and public facilities."

⁴ Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 24).

⁵ Westfield-Washington Township Comprehensive Plan, Rural Northwest and Northeast (pg. 30).



As such, a Special Exception designation is not meant to imply that the use will be disallowed, but that the use requires a greater degree of scrutiny and review because of its potential adverse impact upon the immediate neighborhood and the community. The Board of Zoning Appeals reviews a Special Exception use and its characteristics and impacts to determine its suitability in a given location for those Zoning Districts in which it is permitted.

Findings of Fact: A Special Exception may be approved under Indiana Code § 36-7-4-918.6 and the Westfield-Washington Township Zoning Ordinance (WC) § 16.04.140(D) only upon a determination that:

1. The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health, safety, morals, or general welfare;
2. The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood;
3. The establishment of the special exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;
4. Adequate utilities, streets, drainage and other necessary facilities have been or are being provided;
5. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion; and
6. The special exception will be located in a district where such use is permitted and that all other requirements set forth, applicable to such special exception, will be met.

The Board of Zoning Appeals shall approve, approve with conditions, or deny Special Exceptions. The Board of Zoning Appeals may impose reasonable conditions as a part of its approval.

Recommendation

If the Board of Zoning Appeals is inclined to approve the Special Exception, then the Department recommends approval of the findings set forth below, with the following conditions:

Recommended Conditions for Approval:

1. The Petitioner shall record an Acknowledgement of Variance with the Hamilton County Recorder's Office and return a copy of the recorded instrument to the Economic and Community Development Department; and
2. The Special Exception shall be limited in scope and operation to the Petitioner's Statement of Intent and Site Plan, attached hereto as Exhibits 4 and 5, respectively. Any expansion or substantial alteration to the scope and operation of the Special Exception, as determined by the Director, shall require approval by the Board of Zoning Appeals.



Recommended Findings for Approval:

1. *The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health, safety, morals, or general welfare:*

Finding: It is unlikely that approving the requested Special Exception would be injurious to the public health, safety, morals, and general welfare of the community because the use as proposed is consistent with the rural and agricultural character of the area and the use itself offers a service benefiting the community. The use and property will otherwise comply with or exceed the applicable standards of the AG-SF1 (Agriculture-Single Family Rural) District.

2. *The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood:*

Finding: It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed Special Exception should not have a negative impact on surrounding properties because: (i) the use is utilizing existing improvements which are consistent with and compatible with the character of the surrounding area; (ii) the operation and design of the use are intended to mitigate the impact on surrounding properties; and (iii) the use is otherwise contemplated as appropriate in the AG-SF1 (Agriculture-Single Family Rural) District.

3. *The establishment of the special exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district:*

Finding: The Zoning Ordinance contemplates the use within the AG-SF1 (Agriculture-Single Family Rural) District. The proposed operation and design of the use should mitigate potential impact on surrounding properties. As such, the use is compatible with permitted uses of the AG-SF1 (Agriculture-Single Family Rural) District and potential conflicts resulting from other future and adjacent uses should be diminutive.

4. *Adequate utilities, streets, drainage and other necessary facilities have been or are being provided:*

Finding: The Special Exception will utilize existing infrastructure and improvements. As a result, the use should have little or no impact on utilities, streets, drainage or other necessary facilities.



5. *Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion:*

Finding: The Special Exception is expected to have a nominal increase, if any, in the number of trips to be generated beyond that of a typical residential or agriculturally utilized property. As a result, no traffic congestion is expected.

6. *The special exception will be located in a district where such use is permitted and that all other requirements set forth, applicable to such special exception, will be met:*

Finding: The Zoning Ordinance contemplates the use within the AG-SF1 (Agriculture-Single Family Rural) District. The use and property will otherwise comply with or exceed the applicable standards of the AG-SF1 (Agriculture-Single Family Rural) District.

If the Board of Zoning Appeals is inclined to deny the Special Exception, then the Department recommends approval of the following findings:

1. *The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health, safety, morals, or general welfare:*

Finding: It is likely the Special Exception would be injurious to the public health, safety, morals, and general welfare of the community because the use and concentration of dogs is inconsistent with the rural residential and agricultural character of the area.

2. *The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood:*

Finding: It is likely the use and value of adjacent property will be affected in a substantially adverse manner. The Special Exception will likely have a negative impact on surrounding properties because: (i) the design of the facility does not adequately mitigate the aesthetic and noise impact on surrounding properties; (ii) the concentration of dogs on the property will likely have an undesirable impact on the upkeep and maintenance of the property; and (iii) the quantity of dogs is inconsistent with the number of dogs typically associated with permitted agricultural or residential uses.

3. *The establishment of the special exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district:*

Finding: The design of the facility does not adequately mitigate the aesthetic and noise impact on surrounding properties. As a result, it is likely the use and value of adjacent property will be



affected in a substantially adverse manner that normal and orderly development and improvement of surrounding property will be inhibited.

4. *Adequate utilities, streets, drainage and other necessary facilities have been or are being provided:*

Finding: The Special Exception will utilize existing infrastructure and improvements. As a result, the use should have little or no impact on utilities, streets, drainage or other necessary facilities.

5. *Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion:*

Finding: The Special Exception is expected to have a nominal increase, if any, in the number of trips to be generated beyond that of a typical residential or agriculturally utilized property. As a result, no traffic congestion is expected.

6. *The special exception will be located in a district where such use is permitted and that all other requirements set forth, applicable to such special exception, will be met:*

Finding: The Zoning Ordinance contemplates the use within the AG-SF1 (Agriculture-Single Family Rural) District. The use and property would otherwise comply with or exceed the applicable standards of the AG-SF1 (Agriculture-Single Family Rural) District.