Petition Numbers:	1506-VU-06
Subject Site Location:	14939 Ditch Road
Petitioner:	Jeff Kelich
Requests:	The petitioner is requesting approval of a Variance of Use to allow a commercial lawn and landscaping business in the Single-Family Low Density District (SF2) District (Chapter 13: Use Table).
Current Zoning:	Single-Family 2
Current Land Use:	Concrete business
Approximate Acreage:	4.0 acres +/-
Exhibits:	1. Staff Report 2. Location Map 3. Existing Variance Approval (79-V-12) 4. Application 5. Concept Plan 6. Existing Conditions 7. Written Commitments 8. Plan of Operation
Staff Reviewer:	Kevin M. Todd, AICP

PETITION HISTORY

This petition was originally scheduled to receive a public hearing at the June 9, 2015, Board of Zoning Appeals (the "BZA") meeting, however, Public Notice was not properly served for that hearing. The Board denied the petitioner's request at the June 9, 2015 meeting to reduce the public notice mailing requirement, and the case was continued to the July 14, 2015 BZA meeting.

The petitioner met with neighbors on July 8, 2015 and at the July 14, 2015 BZA meeting requested to continue the case to the August 11, 2015 BZA meeting. The request was granted.

All forms of public notice were properly served for the July 14, 2015 BZA meeting. Since the Board granted a continuance of the case to the August meeting, all previous notice was effectively carried over to the August 11, 2015 meeting.

As of the publishing of this report, the petitioner has scheduled a follow-up meeting with neighbors to review and discuss modifications to proposal at a neighbor meeting on August 10, 2015. The petitioner should be able to provide a summary of the meeting to the Board.

PROPERTY HISTORY

On June 18, 1979, the Board of Zoning Appeals approved a variance request to allow the operation of a concrete business and the construction of a storage building on the subject property (see **Exhibit 3**). There were no conditions of approval associated with this variance. Since the variance approval in 1979, a concrete business has operated on the subject property.

ANALYSIS

Location: The subject property is approximately 4 acres +/- in size and is located at 14939 Ditch Road (the "Property"). The Property is zoned Single Family-2 (SF-2). All adjacent property is single-family residential in use. Adjacent property to the north and east is the Centennial Subdivision and is zoned SF-3 (Cluster). Adjacent property to the south is the Centennial South Subdivision and is zoned Centennial South PUD District. Adjacent property to the west is the Harmony Subdivision and is zoned Harmony PUD District.

Variance Requests: The request is to allow a new commercial lawn and landscaping business, including a limited retail component, on the Property. If approved, the proposed use would replace the existing use of the Property as a concrete business location.

Project Description: The proposed use would include outdoor storage of landscaping materials, plant materials, and equipment, as depicted in the proposed concept plan (see **Exhibit 5**). As proposed, the existing buildings would be used as an office and a retail shop. The proposed concept plan depicts new landscaping around the perimeter of the Property. If the use is approved through this variance request, then any new structures, parking areas, or any improvement requiring an Improvement Location Permit would require Development Plan review and approval by the Advisory Plan Commission.

Existing Screening and Buffering: It appears that existing screening and buffering along the perimeter of the site occurs on the Centennial/Centennial South side of the property line. The north property line has a wood privacy fence with trees. The east property line has a mature tree line. The west property line has an undulating mound, trees, and a privacy fence (see **Exhibit 6**). The petitioner is proposing the addition of landscaping around portions of the perimeter of the property (see **Exhibit 5**).

Land Use: Landscaping businesses in Westfield-Washington Township are not typically surrounded by suburban residential development. This would be an uncommon circumstance, if approved. Most of the landscaping businesses found in Westfield-Washington Township are either in rural or commercial/industrial areas of the community and either pre-date zoning or are allowed by variance.

The UDO groups "landscaping contractors" under the land use term "Construction Trade Office", which is allowed by-right in the Enclosed Industrial and Open Industrial Districts and is allowed by Special Exception in the General Business District. The Property is currently being used as a concrete business with outdoor activity, and changing the use of the SF-2 property to a landscaping business with outdoor activity could arguably be considered a lateral change in terms of overall land use intensity and impact on the surrounding area.

The petitioner met with neighbors when he hosted a meeting on July 8, 2015 to discuss the proposed use and variance request, and is scheduled to have a follow-up meeting with neighbors on August 10, 2015. Neighbor support regarding the proposed change in use should be considered by the Board. The Board may want to request an update from the petitioner regarding the status of neighbor discussions and support levels.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan (the "Comprehensive Plan) identifies this Property within the "Suburban Residential" [1] land use classification. The Comprehensive Plan does not contemplate a landscaping business within the Suburban Residential area. Residential, institutional, and recreational uses are listed as appropriate land-use types within the Suburban Residential classification.

