



CITY OF WESTFIELD, IN
BoardofZoningAppeals_Meeting_Agenda_09_13_2016

Tuesday, September 13, 2016 at 07:00 PM

BOARD OR COMMISSION: Board of Zoning Appeals (BZA)

MEETING DATE: Tuesday, September 13, 2016 at 07:00 PM

MEETING PLACE: Westfield City Hall- Assembly Room

THE FOLLOWING AGENDA IS SUBJECT TO CHANGE AT THE DISCRETION OF THE BOARD OF ZONING APPEALS

OPENING OF MEETING

Note the presence of a quorum

Approval of Minutes - August 9, 2016

Documents: [August 9, 2016, Minutes](#)

Review Rules & Procedures

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).

Documents: [Administrative Appeal Application Packet \(1609-AA-01\)](#) | [Administrative Determination \(1604-AD-02\)](#)

REPORTS/COMMENTS:

Plan Commission Liason

Economic and Community Development Department

ADJOURNMENT

The Westfield-Washington Township Board of Zoning Appeals met at 7:00 p.m. on Tuesday, August 9, 2016, at Westfield City Hall. Members present included Martin Raines, Dave Schmitz, and Robert Smith. Also present were Jesse Pohlman, Senior Planner; and Brian Zaiger, City Attorney.

APPROVAL OF MINUTES

Schmitz moved to approve the July 12, 2016, meeting minutes.

Raines seconded, and the motion passed 3-0.

ITEMS OF BUSINESS

1607-VS-14

[PUBLIC HEARING]

18435 North Union Street

Ben Knock

The petitioner is requesting a Variance of Development Standard for a reduction in the Side Yard Building Setback Line for an Accessory Building (Article 6.1(D)(1)(b)(ii)) in the MF1: Multi-family Low Density District.

Pohlman presented an overview of the requested Variance of Standard, as summarized in the Department report.

Ben Knock introduced himself and explained the request.

Public Hearing opened at 7:06 p.m.

No public comments.

Public Hearing closed at 7:07 p.m.

Raines motioned to approve the Variance of Standard to allow a reduction in the Side Yard Building Setback Line for an Accessory Building (Article 6.1(D)(1)(b)(ii)) in the MF1: Multi-family Low Density District.

Schmitz seconded and the Motion passed 3-0.

Raines moved to adopt the Department's recommended findings of fact for approval.

Schmitz seconded and the Motion passed 3-0.

1606-VS-10
[WITHDRAWN]

4535 East 169th Street

Omar Usmani (Children's Montessori House)

The petitioner is requesting Variances of Development Standard to modify the landscaping requirements (Article 6.8) for an Institutional Use in the SF3: Single-Family Medium Density District.

REPORTS/COMMENTS

Plan Commission Liaison report by Schmitz.

Economic and Community Development Department

Raines motioned to adjourn the meeting.

Schmitz seconded, and the motion passed.

The meeting adjourned at 7:11 p.m.

Chairperson
Robert Smith, Esq.

Secretary
Matthew S. Skelton, Esq., AICP
Director



ADMINISTRATIVE DETERMINATION

Cross Referenced to Instrument No. 2015-32775

FILE NUMBER:

1604-AD-02

DESCRIPTION:

On June 18, 1979, the Westfield-Washington Board of Zoning Appeals (the "BZA") approved a variance (Case Number: 79-V-12) request to allow the operation of a concrete business and the construction of a storage building on property located at 14939 Ditch Road (the "Property").

The current Property owner, Jeff Kelich (the "Property Owner") has said that a concrete business has been operating on the Property since January 2016. Since that time, the City has received numerous complaints from neighbors regarding various activities occurring on the Property. This Administrative Determination outlines the known facts and observed activities on the Property. It also defines what activities constitute an approved "concrete business", as approved by the BZA under variance 79-V-12.

FACTS OF THE CASE:

1. According to variance 79-V-12 (Exhibit "A"), a "concrete business" is a permitted use on the Property.
2. The submitted materials for variance 79-V-12 included a site plan, which indicated one (1) existing building and three (3) future/new buildings. To-date, only one (1) of the future/new buildings depicted on that site plan has been constructed (permit 80-IP-43).
3. The building associated with permit 80-IP-43 was approved "As Per Plans Filed", which correlates to the site plan that was associated with variance 79-V-12.
4. The plans approved as part of the variance request do not contemplate outdoor parking areas, fueling areas, or outdoor storage areas on the Property.
5. According to an email provided to the City by the Property Owner, a new corporation was established on December 23, 2015 called Indiana Structural Foundations, LLC.
6. According to phone conversations with the Property Owner, Indiana Structural Foundations, LLC is a concrete business that operates from the Property.
7. The Property Owner also owns a landscaping business called Carmel Turf Care. According to phone conversations with the Property Owner, Carmel Turf Care does not operate from the Property.
8. A landscaping business is not a permitted use on the Property.
9. According to phone conversations with the Property Owner, Carmel Turf Care has and will perform landscaping and mowing maintenance services for the Property. The Property Owner has communicated a desire to make landscaping improvements to the Property.

10. According to phone conversations with the Property Owner, Carmel Turf Care and Indiana Structural Foundations, LLC share some heavy equipment. That equipment is transferred between companies from time-to-time for operations.
11. The Property Owner has installed new fuel tanks on the Property. The Westfield Fire Marshall has inspected the tanks and has determined that, pursuant to the 2012 International Fire Code with Indiana Amendments, Chapters 2305 and 2306, the tanks, and the locations thereof, comply with federal and state regulations for above-ground fuel tanks.

OBSERVED ACTIVITIES:

1. On March 19, 2016, a neighbor reported a complaint regarding noise being generated from the Property from approximately sunrise to 6:00 PM.
2. On March 21, 2016, a neighbor reported a complaint regarding landscaping trucks, equipment, and materials entering, leaving, and being located on the Property.
3. On March 22, 2016, a site inspection of the Property by City staff revealed trucks, equipment, and materials on the Property. The inspection also revealed that a van for "Homes by Rex Brown" was on-site.
4. On March 27, 2016, a neighbor reported a truck and trailer for "Carmel Turf Care" being kept on the Property over a weekend.
5. On March 27, 2016, a neighbor reported a van for "Homes by Rex Brown" being kept on the Property over a weekend.
6. On April 14, 2016, a neighbor reported a complaint regarding the apparent storage of bagged fertilizer and irrigation tubing on the Property.
7. On April 26, 2016, a neighbor reported a "Carmel Turf Care" truck and trailer being loaded and/or unloaded on the Property.
8. On May 3, 2016, a neighbor reported a complaint regarding equipment noise at approximately 7:30 PM.

ZONING DETERMINATION:

Based on the approval of variance 79-V-12, the Economic and Community Development Director (the "Director") hereby determines the following:

1. Activities related to a concrete business, as approved by variance 79-V-12, are allowed to occur on the Property in a manner consistent with the plan and character of the development approved under variance 79-V-12.
2. The variance does not include any representation of outdoor activities, outdoor storage, or outdoor parking on the Property.
3. Permitted indoor activities associated with the concrete business include but are not limited to: the storage and maintenance of equipment/vehicles; the storage and maintenance of necessary tools; the storage of raw materials for making concrete; the storage of any business-related vehicles; the storage of concrete forms; the mixing of concrete; employee parking; customer parking; shipping and receiving of products/materials; and any office-related activities.
4. Normal indoor and outdoor property upkeep/maintenance/improvement is permitted.
5. Any activities related to a business that is not a concrete business, unless that business is otherwise permitted by the City's Unified Development Ordinance, are not permitted to occur on the Property.
6. All activities must comply with the City's Performance Standards (UDO, Article 6.15).
7. All activities must comply with the City's noise standards (Westfield Code, Chapter 34) (Exhibit "B").

APPEAL:

This Administrative Determination may be appealed to the Westfield-Washington Township Board of Zoning Appeals within thirty (30) days of this Administrative Determination.

BY:



Matthew S. Skelton, Esq.
Economic & Community Development Department Director
City of Westfield, Indiana

The above signatory hereby certifies that the information contained in and accompanying this document is true and correct.

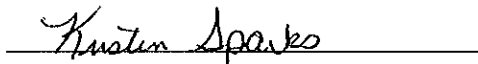
STATE OF INDIANA)

) SS:

COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Matthew S. Skelton, the Community Development Director for the City of Westfield, who having been duly sworn upon his/her oath acknowledged this Administrative Determination as described herein.

Witness my hand and Notary Seal this 9th day of June, 2016.



Signature of Notary Public



Printed Name of Notary Public

My County of Residence: Hamilton

My Commission Expires: 1/31/2017

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law: Kevin M. Todd

Prepared by: Kevin M. Todd, City of Westfield, 2728 East 171st Street, Westfield, IN 46074, (317) 804-3170.



Application Number V - 79-V-12

Date of Application May 18, 79

APPLICATION FOR VARIANCE
WESTFIELD-WASHINGTON BOARD OF ZONING APPEALS

This application must be completed and accompanied by the information specified below and the necessary filing fee, and filed at the Town Hall of Westfield, Indiana, at least Thirty (30) days prior to the Board of Zoning Appeals meeting at which Applicant wishes to make his oral presentation.

1. Applicant's Name PETTIJOHN & BANKS
Address 15111 OAK RD. CARMEL
2. Landowner's Name PETTIJOHN & BANKS
Address _____
Telephone Number _____
3. Attorney _____
(if represented)
4. Common description of property (address, location, etc.):
14939 DITCH ROAD
5. Legal description of property (list below, or attach):
SEE ATTACHED
6. Complete description of the nature of the Variance applied for:
PETITIONER REQUESTS VARIANCE OF USE TO PERMIT
CONSTRUCTION OF AN ADDITIONAL STORAGE BUILDING,
AND CONTINUED OPERATION OF NON"CONFORMING CONCRETE
CONSTRUCTION BUSINESS, AND REMOVAL OF EXISTING
BUILDING AS PER PLANS FILED.

7. Plans drawn to scale must accompany this application and must show at least the following: (a) The shape and dimensions of the land involved; (b) the location and dimensions of any existing buildings; (c) the location and dimensions of any proposed buildings or proposed alterations; and (d) all topographic, natural, or other unusual characteristics of the land involved.

8. No Variance in the application of the Provisions of the Comprehensive Zoning Ordinance of Westfield-Washington shall be granted unless the Board of Zoning Appeals shall find each of the following (thus the Applicant must complete and establish at the hearing that each of the following is true in order to obtain a favorable determination of his variance application):

- (a) That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to the other property or class or use in the same vicinity and district:

Due to the deteriorated condition of our existing
barn there will be a hardship to the owners to the
extent of not having a secure place to store
materials and trucks pertaining to the concrete
business.

- (b) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and district, but which is denied to the property in question:

Because of the difference in square footage in
the old structure and the new structure, a variance
is necessary for continued operation of the non-
conforming use. Around the corner, "THE HERB BARN"
has operated continuously for several years as a
retail business.

- (c) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the

property or improvements in such vicinity and district in which the property is located:

NO, existing barn is potential health and safety
hazard- not to mention an eyesore.

- (d) That the granting of such variance will not alter the land use characteristics of the vicinity and district, diminish the marketable value of adjacent land and improvements, or increase the congestion in the public streets:

NO, the use itself is non-conforming and the new
building is not substantially larger than the old
barn. Traffic coming and going will be no greater
than at present.

The Applicant hereby certifies that the information contained in and accompanying this application is true and correct.

Stanley E. Banks
Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS 15 day of

May, 1979.

Mary Lou Thatchew
Notary Public

My Commission Expires:

Dec. 30, 1979

NOTICE

The Applicant is responsible for giving appropriate notice of his variance application and hearing thereon. Notice must be published twice in a daily newspaper of general circulation

in Hamilton County, with the first publication being at least thirty days prior to the hearing and the second publication being one week later. Proof of publication must be delivered to the Town Hall of Westfield at least five days prior to the hearing. Every contiguous landowner must receive notice by certified mail and returned receipts shall be delivered to the Town Hall of Westfield at least five days prior to the hearing.

The Applicant hereby certifies that every contiguous landowner was appropriately notified by certified mail of his variance application and hearing thereon and return receipts from such certified mailings are hereby delivered to the Town Hall of Westfield.

