



Petition Number: 1503-SE-01 & 1503-VS-05

Subject Site Address: 140 East 161st Street (the “Property”)

Petitioner: Noah Herron d/b/a Urban Farmer Seeds and Plants (the “Petitioner”)

Request: The petitioner is requesting approval of a Special Exception and associated Variances of Development Standard to allow an Agritourism Use in the AG-SF1: Agriculture-Single Family Rural District (Chapter 13: Use Table).

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

Current Land Use: Vacant

Approximate Acreage: 3.10 acres +/-

Exhibits: Exhibit 2: Location Map
Exhibit 3: Existing Conditions
Exhibit 4: Narrative Description and Request
Exhibit 5: Conceptual Renderings
Exhibit 6: Conceptual Site Plan
Exhibit 7: Street Frontage Landscape Plan
Exhibit 8: Signage Examples

Staff Reviewer: Andrew Murray

PROJECT OVERVIEW

Location: The subject property is 3.10 acres +/- in size and located at 140 E. 161st Street, on the north side of 161st Street; approximately a quarter mile east of the Kroger Supermarket (**see Exhibit 2**). The Property is zoned AG-SF1 and currently contains structures totaling 4,560 square feet +/- (**see Exhibit 3**). The surrounding adjacent properties to the north and west are zoned Single Family-3 Cluster District and are improved with single-family dwellings located in the Countryside subdivision. The properties to the east and south are zoned AG-SF1 and are improved with large lot single-family dwellings.

Property History: The prior use of the property was an excavating/construction operation, which is not a permitted use under the current zoning classification. The Property has been unoccupied, with the exception of equipment stored within the existing structures, for approximately the past ten (10) years.

Special Exception Request: The Petitioner has filed a Special Exception request to allow the use of the Property for an agricultural/retail use for the Urban Farmer Seeds and Plants business. The Department has determined the proposed use is an Agritourism Use¹, as defined by the Unified Development

¹ The UDO defines “Agritourism Use” as “[a]n agriculturally-based operation or activity that brings visitors to an operational farm, and that may include, but is not limited to, uses and activities such as: pumpkin patches, Christmas tree sales, animal interaction exhibits, apple or strawberry picking, seasonal or holiday activities, family-oriented



Ordinance. The Petitioner would utilize the Property to provide agricultural-related opportunities and experiences as described in **Exhibit 4**. As shown in **Exhibit 5** and **Exhibit 6**, the Petitioner is proposing to utilize and improve the existing Property and structures. The reuse of the existing structures will require interior renovations; however, the Petitioner also anticipates future expansion, as shown in **Exhibit 6**. Seasonal activities contemplated on the Property include a community garden, educational tours, pumpkin patch, and the sale of Christmas trees and other local products.

An Agritourism Use is permitted only by Special Exception in the AG-SF 1 District. As a result, the Petitioner has filed the appropriate Special Exception application.

Variance of Development Standard Request: In addition to the Special Exception request, the Petitioner, in coordination with the Department, also requests the following Variances of Development Standard:

1. Minimum Lot Area (Article 4.2(C)). In reviewing the proposed Special Exception request, the Department identified that the existing half right-of-way along the Property's 161st Street frontage was not consistent with the City's Thoroughfare Plan. As a result, in coordination with the Public Works Department, the Petitioner, as shown in **Exhibit 6**, will dedicate (as part of the development plan review and approval process) property for the necessary right-of-way improvements related to the development of the Property. As a result of the dedication of this additional right-of-way, the Property will be less than the minimum required three (3) acres in the AG-SF1 District.
2. Minimum Building Setback, Front Yard (Article 4.2 (E)(1)). As a result of the right-of-way dedication, as described above, the Petitioner requests a reduction to the Minimum Building Setback in the Front Yard from one hundred (100) feet to forty (40) feet to accommodate the existing and proposed structures.
3. Landscaping. In working with the Petitioner, the Department identified that variances from the following landscaping standards would be necessary in order to accommodate the Petitioner's proposed landscape plan. The proposed landscape plan is intended to accommodate the unique nature of the proposed use and the Petitioner's intended character for the Property, as well as provide landscaping appropriate with the character and uses of the surrounding properties.
 - a. Perimeter Parking Area (Article 6.8(O)(2)). The standard requires a five (5) foot wide planting area extending along the perimeter of a Parking Area. Required within the Parking Area is one (1) tree per thirty (30) linear feet and one (1) shrub per three (3) linear feet of Parking Area length. As a result of parking spaces oriented and abutting an existing six (6) tall wood fence, the Petitioner is requesting this standard not apply to the Property.
 - b. Foundation Plantings (Article 6.8(L)). The standard requires plant materials for long expanses of Building Facades. Due to the location of the gravel drive aisle and the limited visibility of the structure from adjoining properties or 161st Street, the Petitioner is requesting this standard not apply to the Property.

activities , creamery, vineyards, breweries, educational experiences or tours, limited retail sales of products not produced on-site, related beverage or food sales, and related ancillary uses and buildings.”