PROCEDURAL

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance 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 UDO[2] 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.

Development Plan Approval: If the Board of Zoning Appeals approves the requested Variance of Use and Variance of Development Standard, then certain future site improvements would be required to obtain Development Plan approval by the Advisory Plan Commission.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO[3] 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

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

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.

Variances of Use: The Board of Zoning Appeals shall approve or deny variances of use from the terms of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval. A variance may be approved under Ind. Code § 36-7-4-918.4 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;
3. The need for the variance of use arises from some condition particular to the property involved:
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought; and,
5. The approval does not interfere substantially with the comprehensive plan.

FINDINGS OF FACT

A. If the Board is inclined to **APPROVE** the variance of use request, then the Department recommends the following findings:

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

Finding: It is unlikely that allowing a landscaping business on the Property would be injurious to the public health, safety, morals, and general welfare of the community. A concrete company has operated on the Property for 36 years, and a landscaping operation would have a similar impact on the site and the surrounding area.

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 that the use and value of adjacent property will be affected in a substantially adverse manner. The proposed use would enhance the property at the property lines by installing proper buffering, thus improving the value of the property. Feedback from adjacent property owners should provide insight regarding the impact on adjacent properties.

3. *The need for the variance of use arises from some condition particular to the property involved*:

Finding: The subject property has been used as a concrete business with outdoor activity for 36 years and has been enveloped by residential development over that timeframe. Given the size of the property and its lack of connections to adjacent residential development, redeveloping this Property for residential development would be difficult.

4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought*:

Finding: Strictly applying the zoning ordinance would not permit the requested use. Per the UDO, landscaping businesses are only allowed by-right in industrial districts and the GB District by Special Exception. This use is typically found in either agricultural or industrial areas of the Westfield community. However, the previous (and current) use of this property as a concrete business with outdoor activity, coupled with the fact that this property has been surrounded by residential development and not provided any connection points, lends itself to re-purposing the site for a landscaping operation with minimal site improvements.

5. *The approval does not interfere substantially with the comprehensive plan*:

Finding: The proposed land use is not contemplated in the Suburban Residential area of the Comprehensive Plan. However, the proposed use is not very dissimilar from the existing concrete business use, in terms of land-use intensity, and could be considered a similar continuation of the existing land use type.

B. If the Board is inclined to **DENY** the variance of use request, then the Department recommends the following findings:

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

Finding: It is unlikely that allowing a landscaping business on the Property would be injurious to the public health, safety, morals, and general welfare of the community. A concrete company has operated on the Property for 36 years, and a landscaping operation would have a similar impact on the site and the surrounding area.

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 possible that the use and value of adjacent property will be affected in a substantially adverse manner. While similar because there are outdoor activities involved in both, concrete operations and landscaping operations are not the same thing. Landscaping operations could have more intense and frequent outdoor activity than a concrete company could have. Feedback from adjacent property owners should provide insight regarding the impact on adjacent properties.

3. *The need for the variance of use arises from some condition particular to the property involved*:

Finding: Either a small, single-street residential subdivision project could theoretically develop on the 4-acre property, a single home could be built on the property, or one of the permitted institutional uses could build on the property. Either way, the property could be used in a manner that is consistent with permitted uses in the SF-2 District.

4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought*:

Finding: Strictly applying the zoning ordinance would not permit the requested use. Landscaping businesses are permitted elsewhere within Westfield-Washington Township, and this site that is surrounded by suburban residential development is not the most appropriate location for this use. The Property could be used in a manner that is consistent with permitted uses in the SF-2 District.

5. *The approval does not interfere substantially with the comprehensive plan*:

Finding: The proposed land use is not consistent with the recommendations for the Suburban Residential area of the Comprehensive Plan, which calls for residential, institutional, and recreational uses.

DEPARTMENT RECOMMENDATIONS

If the Board approves 1406-VU-06, then the Department recommends the following conditions:

1. BZA Case No. 79-V-12 be repealed and deemed no longer valid;
2. Subject to the petitioner's Written Commitments (**Exhibit 7**) being executed and recorded within thirty (30) days of the approval of this request; and,
3. Subject to the petitioner's submitted Plan of Operation (see **Exhibit 8**).