Applicant

Date Proof of Publication received: May 25, 1979
Date return receipts received: May 25, 1979
Date fee paid: May 25, 1979
Received by: Virginia C. Morris

(Signature)

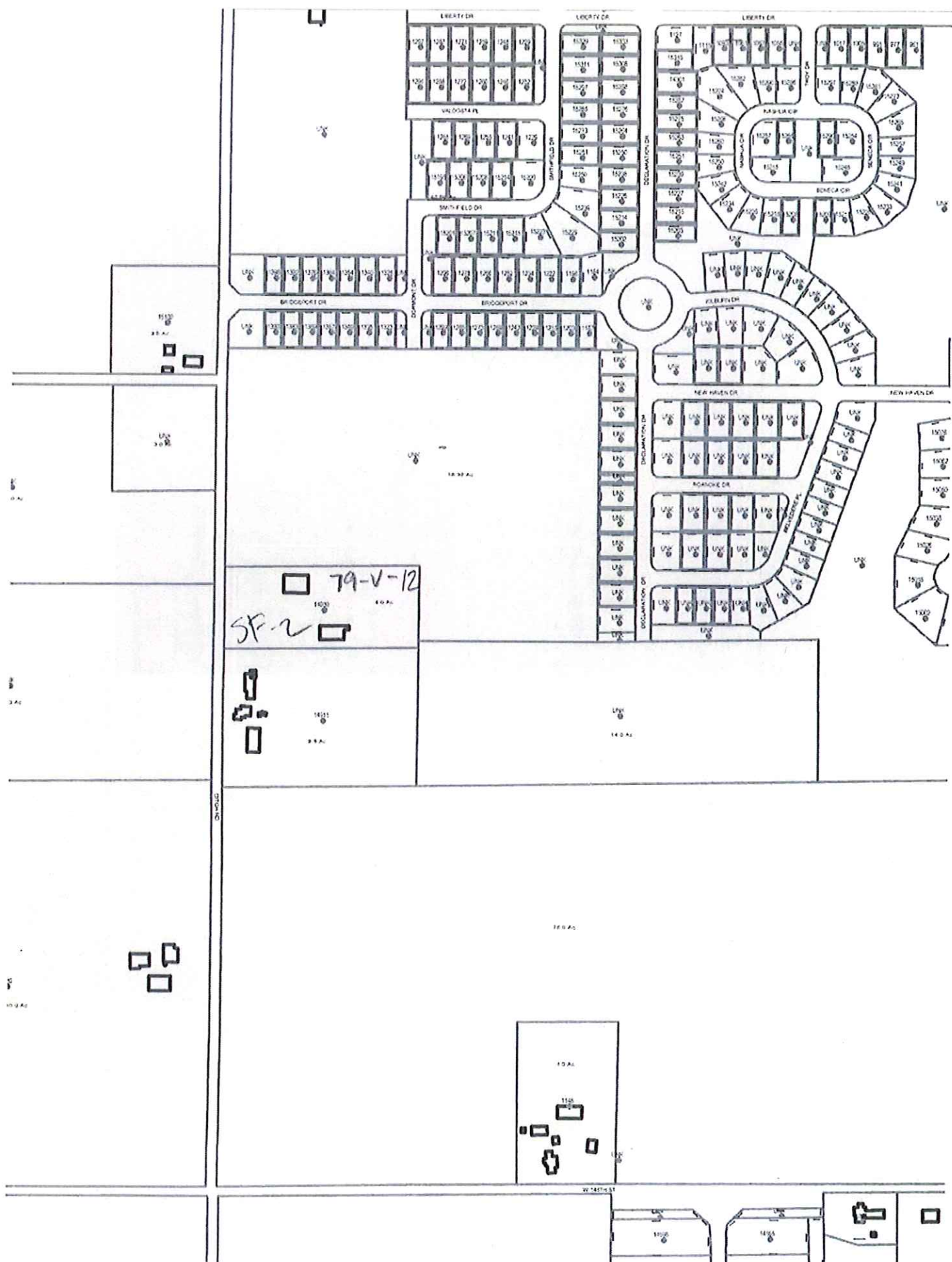
14939 Ditch Road. A variance of use to permit construction of an additional storage building and continued operation of a non-conforming concrete construction business and removal of an existing building as per plans filed is requested by Pettijohn & Banks.

Comments:

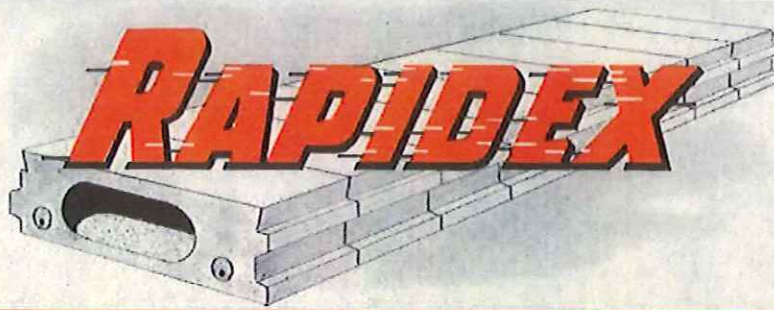
1. The use itself is non-conforming as the business was conducted there before the property was in the jurisdiction of Westfield-Washington Township.
2. Since the proposed new structure is slightly larger than the existing barn, which the petitioner proposes to remove, construction of the new storage building constitutes enlargement of a non-conforming use. Such enlargement requires a variance. Locations of future buildings have also been shown for future permit purposes.
3. The proposed new structure is to be of the same type as the concrete structure presently located on the site. The front, side, and rear setback requirements of both the residential and industrial districts have been exceeded.
4. The building which the petitioner proposes to remove is a badly deteriorated barn-type structure.

Recommendations:

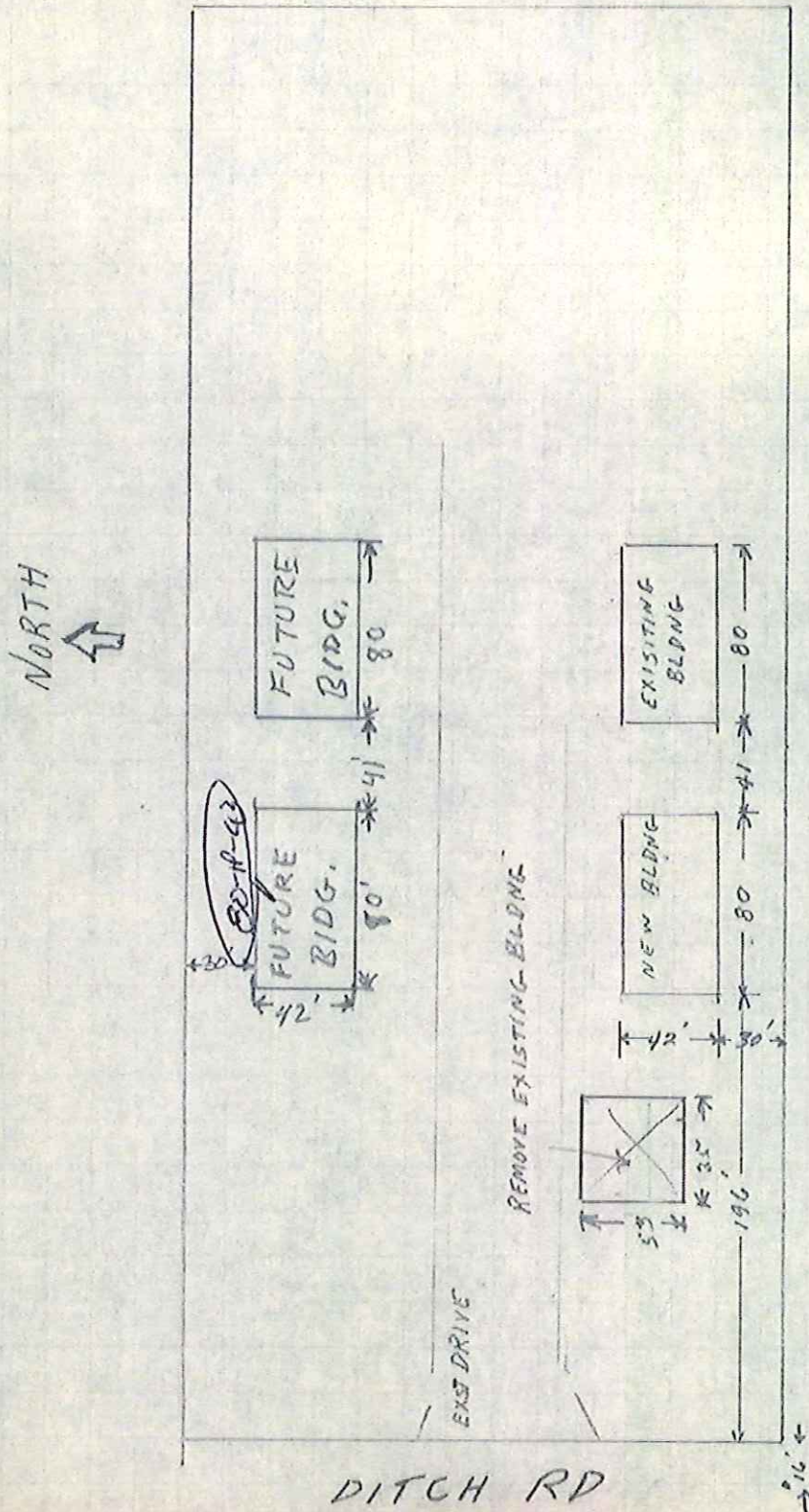
Driving past the site, two conditions are readily obvious: the amount of vehicles and materials being stored outside, and the deteriorated condition of the barn. Both conditions constitute potential health and safety hazards. The barn should be removed in any event, and materials presently stored outside should be stored inside the new structure if it is approved.



LIGHT WEIGHT •
 ACOUSTICAL •
 ECONOMICAL •
 INSULATING •



• FIRE RESISTIVE
 • PRE-ARCHED
 • LONG SPAN
 • UNIFORM TEXTURE

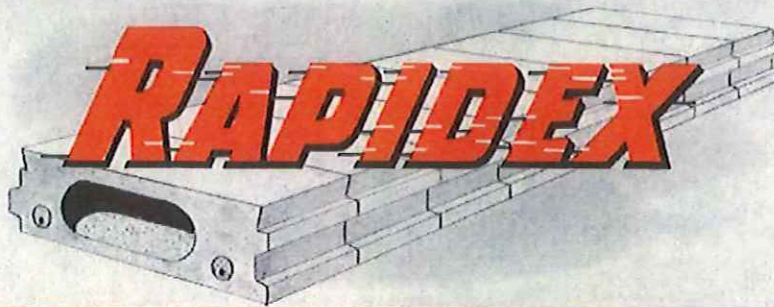


EST APPROX COST @ 9.00 SQ FT = \$ 30,240

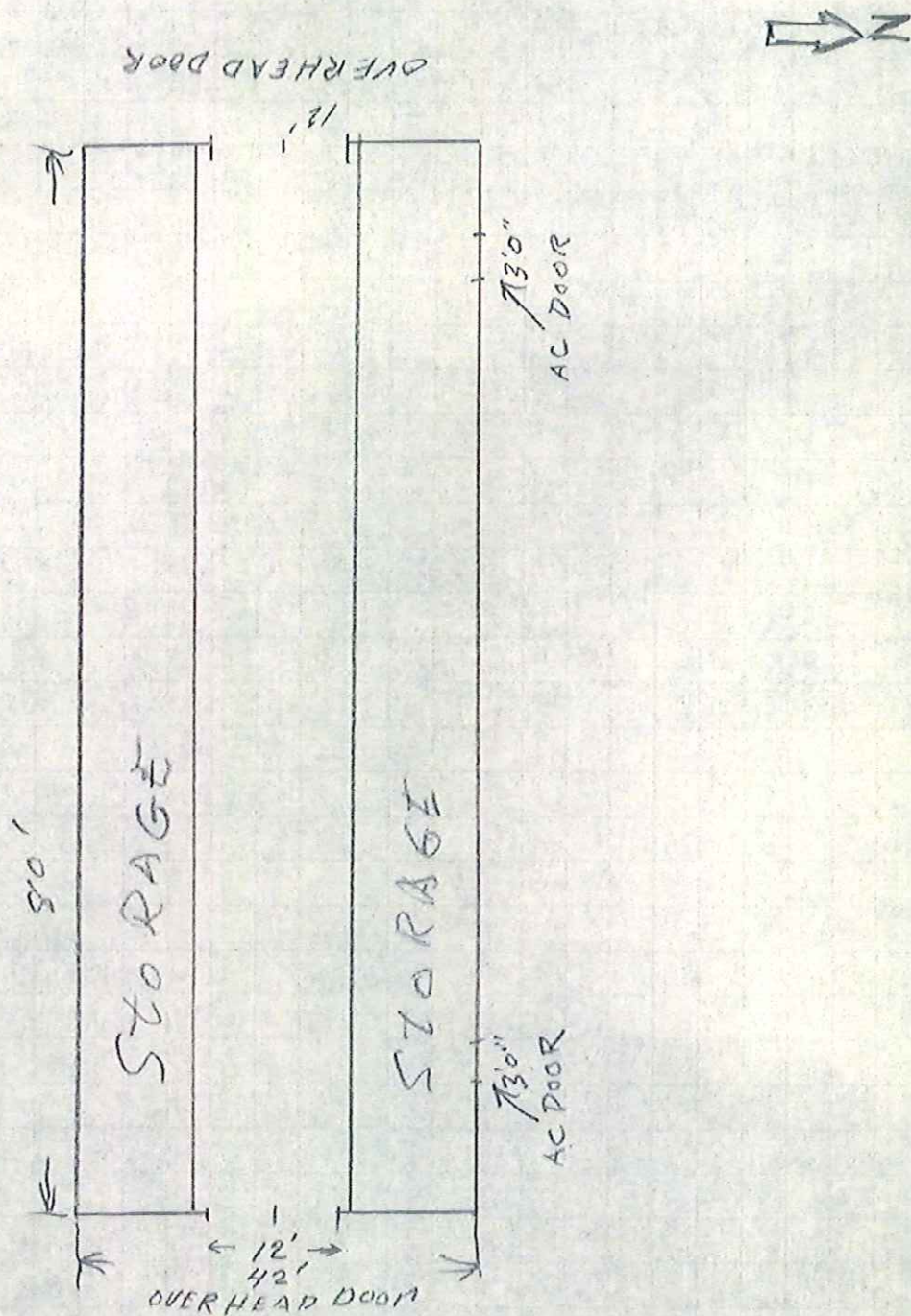
SPICKELMIER INDUSTRIES, INC.

