



Petition Number: 1803-VU-02

Subject Site Address: 133 W. 161st Street (The “Property”)

Petitioner: Mauricio Gonzalez Reyna (The “Petitioner”)

Request: The Petitioner is requesting a Variance of Use to allow for a Construction Trade Office (Article 12) use in the AG-SF1: Agriculture / Single-Family Rural District (Article 13.2)

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

Current Land Use: Residential

Approximate Acreage: 2.5 acres+/-

Exhibits:

1. Staff Report
2. Location Map
3. Petitioner’s Application

Staff Reviewer: Matt Pleasant, Associate Planner

OVERVIEW

Location: The subject Property is 2.5 acres +/- and is located at 133 W. 161st Street (see **Exhibit 2**). The Property is currently a residential use. The surrounding properties east, west, and south are zoned AG-SF1 and both residential (SF-3 Cluster) and commercial (Spring Mill Station Northeast Quadrant PUD) uses to the north. The property to the south is a farmed field that has been used as a local airport in the past.

Variance Request: The Petitioner is requesting a variance to allow a Construction Trade Office use to store vehicles and trailers for their business.

SUMMARY OF VARIANCES

The Petitioner is requesting the temporary use within the definition of an Office, Construction Trade¹ on the Property to allow the storage of vehicles used by their construction business. Chapter 13 of the Westfield-Washington Township Unified Development Ordinance (the “UDO”)

¹ Chapter 12 of the UDO defines “Office, Construction Trade” as: “electrical contractors, general contractors or construction offices, home remodeling companies, septic system contractors, heating and cooling contractors, painting contractors, **landscaping contractors**, and plumbing contractor offices, and the like, where such use is typically characterized to include some or all of the following aspects: storage of product for sale or for installation, storage of materials related to the business, storage of equipment or other implements, office space, **parking of company vehicles**, service areas for equipment and vehicles, warehouse space, showroom space, and/or retail sales.”



Use Table only allows an Office, Construction Trade use to be in zoned Enclosed Industrial and Open Industrial by right and General Business with the approval of a Special Exception.

The Petitioner lives at the Property and has been operating the business on the Property since 2012. The Petitioner currently parks the business trucks and equipment behind the house located on the Property. The Petitioner is requesting this variance to have a time limit of three (3) years to find a permanent location to operate the business.

COMPREHENSIVE PLAN

The Westfield-Washington Township Comprehensive Plan: The Land Use Plan contemplates the Property of a “Local Commercial” and/or a “Suburban Residential” land use classification. Since the Comprehensive Plan Land Use Concept Map² is not bound to the parcel, both classifications shall be analyzed for this request.

The Existing Suburban³ classification is designed to “...preserve and protect the stability and integrity of the area as it fills in.” The Existing Suburban encourages some of the following development policies:

- Encourage only compatible infill development on vacant parcels in existing neighborhoods as a means to avoid sprawl,
- Ensure that new development adjacent to existing suburban is properly buffered,
- Land Uses include detached dwellings, attached dwellings, institutional uses, and recreational uses.

The Local Commercial⁴ classification is characterized by architecture having a residential or suburban feel with attractive signs and extensive landscaping. The classification is designed to:

“...provide goods and services used by nearby residents on a day-to-day basis, as opposed to attracting customers or clients from a large geographic area. Examples include but not limited to banks, beauty salons, drug stores, convenience stores, automobile service stations, video stores, dry cleaners, restaurants, and convenient stores.”

Local Commercial classification encourages some of the following development policies:

- Locate local commercial development only in planned centers and only on streets classified as arterials or on frontage roads as depicted on the Land Use Concept Map.
- Require commercial uses to be dispersed, but also to be focused on key nodes, avoiding strip patterns, which are inefficient from an access point.

² Page 24; Chapter 2: Land Use Classifications and Development Policies; Westfield-Washington Township Comprehensive Plan.

³ Page 38-39; Chapter 2: Land Use Plan: Suburban Residential; Westfield-Washington Township Comprehensive Plan.

⁴ Page 47-49; Chapter 2: Land Use Plan: Commercial; Westfield-Washington Township Comprehensive Plan.



- Use attached residential, offices, and similar uses as transitions between more intensive and less intensive uses.
- Require effective buffering between commercial uses and adjacent residential uses.
- Prevent commercial uses from encouraging into residential areas.

Spring Mill Station Plan: The area surrounding the intersection of 161st Street and Spring Mill Road borders the southeast corner of the Spring Mill Station Addendum (the “Addendum”) to the Comprehensive Plan⁵. The southeast corner is intended to be a transition from commercial to residential:

“...would allow for residential and commercial development to include a large buffer and landscape area to provide transition between newly developed areas and adjacent development⁶.”

The Comprehensive Plan is not law; rather, it is intended to serve as a guide in making land use decisions.

Thoroughfare Plan: The plan identifies 161st Street as a Primary Arterial and expected widening of the street is not anticipated to begin in the immediate future. The plan also identifies this road as a future “Cycle Corridor⁷.”

PROCEDURAL

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Use. This petition is scheduled to receive its public hearing at the March 13, 2018, 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;

⁵ Page 17; Chapter 4: Planning Area; Spring Mill Station Plan Addendum

⁶ Page 19; Chapter 4: Planning Area; Spring Mill Station Plan Addendum

⁷ Appendix B of the Westfield Thoroughfare Plan; Resolution 11-14.

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.



(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.

Variances of Use: The Board of Zoning Appeals shall approve or deny variances from the terms of the UDO. A variance 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 result in practical difficulties in the use of the subject property; and
- 5) The approval does not interfere substantially with the Comprehensive Plan.

DEPARTMENT COMMENTS

Approval: If the Board is inclined to approve the Variance of Use (1707-VU-01), then the Department recommends the Variance of Use (1707-VU-01) approval with the following condition:

- **The Variance of Use shall expire on December 31, 2021;**

In addition, the Department recommends the following written findings of fact related to the Variance of Use:

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 allowing storage of landscape vehicles to locate on the Property for a temporary period will increase density or traffic, nor alter the current characteristics of the Property or the surrounding community since the business has been operating at the Property since 2012. The Property will be primarily used as a single-family residence.

- 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 should not have a negative impact



on surrounding properties. The business has been storing their trucks and equipment since 2012. All such parking areas will be appropriately screened from view of 161st Street.

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

Finding: The variance would allow some time to search for a permanent location for the business to operate. Not allowing the variance will result in ceasing all operations of the business.

- 4) *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:*

Finding: The Property has substantial space for this low impact and temporary use of only storing the company commercial vehicles behind the existing buildings. This location is necessary during the searching and relocation of the business.

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

Finding: This use does not substantially alter the characteristics of the property and will maintain the current residential character of the property.

Denial: If the Board is inclined to deny the requested variance, then the Department recommends denying the variance, and then tabling the adoption of findings until the Board's next meeting with direction to the Department to prepare the findings pursuant to the public hearing evidence and Board discussion.