

0404-VS-006 800 E. Sycamore Street – William and Mary Lyman. The appellant is requesting a development standard variance from WC 16.04.050 (D)(5) Minimums Lot Frontage, to seek relief from the required minimum lot frontage of 50 feet. The parcel is zoned Local Business (LB).

Exhibits:

1. Staff report 04/06/2004
2. Location map 04/06/2004
3. 16.04.050 Westfield Washington Township Zoning Ordinance Text (See 0404-VS-005)
4. Meeting minutes from previous approvals 7/28/1997, 6/26/2000 (See 0404-VS-005)
5. Variance application, including site plan 03/15/2004 (See 0404-VS-005)

Previously Approved Associated Petitions:

1. 97-AP-19; 800 E. Sycamore Street – William and Mary Lyman

Current Associated Petition

1. 0404-VS-005; 800 E. Sycamore Street – William and Mary Lyman.
2. 0403-DP-011/0403-SIT-008; 800 E. Sycamore Street – William and Mary Lyman

Analysis:

The site is located at 800 E. Sycamore street and is zoned Local Business (LB). The appellant is requesting a variance from the road frontage requirement. The variance request is being made for the purpose of bringing an existing nonconforming lot into compliance. Currently the site has no typical road frontage, but rather Sycamore Street ends at the property line. Sycamore Street is the only access street for this site.

Located on site is the Montessori School of Westfield. This school has been in operation since 1997. All improvements on site have gone through the required Town of Westfield processes. However, the creation of the lot was not done in a legal manor (as per Indiana State Code). This issue is not a fault of the appellant, but rather was an oversight by Town of Westfield staff, board, and commission members. This illegal lot was created from a larger parcel that was subdivided during the plan review process at a Plan Commission meeting in 1997 (see minutes). At this meeting the access was discussed, but the issue of frontage requirements was not discussed. The drawing submitted at the 1997 Plan Commission shows the parcel as it exists currently.

The Plan Commission does not have the power to vary Zoning Ordinance standards. For a noncompliant lot to be legal, it requires a variance granted by the Board of Zoning Appeals.

The Montessori School of Westfield also received an amendment to this approved plan in June 2000, and again the nonconforming road frontage was not addressed.

The nonconformity was identified by staff earlier this year, when the appellant filed for a new amendment to their approved plan. The appellant has complied with all requirements imposed by the Plan Commission and staff, and was operating with the assumption that all necessary

variances had been granted during the 2 previous approvals. The current Plan Commission filing to amend their plan (0403-DP-011/0403-SIT-008) proposes the addition of a 2,400 square foot classroom. This would bring their total square footage to 10,500 square feet. With the continued expansion of this site, staff has concerns in regards to accessibility and traffic circulation

Development Standard Variance:

No variance of development standard shall be granted unless the BZA finds all of the following to be true:

- a. That the approval of such variance of development standard will not be injurious to the public health, safety, morals, and general welfare of the community:**

Findings: It is unlikely that the appellant’s proposal will be injurious to public health, safety, or general welfare of the community. This variance will allow the existing school to remain in existence.

- b. That the use and value of the area adjacent to the property included in the variance of development standard will not be affected in a substantially adverse manner:**

Findings: It is unlikely that the variance request would affect the use and value of adjacent properties in a substantially adverse manner. This property, its structures, and access onto Sycamore have existed in their current configuration since 1997.

- c. That the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:**

Findings: Strict application of the terms outlined in zoning ordinance will result in practical difficulties in the use and enjoyment of the appellant’s property. The appellant wishes to continue using the site for the Westfield Montessori School. If this variance is not granted such operations would be not permitted until the lot could be made compliant.

NOTE: If the Board does not determine ALL findings of fact in favor of the appellant, then it may not legally approve the variance request.

Recommended Motion:

Approve the development standard variance request as per the findings with the following condition:

1. Future additions to the site (excluding the current proposed 2,400 square foot addition as outlined in 0403-DP-011/0403-SIT-008), shall not be made until an additional access is created from the site.

The Westfield Washington Township Board of Zoning Appeals met in regular session at 7:00 p.m. on Monday, April 19, 2004 at Westfield Town Hall. Members present included Patrick Miller, David Mueller, Steve Riley, William Sanders, and Craig Wood. Also present were Town Attorney Brian Zaiger and Planner Matthew Griffin.

Regarding the March, 2004, minutes Riley moved to approve the minutes as presented.

