



**Petition Number:** 1511-VS-16

**Subject Site Address:** 2228 E. SR 38 Street (the "Property")

**Petitioner:** Ronald Clifford by Coots, Henke & Wheeler, P.C. (the "Petitioner")

**Request:** The Petitioner is requesting Variances of Development Standard for a reduction of: (i) the Minimum Lot Area (*Article 4.2(E)(2)*); (ii) the Minimum Lot Frontage (*Article 4.2(C)*); and (iii) the Side and Rear Yard Minimum Building Setback Lines (*Article 4.2(D)*) in the AG-SF1: Agriculture / Single-Family Rural District.

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

**Current Land Use:** Detached Single-Family Dwelling and detached Accessory Structure

**Approximate Acreage:** 1.26 acres +/-

**Exhibits:**

1. Staff Report
2. Location Map
3. Existing Conditions Exhibit
4. Property Survey
5. Petitioner's Narrative
6. Petitioner's Application
7. Improvement Location Permit Materials

**Staff Reviewer:** Jeffrey M. Lauer, Associate Planner

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**PROPERTY INFORMATION**

The subject property (Parcel No. 08-06-18-00-00-026.000) is 1.26 acres +/- in size and located on the north side of State Highway 38; approximately two thousand one hundred (2,100) feet east of US Highway 31 (see **Exhibit 2**) (the "Property"). The Property is zoned AG-SF1: Agriculture / Single-Family Rural ("AG-SF1") District. The surrounding properties are also zoned the AG-SF1 District. Macgregor Park is located immediately adjacent to the west of the Property.



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## **PROPERTY HISTORY**

**1962-1974:** The existing Single-Family Dwelling located on the Property was constructed.<sup>1</sup>

**06/20/1994:** Improvement Location Permit (“ILP”) (Permit No. 94-IP-141) was issued for an addition to the existing Single-Family Dwelling (Certificate of Occupancy issued 12/30/1994) (see **Exhibit 7**).

**08/18/1998:** A 12.5 acre +/- parcel was deeded to Ronald and Pattie Clifford (collectively, the “Property Owners”) by Murray and Sarah Smith (see **Exhibit 6**).

**08/12/1999:** An ILP (Permit No. 99-IP-509) for an Accessory Structure described as “a twenty-four (24) foot by forty-six (46) foot workshop” was issued (see **Exhibit 7**).

**02/05/2003:** The Property Owners illegally subdivided the Property creating two separate parcels (see **Exhibit 4** and **Exhibit 5**) in order to classify the northern 10.8 acre parcel (Parcel No. 08-06-18-00-00-026.001) as forest land, as part of the Indiana Classified Forest Program, in working with the Indiana Department of Natural Resources (see **Exhibit 5**). This subdivision resulted in the existing Single-Family Dwelling and Accessory Structure, (Parcel No. 08-06-18-00-00-026.000) located on the southern 1.26 acre parcel, to no longer comply with the Unified Development Ordinance’s minimum Lot Area, Lot Frontage, and Side and Rear Yard Minimum Building Setback Lines.<sup>2</sup>

**06/11/2011:** The Indiana State Department of Transportation (“INDOT”) purchased right-of-way from the Property Owners for the widening and improvement of State Highway 38.

**07/10/2015:** In working with the Property Owner regarding their Variance of Use (Petition No. 1511-VU-09) petition for the Property, the Department identified the illegal subdivision and violations with regard to the minimum Lot Area, Lot Frontage, and Side and Rear Yard Minimum Building Setback Lines.

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<sup>1</sup> The exact date an Improvement Location Permit was approved or Certificate of Occupancy issued for the residence cannot be determined; however, historic aerials provide evidence that the home was constructed after 1962, but prior to 1974.

<sup>2</sup> Article 4.2(E)(2), Article 4.2(C), and Article 4.2(D) of the Westfield-Washington Township Unified Development Ordinance (the “UDO”).



**10/02/2015:** The Property Owners filed this petition for Variances of Development Standard (see **Exhibit 6**).

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### **VARIANCE REQUESTS**

The Petitioner is requesting the following four (4) Variances of Development Standard:

