

The Westfield-Washington Township Board of Zoning Appeals met at 7:00 p.m. on Tuesday, September 13, 2016, at Westfield City Hall. Members present included Ken Kingshill, Martin Raines, Bill Sanders, Dave Schmitz, and Robert Smith. Also present were Matt Skelton, Director; Kevin Todd, Senior Planner; and Brian Zaiger, City Attorney.

APPROVAL OF MINUTES

Schmitz moved to approve the August 9, 2016, meeting minutes.

Raines seconded, and the motion passed 5-0.

ITEMS OF BUSINESS

1609-AA-01

14939 Ditch Road

Indiana Structural Foundations, LLC

The petitioner is appealing an Administrative Determination (1604-AD-02) regarding standards applicable to a concrete business pursuant to a previously approved Variance of Use (79-V-12).

Zaiger presented an overview of the requested Administrative Appeal and the process for hearing this matter. He noted that the previous owners of the subject property were granted a variance in 1979 to allow a concrete business to operate on the property. He stated that the Director made an interpretation and determination regarding the limits of the 1979 variance approval. He added that the current property owner has appealed the Director's determination, and it is the Board's responsibility to hear the appeal. He stated that the petitioner will present their case, followed by the Director presenting his case. Zaiger said that the Board will then have a chance to ask questions and make a final determination.

Joseph Calderon, Barnes & Thornburg, LLP, representing Indiana Structural Foundations, presented the appeal, stating that they did not believe the 1979 variance limited outdoor activities related to a concrete business, citing the Letter of Grant that offered no conditions of approval that limited the terms of the business' operation. He argued that by that Board's failure to put any conditions on the approval of the variance in 1979, that outdoor activity was not automatically precluded from this use on this site. He added that common law would allow normal accessory use of the property along with the primary use. He argued that the administrator (Director) made an error in determining that no outdoor activities be conducted on the property simply because they do not appear on the plan that accompanied the 1979 variance case. Calderon argued that activities such as moving equipment, moving forms, staging materials for shipping, loading and unloading forms and other equipment, employee parking, etc. would all classify as accessory to the permitted concrete business use. He showed the Board a series of historic aerial photographs of the property over the past approximately 30 years, highlighting the apparent outdoor activity on the site. He said that this activity has occurred without enforcement by the City or complaint by neighbors. He argued that the site's historical use should be considered when determining the outcome of this appeal. Calderon went on to say that they believe they are not operating any more

intensely than the previous user operated on the site. He added that he has an affidavit from the previous owner/operator of a concrete business on the property affirming the historical outdoor activity without condition or enforcement has been occurring continuously for over 30 years.

The Board members asked questions of the petitioner, gaining clarification regarding the nature of the concrete business' operations and use of the property.

The Board discussed the difference between this use being considered legal non-conforming versus being permitted by the 1979 variance.

Calderon stated that the key issue in this appeal is allowing outdoor activity/storage versus requiring all activity to occur indoors.

Smith stated that he does not believe the 1979 variance places any restrictions on the operations of the business. He noted that it makes reference to constructing a new building in order to secure a place to store supplies and trucks pertaining to the concrete business.

Schmitz stated that he believes the variance did attempt to restrict the use by what was included in the application.

Calderon replied all the variance did was give the right to knock down a building put another one up and continue the existing business as it was at that time. He added that he believes because that existing business did have a level of outdoor activity at that time that it could continue in that manner. He stated that the application does not say that there won't be any more outdoor parking.

Skelton presented arguments defending the administrative determination that outdoor activities are not permitted on the subject property. He stated that any pre-existing non-conforming status was extinguished when the variance was granted in 1979. He stated that when evaluating the 1979 variance, the Department analyzed only what was in the record, which included an application, a site plan, and a letter of grant and made a determination that the variance could not be granted for anything beyond the plans that were filed. He acknowledged that the plan was not of great quality, but it did show the entire property, showed the building to be removed, and it showed 4 additional structures to be constructed. He said that nowhere on the plan is there any outdoor storage or parking lots indicated. He said that the variance is restricted by the plans that were submitted by the applicant, approved by the Board, and attached to the variance approval. Skelton added that non-enforcement over the years does not constitute entitlement.

The Board discussed the application, the site plan, and the letter of grant. They discussed the intent of the new storage building and the topic of outdoor activity and outdoor parking.

Smith asked Skelton if the petitioner put everything indoors, including parking, if it would be in compliance.

Skelton replied yes.

Smith stated that he believes that is an absurd interpretation.

Calderon believes that they have demonstrated that what is occurring today is what was occurring since the use began operating on the property.

Skelton told the Board that if they are inclined to allow outdoor activities, that the Department would need guidelines to enforce for this activity.

Raines said that he believes everything is to be stored indoors, according to the variance file and plan. He stated that he believes the reason for the new storage buildings was for aesthetic and safety reasons.

Smith responded that the letter states to tear the building down, but that it does not say anything about storing things inside.

Smith requested additional time to make a decision regarding indoor or outdoor parking, and requested the item to be continued and discussed at the next meeting.

Calderon agreed to the continuance and indicated a desire to work together to explore a possible solution outside of this appeal process.

Motion: Continue this item to the October 11, 2016 BZA Meeting.

Motion: Schmitz; Second: Raines; Vote: 5-0

REPORTS/COMMENTS

Plan Commission Liaison report by Schmitz.

Economic and Community Development Department

Kingshill motioned to adjourn the meeting.

Schmitz seconded, and the motion passed.

The meeting adjourned at 8:27 p.m.

Chairperson
Robert Smith, Esq.

Secretary
Matthew S. Skelton, Esq., AICP
Director