Sanders seconded, and the minutes were adopted into the public record by unanimous voice vote.

Miller read the introductory statement that outlines the rules, procedures, and function of the Board of Zoning Appeals, and the right to an appeal.

NEW BUSINESS:

Arctic Zone Ice Skating Rink

0404-VU-002 16616 Southpark Drive – Welsh Development LLC. The appellants are requesting a use variance to allow an existing indoor ice skating training facility the additional use of public ice skating. The parcels are zoned Enclosed Industrial (EI) and are in the State Highway 32 Overlay.

Mr. Kyle Schmutzler, representing the appellants, introduced the variance. He stated that this new use would be a public facility used for teaching fundamentals of hockey and figure skating.

Miller asked what the total capacity was for a public skating event. Mr. Schmutzler replied that he was unsure of the exact amount of usage, but stated that it would be similar to Carmel Skate on a Friday night.

Riley asked if changes would be required to the physical building to allow for public skating. Mr. Schmutzler responded that no changes would be necessary.

Mueller stated that traffic will become an issue in this area as 31 becomes a limited access highway, and he asked how the appellant planned on handling the foreseeable traffic volumes.

Schmutzler responded that he did not anticipate traffic being an issue, in that their hours of operation would be at off peak times for travel, such as evenings and weekends.

Miller opened the *public hearing* at 7:12 p.m. for 0404-VU-002.

No one spoke.

Miller closed the public hearing at 7:13 p.m.

Riley asked what types of facilities were available for food and drink. Schmutzler answered that there was an existing refreshment stand that is used for cokes, etc. There is also a sitting area for patrons.

Riley asked what types of drinks would be served.

Schmutzler stated that there are currently soft drinks available at that refreshment area, and it was anticipated that alcohol would be served in a room in the second floor – that would be used for corporate patrons. The area serving alcohol would not have set hours or be run like a bar or tavern, but rather it would be an area that could be booked in advance for event usage.

Wood asked if the rink would be opened past midnight. The appellant responded that such was not anticipated.

Mueller asked how much the rink would be used for public skating, versus its current use as a training facility. The appellant stated that he would guess the breakdown would be 60%-75% used for leagues.

Riley asked Griffin if alcoholic beverages were allowed in the EI district. Griffin responded that alcoholic beverages are not a use. Zaiger added that the only mention of alcohol in the use table is in regards to restaurants in terms of those having more than 50% of their sales derived from alcohol. Zaiger added that it was not in the scope of the ordinance to limit alcohol sales on an individual basis.

Riley stated that it was bothersome knowing that alcohol was being served in a setting with children, and not knowing exactly where that alcohol was being permitted on the premises. He stated that if the alcohol was kept in a single room, or a designated area, he could be more agreeable.

Zaiger stated that the ABC would control the way alcohol was handled on the premises, and that such would be no different from other business that served alcohol and permitted children – like Pizza Hut.

Sanders stated that he wanted to see organization in terms of hours and operation, before making a decision.

Miller stated that he was concerned that bringing such a use into a business park may begin to change the nature of the park, and could work to inconvenience the tenants that are already established.

Matt Skelton stated that Arctic Zone is adding 87 new parking spaces, whether or not this variance is approved. He then stated that he has received full support of the developers of Southpark and Southoak.

Mueller asked if the appellant intended on being open before 5:00 pm, Monday thru Friday. The appellant stated yes, but he felt that business would remain fairly light during daytime hours.

The appellant stated that they were not changing their use, but wished to add public skating as another allowable activity at their skating rink.

Sanders stated that he was looking at the value aspect.

Griffin stated he believed the value of the properties takes into account the potential uses for the properties.

Sanders stated that the question is “use and value”, and that the potential use of the property has nothing to do with its value. He went on to say that he had concerns with adding this use along with the adjacent Roundtripper Baseball Facility, and how these expanding recreational uses may affect the entire park in terms of value. Expanding these uses changes the environment as well as the orientation of development. Sanders then made a motion to deny the request.

Mr. Schmutzler stated that the appellant would be glad to continue this case and come back next month to address any outstanding issues.

Wood asked if the park to the south had been built out. Griffin responded that it had not.

Miller asked if there was a second to Sanders’ motion. Sanders then withdrew his motion to deny.