- c. External Street Frontage Landscaping Requirements (Article 6.8(M)). The standard requires a minimum three (3) shade trees, three (3) ornamental trees, and twenty-five (25) shrubs per one hundred (100) lineal feet of Lot Frontage on 161st Street. The Petitioner is requesting this standard not apply; rather, the community garden, trialing garden and butterfly habitat (as shown in Exhibit 7) proposed along 161st Street replace the otherwise required External Street Frontage Landscaping Requirements.
4. Public Parking Area Surface (Article 6.14(G)(7)). Public Parking Areas are required to be paved with a dust proof or hard surface. As noted in Exhibit 6, gravel already exists on the Property. In order to preserve the agricultural environment and desired character of the proposed use of the Property, the Petitioner is requesting the standard not apply to the Property.
5. Sign Area (Article 6.17(H)(1)). The standard for determining the total Sign Area Allocation is one (1) square foot of Sign Area for each one (1) linear foot of building fronting on a public Right-of-way. The total Sign Area may be divided between Monument, Wall and Awning signs. As shown in Exhibit 6, the total linear of footage of building fronting 161st Street is forty (40) feet. Because of the nature and scale of the proposed use, as well as the orientation of the current structures, the Petitioner does not feel forty (40) square feet of signage is adequate for the Property. As a result, the Petitioner requests to double to total Sign Area Allocation to eighty (80) square feet. Examples of signs are included as Exhibit 8.

Comprehensive Plan: The Comprehensive Plan identifies this Property within the “Suburban Residential” land use classification. Development policies include: (i) protection of existing suburban character of the area; (ii) ensure that the infill development is compatible in mass, scale, density, materials and architectural style; and (iii) ensure proper buffering to existing residential development.

Spring Mill Station Plan: The Spring Mill Station Plan (the “Plan”), an addendum to the Comprehensive Plan adopted by the Council in April 2014, identified a geographic study area (named “Spring Mill Station”) generally located at the four corners of the intersection of Spring Mill Road and 161st Street. The planning process of adopting the Plan resulted in the formation of the Spring Mill Station Task Group (the “SMSG”), which primarily consists of representatives of the surrounding neighborhoods.

Although the Property is located just outside the boundaries of Spring Mill Station, the Department encouraged the Petitioner to meet with the SMSG. The SMSG has provided a letter as a result of their meeting with the Petitioner, which will be presented at the public hearing.

PROCEDURAL

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Special Exception and Variances of Development Standard. The petitions are scheduled to receive its public hearing at the March 10, 2015, Board of Zoning Appeals meeting. Notice of the public hearings were properly advertised in accordance with Indiana law and the Board of Zoning Appeals’ Rules of Procedure.



Conditions: The UDO² and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO³ requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Special Exceptions: The UDO (Chapter 12: Definitions) defines “Special Exception” as “[a] use that requires a greater degree of scrutiny and review because of its potential adverse impact upon the immediate neighborhood and the community that is reviewed by the Board of Zoning Appeals for its characteristics and impacts to determine its suitability in a given location for the Zoning District in which it is permitted”.

Special Exception Decision Criteria: A Special Exception may be approved by the Board of Zoning Appeals only upon the determination in writing that the Special Exception at the proposed location meets the following⁴:

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 be designed, constructed, operated, and maintained so as to: (i) not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area;
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 Zoning District;
4. Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided and the Special Exception will not result in excessive additional requirements at public expense for such public facilities and services;

² Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

³ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

⁴ Article 10.11(D) Processes and Permits; Special Exceptions; Review Criteria



5. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion and have vehicular approaches are designed as not to create an interference with traffic on surrounding rights-of-way;
6. The Special Exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan; and
7. The Special Exception will be located in a Zoning District where such use is permitted and that all other requirements of the Zoning District and this Ordinance, and as may be applicable to such use, will be met.

Variances of Development Standard Decision Criteria: Variances of Development Standard may be approved only upon the determination that⁵:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property.

STAFF COMMENTS

If the Board of Zoning Appeals is inclined to approve the Special Exception and Variances of Development Standard, then the Department recommends approving the petitions with the following conditions and findings:

Recommended Conditions:

1. The Special Exception shall be substantially similar as described in the Petitioner's Narrative Description and Conceptual Site Plan, attached hereto as Exhibits 4 and 6, respectively. Any 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; and
2. The Variances of Development Standard shall only apply to an Agritourism use.

Recommended Findings of Approval (Special Exception):

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 character of the area and the use itself offers a service benefiting the community and surrounding subdivisions.