1100 East 52nd Street • Indianapolis 5, Indiana

LIGHT WEIGHT •
 ACOUSTICAL •
 ECONOMICAL •
 INSULATING •



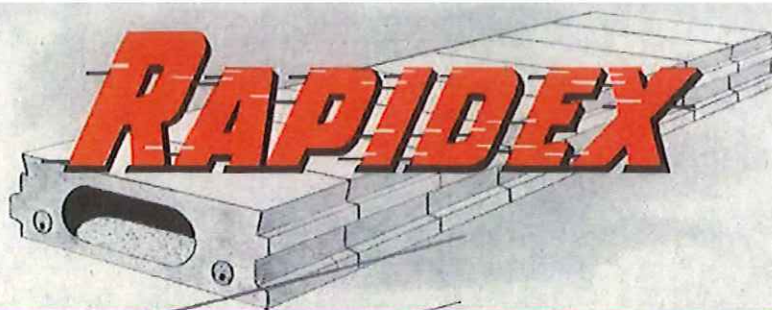
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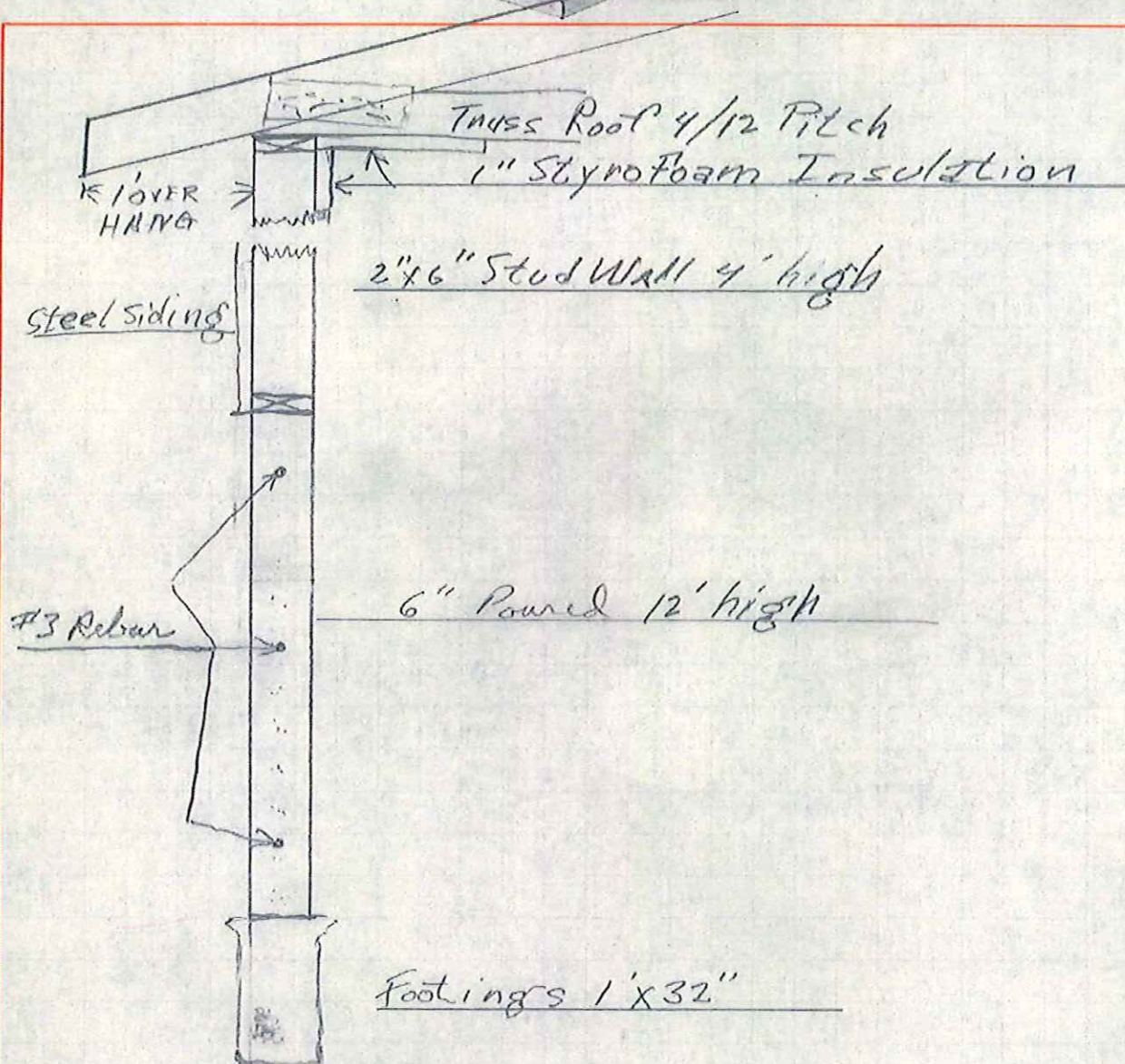
SPICKELMIER INDUSTRIES, INC.

1100 East 52nd Street • Indianapolis 5, Indiana

• LIGHT WEIGHT •
 • ACOUSTICAL •
 • ECONOMICAL •
 • INSULATING •



• FIRE RESISTIVE •
 • PRE-ARCHED •
 • LONG SPAN •
 • UNIFORM TEXTURE •



SPICKELMIER INDUSTRIES, INC.

1100 East 52nd Street • Indianapolis 5, Indiana

Town of Westfield

130 PENN STREET
P.O. BOX 322
WESTFIELD, INDIANA 46074

June 20, 1979

Pettijohn & Banks
15111 Oak Road
Carmel, Indiana 46032

Gentlemen:

On Monday, June 18, 1979, the Westfield-Washington Board of Zoning Appeals met to consider your application #79-V-12 requesting a variance of use to permit construction of an additional storage building and continued operation of a non-conforming concrete business and removal of an existing building, for the property located at 14939 Ditch Road. The Board of Appeals by a vote of 4 to 0 unanimously approved and granted your petition.

When you are ready to begin construction, you may obtain an Improvement Location Permit at the office of the Building Commissioner. The hours are Monday, Tuesday, Thursday, and Friday from 9:00 A.M. until 3:00 P.M. and Wednesday from 9:00 A.M. until noon.

Yours truly,

Virginia C. Norris

Virginia C. Norris

Secretary, Board of Zoning Appeals

Chapter 34 - ENVIRONMENT^[1]*Footnotes:**--- (1) ---**Cross reference— Animals, ch. 10; buildings and building regulations, ch. 14; civil emergencies, ch. 22; community development, ch. 26; fire prevention and protection, ch. 38; impact fees, ch. 40; streets, sidewalks and other public places, ch. 54; utilities, ch. 62.**State Law reference— Environment, IC 13-1-1-1 et seq.; actions for nuisance, IC 34-1-52-1 et seq.; protection of public health, safety and welfare, IC 36-8-2-4.*

ARTICLE I. - IN GENERAL.

Secs. 34-1—34-30. - Reserved.

ARTICLE II. - NUISANCES^[2]*Footnotes:**--- (2) ---**State Law reference— Planning and zoning violation as common nuisance, IC 36-7-4-1012.*

DIVISION 1. - GENERALLY

Sec. 34-31. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Garbage means rejected food wastes and shall include every waste, accumulation of animal, fruit or vegetable matter used or intended for food or used in the preparation, use, cooking, sale or storage of meat, fish, fowl, vegetables or fruits.

Gutter means concrete improvements constructed along the edge of roads or streets designed to collect and carry water to a storm sewer or other drainage system.

Litter means garbage and rubbish as these terms are defined in this section, newspapers, handbills, circulars and all other waste material which, if thrown or deposited as prohibited in this article, tends to create a danger to public health, safety and welfare.

Rubbish means such matter as ashes, cans, scrap metal, broken glass, crockery, foul and filthy substances, dirt, sweepings, boxes, wood, grass, weeds or waste matter of any kind.

Scrap metal means pieces or parts of steel, iron, tin, zinc, copper, aluminum or any alloy thereof, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its originally intended purpose.

(Ord. No. 96-30, § 1(8.04.010), 12-9-96)

Cross reference— Definitions generally, § 1-2.

Sec. 34-32. - Litter in public places.

No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the city except in public receptacles or in authorized private receptacles for collection.

(Ord. No. 96-30, § 1(8.04.020), 12-9-96)

Sec. 34-33. - Placement of litter in receptacles so as to prevent scattering.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place, or upon private property.

(Ord. No. 96-30, § 1(8.04.030), 12-9-96)

Sec. 34-34. - Sweeping litter in gutters prohibited.

No person shall sweep into or deposit in any gutter, street or other public place within the city, the accumulation of litter from any building, lot or any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises of litter.

(Ord. No. 96-30, § 1(8.04.040), 12-9-96)

Sec. 34-35. - Property owners' or occupants' duty to keep sidewalks free from obstruction.

Persons owning or occupying property shall keep all publicly owned sidewalks and gutters adjacent to sidewalks and streets clear of litter, goods, wares, merchandise, boxes, trash receptacles, automobiles and obstructions of any nature.

(Ord. No. 96-30, §1(8.04.050), 12-9-96; Ord. No. 98-18, §§ 1, 2, 8-10-98)

Sec. 34-36. - Litter thrown from vehicles.

No person, while a driver or passenger of a vehicle, shall throw, deposit or cause to be deposited, litter upon any street or other public place or upon private property.

(Ord. No. 96-30, § 1(8.04.060), 12-9-96)

Sec. 34-37. - Truck loads causing litter.

No person shall drive or move any truck or other vehicle unless such vehicle is constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. No person shall drive or move any vehicle or truck within the city, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

(Ord. No. 96-30, § 1(8.04.070), 12-9-96)

Sec. 34-38. - Litter in private places.

No person shall throw, deposit or cause to be deposited, litter in or upon any private property, whether owned by such person or not, except that the owner or person in control of private property may maintain private receptacles for collection in such manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place, or upon any private property.

(Ord. No. 96-30, § 1(8.04.080), 12-9-96)

Sec. 34-39. - Storage of scrap metal.

The storage of scrap metal within the incorporated city, except on premises authorized by the city for such purposes, shall not be permitted.

(Ord. No. 96-30, § 1(8.04.090), 12-9-96)

Sec. 34-40. - Nuisances enumerated.

It shall be unlawful for any owner, occupant, manager or person having control of any property within the incorporated city to permit or cause a public nuisance to develop, including, but not limited to the following:

- (1) *Airborne matter.* Emission of a significant amount of odor, dust, smoke or other matter into the atmosphere which renders ordinary use and enjoyment of property in the vicinity uncomfortable or impossible (see IC 36-8-2-8).
- (2) *Noise.* Emissions of a significant amount of noise which renders ordinary use and enjoyment of property in the vicinity uncomfortable or impossible (see IC 36-8-2-8).
- (3) *Infestation.* The causing or permitting of any significant rodent or insect population to exist on any property, or to cause or permit any condition which would attract such population (see IC 16-1-27-4).
- (4) *Other offenses.* In addition to what is declared in this article to be a public nuisance, those offenses which are known in common law and state statutes as public nuisances may be treated as such and be proceeded against as is provided in this article or in accordance with any other applicable law.

(Ord. No. 96-30, § 1(8.04.100), 12-9-96)

Sec. 34-41. - Owner to maintain premises free of litter and nuisances.

The owner or person in control of any private property shall at all times maintain the premises free of litter and nuisances, provided that this section shall not prohibit the storage of litter in authorized private receptacles for collection.

(Ord. No. 96-30, § 1(8.04.110), 12-9-96)

State Law reference— Violations on private property, IC 36-1-6-2.

Sec. 34-42. - Nuisances created by others.

It is not essential that litter or nuisances be created or contributed to by the owner, occupant, manager or person having control of property, but merely that a nuisance be created or contributed to by licensees, invitees, guests or other persons whose conduct the owner, occupant, manager or person having control of property is responsible for.

(Ord. No. 96-30, § 1(8.04.120), 12-9-96)

State Law reference— Air pollution as public nuisance, IC 13-1-1-7.

Sec. 34-43. - Penalties.

Violations outlined in this article are punishable as class C infractions pursuant to IC 34-4-32-4, which allows for a judgment of up to \$500.00. The payment of a penalty for the violation of any provision of this article shall not excuse the violation or permit it to continue. A separate offense shall be deemed committed each day such violation occurs or continues.

(Ord. No. 96-30, § 1(8.04.130), 12-9-96)

Sec. 34-44. - Outdoor storage of environmentally hazardous materials prohibited.

- (a) The council finds that the outdoor storage of environmentally hazardous materials poses a threat

to the health, welfare and safety of the citizens of the city.

- (b) The city hereby forbids outdoor storage of environmentally hazardous materials within the corporate limits of the city.

(Ord. No. 05-19, §§ I, II, 5-26-05)

Secs. 34-45—34-50. - Reserved.

DIVISION 2. - NOISE

Sec. 34-51. - Prohibitions.