Matt Skelton stated that he spoke with staff at length regarding this project, and the interesting thing in Westfield is that there really is no business park zoning designation. There is enclosed industrial. Skating is not the type of use that most people want to see in a regional commercial type of setting, so the appellant is stuck in a situation trying to find a home for a use that doesn’t have a home in Westfield, except for in the EI district. This property is located in the EI zone, it just happens to be partially within the 31 overlay district, which prevents it from being used in the same manner as some surrounding properties.

Miller stated that part of the concern is that public skating changes the use, and that detail about this change in regards to hours of operation, liquor sales, and capacities have not been given.

The appellant responded that public skating would be 4:30 pm to 6:00 pm on a weekday, on Saturday and Sunday it could be a 1:00 to 3:00 in the afternoon, and then on Friday and Saturday night it would probably be from 7:00 pm to 10:00 pm. The liquor license is for more of a corporate party situation, or an adult open skate situation. There will be no set hours for beer and wine vending; it would be only as addition to a corporate party where the entire building was rented.

Mueller stated that he had seen the area where the beer and wine was to be sold, and it was separated from the main public area.

Miller asked if this area would be open during normal public skating. The appellant responded that it would be open only during an adult public skate.

Skelton then stated all of the items that need to be addressed at the next meeting. These items include the following:

1. What open skating is, and what are its hours?
2. What is the capacity? Is the proposed parking adequate?
3. What are the ages for each type of event?
4. Availability of the private party room, hours and when it would be used.

The appellant pointed out the Carmel Skate has 120 parking spaces, and 2 ice rinks, whereas Arctic Zone only has 1 rink and 117 parking spaces, so parking should not be a problem.

Miller stated that the item will be continued until next month, as per petitioner's request.

Montessori School of Westfield

0404-VS-005 800 E. Sycamore Street – William and Mary Lyman. The appellant is requesting a development standard variance from WC 16.04.050 (D)(4) Minimum Lot Area, to reduce the minimum required lot size from 5 acres to 3.06. The parcel is zoned Local Business (LB).

0404-VS-006 800 E. Sycamore Street – William and Mary Lyman. The appellant is requesting a development standard variance from WC 16.04.050 (D)(5) Minimum Lot Frontage, to seek relief from the required minimum lot frontage of 50 feet. The parcel is zoned Local Business (LB).

Jan Smith introduced the cases. In 1997 the Montessori School started its operations at this location. In 2000 there was some building expansions that were reviewed and approved by the Plan Commission. In February 2004, the appellants filed a new petition with the town to create a new building expansion. In February it was discovered that this lot was not in compliance with the zoning ordinance. These nonconformities were not addressed at any of the previous approvals. It is the appellant's desire to bring their lot into compliance through the requested variances, and then continue with their plans for the building expansion.

They noted that staff comments recommend approval, and that minimum road frontage report has language to approve with a condition, and they would prefer approval without conditions. If there is a condition attached to the approval, they want to make sure it does not include the proposed addition that they submitted in February.

Miller stated that the proposed condition was that future additions to the site, excluding the current proposed 2,400 sq. ft. addition, shall not be made until an additional access is crated.

The appellant stated that such was an acceptable condition.

Mueller asked how many additional children the building expansion would support.

Smith responded that it wasn't being built in anticipation of new students, as much as it was to provide adequate class space for the current students.

Mueller asked how many full time students are enrolled. Smith responded that there are 65 to 70 full time enrollments.

Wood commented that he was concerned that the traffic on Sycamore Street may become more of an inconvenience as the school develops – especially in the morning and in shifts of drop off and pick up.

Smith responded that they staggered the classes a little bit to alleviate traffic. Car pooling also helps to reduce traffic. Family events are also to be held off site in the future (at Oak Trace Elementary)

Miller opened the *public hearings* at 7:49 p.m. for 0404-VS-005 and 0404-VS-006.

No one spoke about the variance, and the *public hearings closed* at 7:50 p.m.

Wood asked about emergency response, and if the site is accessible. Smith responded that such concerns would have come out in the TAC meetings that are mandatory in the Plan Commission Meeting process.

Riley moved to approve 0404-VS-005.

Mueller seconded, and the motion passed unanimously.

Miller moved that the Board adopt the staff findings of fact as their own.

Sanders seconded, and the motion passed unanimously.

Wood moved to approve 0404-VS-006 with the following imposed staff conditions:

1. Future additions to the site (excluding the current proposed 2,400 square foot addition as outlined in 0403-DP-011/0403-SIT-008), shall not be made until an additional access is created from the site.