⁵ Article 10.11(G)(2) Processes and Permits; Variances, Decision Criteria



2. The Special Exception will be designed, constructed, operated, and maintained so as to: (i) not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area:

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 operation and design of the use are intended to mitigate the impact on surrounding properties; and (ii) the use is otherwise contemplated as appropriate in the AG-SF1 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 Zoning District:

Finding: The Unified Development Ordinance contemplates the use within the AG-SF1 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 District and potential conflicts resulting from other future and adjacent uses should be diminutive.

4. Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided and the Special Exception will not result in excessive additional requirements at public expense for such public facilities and services:

Finding: 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 and have vehicular approaches are designed as not to create an interference with traffic on surrounding Rights-of-way:

Finding: Development Plan review and approval of the Special Exception will be required, at which time the development plan will be reviewed for compliance with the applicable design standards related to ingress and egress. Any additional improvements that may be warranted at that time to minimize conflict and interference with the adjacent right-of-way will be required. .

6. The Special Exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan:

Finding: See Page 3, "Comprehensive Plan". The Comprehensive Plan states the basic policy is to preserve and protect the stability and integrity of the area as infill development occurs (page 38, Comprehensive Plan).

7. The Special Exception will be located in a Zoning District where such use is permitted and that all other requirements of the Zoning District and this Ordinance, and as may be applicable to such use, will be met.



Finding: The Unified Development Ordinance contemplates the use within the AG-SF1 District. The use and property will otherwise comply with or exceed the applicable standards of the AG-SF1 District.

Recommended Findings of Approval (Variances of Development Standard):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

Finding: It is unlikely that approving the requested variance(s) would be injurious to the public health, safety, morals, and general welfare of the community because the AG-SF1 District acknowledges the use as appropriate and the resulting improvements and parcel will otherwise comply with or exceed the applicable standards of the AG-SF1 District.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Finding: It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed variance(s) should not have a negative impact on surrounding properties because: (i) the use is acknowledged as appropriate in the AG-SF1 District; (ii) the parcel will otherwise comply with or exceed the applicable standards of the AG-SF1 District; and (iii) the approval of the variance(s) will allow for the use and improvement of the Property in a manner substantially consistent with the quality and character of the surrounding area and Comprehensive Plan.

3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property.

Finding: Strict adherence to the zoning ordinance would result in the inability to improve the Property, as proposed, in accordance with the Unified Development Ordinance. The use is contemplated by the Unified Development Ordinance and the proposed improvements and parcel would otherwise be permitted and comply with the Unified Development Ordinance.

If the Board of Zoning Appeals is inclined to deny the Special Exception or Variances of Development Standard, then the Department recommends 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 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 character of the area and the use itself offers a service benefiting the community and surrounding subdivisions.

2. The Special Exception will be designed, constructed, operated, and maintained so as to: (i) not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area:



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 operation and design of the use are intended to mitigate the impact on surrounding properties; and (ii) the use is otherwise contemplated as appropriate in the AG-SF1 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 Zoning District:

Finding: The Unified Development Ordinance contemplates the use within the AG-SF1 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 District and potential conflicts resulting from other future and adjacent uses should be diminutive.

4. Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided and the Special Exception will not result in excessive additional requirements at public expense for such public facilities and services:

Finding: 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 and have vehicular approaches are designed as not to create an interference with traffic on surrounding Rights-of-way:

Finding: Development Plan review and approval of the Special Exception will be required, at which time the development plan will be reviewed for compliance with the applicable design standards related to ingress and egress. Any additional improvements that may be warranted at that time to minimize conflict and interference with the adjacent right-of-way will be required. .

6. The Special Exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan:

Finding: See Page 3, "Comprehensive Plan". The Comprehensive Plan states retail uses should be restricted in Existing Suburban areas (page 39, Comprehensive Plan) and the proposed use is not an appropriate transition use from Spring Mill Station (page 17, Spring Mill Station Plan).

7. The Special Exception will be located in a Zoning District where such use is permitted and that all other requirements of the Zoning District and this Ordinance, and as may be applicable to such use, will be met.

Finding: The Unified Development Ordinance contemplates the use within the AG-SF1 District. The use and property will otherwise comply with or exceed the applicable standards of the AG-SF1 District.

Recommended Findings of Denial (Variances of Development Standard):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:



Finding: It is unlikely that approving the requested variance(s) would be injurious to the public health, safety, morals, and general welfare of the community because the AG-SF1 District acknowledges the use as appropriate and the resulting improvements and parcel will otherwise comply with or exceed the applicable standards of the AG-SF1 District.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Finding: It is likely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed variance(s) will likely have a negative impact on surrounding properties because the Special Exception is inconsistent with the surrounding area and will likely have an undesirable impact in preserving the character and quality of the area.

3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property.

Finding: Strict adherence to the zoning ordinance would result in the inability to improve the Property, as proposed, in accordance with the Unified Development Ordinance. The use is contemplated by the Unified Development Ordinance and the proposed improvements and parcel would otherwise be permitted and comply with the Unified Development Ordinance.