No person shall play, use or operate any machine or device for the producing or reproducing or sound, including, but not limited to, loudspeakers, radios, CD players, television sets, musical instruments, phonographs, cassette players or any other machine designed or intended to produce or reproduce sound, not operate any motor vehicle that contains a modified or defective exhaust system, if such machine, device or vehicle is located in or on any of the following:

- (1) Any public property, including any public right-of-way, highway, building, sidewalk, public space, park or thoroughfare and the sound generated therefrom is clearly audible 40 feet or more from its source, or is at a level of 90 decibels or more when measured from a distance of not less than six feet from its source; or
- (2) Any private property and the sound generated therefrom is clearly audible 40 feet or more outside of said private property line, or is at a level of 90 decibels or more when measured from a distance of not less than six feet from said private property line.

(Ord. No. 02-34, § I, Exh. A, 11-11-02)

Sec. 34-52. - Exemptions.

The following are exempted from the provisions of this subchapter:

- (1) Sounds emitted from authorized emergency vehicles.
- (2) Lawn mowers, garden tractors, construction equipment, and power tools, when properly muffled, between the hours of 7:00 a.m. and 10:00 p.m. only.
- (3) Burglar alarms and other warning devices when properly installed, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time.
- (4) Parades, festivals, carnivals, fairs, celebrations, concerts, artistic performances or other events authorized by the city council or another appropriate governmental entity.
- (5) Attendant noise connected with the actual performance of athletic or sporting events and practices related thereto.
- (6) The emission of sound for the purposes of alerting persons to the existence of an emergency, or for the performance of emergency work.
- (7) Sounds associated with the use of legal fireworks.
- (8) Sounds associated with the use of an approved public safety training facility between the hours of 7:00 a.m. and 10:00 p.m.
- (9) Sounds associated with the normal conduct of legally established non-transient businesses when such sounds are customary, incidental and within the normal range appropriate for such use.

(Ord. No. 02-34, § I, Exh. A, 11-11-02)

Sec. 34-53. - Violations.

Any person who violates the provisions of this subchapter shall be guilty of an infraction, punishable by a fine of not more than:

- (1) First offense: up to \$250.00.
- (2) Second offense within two years: up to \$500.00.
- (3) Third offense within two years: up to \$1,000.00.
- (4) Fourth and subsequent offenses within two years: up to \$2,500.00.

(Ord. No. 02-34, § I, Exh. A, 11-11-02)

Sec. 34-54. - Penalty.

- (a) A separate offense shall be deemed committed upon each day during or on which the violation occurs or continues.
- (b) The payment of a penalty for the violation of any provision of this chapter shall not excuse the violation or permit it to continue. Nor shall such payment be held to prevent the enforced correction of the prohibited conditions by the court in which any complaint based on these sections shall be filed, or by separate action as provided for herein.
- (c) In addition to any penalties provided for herein the city shall have the right to enforce compliance with the code or to enjoin the acts in violation of the code by filing the necessary actions for injunctive relief. If injunctive relief is granted by any court, the city shall further be entitled to recover the costs of prosecuting the suit, which costs shall include attorney fees or other necessary expenses.
- (d) Violations of any of the sections of this section may be brought by the city or its authorized agent on a form complaint and summons.

(Ord. No. 02-34, § I, Exh. A, 11-11-02)

Secs. 34-55—34-60. - Reserved.

ARTICLE III. - TREES AND SHRUBS

Sec. 34-61. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Owner means the person whose name appears on the current tax duplicate in the office of the auditor of the county as the owner of such real estate.

(Ord. No. 96-30, § 1(8.06.010), 12-9-96)

Cross reference— Definitions generally, § 1-2.

Sec. 34-62. - Planting of trees and shrubs.

Within the city, no person shall plant trees or shrubs between the street and the sidewalk or property line, except under the following conditions:

- (1) No tree or shrub shall exceed a height of 18 feet at maturity; and
- (2) No shrub, exceeding a height of three feet, or tree shall be planted within 20 feet of any other

tree or shrub, or within 20 feet of an intersection.

(Ord. No. 96-30, § 1(8.05.020), 2-19-96)

Sec. 34-63. - Vegetation obstructing public rights-of-way.

No trees or other vegetation shall be permitted to grow with less than 14 feet of clearance over streets or less than eight feet over sidewalks.

(Ord. No. 96-30, § 1(8.05.030), 12-9-96)

Sec. 34-64. - Duty of property owners.

The owner or person in control of real estate adjacent to the area between the street and the sidewalks or right-of-way line on which any tree or shrub is planted shall be responsible for the maintenance and removal of the tree or shrub if such removal is necessary. If, after notice from the city, the owner or person in control fails to remove a dead tree or shrub or any dead or dangerous limbs or branches thereon, the city may remove the shrub or limbs and collect the costs thereof from the owner.

(Ord. No. 96-30, § 1(8.05.040), 12-9-96)

Sec. 34-65. - Obstruction of visibility.

If any tree or shrub shall, in the opinion of the city council, create a hazardous obstruction to vision which may endanger vehicular or pedestrian traffic, then the tree or shrub shall be appropriately trimmed or removed.

(Ord. No. 96-30, § 1(8.05.050), 12-9-96)

Sec. 34-66. - Damage to street or sidewalk.

If any tree or shrub shall cause damage to any street, curb or sidewalk, then the tree or shrub causing such damage shall be removed and the damage shall be repaired by the owner or person in control of the property on which such tree or shrub is located.

(Ord. No. 96-30, § 1(8.05.060), 12-9-96)

Sec. 34-67. - Access.

The city and public utilities retain their ownership and right of access to the areas between the street and right-of-way lines and retain the right to reasonably remove any tree or shrub impeding necessary work to be performed by the city, public utilities or other authorized users.

(Ord. No. 96-30, § 1(8.05.070), 12-9-96)

Sec. 34-68. - City and public utility not liable.

Neither the city, public utilities nor other authorized users of the city's property located between the street and the sidewalk or right-of-way line shall be liable for any damages done to trees or shrubs located upon city property as a result of the action of the city, public utilities or other authorized users in the performance of their duties.

(Ord. No. 96-30, § 1(8.05.080), 12-9-96)

Sec. 34-69. - Penalties.

Violations outlined in this article are punishable as class C infractions pursuant to IC 34-4-32-4, which allows for a judgment of up to \$500.00. The payment of a penalty for the violation of any provision of this article shall not excuse the violation or permit it to continue. A separate offense shall be deemed committed each day such violation occurs or continues.

(Ord. No. 96-30, § 1(8.05.090), 12-9-96)

Secs. 34-70—34-90. - Reserved.

ARTICLE IV. - WEEDS, RANK VEGETATION AND DEBRIS⁽³⁾

Footnotes:

--- (3) ---

Editor's note—Ord. No. 12-20, §§ 1—11, adopted July 9, 2012, repealed former Art. IV, §§ 34-91—34-100, in its entirety and enacted new provisions as herein set out. Former Art. IV pertained to similar subject matter and derived from Ord. No. 11-14, §§ 1—11, adopted July 11, 2011.

Sec. 34-91. - Definitions.

Debris shall include the remains of something broken-down or destroyed.

Rank vegetation shall include those weeds and growing vegetation which is excessively vigorous in growth, shockingly conspicuous, malodorous and/or flagrant. This definition shall also apply to any and all vegetation that inhibits a safe field of view along any public roadway.

Weeds shall include any plant that is not valued where it is growing, and is of rank growth, tends to overgrow or choke out more desirable plants and/or is listed as a weed in the U.S. Department of Agriculture publication entitled Common Weeds of the United States, or in any similar government publication.

(Ord. No. 12-20, § 2, 7-9-12)

Sec. 34-92. - Violation.

It is a violation of this article to have weeds, rank vegetation and/or debris on any real property ("property") located within the city's corporate limits.

(Ord. No. 12-20, § 3, 7-9-12)

Sec. 34-93. - Requirement to cut.

All owners of property located within the city shall cut and remove weeds and other rank vegetation growing thereon that exceeds a height of 12 inches, and shall keep their property clear of debris.

(Ord. No. 12-20, § 4, 7-9-12)

Sec. 34-94. - Violation notice.

In the event of a violation of this article, the director and/or his designee, or an officer of the police or fire department shall issue a written notice ("violation notice") to the violating landowner. The violation notice shall identify the violation and order the landowner to correct the same within ten calendar days from the date on which the violation notice is served on the landowner ("abatement period"). Posting notice conspicuously on the property in violation, personal service, service by U.S. certified mail, regular mail or any other manner service recognized in the Indiana Rules of Trial Procedure shall constitute proper service upon the landowner for purposes of this article.

(Ord. No. 12-20, § 5, 7-9-12)

Sec. 34-95. - Appeal.

Any violation notice issued pursuant to this article may be appealed to the board of public works and safety ("board") if written notice of appeal is served by the landowner on the city within the time period contained in the violation notice. The timely appeal of a violation notice shall toll the abatement period pending the issuance of a decision thereon by the board. Service of this notice shall be to the community development department.

(Ord. No. 12-20, § 6, 7-9-12)

Sec. 34-96. - City to abate.

If the landowner fails to timely abate each violation set forth in a violation notice, the landowner shall be deemed to have granted permission to the city to enter the landowner's property for the limited purpose of inspecting, cutting and/or removing such debris, weeds or rank vegetation located thereon and identified in the violation notice. In such case, the director, or his designee, shall prepare a certified statement as to the actual administrative and other costs incurred by the city in taking such action, and serve a copy of the invoice on the landowner. The landowner shall, within seven calendar days from the date on which the landowner is served with such invoice ("payment period"), pay in full the amount stated thereon to the department of community development ("department").

(Ord. No. 12-20, § 7, 7-9-12)

Sec. 34-97. - Appeal of costs.

Any invoice issued pursuant to this article may be appealed to the board of public works and safety if written notice of appeal is served on the director within seven calendar days from the date on which the invoice is served on the landowner. The timely appeal of an invoice shall toll the payment period pending the issuance of a decision thereon by the board.

(Ord. No. 12-20, § 8, 7-9-12)

Sec. 34-98. - Failure to pay.

If the landowner fails to timely pay an invoice issued pursuant to this article, the director, or his designee, shall certify to the county auditor the amount of the invoice, plus any additional administrative costs incurred in the certification of the same. The auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the city.

(Ord. No. 12-20, § 9, 7-9-12)

Sec. 34-99. - Time of appeals.

The board shall hear any timely requested appeal of a notice of violation or invoice within 30 calendar days following receipt of the same, and shall thereafter promptly issue a written decision granting or denying, in whole or in part, the appeal. The date on which the board's decision is served on the landowner shall thereafter become the first calendar day of the abatement period or payment period, as applicable.

(Ord. No. 12-20, § 10, 7-9-12)

Sec. 34-100. - Penalty.

Any person who violates any provision of this article shall be subject to the general penalties set forth in § 1-6 of the Code. Each day that a violation continues shall constitute a separate offense.

(Ord. No. 12-20, § 11, 7-9-12)

Secs. 34-101—34-110. - Reserved.

ARTICLE V. - EROSION AND SEDIMENT CONTROL⁽⁴⁾

Footnotes:

... (4) ...

Editor's note—Ord. No. 06-52, §§ 1—8, adopted Nov. 13, 2006, amended Art. V in its entirety to read as herein set out. Former Art. V, §§ 34-111—34-118, pertained to similar subject matter, and derived from Ord. No. 06-16, §§ 1—8, adopted April 10, 2006.

Sec. 34-111. - Purpose and intent.

The primary purpose of this article is to ensure perimeter sediment and erosion control, with best management practices (BMP's) being utilized to prevent and minimize sediment and erosion discharge from leaving the construction site. The intent of this article is to prevent non-storm water discharges, erosion and minimize sediment from leaving the site. Failure to do so can result in damage to adjacent property, damage to the MS4's storm sewer system, and contribute to the polluting of streams, lakes and rivers.

The City of Westfield Improvement Location Permit Application ("ILP"), generally known as a building permit, permittee (the "permittee") is responsible for ensuring that adequate BMP's are in place and functioning until the construction project obtains a certificate of occupancy ("C of O") from the city building department. The property owner, after the C of O is issued, is responsible to maintain the erosion control measures until adequate ground cover (70% mature growth) is established and the property is required to have established adequate ground cover within two years from the issuance of the C of O.

Compliance with this article shall be the responsibility of the party listed on the ILP filed with the city.

(Ord. No. 06-52, § 1, 11-13-06)

Sec. 34-112. - Best Management Practices (BMP's) for construction lots.

Examples of BMP's include but are not limited to: Sediment fence, straw mat, seed, mulch, coconut and fiber rolls, or other types approved by the Westfield Public Works Department ("WPWD"). The sequence of installation shall be:

- (1) *Grading/excavating.* Install all BMP's prior to any grading or excavating activities, where practical.
- (2) *Inlet protection.* Ensure that the BMP's are in place and functioning for both yard inlets and curb inlets around the perimeter of the lot.
- (3) *Protection of adjacent lots.* Install BMP's along the common lot line of adjacent lots.
- (4) *Stabilize stockpiles.* Install BMP's to stabilize stockpiles to prevent erosion and sediment from entering the street.
- (5) *Installation of BMP's.* Follow manufacturer's recommendations and requirements for the

installation of all BMP's.

