



Petition Number: 1912-VU-07

Subject Site Address: 16708 Dean Road (the “Property”)

Petitioner: Esler Properties, LLC by Morse & Bickel, P.C. (the “Petitioner”)

Request: The Petitioner is requesting a renewal of a previously approved Variance of Use to allow an auto service facility on 4.59 acres +/- in the EI: Enclosed Industrial District and the US Highway 31 Overlay District (Article 13.2).

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

Current Land Use: Commercial

Approximate Acreage: 4.59 acre +/-

Exhibits:

1. Staff Report
2. Location Map
3. Existing Site Conditions
4. Acknowledgement of Variance (1603-VU-03)
5. Petitioner’s Application

Staff Reviewer: Pam Howard, Senior Planner

OVERVIEW

Property 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 Structure was being installed on the Property without an Improvement Location Permit. Upon inspection, it was found that the base of a new Pole Sign (the “Pole Sign”) had been installed on the Property and a non-conforming Pole Sign 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.

On January 4, 2019, GEFT Outdoor LLC submitted an application for several Variances of Development Standard to permit an Off-Premise Electronic Pole Sign on the Property. The request received a Public Hearing at the February 12, 2019, BZA meeting and was denied.

SUMMARY OF VARIANCES

The Petitioner requests a renewal of the Second Variance, which expired on December 31, 2019.

The Property is zoned EI: Enclosed Industrial and is also subject to the US Highway 31 Overlay District. Vehicle sales are categorized as a Very High Intensity Retail¹ use in the Unified

¹ The UDO defines Retail, Very High Intensity as “[r]etail businesses that have a very high impact on neighboring properties, traffic generation, and public safety and that inherently operates in whole or part outdoors through sale, display or other general activities. Example businesses include, but are not limited to: vehicle and motorcycle sales (new or used), construction vehicle and trailer sales, farm equipment sales, farm implement sales and



Development Ordinance. As such, the use is only permitted by Special Exception in the General Business District, and is also an excluded use in the US Highway 31 Overlay District².

The Second Variance was approved with a three (3) year time limit.

COMPREHENSIVE PLAN

The Westfield-Washington Township Comprehensive Plan identifies this Property within the "Employment Corridor"³ land use classification. The Employment Corridor is discussed in the Highway Corridors chapter of the Comprehensive Plan; and contemplates uses that would encourage employment growth in Westfield, including but not limited to: "office and service uses, research and development, and retail and institutional uses that are subordinate to and supportive of the office and service uses."⁴

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 January 14, 2020, 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 UDO⁵ 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.

service, feed sales, heavy equipment sales, tool and light equipment rental, manufactured or mobile home sales, boat and trailer sales and service, travel trailer sales and rental, and semi tractor-trailer cleaning, service, rental, repair and sales."

² Article 13.2 Use Table of the UDO.

³ Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 24).

⁴ Pages 53-55 of the Westfield and Washington Township Comprehensive Plan.

⁵ Article 10.14(l) Processes and Permits; Variances; Conditions of the UDO.



Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO⁶ 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.

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

Approval: If the Board is inclined to approve the petition, the Department recommends the following conditions and findings:

Recommended Conditions:

1. That approval of this variance shall expire on **[INSERT CHOSEN DATE]**. Any request to extend the time limit of this variance shall be reviewed and approved by the Board of Zoning Appeals prior to **[INSERT CHOSEN DATE]** (A 3-year renewal would result in expiration on March 1, 2022).
2. The Pole Sign shall be removed by **[INSERT CHOSEN DATE]**.

⁶ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



Recommended Findings for Approval:

If the Board is inclined to approve the variance, then the Department recommends the following findings:

- 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 an automobile repair business to continue to locate on the Property for a temporary period of time will 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:*

Finding: It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The Property and the surrounding area were developed without the existing U.S. Highway 31 Overlay standards being in effect. None of the surrounding area complies with the Overlay standards. Approving the variance would result in the character of the area to remain unchanged.

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

Finding: The use of an automobile repair business is not permitted within the Enclosed Industrial (EI) zoning and is an excluded use under the U.S. Highway 31 overlay.

- 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 use of an automobile repair business is not permitted within the Enclosed Industrial (EI) zoning and is an excluded use under the U.S. Highway 31 Overlay.

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

Finding: The Westfield-Washington Comprehensive Plan (the "Comprehensive Plan") includes this area in the Employment Corridor. The Comprehensive Plan recommends this Highway Corridor be reserved for employment-generating uses and related supporting service uses. The continued use of the Property as an automobile repair business would not interfere substantially with the Comprehensive Plan.

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.