Mueller seconded, and the motion passed unanimously.

Miller moved to adopt the staff findings of fact for both appeals as the Board's.

Riley seconded, and the motion passed by unanimous voice vote.

Hoff Property

0404-VS-007

2825 East 216th Street – Mike Hoff. The appellant is requesting a development standard variance from WC 16.04.030 (B)(5)(a) Minimum Lot Frontage on Road, to allow the creation of four (4) lots that have no

direct road access. The existing parcel is zoned Agricultural-Single Family (AG-SF1).

Tom Wellman introduced the variance, speaking on behalf of Mike Hoff.

Miller stated that the Board had received a letters from an outside source, and it was his understanding that the Board was not supposed to have direct contact with people regarding the case before the meeting. It was confirmed that such contact is not permitted.

The appellant was provided copies of two letters, one dated April 12, 2004, from Goldman and Assoc. PLC, signed by Goldman, and the second dated April 13, 2004, signed by Richard and Rebecca Taylor.

The appellant chose to have these letters stricken from the record. The letters were collected by staff, and the content of these letters was not considered for the case.

The board discussed the size of the parcel and the appellant's desires in regards to splitting the land into 5 new lots. It was stated that the lots would be served by septic and well, and road access would be through an access easement.

The appellant was given a copy of the staff report and recommendation, and a 5 minute recess was called.

The appellant talked about the access easement, and which lots would need to use it. He then put up an overhead of the proposed lot configuration.

Mueller asked what the use would be for the area. The appellant responded that these lots would be use for single family houses, with no agricultural uses.

Miller opened the *public hearings* at 8:21 p.m. for 0404-VS-007.

Richard Taylor spoke about his concerns regarding this variance. He mentioned that he had safety concerns in regards to the shared drive, that the additional lots would hurt his property value, and that he felt this variance request, if granted, would be a breach of contract between himself and Mr. Hoff.

The Board asked several clarifying questions to Mr. Taylor and it was determined that there was no written agreement as to the future of the parcel to be split.

Josie Hoff spoke in regards to the site, and how they are improving it. She pointed out several view enhancing features they had installed including a pond and trees. She then spoke in regards to the future plan for the area, and how it was in character with the surroundings.

With no one else to speak about the variance, the *public hearings closed* at 8:35 p.m.

Miller asked if Taylor was correct in that the plan presented was different from what was originally planned. Hoff responded that he was doing what he had intended to do when he began splitting up the parcel, and that he didn't foresee the new lots being built out for many years. He then stated the 4 lots wasn't what he really needed, but could settle for a single lot for his home, and the separate lot that fronts on Anthony Road. The variance request was made simply because he could get four lots out of the parcel, and maybe it would be easier to liquidate in the future if such was necessary. However, if splitting the land into 5 lots would make his neighbors upset, then he would not want to do such.

Miller asked if the appellant was not set on having four lots, if there was any way they could reconfigure their request in a manner that might be more appropriate.

Miller stated that, given the appellants desired use of the land, it sounds like he needs 2 lots, and not four, but that's not how it has been presented. All the Board can do is vote on what has been presented.

Mr. Wellman stated that 4 lots may not be feasible, and that such a request may not be their desire. Four would be their ideal, but their goal is to get at least 2 lots. As such they would like to be continued so that they could come back with a more suitable design.

The Board granted the motion for continuance. Miller stated that when the appellant comes back, they should present what they really want, instead of offering options.

Denardo Property

0404-VS-011 16220 Joliet Road – Andrew and Diane DeNardo. The appellant is requesting a development standard variance from *WC 16.04.010 (I) Lots*, to allow two residential buildings on one lot. The parcel is zoned Agricultural-Single Family (AG-SF1).

0404-VS-012 16220 Joliet Road – Andrew and Diane DeNardo. The appellant is requesting a development standard variance from *WC 16.04.100 (2)(B)(vii) Accessory Buildings*, to allow the construction of an accessory building that will be greater in height and bulk than the existing principle building. The parcel is zoned Agricultural-Single Family (AG-SF1).

Andy DeNardo presented the requests.

Griffin mentioned that he had received a letter from Don and Victoria Meerhoff that was to be taken into consideration at the meeting. The letter states that Don and Victoria Meerhoff would like to see all the existing structures removed before any new construction takes place.