- (6) *Temporary construction entrance.* A temporary stone access drive is required for all lots and shall be utilized for access onto the lot.
- (7) *Maintenance.* The builder is responsible for maintaining and repairing all BMP's as needed throughout construction.
- (8) *Final grading.* BMP's may be removed in order to complete final grading on the lot. However, BMP's will be required to be reinstalled until seed germination establishes 70 percent mature growth. On lots where sod is installed erosion control measures are not required to be installed, unless requested by the WPWD. For lots where sod installation is delayed, the contractor will be required to maintain BMP's until the sod can be installed effectively.
- (9) *Concrete wash out.* Required onsite or within development.

(Ord. No. 06-52, § 2, 11-13-06)

Sec. 34-113. - Responsibilities of permittee.

- (a) The permittee is responsible for ensuring that a BMP's measures remain in place during the construction process and that the installation and continuous maintenance of all lot erosion and sediment control devices are monitored.
- (b) Periodic inspection will be necessary to ensure that erosion and sediment control measures are functioning as designed and installed per the manufacturer's specifications. In addition, to standard periodic inspections, this article requires that the permittee conduct inspections after each rain event of one-half-inch or more in a 24-hour period. Any problems noted during these inspections shall be corrected immediately.
- (c) Once the permittee has started construction, the permittee is responsible for the maintenance of erosion and sediment control measures protecting yard inlets on and/or adjacent to their lots, as well as curb inlets along the street frontage. Sediment must not be allowed to enter the storm sewer system and allowing such is a violation of this article.
- (d) A temporary construction entrance provides a place for parking vehicles off of the street and a spot where material can be off loaded. This requirement is to provide a stable surface for parking vehicles where mud and other debris will not be tracked onto the street. Proper maintenance of the area is required until such time as a permanent driveway is installed.
- (e) During the entire construction process the permittee is responsible to ensure that mud, dirt, rocks, and other debris are not allowed to erode onto streets and sidewalks, nor tracked onto the streets by construction vehicles. At no time shall any mud or other debris be deposited onto the street.
- (f) Failure to keep streets clear of mud sediment, and debris will result in an enforcement action by the WPWD under the authority of the City of Westfield's Stormwater Management Ordinance (05-30). The permittee will be responsible for incurring all costs associated with cleaning the streets.

(Ord. No. 06-52, § 3, 11-13-06)

Sec. 34-114. - Administration and application.

- (a) The WPWD will administer, implement, and enforce the provisions of this article.
- (b) This article shall apply to all construction activity, (direct or indirect stormwater discharges, and illicit discharges) entering within the storm drainage system, MS4, or receiving waters under the jurisdiction of the city.

- (c) Any permittee subject to an NPDES stormwater discharge permit shall comply with all provisions of such permit. If provisions of this ordinance are more restrictive than the NPDES stormwater discharge permit, proof of compliance with said permit and this article may be required in a form acceptable to the WPWD prior to allowing discharges to the MS4.
- (d) The provisions of this article shall be deemed as additional requirements to minimum standards required by other provisions of the City of Westfield Code, and as supplemental requirements to Indiana's Rule 5 regarding stormwater discharge associated with construction activity and Indiana's Rule 13 regarding stormwater runoff associated with MS4 conveyances. In case of conflicting requirements, the most restrictive shall apply. Unless otherwise stated, the most recent versions or editions of said codes, ordinances, laws, and statutes shall apply.
- (e) The city, by and through its council, has the authority to modify, grant exemptions, and/or waive any and all the requirements of this article. A meeting with the WPWD may be requested by an permittee to discuss the applicability of various provisions of the article with regard to unique or unusual circumstances. However, any initial determination of such applicability shall not be binding on future determinations of the WPWD.
- (f) The City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual, and amendments thereto, are hereby incorporated herein by reference, with copies of the same being maintained in the WPWD for public inspection during regular business hours.
- (g) Technical words and technical phrases that are not defined in this Ordinance, but which have acquired particular meanings in law or in technical usage shall be construed according to such meanings and as defined in 327 IAC 15-13 and 327 IAC 15-5 of the Indiana Code and other provisions of the City of Westfield Code.
- (h) The city shall be permitted to enter and inspect any premise subject to regulation under this article. It shall be unlawful for the permittee of any premise to refuse to allow the WPWD to enter upon the premise for the purposes set forth in this article.

(Ord. No. 06-52, § 4, 11-13-06)

Sec. 34-115. - Enforcement.

(a) *Notice of violation and stop work order.*

- (1) In the event a permittee has violated the terms of this article, the city may order compliance by written notice of violation to the permittee. Such notice may require:
 - a. Issuance of a pending stop work order or issuance of a stop work order.
 - b. The restoration or installation of new BMP measures;
 - c. Payment of a fine; and/or
 - d. Revocation or suspension of the erosion control inspection permit.
- (2) The city may, without prior notice of stop work order or violation, suspend storm drainage system or MS4 access to a permittee when storm water discharges present or may present imminent and substantial danger.
- (3) The notice of a stop work order due to a violation will:
 - a. Be in writing;
 - b. Include a description of the property for identification;
 - c. Include a statement of the violation(s) and section violated and why the notice or order is being issued;

- d. Failure to comply with the conditions set forth in this article will result in an initial verbal warning. If the violation is not corrected within one day from the verbal warning, a pending stop work order will be issued and a penalty of \$50.00 will be assessed for a re-inspection. After the third day from the initial verbal warning, a stop work order will be issued and an additional penalty of \$50.00 will be assessed for a re-inspection to ensure that the repairs and improvements required to the property are in compliance with the provisions of this article.
 - (4) Reinspection of remedied violations will be assessed a re-inspection fee in accordance with the fee schedule in this article.
 - (5) If the permittee fails to comply with a stop work order, then the WPWD will take steps as deemed necessary to prevent or minimize damage or remediate a violation. All reasonable costs associated with the abatement or restoration shall be assessed against the owner of the property and may be filed as a lien against the property in the amount of the assessment. It shall be unlawful for any permittee, owner, agent or person in possession of any premise to refuse to allow the WPWD or its designee to enter upon the premise for the purposes set forth above.
 - (6) In the event of a stop work order, the city shall not reinstate the erosion control inspection permit or MS4 access to the permittee until the permittee presents proof, satisfactory to the city, that the corrections have been made. Permittee violates this article if the permittee reinstates MS4 access to the premises terminated pursuant to this section, without the prior approval of the city.
 - (7) In addition to the penalties listed above, if construction activities are conducted contrary to the provisions of this article, the city may order the work stopped by notice in writing, in the form of a stop work order, served on any permittee engaged in the doing or causing of such work to be done; and any such permittee shall forth with stop such work until authorized by the WPWD to proceed with the work.
- (b) *Appeal of notice of violation.*
- (1) Any permittee receiving a notice of violation may appeal the determination of violation to the council, for rescission of the notice or order, or for a modification, variance, or extension of time for compliance on one or more of the following bases: (i) a stop work order served in accordance with this article is in error, or (ii) should, due to hardship, be modified or entitled to a variance from enforcement, or (iii) that a reasonable extension of time for the compliance should be granted upon the grounds of a demonstrated case of hardship and evidence of an actual undertaking to correct the violation, together with a legitimate intent to comply within a reasonable time period.
 - (2) A request for rescission, modification, variance, or extension of time shall be made in writing, within ten days of the permittee's receipt of a copy of the notice or order, to the City of Westfield clerk-treasurer's office, to be placed on the council agenda. The council shall schedule a hearing within 30 days of receipt of the request.
 - (3) All hearings before the council shall be open to the public. The permittee, the permittee's representative, and any persons whose interests are affected shall be given an opportunity to be heard.
 - (4)

At the conclusion of the hearing the council may reverse, affirm, or modify the order, notice, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as justice would require. The council's determination and findings of fact shall be recorded and if a notice or order is affirmed or modified, the Council shall, in the determination on appeal, re-establish a reasonable timeline to make the repairs and improvements required to bring the violation into compliance with the provisions of this article.

- (c) *Transfer of ownership.* No owner of any premise upon whom a stop work order has been served shall sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the notice of violation have been complied with, or until such owner first furnishes the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the city and furnishes to the city a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice of violation and fully accepting the responsibility without condition for making corrections or repairs required by such notice of violation.
- (d) *Penalties for violations.* Any person found in violation of any provisions of this article shall be responsible for a civil infraction and subject to a maximum fine of \$200.00 for the first offense, \$1,000.00 for the second offense, and a maximum of \$7,500.00 for a subsequent offense, plus cost, damages, and expenses. Each day such violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day. The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law. An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this article.

Any person who aids or abets a person in violation of this article shall be subject to the penalties provided in this section.

For purposes of this section, "subsequent offense" means a violation of the provisions of this article committed by the same person within 12 months of a previous violation of the same provision of this article for which said person admitted responsibility or was adjudicated to be responsible.

(Ord. No. 06-52, § 5, 11-13-06)

Sec. 34-116. - WPWD erosion control inspections.

- (a) The WPWD erosion control inspector will inspect erosion and sediment control measures in conjunction with routine inspections. Inspections will ensure that proper placement and installation of erosion and sediment control measures are in place.
- (b) The first inspection will occur at the time prior to the pushing of the pad and foundation installation. standard items to be checked are: protection of adjacent lots, protection of inlets, grading/excavating, and that stockpiles are stabilized. If BMP's are not installed in the correct location and/or not installed correctly, the inspection may be denied, a stop work order required or fees may be applied.
- (c) It is anticipated that by the time the foundation inspection is requested, backfilling of the foundation will have been complete and all erosion and sediment control measures will have been installed. If the permittee fails to install the proper erosion and sediment control measure, this may result in the inspection being denied, a stop work order required or fees may be applied.

- (d) For unique situations the erosion control inspector will be available to discuss erosion and sediment control measures for any lot and the sequencing for installation of BMP's.

(Ord. No. 06-52, § 6, 11-13-06)

Sec. 34-117. - WPWD erosion control inspection fees.

Fees for erosion control inspections shall be:

- (1) Residential lots two acres or less \$100.00 each.
- (2) Residential lots greater than two acres will be assessed at \$100.00 per one-quarter-acre or portion thereof.
- (3) Industrial, commercial, and retail outlets will be assessed at \$100.00 per one-quarter-acre or portion thereof.
- (4) Additional re-inspections for denied and/or stop work orders or fines will be assessed at \$50.00 per re-inspection.

(Ord. No. 06-52, § 7, 11-13-06)

Sec. 34-118. - Forms.

The applicable permit forms are attached to [Ordinance No. 06-52] as Exhibit A.

(Ord. No. 06-52, § 8, 11-13-06)

Secs. 34-119—34-140. - Reserved.

ARTICLE VI. - PUBLIC TREES⁽⁵⁾

Footnotes:

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Editor's note—The city parks departments maintains master lists for trees and shrubs suitable for different locations and conditions. These lists were attached to Ord. No. 12-38, adopted Dec. 10, 2012.

Sec. 34-141. - Intent.

The city finds that trees are an important asset to the natural ecosystem, beneficially contribute to the character of the community, and positively influence the quality of life within the community. The purpose of this section is to provide minimum standards for street and park trees throughout the city. Trees are viewed as a critical element to promote the desired image of the community, enhance the visual appearance and land values, and protect the health, safety and welfare of the public. The street and park tree elements of the section are intended to:

- (1) Provide for the protection, preservation, replacement, and proper maintenance of trees within and overhanging public property including rights-of-way;
- (2) Protect the integrity of streetscapes and park property;
- (3) Provide a tree planting maintenance program;
- (4) Provide the minimum regulation necessary to ensure that trees within and overhanging public property, including rights-of-way, are preserved wherever possible.

(Ord. No. 07-27, Exh. A, § A, 12-10-07)

Sec. 34-142. - Prohibitions.

It shall be a violation of this code for any person other than the City of Westfield or its designee, or a private utility or their designee, to:

- (1) Tie, tack, nail, wire or otherwise attach any sign, poster, handbill, or other object to any street tree, park tree, or other woody vegetation on public property;
- (2) Prune, spray, treat, top, or remove park trees, except when overhanging private property;
- (3) Prevent, delay, or interfere with the city or its designee engaged in the planting, cultivating, mulching, pruning, spraying, treating, removal, or otherwise maintain woody vegetation on public property.

