



Petition Number: 1511-VU-09

Subject Site Address: 2228 E. SR 38 Street (Parcel No. 08-06-18-00-00-026.000) (the "Property")

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

Request: The petitioner is requesting a variance of use to allow for the "assembly operations of pre-manufactured parts, components" in the AG-SF1: Agriculture / Single-Family Rural District (Chapter 13: Use Table).

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

Current Land Use: Detached single-family home and detached accessory structure

Approximate Acreage: 1.26 acres +/-

Exhibits:

1. Staff Report
2. Location Map
3. Existing Conditions Exhibit
4. Site Plan
5. Petitioner's Narrative
6. Petitioner's Application
7. Code Enforcement Materials

Staff Reviewer: Jeffrey M. Lauer, Associate Planner

PROPERTY INFORMATION

The subject property (Parcel No. 08-06-18-00-00-026.000) is 1.26 acres +/- in size and is located on the north side of State Road 38; approximately two thousand one hundred (2,100) feet east of US Highway 31 (see **Exhibit 2**). The Property is zoned AG-SF1: Agriculture / Single-Family Rural ("AG-SF1") District. The surrounding properties are also zoned the AG-SGF1 District. Macgregor Park is located immediately adjacent to the west of the Property.



PROPERTY HISTORY:

Improvement Location Permit: The existing Single-Family Dwelling on the Property was constructed between 1962 and 1974.¹ On June 20, 1994, a building permit was issued for an addition to the rear of the dwelling. On August 12, 1999, a building permit for an Accessory Structure was issued, described as a twenty-four (24) foot by forty-six (46) foot workshop. A final inspection was completed on December 30, 1994.

ANALYSIS

Issue: This petition request is the result of an existing violation (EN-15-03-06) on the Property. The violation, which began as a complaint filed with the Department, related to loading and unloading activity in the State Road 38 right-of-way on March 13, 2015 (see “Code Enforcement History” contained herein). The Department inspected the Property on March 23, 2015, and contacted the Petitioner on March 31, 2015, regarding the concern. The Petitioner subsequently met with the Department on April 8, 2015. The Department formally cited the Petitioner of a land use violation on June 15, 2015.

Land Use: The Petitioner operates a small business out of an existing Accessory Structure on the Property as summarized in the Petitioner’s narrative description of the operations at **Exhibit 5**. The operation consists of assembling two (2) pre-manufactured metal brackets together with a small bolt and nut. The Petitioner has characterized in meetings with the Department that the use includes the seasonal part-time employment of high school students. The assembly operations are conducted within the existing Accessory Structure and includes deliveries once or twice a month. The Petitioner is not proposing any new structures related to the business.

The Department has determined the Petitioner’s activity qualifies as Light Industry², as defined by the UDO. Light Industry is not a permitted use in the AG-SF1 District; rather, the UDO provides

¹ The exact date an Improvement Location Permit or Certificate of Occupancy was issued for the residence cannot be determined; however, historical aerials provide no evidence of a home prior to 1962, but do show a home constructed on the Property after 1974.

² The UDO defines “Light Industry” as “[r]esearch and development activities, manufacturing, compounding, processing, packaging, storage, assembly, fabrication, processing, and/or treatment of finished or semi-finished products from previously prepared materials, which activities are conducted wholly within an enclosed building using processes that ordinarily do not create noise, smoke, fume, odors, glare or health or safety hazards outside of the building or Lot and shall not include any use that is otherwise listed specifically in this Ordinance. Example uses include, but are not limited to: leather products manufactured from finished leather; casket and casket supplies; crating and packaging service; exterminators; glass fabrication and installation; newspaper publishing; storage and transfer (household goods); manufacturing and/or assembly of storm doors, windows, awnings, siding, cabinets, can or containers, communication equipment, household appliances, marine equipment, office equipment and



the purpose and intent of the AG-SF1 District³ "...is to accommodate agricultural land uses and large-lot Single-family Dwellings." As a result, the Petitioner has filed this variance of use petition to address the existing land use violation.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan (the "Comprehensive Plan") identifies this Property within the "Rural Northeast" land use classification⁴. The Comprehensive Plan does not contemplate light industrial uses within the "Rural Northeast" area. Appropriate land uses in this area that are identified include: (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.

The development policies and implementation tools of the Comprehensive Plan for this area include, among other policies:

- Large-scale commodity farms (crops and livestock) are subject to eventual change due to growth pressure. It is expected as growth pressure moves northwest, some agricultural land will be converted to other uses, but not within the time frame of this plan.
- Allow the continuation of the historic rural patterns, including homestead farms, artisan farms, and equestrian uses. New residential development will be accommodated, but only as it fits into the agricultural life style.
- Promote flexible design that maximizes open space by regulating density rather than lot size. This approach will permit a wide range of lot dimensions (area, frontage, setbacks, etc.). Open space should be encouraged through incentives (such as density bonuses).
- Locate roadways and house lots so as to respect natural features and to maximize exposure of lots to open space (directly abutting or across the street). "Single-loaded" streets (with homes on one side only) can be used to maximize open space visibility, thus increasing real estate values and sales, while costing no more than streets in conventional subdivisions (due to savings from narrower lot frontages).