Riley asked for more details on the cabin.

Mr. DeNardo explained that it was a single story log cabin built in the '20s. It has full utilities, and is served by septic and well. He has owned the property for 3 years. He said he understood

some of the neighbor concerns for the cabin, but he was willing to accept conditions the would prohibit renting the cabin, and restrict his use of the cabin.

Miller asked how many nights a year he anticipated using the cabin.

Mr. DeNardo stated that thought that occasionally a guest may stay there, but that was not the intent. He would be willing to limit that number of days a year this cabin could be inhabited.

Mueller asked when the appellant's planned on building their new house.

Mr. DeNardo said they wished to build as soon as possible.

Mueller asked if they had looked into the Indiana Historical Society to get historic structure status granted to the cabin.

DeNardo stated that they had looked into it, but getting such a designation generally takes a year or more, and even with such a designation, he felt a variance would still be necessary.

Miller opened the *public hearings* at 9:15 p.m. for 0404-VS-011 and 0404-VS-012.

No one spoke about the variance, and the *public hearings closed* at 9:16 p.m.

Mueller stated that he had some concerns as to how often the cabin would be used recreationally, and the hours it would be used.

The appellants explained the cabin's physical location, as well as its distance from the neighbors, and felt that such a location would screen the cabin adequately.

Sanders moved to approve 0404-VS-011 with the following imposed conditions:

1. The cabin can not be inhabited for more than one week in any month, and can be inhabited no more than a total of six weeks per calendar year;
2. The owner shall not rent the cabin for any purposes;
3. The property owner must commence house construction during calendar year 2004, with completion no later than June 1, 2005, in the manner portrayed on the submitted sketch;
4. The cabin shall be maintained in a safe and attractive manner;
5. If the cabin is removed for any reason (natural or unnatural) it may not be rebuilt or replaced;
6. The cabin's square footage shall count as accessory structure square footage, and it shall no longer be considered the primary structure.

Riley seconded. The motion passed 4 to 1 (Mueller).

Miller moved to adopt findings of fact that are opposite that of staff.

Sanders added that the cabin was considered a nonresidential use by its identification and also by its use by condition. Miller agreed.

Miller moved to adopt a series of findings of fact opposite and adverse to staff's findings of fact with the statement that the cabin was considered a nonresidential use by its identification and also by its use by condition.

Riley seconded, and the motion passed by unanimous voice vote.

The Board then discussed the details and timing of 0404-VS-012.

Sanders moved to approve 0404-VS-012 with the following imposed condition:

1. Upon completion of the proposed residential structure, said structure shall exceed all accessory structures in both height and total bulk, as per *WC 16.04.100 (2)(B)(vii) Accessory Buildings*.

Miller seconded. The motion passed unanimously.

The meeting was adjourned at 9:30 p.m.

Chairman

Secretary

TOWN OF WESTFIELD

COMMUNITY DEVELOPMENT DEPARTMENT

April 21, 2004

WESTFIELD WASHINGTON TOWNSHIP
PLAN COMMISSION
BOARD OF ZONING APPEALS
ZONING ENFORCEMENT
BUILDING PERMITS

FILE COPY

William and Mary Lyman
800 E Sycamore Street
Westfield, IN 46220

Re: 800 E. Sycamore Street, 0404-VS-006, a Variance of Development Standard

To Whom It May Concern:

The Westfield-Washington Township Board of Zoning Appeals met on April 19, 2004, to review 0404-VS-006, a development standard variance from *WC 16.04.050 (D)(5) Minimum Lot Frontage*, to seek relief from the required minimum lot frontage of 50 feet. The parcel is zoned Local Business (LB).

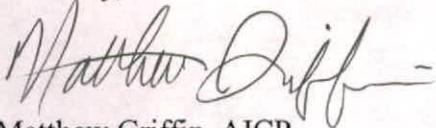
A public hearing was held and the Board voted unanimously to approve your variance request with the following imposed condition:

1. Future additions to the site (excluding the current proposed 2,400 square foot addition as proposed in 0403-DP-011/0403-SIT-008), shall not be made until an additional access is created from the site.

Please secure the necessary permits from the Westfield Community Development Department prior to construction or sign installation. Failure to do so can result in enforcement action and fines.

Feel free to contact the Community Development Department at (317) 896-5577 with any questions regarding this variance.

Sincerely,



Matthew Griffin, AICP
Associate Planner