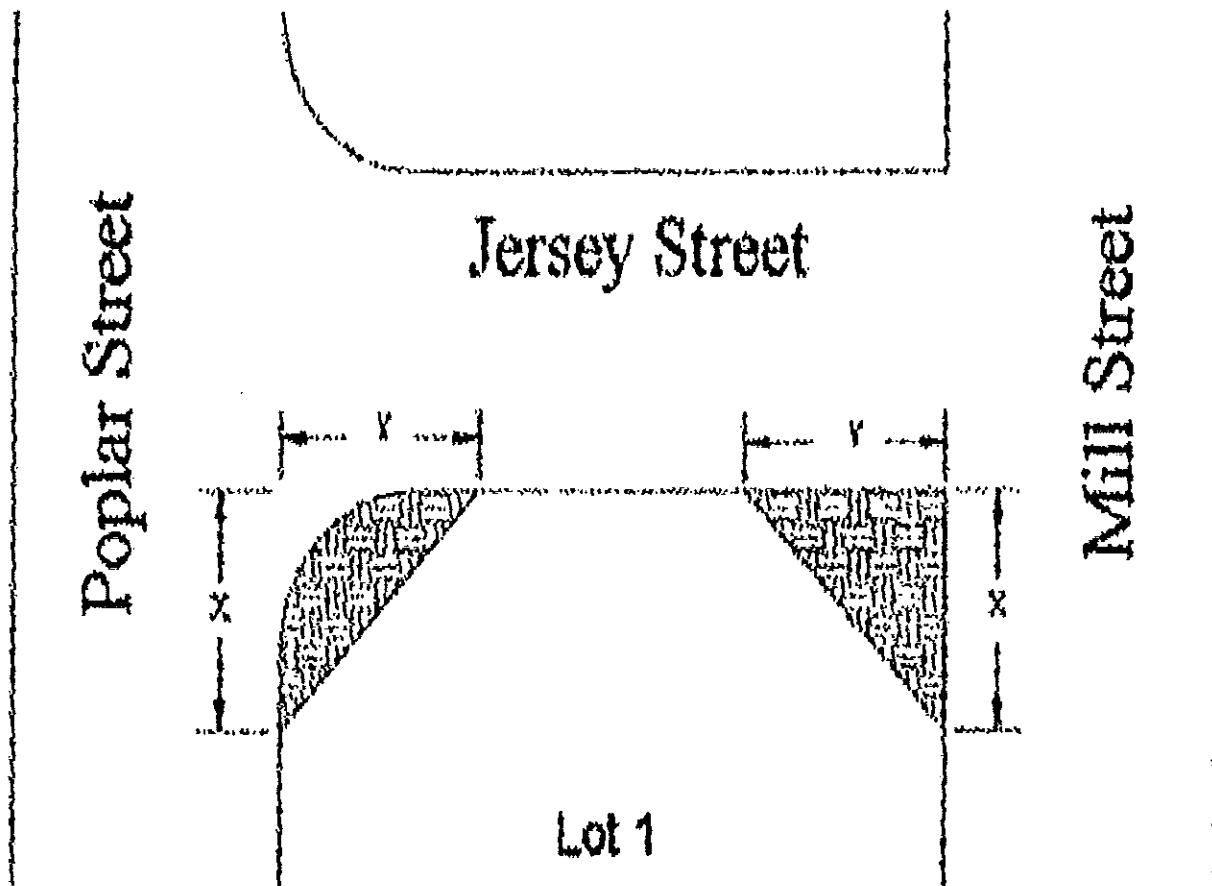
(Ord. No. 07-27, Exh. A, § B, 12-10-07)

Sec. 34-143. - Definitions.

Abutting property owner. Adjacent or bordering holder or proprietor of land.

Caliper. A standard trunk diameter measurement for trees. Caliper measurements are taken six inches above the finished grade for trees with a diameter of four inches or less and 12 inches above the finished grade for larger sizes.

Clear vision triangle. A triangular area located at the intersection of two streets, two sides of which are measured from their corner intersection for a distance specified within the ordinance. The third side of the triangle is a line across the corner of the lot joining the end of the other two sides. Where the lot lines at intersection have rounded corners, the lot lines will be extended in a straight line to a point of intersection. See diagram below.



Deciduous tree. A tree that sheds its foliage at the end of the growing season.

Evergreen tree. A tree that has foliage that persists and remains green throughout the year.

Large tree(s). Mature tree height over 40 feet.

Medium tree(s). Mature tree height 20 to 40 feet.

Ornamental tree. A deciduous tree that is typically grown because of its shape, flowering characteristics or other attractive features and typically grows to a mature height of 20 feet or less.

Park tree(s). A tree located within a City of Westfield park.

Public tree(s). A tree located in the public right-of-way, within a City of Westfield park, or on City of Westfield property.

Small tree(s). Mature tree height under 20 feet.

Street tree(s). A tree located in the public right-of-way strip adjacent to a road, street, drive, court, or alley.

Tree. A woody plant which at maturity is 13 feet or more in height with an erect perennial trunk and having a definite crown of foliage.

Tree lawn. That part of a street or highway, not covered by sidewalk or other paving, lying within the public street right-of-way.

(Ord. No. 07-27, Exh. A, § C, 12-10-07)

Sec. 34-144. - Tree standards.

(a) *General.*

- (1) All trees shall be hardy to the region, be free of disease and insects at time of planting and conform to the American Standard for Nursery Stock of the American Association of Nurserymen.
- (2) Tree stakes, guy wires and tree wrap will be installed at time of planting and removed after one year.

(b) *Species.*

- (1) The city's parks and recreation department shall establish, update, and maintain a listing of appropriate street and park trees for planting within public property.
- (2) A copy of the list shall be available in the city's parks and recreation department offices during regular business hours.

(c) *Caliper.*

- (1) Deciduous trees shall measure at minimum two caliper inches 12 inches above grade.
- (2) Evergreen trees shall measure at minimum six feet from grade.
- (3) Ornamental trees shall measure at minimum two caliper inches six inches above finished grade.

(Ord. No. 07-27, Exh. A, § D, 12-10-07)

Sec. 34-145. - Tree maintenance.

- (a) The city, or its designee, shall plant, prune, maintain and if necessary, remove, all street and park trees, as well as other woody vegetation, within or overhanging public property, including rights-of-way, as determined to be reasonably appropriate to enhance public safety with consideration given to symmetry and beauty of public grounds.
- (b) Trees that were planted, and approved, as part of an overall development plan, are the responsibility of the property management group, homeowners association, or adjoining property owner to the right of way.
- (c) Property owners abutting public rights-of-way who have trees encroaching on right-of-way shall be required to remove tree branches that hang above any sidewalk or street to a distance of eight feet above the surface of a sidewalk or a distance of 12 feet above a street.
- (d) The city reserves the right to remove any and all trees from public property or rights-of-way when it becomes necessary and expedient to remove in order to carry out any plan of street sidewalk, curb improvement, street improvement, or other infrastructure project adopted by the City.
- (e) Trees located in a public right-of-way may be removed by the City of Westfield, or its designee, based on any one of the following criteria. Trees not meeting these criteria may be removed at the abutting property owner's expense.
 - (1) Tree(s) is dead or dying
 - (2) Tree(s) is deemed hazardous for which the condition can not be resolved or corrected through pruning or other reasonable arboricultural practices.
 - (3) When tree(s) are not deemed dead, dying or hazardous, the following factors will be considered:
 - a. Life expectancy of the tree;
 - b. Desirability of the tree species;
 - c. Amount of space for growth;
 - d. Overall quality and structural integrity of the tree;
 - e. Persistent and uncontrollable insect, disease, or fruiting problems;
 - f. Frequency and extensiveness of maintenance requirements;
 - g. Feasibility and timeliness in which a replacement may be planted;
 - h. Proximity and quality of trees near to tree marked for removal;
 - i. Wishes and desires of the abutting property owner;
 - j. Quality and extend of past pruning and other tree maintenance practices;
 - k. Extent and frequency of damage being caused to surrounding infrastructure such as, but not limited to, sidewalks, streets, and sewers;
 - l. Location with regard to street lights, traffic control devices, clear vision triangle, and growing space requirements.

(Ord. No. 07-27, Exh. A, § E, 12-10-07)

Sec. 34-146. - General requirements.

Except as specifically authorized by the city parks and recreation department and the city public works department the spacing of trees shall be in accordance with the following sizes and no tree may be planted (as measured from the center of the tree):

- (1) Closer than the following:
 - a. Small trees, 25 feet;
 - b. Medium trees, 35 feet;
 - c. Large trees, 45 feet.
- (2) Closer to any curb, curb line, or sidewalk than the following:
 - a. Small trees, two feet;
 - b. Medium trees, three feet;
 - c. Large trees, four feet.
- (3) Within clear vision triangle of 40 feet on collectors, local roads and streets, and 75 feet for primary arterials and secondary arterials, measured from the point of the nearest intersection curbs or curb lines.
- (4) Within ten feet of any fire hydrant.

(Ord. No. 07-27, Exh. A, § F, 12-10-07)

Sec. 34-147. - Permitting.

- (a) Individual property owners desiring to plant a tree(s) in the public right-of-way strip abutting the owner's property shall obtain a permit from the city parks and recreation department. Application shall include:
 - (1) Site plan showing:
 - a. Location of existing and proposed plantings;
 - b. Identification of each species of tree at each existing and proposed location;
 - c. Identification and location of other structures within public rights-of-way (including but not limited to: regulatory signs, hydrants, manholes, or storm drains).
 - (2) Plant schedule listing the type and number of trees to be planted;
 - (3) Proof of ownership of abutting property;
 - (4) Watering plan.
 - (b) Permit shall be wired to the tree with a City of Westfield issued tag for a period of six months.
- (Ord. No. 07-27, Exh. A, §§ G, H, 12-10-07)

Sec. 34-148. - Violations.

- (a) *Notification.* Whenever a tree is found not to be in compliance with tree maintenance, section 34-145, the city code enforcement officer shall give the abutting property owner written notice to trim such trees within seven days of receipt of notice.
- (b) *Failure to comply.* On failure of the owner to cause said violations to be brought into compliance, the city or designee shall trim the trees in accordance with applicable standards.
- (c) *Cost of corrective actions.* The cost of causing the violations to be brought into compliance shall be charged to the abutting property owner, and shall be payable within 30 days of the completion of the corrective actions.
- (d) *Recovery of costs.* If within 30 days of billing the abutting property owner fails to pay charges, the city shall file suit to collect the amount due for the work completed.
- (e) *Continued violation.* Payment of the penalty for any violation of any provision of this chapter shall not excuse the violation or permit it to continue, nor shall payment be withheld to prevent enforcement correction of the prohibited conditions.

(Ord. No. 07-27, Exh. A, § I, 12-10-07)

Sec. 34-149. - Appeals process.

Should a property owner be denied a permit or found to be in violation of this ordinance section, they may appeal to the city board of public works. Application may be submitted to the city public works department.

(Ord. No. 07-27, Exh. A, § J, 12-10-07)

ADMINISTRATIVE APPEAL APPLICATION

OFFICE
USE ONLYDOCKET #: 1609-AA-01
FILING FEE: \$ 550.00FILED (RECEIVED) DATE: 07/08/16
RECEIVED BY: K. [signature]

APPLICANT INFORMATION

APPLICANT'S NAME: Indiana Structural Foundations, LLC TELEPHONE: _____
ADDRESS: 14939 Ditch Road, Westfield, Indiana 46074 EMAIL: _____
PROPERTY OWNER'S NAME: J&R Kelich Farms, LLC TELEPHONE: 317-710-3927
ADDRESS: 25710 Devaney Road, Arcadia, Indiana EMAIL: jeffk@carmelturfcare.com
REPRESENTATIVE'S NAME: Joseph D. Calderon TELEPHONE: 317-684-5331
COMPANY: Bose McKinney & Evans LLP EMAIL: jcalderon@boselaw.com
ADDRESS: 111 Monument Circle, Suite 2700, Indianapolis, IN 46204

PROPERTY AND PROJECT INFORMATION

ADDRESS OR PROPERTY LOCATION: 14939 Ditch Road, Westfield, Indiana 46074
COUNTY PARCEL ID #(S): 08-09-15-00-00-013.000
EXISTING ZONING DISTRICT(S): SF2 EXISTING LAND USE(S): Concrete Business
HAS WORK FOR WHICH THIS APPLICATION IS BEING FILED ALREADY STARTED? ☒ YES ☐ NO
RELATED DOCKET, ADMINISTRATIVE DETERMINATION OR BUILDING PERMIT #: 1604-AD-02

APPEAL REQUEST

EXPLANATION OF REQUESTED APPEAL (ATTACH SEPARATE SHEET OR LETTER IF NECESSARY):
Applicant, Indiana Structural Foundations, LLC, appeals certain of the restrictions and limitations on the use of the subject property as a concrete business; namely, the determination prohibiting any outdoor activity, storage or parking.

RELATED CODE CITATION(S): _____

REASONS SUPPORTING THE APPEAL (ATTACH SEPARATE SHEET OR LETTER IF NECESSARY): *See Attached
The Applicant is using the subject property consistently with the Prior Owner (Pettijohn & Banks). The Prior Owner was a concrete company with significant outdoor activity including vehicles and raw materials. This use was deemed as a legal non-conforming use, and as such, the use may continue, despite changes to zoning regulations, subject to legal limits. The Administrative determination was based on the 1979 Variance Application, wherein the Prior Owner asked for a variance to construct an additional storage building, remove an existing building, and continue operation of a non-conforming concrete construction business. While it was recommended to the Board of Zoning Appeals that materials stored outside should be stored inside if the new structure was approved, the Board's letter of grant imposed no such condition. The Prior Owner stored materials and equipment and parked vehicles outdoors for more than 30 years thereafter without any notice of violation. Applicant merely asks for the same treatment.

APPLICANT AFFIDAVIT

IN WITNESS WHEREOF, the undersigned, having duly sworn, upon oath says that above information is true and correct as he/she is informed and believes and that Applicant owns or controls the property involved in this application.

Joseph D Calderon
Applicant/Representative (signature)

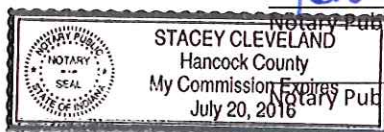
Joseph D Calderon, Attorney
Applicant/Representative (printed)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing Application.

Witness my hand and Notarial Seal this 8th day of July, 2016.

State of Indiana County of Marion SS:

Stacey Cleveland
Notary Public Signature



Notary Public (printed)

PROPERTY OWNER AFFIDAVIT

IN WITNESS WHEREOF, the undersigned, having duly sworn, upon oath says they are the owners of the property involved in this application and that they hereby acknowledge and consent to the foregoing Application.