machinery, cloth products from finished cloth, furniture, glass and glass products, jewelry without retail, musical instruments, optical goods, paper boxes and paper products from finished paper, portable household appliances, electric hand tools, railroad equipment (including repair and service), recording instruments, tools, implements, machinery, mattress and upholstery, pharmaceutical, advertising and business signs, medicine and cosmetics; **assembly operations of pre-manufactured parts, components**; assembly, repair and manufacture of light component parts; taxidermist; machine, welding, tool and die shops; stamping and fabricating metal shops; tire recapping; malt products, brewery, distiller of liquor and spirits; bottling of alcoholic and non-alcoholic beverages; secondary food processing and packaging of products not produced on site."

³ Article 4.2(A).

⁴ Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 23)



- Encourage appropriate transitions from the villages to the open agricultural land.
- Preserve historically significant buildings and resources (barns, houses, etc.).
- Encourage development of the Monon Trail.
- Preserve the night sky by limiting lighting.
- Establish maximum density limits aimed at retaining rural character.
- Provide for density bonuses in Conservation Subdivisions (up to 1 unit/acre) only if specific standards are met with reference to the following:
 - Minimum percentage of open space.
 - Location, connectivity, and suitability of open space areas.
 - Minimum amount of usable open space (active and passive recreation, equestrian trails).
- Limit the land uses to those that are consistent with and contribute to the rural character.
- Create design standards for new building to ensure consistency with the character with the character of the area.
- Establish buffering requirements for new develop.

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.

CODE ENFORCEMENT HISTORY

08/18/1998: The “Property” was deeded to Ronald and Pattie Clifford (collectively, the “Property Owner”).

03/13/2015: Formal complaint was filed with the City by a neighbor. The complaint included a concern about loading and unloading activity at the Property in the State Highway 38 right-of-way (“SR38”) and that such activity potentially created a dangerous situation for access and egress to the complainant’s property. Complainant submitted several pictures to the Department, which were included with the record and incorporated herein at **Exhibit 7**.



03/17/2015: Complainant submitted additional photos and notified the Department of continuing deliveries (these additional photos were also included with **Exhibit 7**).

03/23/2015: The Department conducted a site visit to the Property; however, no exterior activity was observed at the time that would have constituted a violation of the UDO.

03/31/2015: The Department issued a letter to the Property Owner advising them of the complaint received and potential use violation (see **Exhibit 7**).

04/08/2015: The Petitioner met with the Department to discuss the Department's letter dated March 31, 2015. The Petitioner acknowledged the existing business operation that included: deliveries within the SR38 right-of-way; employees; equipment; and assembly activity.

05/22/2015: The Department communicated with the Indiana Department of Transportation (INDOT) regarding the use of the SR38 right-of-way. INDOT concluded the Petitioner's use of the right-of-way does not qualify as a prohibited encroachment because it was not encroaching live traffic and the use was inherently temporary in nature.

06/15/2015: The Department issued a formal violation notice (see **Exhibit 7**).

06/24/2015: The Department responded to the Petitioner's request to outline the timeline of the enforcement action. The Department established a July 31, 2015, deadline to either comply with the UDO's home business standards (Article 6.7), cease operating the use, or request a variance of use to allow the business activity.

07/10/2015: The Petitioner filed a Variance of Development Standard (1508-VS-11) requesting relief from Article 6.7(D)(3) regarding business operations in an accessory dwelling, and Article 6.7(F)(3) regarding employees for a home business (to review this previous application, see **Exhibit 7**). Upon review of the filed petition, the Department determined the use did not qualify as a permitted home business. As a result, the Department communicated this determination to the Petitioner on July 17, 2015.

09/03/2015: The Department met with Petitioner to discuss the nuances of the Petitioner's operations and the need to modify the variance application. Furthermore, the Department identified that the existing parcels were illegal subdivided in 2003⁵ and advised the Petitioner to

⁵ This corresponding Variance of Development Standard was filed as **Petition No. 1511-VS-16**.



either recombine the parcels, file a plat that complies, or modify the variance request to address the resulting non-conforming lot area, lot frontage and minimum building setback lines.

09/10/2015: The Department advised the Petitioner the requested use is “Light Industry” because of the “assembly operations of pre-manufactured parts, components” and that a variance of use petition, rather than a variance of development standard, would be required .

10/02/2015: The Petitioner filed a modified variance of standard application for the illegal subdivision (see Petition No. 1511-VS- 16) and this variance of use petition.

10/20/2015: The Petitioner requested appearance at the December 8, 2015, Board of Zoning Appeals public hearing, rather than the November 8, 2015, public hearing due to a scheduling conflict. Petitioner subsequently mailed certified public notices on October 23, 2015, as required by the Board’s Rules of Procedure for the December 8, 2015, public hearing.

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 8th, 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 UDO⁶ 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 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 UDO⁷ 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

⁶ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

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



Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variance of Use: The Board of Zoning Appeals shall approve or deny variances of land use from the terms of the UDO. A variance of land use may be approved under Indiana 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 arises from some condition peculiar 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 is sought; and
5. The approval does not interfere substantially with the Comprehensive Plan.