1. **Minimum Lot Area:** Prior to the subdivision, the original parcel was 12.5 acres +/- in size (see **Exhibit 5**) (the "Original Parcel"). The current southern parcel (Parcel No. 08-06-18-00-00-026.000) is 1.26 acres +/- in size (after the subdivision of the Original Parcel and INDOT's acquisition of right-of-way along State Road 38). The UDO's Minimum Lot Area is three (3) acres in the AG-SF1 District<sup>3</sup>. The Petitioner is requesting a reduction of the Minimum Lot Area to 1.26 acres +/- for the southern parcel.
2. **Minimum Lot Frontage:** The Original Parcel had 415.85 feet +/- of Lot Frontage. The current southern parcel (Parcel No. 08-06-18-00-00-026.000) has a Lot Frontage of 153 feet +/- (see **Exhibit 4**) (after the subdivision of the Original Parcel and INDOT's acquisition of right-of-way along State Road 38). The UDO's Minimum Lot Frontage is two hundred and fifty (250) feet in the AG-SF1 District<sup>4</sup>. The Petitioner is requesting a reduction in the Minimum Lot Frontage to one hundred and fifty-three (153) feet +/- for the southern parcel.
3. **Minimum Building Setback Line:** The Single-Family Dwelling and Accessory Structure (the "Buildings") were both constructed prior to the subdivision of the Original Parcel in 2003. The Buildings complied with the applicable setback standards at the time of the issuance of the ILP for the Buildings (see **Exhibit 7**); however, the illegal subdivision of the Original Parcel resulted in the Buildings no longer complying.
  - a. **Minimum Side Yard Building Setback Line:** The UDO's Minimum Side Yard Building Setback Line is thirty (30) feet in the AG-SF1 District. The subdivision of the Original Parcel resulted in a side yard setback of thirteen (13) feet for the existing Accessory Structure. As a result, the Petitioner is requesting a reduction in the Minimum Side Yard Building Setback Line to twelve (12) feet +/- for the southern parcel.

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<sup>3</sup> Article 4.2(C)

<sup>4</sup> Article 4.2(D)



- b. Minimum Rear Yard Building Setback Line: The UDO's Minimum Rear Yard Building Setback Line is thirty (30) feet in the AG-SF1 District. The subdivision of the Original parcel resulted in a rear yard setback of less than one (1) foot for the existing Single-Family Dwelling. As a result, the Petitioner is requesting a reduction in the Minimum Rear Yard Building Setback Line to zero (0) feet for the southern parcel.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan (the "Comprehensive Plan") identifies this Property within the "Rural Northeast" land use classification<sup>5</sup>. Appropriate land uses in this area are: (i) Single-family detached houses on large lots or in a rural or Conservation Subdivision; (ii) accessory dwellings; (iii) equestrian uses (iv) agriculture, including artisan farms; and (v) institutional uses, such as schools, churches, public safety facilities and similar uses are contemplated in this area.

Thoroughfare Plan: The Westfield-Washington Township Thoroughfare Plan (the "Thoroughfare Plan") is designed to support and facilitate the City's efforts to provide for a safe and effective transportation system within the Township. As such, each major roadway in the Township is classified, based upon anticipated future growth. The adjacent State Highway 38 is identified as a "Primary Arterial," which is the highest classification for public right-of-way (i.e. seventy-five (75) foot half right-of-way). All existing structures on the Property are located outside the existing and anticipated future rights-of-way.

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## **PROCEDURAL**

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of this petition. This petition is scheduled to receive its public hearing at the December 8, 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<sup>6</sup> and Indiana Code § 36-7-4-918.4 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

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<sup>5</sup> Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 23)

<sup>6</sup> Article 10.14(l) Processes and Permits; Variances; Conditions of the UDO.



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 UDO<sup>7</sup> 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.

**Variance 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.

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## **RECOMMENDED FINDINGS OF FACT**

**Recommended Findings for Approval:** If the Board is inclined to approve the requested Variances of Development Standard, then the Department recommends the following written findings of fact:

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 variances would be injurious to the public health, safety, morals, and general welfare of the community because the AG-SF1

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<sup>7</sup> Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



District permits the existing improvements. Furthermore, the Property and all improvements are required to comply with all other applicable standards of the Unified Development Ordinance.

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. As proposed, the use of the Property will not change.

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 whole or in part: (i) the relocation or demolition of existing structures; (ii) the modification of existing parcel lines, and; (iii) termination in use and occupancy of the Property. The uses are otherwise permitted by the Unified Development Ordinance and the existing improvements and parcel would be required to comply with all other applicable standards in the Unified Development Ordinance.

**Recommended Findings for Denial:** If the Board is inclined to deny the requested Variances of Development Standard, then the Department recommends the following written findings of fact:

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 variances would be injurious to the public health, safety, morals, and general welfare of the community because the AG-SF1 District permits the existing improvements. Furthermore, the Property and all improvements are required to comply with all other applicable standards of the Unified Development Ordinance.

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. As proposed, the use of the Property will not change.

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



WESTFIELD-WASHINGTON  
BOARD OF ZONING APPEALS

December 8, 2015

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Exhibit 1

**Finding:** The requested variance is the result of a self-imposed hardship predicated by the illegal subdividing of the property. The adjacent parcel is currently owned by the petitioner and could either be combined with the subject parcel or allow for the adjustment of the existing property lines to bring the parcel into compliance or at a minimum, reduce the noncompliance. Strict application of the ordinance would not inhibit the use of the property and thus would not be a practical difficulty.