



Petition Number: 1507-VS-10

Subject Site Address: 15550 Little Eagle Creek Avenue (the “Property”)

Petitioner: James and Donna Curry (the “Petitioner”)

Property Owner: James and Donna Curry (the “Property Owner”)

Request: The petitioner is requesting approval of Variances of Development Standard to reduce: (i) the Minimum Lot Area (*Article 4.2 (C)*); (ii) the Minimum Building Setback Line for the Front Yard (*Article 4.2 (E)(1)(b)*); and (iii) the Minimum Building Setback Line for the Side Yard (*Article 4.2 (E)(2)*) in the AG-SF1: Agriculture / Single-Family Rural District.

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

Current Land Use: Residential

Approximate Acreage: 0.49 acre +/-

Exhibits:

1. Staff Report
2. Location Map
3. Application
4. Site Plan

Staff Reviewer: Kevin M. Todd, AICP

Petition History

This petition will receive a public hearing at the July 14, 2015, Board of Zoning Appeals meeting.

Analysis

Location: The subject property is approximately 0.49 acre +/- in size and located at 15550 Little Eagle Creek Avenue (see **Exhibit 2**). The Property is zoned AG-SF1: Agriculture / Single-Family Rural District (“AG-SF1”). The Property used to contain a house, and currently only contains a garage structure. The surrounding properties are all zoned AG-SF1 and include rural/estate residential to the north and west; single-family residential to the south; and a cemetery to the east (across Little Eagle Creek Avenue). Much of the Property falls within the flood zone (see **Exhibit 4**), however the proposed home location is outside of the flood zone.

Variance Request: As summarized in the Petitioner’s Statement of Intent on the Application (see **Exhibit 3**), the Petitioner has filed this variance request to allow the construction of a home on the Property. The property does not meet the Minimum Lot Area requirements for an AG-SF1 lot¹. Also, the shallow-nature of the lot does not provide enough depth to meet the front yard setback². Finally, the proposed home

¹ Article 4.2 (C) – AG-SF1 -- Minimum Lot Area = 3 acres

² Article 4.2 (E)(1)(b) – AG-SF1 -- Minimum Front Yard Setback = 80 feet



location is in the same location where a house was historically positioned on this property. By using the existing clear area (former home site) to locate the new home site, the side yard setback³ to the south would not be met.

Nonconforming Lot: The configuration of the subject property pre-dates zoning being established in Westfield-Washington Township. The lot appears in 1974 aerial/parcel maps. Zoning was established here in 1977. Because the lot is under one (1) acre in size, the property does not meet the “Nonconforming Lot of Record” standards in the UDO⁴. As such, the Minimum Lot Area portion of this variance request is necessary in order to build on this lot.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan identifies this Property within the “Rural Southwest”⁵ land use classification. Among other uses, the Comprehensive Plan⁶ notes that single-family residential dwellings on large-lots are desirable this area of the township. The Comprehensive Plan also promotes the preservation of Little Eagle Creek Avenue as a scenic by-way⁷.

Procedural

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variances of Development Standard. This petition is scheduled to receive its public hearing at the July 14, 2015, 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.

Conditions: The UDO⁸ 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 UDO⁹ 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.

³ Article 4.2 (E)(2) – AG-SF1 -- Minimum Side Yard Setback = 30 feet

⁴ Article 9.4(B)(3)

⁵ Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 24).

⁶ Westfield-Washington Township Comprehensive Plan, Rural Residential (pg. 27).

⁷ Westfield-Washington Township Comprehensive Plan, Rural Residential (pg. 28).

⁸ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

⁹ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

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Exhibit 1

Variances of Development Standard: The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

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 zoning ordinance will result in practical difficulties in the use of the subject property.



Department Comments

If the Board is inclined to APPROVE the variances, then the Department recommends approving the petition with the following condition and findings:

Recommended Condition:

1. The Property shall only be permitted one (1) driveway access onto Little Eagle Creek Avenue.

Recommended Findings for Approval:

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 permits the proposed residential use 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 permitted and the Property will be used for its current residential use; (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 continued 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 zoning ordinance will result in practical difficulties in the use of the subject property.*

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

Recommended Findings for Denial:

If the Board is inclined to DENY the variances, then the Department recommends approving the petition with the following conditions and findings:

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

Finding: It is likely that approving the requested variance(s) would be injurious to the public health, safety, morals, and general welfare of the community because the Comprehensive Plan



calls for the preservation of Little Eagle Creek Avenue as a scenic by-way. Adding a new structure so close to the existing structure to the south could have a negative impact on preserving the scenic nature of this corridor.

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) would result in a new home on undersized property for the area, thus being inconsistent with the character of the surrounding area and Comprehensive Plan.

3. *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.*

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