DEPARTMENT COMMENTS

Below, the Department has provided two (2) separate findings of fact, one if the Board is inclined to approve the petition, and another, if the Board is inclined to deny the petition.

Recommendations for Approval

If the Board is inclined to approve the petition, then the Department recommends the following conditions to limit the scope of the business to its existing activity and mitigate conflicts with the use and enjoyment of surrounding properties:

1. The “[A]ssembly operations of pre-manufactured parts, components” shall be limited in scope and operation to the Petitioner’s Narrative and Site Plan, attached hereto and incorporated herein as **Exhibit 4** and **Exhibit 5**, respectively. Any expansion or substantial alteration to the scope and operation of the Variance of Use, as determined by the Director, shall require approval by the Board of Zoning Appeals.
2. This Variance of Use shall be limited to the Property Owner and shall expire upon the ownership transfer of the Property to an owner other than the existing Property Owner.
3. All loading and unloading activity, including deliveries to and from the Property, shall only occur on the Property and not within the adjacent right-of-way, nor shall it prohibit or hinder access to and egress from adjacent properties.



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 of Use would be injurious to the public health, safety, morals, and general welfare of the community because all proposed assembly operations would occur entirely within the existing accessory structure, with the exception of deliveries once or twice a month, and will otherwise comply with all applicable standards of the UDO.

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 of Use should not have a negative impact on surrounding properties because: (i) the use is utilizing existing improvements which are compatible and consistent with the rural/residential character of the surrounding area; (ii) all assembly operations of the use will occur completely within the existing accessory structure, with the exception of deliveries once or twice a month; and (iii) the imposed conditions are intended to further mitigate conflicts with surrounding uses.

3. *The need for the variance arises from some condition peculiar to the property involved.*

Finding: The Unified Development Ordinance does not permit “assembly operations of pre-manufactured parts, components” within the AG-SF1 District; however, the surrounding area is contemplated by the Comprehensive Plan to be developed with higher intensity uses, of which the proposed use would likely be compatible with and of a lesser intensity (i.e. traffic impact and light, noise, and odor pollution).

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 is sought.*

Finding: The Unified Development Ordinance establishes that home businesses are intended for “[p]rofessional services and domestic occupations...as typically carried out can be conducted in a Dwelling without impairment of the use thereof as a place of residence and with no detrimental effect upon adjacent residential properties.” The proposed use is not inconsistent with these stated objectives; however, the strict application of the terms of the Unified Development Ordinance results in the classification of the proposed use as a light industrial use which is not permitted, resulting in an unnecessary hardship when the proposed use is consistent with otherwise permitted agricultural operations and home businesses.

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



Finding: The Comprehensive Plan identifies this property within the “Rural Northeast” land use classification. Surrounding properties include the “Business Park” land use classification⁸, which contemplates higher intensity commercial, industrial and warehousing activity. Additionally, the property is approximately one thousand (1,000) feet west of the “Regional Commercial” land use classification⁹ at the interchange of US Highway 31 and State Road 38. The proposed use is not inconsistent with surrounding land uses already contemplated by the Comprehensive Plan’s land use map, policies and objectives and does not interfering substantially with the Comprehensive Plan.

Recommended Findings for Denial:

If the Board is inclined to deny the request, 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: The requested Variance of Use would be injurious to the public health, safety, morals, and general welfare of the community because the proposed site design, access and operation interferes with safe ingress and egress of the property and adjacent residential properties along a State highway.

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 use will likely have a negative impact on surrounding properties because: (i) the design of the site and operation does not adequately mitigate the aesthetic and ingress/egress impact on surrounding properties; (ii) the nature of the operation will likely have an undesirable impact on the residential character of the property; and (iii) the nature of the operation and operational characteristics is inconsistent with otherwise permitted uses on the property.

3. *The need for the variance arises from some condition peculiar to the property involved.*

Finding: The need for this variance arises because of an existing zoning violation on the Property. The condition of the Property is not peculiar or unique in nature and the use and enjoyment of the property could otherwise occur as permitted in the AG-SF1 District.

⁸ Land uses contemplated as appropriate in Business Parks are (i) manufacturing; (ii) subordinate office, retail, and services; (iii) research and development; and (iv) warehousing.

⁹ Land uses contemplated as appropriate in Regional Commercial are (i) regional retail; (ii) office; and (iii) attached residential dwellings.



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 is sought.*

Finding: The need for this variance arises because of an existing zoning violation on the Property that is self-imposed. Strict application of the Unified Development Ordinance would not constitute an unnecessary hardship because the existing improvements could otherwise be used as contemplated by the UDO and permitted in the AG-SF1 District.

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

Finding: The Comprehensive Plan identifies this property within the “Rural Northeast” land use classification. Although the area surrounding the Property is contemplated for commercial and industrial development, the proposed use is not consistent with the Comprehensive Plan’s land use map, policies and objectives for the “Rural Northeast” classification; thereby interfering substantially with the Comprehensive Plan.