



Petition Number: 1902-VS-04

Subject Site Address: 16708 Dean Road (the "Property")

Petitioner: GEFT Outdoor LLC (the "Petitioner")

Request: The petitioner is requesting Variances of Development Standard to permit an Off-Premise Electronic Pole Sign in the EI: Enclosed Industrial District and US Highway 31 Overlay District (Articles 6.17(E)(4-5), 6.17(F)(5), 6.17(F)(6)(a-f)).

Current Zoning: EI Enclosed Industrial District
US Highway 31 Overlay District

Current Land Use: Auto Repair

Approximate Acreage: 4.59 acres +/-

Exhibits:

1. Staff Report
2. Location Map
3. Site Plan Exhibit
4. Proposed Sign Exhibit
5. Application

Staff Reviewer: Pam Howard, Senior Planner

OVERVIEW

Location: The subject property is 4.59 acres +/- in size and located at 16708 Dean Road (the "Property") (see **Exhibit 2**). The Property is zoned the Enclosed Industrial (EI) District and located within the US Highway 31 Overlay District (the "US31 Overlay"). Adjacent properties to the north and south are also zoned the EI District, properties to the west are zoned the South Oak PUD. The Property is bordered by Dean Road and US 31 to the East.

Property History: On November 9, 2010, the Westfield-Washington Board of Zoning Appeals (the "BZA") approved a variance of use (Case Number: 1011-VU-05, the "First Variance") with conditions to allow the temporary operation of an automobile repair facility at 16708 Dean Road, now owned by Esler Properties, LLC, within the U.S. Highway 31 Overlay District (the "Overlay District"). As a condition of the First Variance approval, the Repair Business was to terminate by December 31, 2015.

On January 28, 2016, a new variance of use application was submitted requesting approval to continue operation of the Repair Business in the Overlay District. On March 8, 2016, the BZA approved the variance of use request (Case Number: 1603-VU-03, the "Second Variance") to allow the temporary operation of the Repair Business on the Property until December 31, 2019.



On or about November 7, 2017 the Westfield Economic and Community Development Department (“the Department”) received a complaint that a Structure¹ was being installed on the Property without an Improvement Location Permit. Upon inspection, it was found that the base of a new Pole Sign² (the “Pole Sign³”) had been installed on the Property and a non-conforming Pole Sign⁴ was located on the Property. No reference to the new Pole Sign or a relocation of an existing sign was included in the Site Plan or Statement of Intent submitted to the BZA for the First Variance or Second Variance for its consideration. On December 16, 2016, Esler Properties, LLC removed the relocated existing sign but left the base of the new Pole Sign in the ground.

On December 18, 2017, the Department issued an Administrative Determination revoking the Second Variance. Esler Properties LLC filed an appeal of that determination on January 17, 2018 (Case Number 1803-AA-01, the “Appeal”). The Appeal is still pending.

Variances: The Petitioner, who asserts a leasehold interest in a portion of the Property, is requesting several Variances of Development Standard to permit an Off-Premise Electronic Pole Sign in the EI: Enclosed Industrial District and US Highway 31 Overlay District, as depicted on the Site Plan Exhibit (see **Exhibit 3**) and Proposed Sign Exhibit (see **Exhibit 4**). The next section further details the variances requested.

SUMMARY OF VARIANCES

Variances #1 & 2 (Prohibited Signs): The Petitioner requests that the following prohibited Sign types be permitted on the Property.

Article 6.17(E)(4) Sign Standards; Prohibitions: Pole Signs.

Article 6.17(E)(5) Sign Standards; Prohibitions: Off-Premise Signs⁵.

¹ The UDO defines “Structure” as “[a]nything constructed or erected which requires location on the ground or attachment of something having location on the ground.”

² The UDO defines “Sign” as “[a]ny display or device placed on a property in any fashion which is designed, intended, or used to convey any identification, message or information other than an address number.”

³ The UDO defines “Sign, Pole” as “[a] Sign which is supported by one or more poles, posts, or braces upon the ground, in excess of six (6) feet in height, not attached to or supported by any building.”

⁴ The nonconforming pole sign was a grandfathered sign on the Property which had been moved and therefore lost its grandfathered status.

⁵ The UDO defines “Sign, Off-Premise” as “[a] Sign directing attention to a specific business, product, service, entertainment, or any other activity offered, sold, or conducted elsewhere than upon the lot where the Sign is displayed.”



Variance #3 (Sign Area⁶): The Petitioner requests that the maximum total sign area permitted be increased to six hundred seventy-two (672) square feet from the five hundred (500) square feet permitted by the UDO.

Article 6.17(F)(5) Sign Standards; General Regulations, Sign Area: In no instance shall a permitted non-residential use or tenant be restricted to less than twenty-five (25) square feet of Sign Area, nor shall any permitted nonresidential use or tenant be permitted to display more than five (500) hundred square feet of Sign Area.