By: J&R Kelich Farms, LLC
Property Owner (signature)*

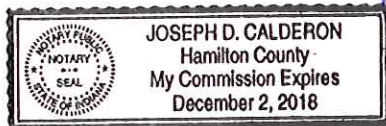
Jeffrey C. Kelich
Property Owner (printed)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the Property Owner, who having been duly sworn acknowledged and consents to the execution of the foregoing Application.

Witness my hand and Notarial Seal this 7th day of July, 2016.

State of INDIANA County of HAMILTON SS:

Joseph D Calderon
Notary Public Signature



Notary Public (printed)

*A signature from each party having interest in the property involved in this application is required. If the Property Owner's signature cannot be obtained on the application, then a notarized statement by each Property Owner acknowledging and consenting to the filing of this application is required with the application.



ADMINISTRATIVE APPEAL APPLICATIONS

GENERAL INSTRUCTIONS

- A. **Right of Appeal:** The Board of Zoning Appeals may grant an appeal of any decision, interpretation, or determination made by the Director, or any other administrative official or board charged with the duty of enforcing and interpreting this Ordinance.
- B. **Stay of Enforcement:** If an appeal is filed in accordance with the applicable ordinances, then the enforcing party shall take no further action on the matter pending the Board's decision, except for unsafe circumstances which present an immediate and serious danger to the public.
- C. **Filing Petition:** A petition shall be filed with the Department within thirty (30) days of when the decision, interpretation, or determination was made, along with the required supporting information. Supporting information shall include, but not be limited to, the following:
- ☐ Completed Application
 - ☐ Filing Fee Check (made out to "City of Westfield")
 - ☐ Copy of Property Deed
 - ☐ Property Owner Consent
 - ☐ Copies of all materials upon which the decision being appealed was based
 - ☐ Copies of any written decisions that are the subject of the appeal
 - ☐ A letter or narrative describing the reasons for the appeal (noting specific sections of the ordinance or other applicable standards upon which the appeal is based)
- D. **Ex-parte Communication:** In no event shall applicants or other interested parties contact or attempt to communicate with members of the Board in regard to a filed variance petition prior to the public hearing.
- E. **Board Review:** The Board will then, at a meeting scheduled consistent with the adopted Schedule of Meeting and Filing Dates, hold a hearing at City Hall, 130 Penn Street, Westfield, Indiana to review the appeal and supporting information including a report from the Department and/or enforcing party and testimony from the Applicant and/or representatives and witnesses.
- F. **Public Hearing Notice:** Depending on the nature of the appeal, public notice of the hearing may be required. If required, notice shall be provided in accordance with the Board's Rules of Procedure:
1. **Newspaper Publication:** Notice of the hearing will be published in the Indy Star and The Times. The Department will handle the newspaper publication requirement.
 2. **Mailed Public Notice:** The applicant is responsible to send public notice by mail to all interested parties by certified mail with return receipt requested (green card), postmarked at least ten (10) days prior to the hearing. A list of adjacent property owners may be obtained from the **Hamilton County Auditor, Office of Transfers and Mapping** (33 North 9th Street, Noblesville, IN 46060, (317) 776-9624), and shall include all owners of property to a depth of two (2) ownerships of no direct or indirect financial or other interest to the applicant or property owner or one-eighth of a mile (1/8), whichever is less.
 3. **Public Notice Sign:** The applicant is responsible to post a public notice sign(s) on the property at least ten (10) days prior to the public hearing. The Department will determine sign locations and will make signs available for the applicant to obtain in the office of the Department.
 4. **Affidavit of Notice of Public Hearing:** The applicant shall deliver a copy of the mailed notice and a signed affidavit, verifying that the notices were mailed and the public notice sign(s) was posted on the subject property, to the Department at least four (4) calendar days prior to the public hearing.
- G. **Board Action:** Following the hearing, the Board may affirm, affirm with modifications, reverse, or continue the appeal.
- H. **Resource:** Please see the Board's Rules of Procedure for more detailed procedural information.

ADMINISTRATIVE INFORMATION

PARCEL NUMBER
29-09-15-000-013.000-015

Parent Parcel Number

Property Address
14939 Ditch Rd

Neighborhood

293420 COMMERCIAL/INDUSTRIAL - OTHER

Property Class

499 Com Other commercial structure

TAXING DISTRICT INFORMATION

Jurisdiction 29

Area 008

Corporation N

District 015

Routing Number 4

Site Description

Topography:

Level

Public Utilities:

Electric

Street or Road:

Paved

Neighborhood:

Static

Zoning:

Legal Acres:

4.0000

Admin. Legal

4.0000

OWNERSHIP

J & R Kelich Farms LLC
25710 Devaney Rd
Arcadia, IN 46030

Acreage 4.00, Section 15, Township 18, Range 3

Tax ID 0809150000013000

TRANSFER OF OWNERSHIP

Date

06/25/2015 Pettijohn & Banks Inc

Doc #: 2015-32775

\$280000

Printed 05/18/2016 Card No. 1 of 2

COMMERCIAL

VALUATION RECORD

Assessment Year	03/01/2010	03/01/2011	03/01/2012	03/01/2013	03/01/2014	03/01/2015	01/01/2016
Reason for Change							
VALUATION							
Appraised Value	182400	133000	133000	133000	133000	133000	152000
	64500	64500	60700	62100	62100	59400	59400
	246900	197500	193700	195100	195100	192400	211400
VALUATION							
True Tax Value	182400	133000	133000	133000	133000	133000	152000
	64500	64500	60700	62100	62100	59400	59400
	246900	197500	193700	195100	195100	192400	211400

LAND DATA AND CALCULATIONS

Rating	Measured	Table	Prod. Factor	Base	Adjusted	Extended	Influence	Value
-or-	-or-	-or-	-or-	Rate	Rate	Value	Factor	
Actual	Effective	Effective	Depth	Rate	Rate	Value	Factor	
Frontage	Frontage	Depth	Square Feet					
18	2.0000	1.00	40000.00	40000.00	40000.00	80000		80000
19	2.0000	1.00	36000.00	36000.00	36000.00	72000		72000
1 PRIMARY								
2 UNDEVELOPED USABLE								

ANNX: ORD 08-05 FOR 07 P 08 JDG
LOI 6: LAND KWP/DB 2-5-16
RV12: SRB
RV15: CORRECTED JEAN-TO 10/24/14 KWP/KAP

Supplemental Cards

TRUE TAX VALUE 152000

FARMLAND COMPUTATIONS

Parcel Acreage
81 Legal Drain NV [-]
82 Public Roads NV [-]
83 UT Towers NV [-]
9 Homestead(s) [-]
91/92 Excess Acreage [-]
TOTAL ACRES FARMLAND
TRUE TAX VALUE

4.0000 Measured Acreage

Average True Tax Value/Acre

TRUE TAX VALUE FARMLAND

Classified Land Total

Homestead(s) Value (+)

Excess Acreage Value (+)

Supplemental Cards

TOTAL LAND VALUE 152000

Date

VALUATION RECORD

Assessment Year
Reason for Change
VALUATION

Site Description

LAND DATA AND CALCULATIONS

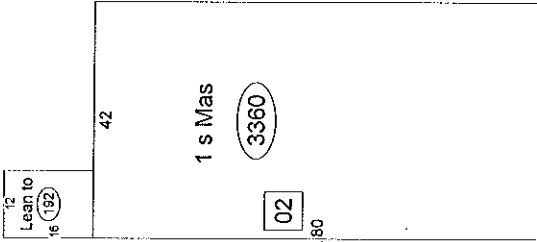
Land Type	Rating Measured Soil ID Acreage -or- Actual Effective Frontage Frontage	Table Effective Depth	Prod. Factor -or- Depth Factor -or- Square Feet	Base Rate	Adjusted Rate	Extended Value	Influence Factor	Value
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Supplemental Cards
TOTAL LAND VALUE

IMPROVEMENT DATA

PHYSICAL CHARACTERISTICS

ROOFING					
Metal					
WALLS					
Frame					
Brick					
Metal					
Guard					
FRAMING					
Wd Jst					
FINISH					
UF					
1					
U					
Total					
HEATING AND AIR CONDITIONING					
Heat					
PLUMBING					
Full Baths					
Half Baths					
Extra Fixtures					
TOTAL					



P Key	GC118	00
#Units		
AVSize		
Floor		
Perim	244	116
PAR	7	17
Height	14	0
Use SF	SMSHOP	LUTLSTOR
Use %	3860	672
Rate	55.94	11.55
Fr Adj	-11.17	0.00
WH Adj	0.00	0.00
Ot Adj	0.00	0.00
BASE	44.77	0.00
SPA %	100%	0%
Subtot	44.77	11.55
U Fin	0.00	0.00
Ot Adj	0.00	0.00
IntFin	0.00	0.00
Div W	0.00	0.00
Lightg	0.00	0.00
AirCon	0.00	0.00
Heat	0.00	0.00
Sprink	0.00	0.00
SF Pr	44.77	11.55
x SF	150430	0
Subtot	150430	
Plumb	4800	
SpFeat	7760	
ExFeat	0	
TOTAL	162990	
Qual/Gr	C-1	
RCN	154840	
Use Dep	0/0	0/0

(LCM: 100.00)

SUMMARY OF IMPROVEMENTS

SPECIAL FEATURES

Description	Value	ID	Use	Sty Hgt	Const	Year Eff	Base	Feat-	Adj	Size or	Computed	Phys Obsol	Market	Depr	Adj	Comp	Value	
ME22	7760	C	SMSHOP	0.00	C-1	1976	1977	A	0.00	N	0.00	3360	154840	82	0	100	100	27900
		03	LEANTO	8.00	C	1976	1976	A	3.83	N	3.83	12x 16	740	55	0	100	100	300

Supplemental Cards
TOTAL IMPROVEMENT VALUE

Neighborhood
Neigh 293420 AV

Data Collector/Date
KWF 10/20/2014

Appraiser/Date
TMT 07/18/2011

July 8, 2016

Westfield Board of Zoning Appeals
c/o Matthew S. Skelton, Esq.
Director of Economic and Community Development
2728 East 171st Street
Westfield, IN 46074

Re: 14939 Ditch Road, Westfield, Indiana
Administrative Determination 1604-AD-02

Dear Board Members:

This letter supplements the Administrative Appeal Application that we are filing on behalf of our client, Indiana Structural Foundations, LLC, appealing Administrative Determination 1604-AD-02 (the "Determination") in certain respects.

The Determination, while being well thought out, is flawed in one significant respect. The Determination assumes that a 1979 variance controls the use and development of the subject property. However, the 1979 variance was merely to allow for demolition of an existing structure and construction of several new structures for an existing business. The subject property was developed by Pettijohn & Banks, Inc. in 1976 (according to property record cards, deed records, etc.), which means that it was a legal non-conforming use before it went to the Board of Zoning Appeals in 1979. The 1979 variance explicitly recognized the then existence of the concrete business and approved the variance, without any condition that activities be moved indoors. Subsequent to the 1979 variance, activities on the subject property remained consistent, and there was never, to the Applicant's knowledge, a citizen complaint or notice of violation issued to the concrete business.

The Applicant is merely trying to operate the subject property in a substantially similar manner as its predecessor, which is legal under Indiana case law since it existed prior to any zoning ordinance adopted by Westfield. The Determination instead leans on the fact that there were no representations of outdoor activities taking place on the subject property (even though in fact there were such activities taking place at the time of the variance, including times prior thereto and afterwards), and concludes that even vehicle parking must take place indoors. This is not consistent with what might otherwise be described currently as a normal accessory use of property under the current ordinance. The Determination also attempts to regulate current activities taking place on the subject property in accordance with the City's performance

Matthew S. Skelton, Esq.
July 8, 2016
Page Two

standards and noise standards. While such activities are likely meeting such standards, Applicant is not in a position to concede that it is required to meet such standards, to the extent that activities on the subject property are no more intense than activities which were taking place prior to the enactment of those particular ordinances.

Applicant will be presenting evidence indicating that the use of the subject property is consistent with what was taking place prior to the adoption of any applicable zoning ordinance to the subject property, including, but not limited to, aerial photographs, property record cards, deed records and potentially affidavits from the owners of the prior user.

Thank you for the opportunity to present this matter to the Board.

Very truly yours,



Joseph D. Calderon,
Attorney for Indiana Structural Foundations, LLC

JDC:src

3030675_1

MC

DULY ENTERED FOR TAXATION Subject to final acceptance of transfer 1st day of July 2015 - GR <i>Dawn Cordale</i> Auditor of Hamilton County Parcel # 08-09-15-00-00-013.000
--

2015032775 WD \$18.00
07/01/2015 03:45:05PM 2 PGS
Jennifer Hayden
Hamilton County Recorder IN
Recorded as Presented



Corporate Warranty Deed

This Indenture Witnesseth, that Pettijohn & Banks, Inc., a corporation organized and existing under the laws of the State of Indiana ("Grantor"), CONVEY(S) AND WARRANT(S) to J & R Kelich Farms LLC ("Grantee") of Hamilton County, in the State of Indiana, for the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following real estate in Hamilton County, State of Indiana, commonly known as 14939 Ditch Road, Westfield, IN 46074, and more particularly described as:

Part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 18 North, Range 3 East, in Washington Township, Hamilton County, Indiana, more particularly described as follows: Beginning at a point on the west line the Southwest Quarter of Section 15, Township 18 North, Range 3 East, said point being South 00 degrees 10 minutes 33 seconds East 608.04 feet from the northwest corner thereof; thence North 88 degrees 43 minutes 27 seconds East 655.04 feet; thence South 00 degrees 09 minutes 40 seconds East 241.61 feet; thence South 00 degrees 13 minutes 33 seconds East 24.45 feet; thence South 88 degrees 43 minutes 27 seconds West 655.00 feet to a point on the west line of said Quarter; thence North 00 degrees 10 minutes 33 seconds West on and along said west line 266.06 feet to the Place of Beginning, and containing 4.00 acres, more or less.