Variance #4 (Electronic Sign⁷ type): The petitioner requests that an Electronic Sign be permitted to be a Pole Sign . The UDO currently limits Electronic Signs to Monument Signs⁸. The proposed Sign is not a Monument Sign, it is a Pole Sign.

Article 6.17(F)(6)(a) Sign Standards; General Regulations; Electronic Signs: Electronic Signs shall be limited to Monument Signs...

Variance #5 (Electronic Sign Area): The petitioner requests that the entire electronic display not be counted towards the size limitations of 60 square feet per face. [I'm unclear on the purpose of this requested variance. It seems to me the only way to vary it would be not have the entire electronic display count as sign area, which contradicts variance #7 which states 100% of the sign area will be electronic.]

Article 6.17(F)(6)(b) Sign Standards; General Regulations; Electronic Signs: The entire electronic display area for Electronic Sign shall count toward the permitted Sign Area, as applicable to the type of sign (e.g., Monument Sign) and as permitted in this Article.

Variance #6 (Electronic Sign character height): The petitioner requests that there be no maximum height for characters displayed on the sign. The UDO restricts the height of any characters on the electronic display to twenty (20) inches. The proposed sign will contain characters of varying height, possibly exceeding this limitation.

Article 6.17(F)(6)(c) Sign Standards; General Regulations; Electronic Signs: The maximum height of any letter, number or character shall be twenty (20) inches.

⁶ The UDO defines "Sign Area" as "The entire area within a single continuous perimeter enclosing the extreme limits of a sign, including all background area figures and letters. However, such perimeter shall not include any structural elements lying outside the limits of the sign which are not part of the information, visual attraction, or symbolism of the sign. Sign Area shall be computed as the smallest continuous rectangular figure that circumscribes a single sign display including writing, representations, emblems, logos or other displays, exclusive of the supporting framework, base, or structural bracing clearly incidental to the sign display."

⁷ The UDO defines "Sign, Electronic" as "[a] Sign or Sign component with a fixed or changeable display composed of a series of lights, including but not limited to light emitting diode (LED), that may be changed through electronic means."

⁸ The UDO defines "Sign, Monument (or Ground)" as [a] sign that is permanently fixed to the ground."



Variance #7 (Electronic Sign Area): The petitioner requests that the maximum area for proposed sign be increased to 672 square feet (100% of the total Sign Area) from the 60 square feet and 50% of the total Sign Area permitted by the UDO.

Article 6.17(F)(6)(d) Sign Standards; General Regulations; Electronic Signs: An Electronic Sign shall not exceed fifty percent (50%) of the Sign Area of the Sign, as permitted by this Article, on which it is located; however, in no instance shall an Electronic Sign exceed sixty (60) square feet, per face.

Variance #8 (Electronic Sign effects): The petitioner request that effects be permitted during the transition between images. [I am also unclear what they are asking for with this, it seems as though they are asking for this standard to not apply to them "just in case" we determine that the image transitions are moving. The UDO has a separate standard related to transitions (Article 6.17(F)(6)(g)) which they have not requested a variance from.]

Article 6.17(F)(6)(e) Sign Standards; General Regulations; Electronic Signs: The effects or use of moving, flashing, blinking, animation, scrolling, twirling, or other similar effects (including but not limited to video) are prohibited.

Variance #7 (Electronic Sign image change frequency): The petitioner requests that the maximum frequency of a change of image be increased to once per 8 seconds from the UDO standard of once per hour.

Article 6.17(F)(6)(e) Sign Standards; General Regulations; Electronic Signs: Changes of image shall not occur more than once per hour, except for displays containing only time and/or temperature.

IMPACT OF COMPREHENSIVE PLAN

Comprehensive Plan: The Future Land Use Plan in the Westfield-Washington Township Comprehensive Plan (the "Comprehensive Plan") identifies the properties as "Employment Corridor". The Comprehensive Plan is not law; rather, it is intended to serve as a guide in making land use decisions.

US Highway 31 Overlay District: Permitting a Pole Sign would not align with the vision of the US 31 corridor. Article 5.1 (A)(2) states "US Highway 31 is a limited access highway and an important entrance corridor to the community. It is the further purpose of the US31 Overlay to preserve the aesthetic qualities of those bordering properties..." A Pole Sign would negatively affect the aesthetics of the corridor.



PROCEDURAL

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the February 12, 2019, 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 UDO⁹ 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 UDO¹⁰ 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.

Variances 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.

⁹ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

¹⁰ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



Variances of Use: The petitioner did not submit an application to amend the previously granted Variance of Use. If an application had been submitted, as requested by the Department, additional analysis and Findings of Fact would have been included in this report.

DEPARTMENT COMMENTS

Findings: The Board must determine all of the following to be true statements for each of the requested Variances of Development Standard in order to approve each requested Variance.

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.

Recommendation: The Department recommends denial of all requested Variances of Development Standard. The Department also recommends tabling the adoption of findings until the Board's next meeting with direction to the Department to prepare the findings consistent with the public hearing evidence and Board discussion.