Taxes for 2015 payable 2016 now a lien, not yet due and payable.

Subject to covenants, agreements, easements, restrictions and all rights of way of record.

The undersigned person(s) executing this deed on behalf of Grantor represent and certify that they are duly elected officers or representatives of Grantor and have been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this deed; that Grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

In Witness Whereof, Grantor has caused this deed to be executed this 25TH day of June, 2015.

Pettijohn & Banks, Inc.

BY: Joseph A. Pettijohn

PRINT: Joseph A. Pettijohn

TITLE: President

STATE OF INDIANA)

COUNTY OF Hamilton)

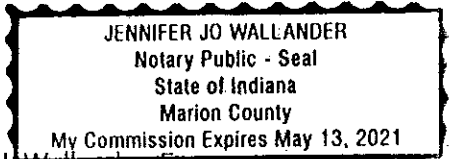
Before me, a Notary Public in and for said County and State, personally appeared Pettijohn & Banks, Inc. by Joseph A. Pettijohn, its President who acknowledged the execution of the foregoing Corporate Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 25TH day of June, 2015.

Signature: Jennifer J. Wallander, Notary Public

Printed: _____

My Commission Expires:
My County Of Residence is:
15-0716



Prepared by and return deed to: Jennifer J. Wallander, Esq.
Hamilton National Title LLC, 865 W. Carmel Drive, Suite 110, Carmel, IN 46032

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law, Jennifer J. Wallander.

Grantee mailing address and please send tax statements/notices to:

25710 Devaney Road
Arcadia, IN 46030



14939 Ditch Rd

Image U.S. Geological Survey

Imagery Date: 3/26/1999 -40°00'16.25" N, 86°10'55.66" W, elev. 910

Google

11/2004

14939 Ditch Rd

Image © 2016 DigitalGlobe

1993

Imagery Date: 11/8/2004 40°00'16.60" N 86°10'55.88" W elev 910

Google

10/2/2008

Ditch Rd

14939 Ditch Rd

Mayfield Ct

Image USDA Farm Service Agency

Montclair Dr

1993

Image Date: 6/18/2008

40°00'15.63" N 86°10'54.94" W elev 910

Google

10/2013

14939 Ditch Rd



Imagery Date: 10/10/2013 40°00'16.30" N 86°10'55.73" W elev 910

Google



Mayor
Andy Cook

City Council
Chuck Lehman
Jim Ake
Joe Edwards
Steven Hoover
Robert L. Horkay
Dr. Mark Keen
Cindy L. Spoljark

Clerk Treasurer
Cindy J. Gossard

**Economic and
Community
Development**

(317) 804-3170

2728 East 171st Street
Westfield, IN 46074

westfield.in.gov

June 15, 2016

Mr. Jeff Kelich
25710 Devaney Road
Arcadia, IN 46030

Re: Concrete Business Use at 14939 Ditch Road, Westfield, IN

Dear Mr. Kelich,

Since you began your concrete business in January 2016, the City has received numerous complaints regarding activities on your property located at 14939 Ditch Road (the "Property"). The nature of the complaints caused us to perform a comprehensive review of the Property's zoning history so we could determine precisely what activities are permitted on the Property and what activities are not permitted.

Review and analysis of the 1979 variance (79-V-12), which permitted a "concrete business" on the Property, revealed, among other things, that all activities related to a concrete business are to be conducted indoors. There was no representation of outdoor activity associated with the variance approval.

As a result, we have prepared an Administrative Determination (No. 1604-AD-02), enclosed for your records, which outlines and clarifies the activities, and the manner in which those activities, can and cannot occur on the Property.

The Westfield Unified Development Ordinance (the "UDO") prescribes your right to appeal this Administrative Determination under Article 10.3. The UDO states that you have 30 days from the time of the determination to file your appeal with the Economic and Community Development Department for docking on the next available Board of Zoning Appeals agenda. This Administrative Determination was recorded on June 10, 2016, so you would have until July 10, 2016 to file an appeal application, should you choose to do so. Since July 10, 2016 is a Sunday, your application would need to be received by the close of business on Friday, July 8, 2016.

If you have any questions about the Administrative Determination or the appeal process, please feel free to contact me at mskelton@westfield.in.gov or 317.508.6288.

Regards,

A handwritten signature in black ink, appearing to read "MSkelton", is written over a horizontal line.

Mathew S. Skelton, Esq.
Director of Economic and Community Development

73-
32
2 NONC
1 X REF

2016026934 MISC \$76.00
06/10/2016 12:37:52P 32 PGS
Jennifer Hayden
HAMILTON County Recorder IN
Recorded as Presented

ECONOMIC & COMMUNITY DEVELOPMENT
ADMINISTRATIVE DETERMINATION
June 9, 2016
1604-AD-02



ADMINISTRATIVE DETERMINATION

Cross Referenced to Instrument No. 2015-32775

FILE NUMBER:
1604-AD-02

DESCRIPTION:

On June 18, 1979, the Westfield-Washington Board of Zoning Appeals (the "BZA") approved a variance (Case Number: 79-V-12) request to allow the operation of a concrete business and the construction of a storage building on property located at 14939 Ditch Road (the "Property").

The current Property owner, Jeff Kelich (the "Property Owner") has said that a concrete business has been operating on the Property since January 2016. Since that time, the City has received numerous complaints from neighbors regarding various activities occurring on the Property. This Administrative Determination outlines the known facts and observed activities on the Property. It also defines what activities constitute an approved "concrete business", as approved by the BZA under variance 79-V-12.

FACTS OF THE CASE:

1. According to variance 79-V-12 (Exhibit "A"), a "concrete business" is a permitted use on the Property.
2. The submitted materials for variance 79-V-12 included a site plan, which indicated one (1) existing building and three (3) future/new buildings. To-date, only one (1) of the future/new buildings depicted on that site plan has been constructed (permit 80-IP-43).
3. The building associated with permit 80-IP-43 was approved "As Per Plans Filed", which correlates to the site plan that was associated with variance 79-V-12.
4. The plans approved as part of the variance request do not contemplate outdoor parking areas, fueling areas, or outdoor storage areas on the Property.
5. According to an email provided to the City by the Property Owner, a new corporation was established on December 23, 2015 called Indiana Structural Foundations, LLC.
6. According to phone conversations with the Property Owner, Indiana Structural Foundations, LLC is a concrete business that operates from the Property.
7. The Property Owner also owns a landscaping business called Carmel Turf Care. According to phone conversations with the Property Owner, Carmel Turf Care does not operate from the Property.
8. A landscaping business is not a permitted use on the Property.
9. According to phone conversations with the Property Owner, Carmel Turf Care has and will perform landscaping and mowing maintenance services for the Property. The Property Owner has communicated a desire to make landscaping improvements to the Property.

10. According to phone conversations with the Property Owner, Carmel Turf Care and Indiana Structural Foundations, LLC share some heavy equipment. That equipment is transferred between companies from time-to-time for operations.
11. The Property Owner has installed new fuel tanks on the Property. The Westfield Fire Marshall has inspected the tanks and has determined that, pursuant to the 2012 International Fire Code with Indiana Amendments, Chapters 2305 and 2306, the tanks, and the locations thereof, comply with federal and state regulations for above-ground fuel tanks.

OBSERVED ACTIVITIES:

1. On March 19, 2016, a neighbor reported a complaint regarding noise being generated from the Property from approximately sunrise to 6:00 PM.
2. On March 21, 2016, a neighbor reported a complaint regarding landscaping trucks, equipment, and materials entering, leaving, and being located on the Property.
3. On March 22, 2016, a site inspection of the Property by City staff revealed trucks, equipment, and materials on the Property. The inspection also revealed that a van for "Homes by Rex Brown" was on-site.
4. On March 27, 2016, a neighbor reported a truck and trailer for "Carmel Turf Care" being kept on the Property over a weekend.
5. On March 27, 2016, a neighbor reported a van for "Homes by Rex Brown" being kept on the Property over a weekend.
6. On April 14, 2016, a neighbor reported a complaint regarding the apparent storage of bagged fertilizer and irrigation tubing on the Property.
7. On April 26, 2016, a neighbor reported a "Carmel Turf Care" truck and trailer being loaded and/or unloaded on the Property.
8. On May 3, 2016, a neighbor reported a complaint regarding equipment noise at approximately 7:30 PM.

ZONING DETERMINATION:

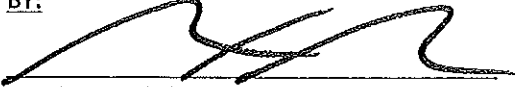
Based on the approval of variance 79-V-12, the Economic and Community Development Director (the "Director") hereby determines the following:

1. Activities related to a concrete business, as approved by variance 79-V-12, are allowed to occur on the Property in a manner consistent with the plan and character of the development approved under variance 79-V-12.
2. The variance does not include any representation of outdoor activities, outdoor storage, or outdoor parking on the Property.
3. Permitted indoor activities associated with the concrete business include but are not limited to: the storage and maintenance of equipment/vehicles; the storage and maintenance of necessary tools; the storage of raw materials for making concrete; the storage of any business-related vehicles; the storage of concrete forms; the mixing of concrete; employee parking; customer parking; shipping and receiving of products/materials; and any office-related activities.
4. Normal indoor and outdoor property upkeep/maintenance/improvement is permitted.
5. Any activities related to a business that is not a concrete business, unless that business is otherwise permitted by the City's Unified Development Ordinance, are not permitted to occur on the Property.
6. All activities must comply with the City's Performance Standards (UDO, Article 6.15).
7. All activities must comply with the City's noise standards (Westfield Code, Chapter 34) (Exhibit "B").

APPEAL:

This Administrative Determination may be appealed to the Westfield-Washington Township Board of Zoning Appeals within thirty (30) days of this Administrative Determination.

BY:



Matthew S. Skelton, Esq.
Economic & Community Development Department Director
City of Westfield, Indiana

The above signatory hereby certifies that the information contained in and accompanying this document is true and correct.

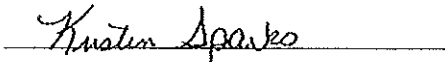
STATE OF INDIANA)

) SS:

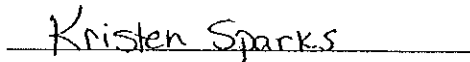
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Matthew S. Skelton, the Community Development Director for the City of Westfield, who having been duly sworn upon his/her oath acknowledged this Administrative Determination as described herein.

Witness my hand and Notary Seal this 9th day of June, 2016.



Signature of Notary Public



Printed Name of Notary Public

My County of Residence: Hamilton

My Commission Expires: 1/31/2017

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law: Kevin M. Todd

Prepared by: Kevin M. Todd, City of Westfield, 2728 East 171st Street, Westfield, IN 46074, (317) 804-3170.

Application Number V - 79-V-12

Date of Application May 15, 79

APPLICATION FOR VARIANCE
WESTFIELD-WASHINGTON BOARD OF ZONING APPEALS

This application must be completed and accompanied by the information specified below and the necessary filing fee, and filed at the Town Hall of Westfield, Indiana, at least Thirty (30) days prior to the Board of Zoning Appeals meeting at which Applicant wishes to make his oral presentation.

1. Applicant's Name PETTIJOHN & BANKS
 Address 15111 OAK RD. CARMEL
2. Landowner's Name PETTIJOHN & BANKS
 Address _____
 Telephone Number _____
3. Attorney _____
 (if represented)
4. Common description of property (address, location, etc.):
14939 DITCH ROAD
5. Legal description of property (list below, or attach):
SEE ATTACHED
6. Complete description of the nature of the Variance applied for:
PETITIONER REQUESTS VARIANCE OF USE TO PERMIT
CONSTRUCTION OF AN ADDITIONAL STORAGE BUILDING,
AND CONTINUED OPERATION OF NON-CONFORMING CONCRETE
CONSTRUCTION BUSINESS, AND REMOVAL OF EXISTING
BUILDING AS PER PLANS FILED.

7. Plans drawn to scale must accompany this application and must show at least the following: (a) The shape and dimensions of the land involved; (b) the location and dimensions of any existing buildings; (c) the location and dimensions of any proposed buildings or proposed alterations; and (d) all topographic, natural, or other unusual characteristics of the land involved.

8. No Variance in the application of the Provisions of the Comprehensive Zoning Ordinance of Westfield-Washington shall be granted unless the Board of Zoning Appeals shall find each of the following (thus the Applicant must complete and establish at the hearing that each of the following is true in order to obtain a favorable determination of his variance application):

- (a) That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to the other property or class or use in the same vicinity and district:

Due to the deteriorated condition of our existing
barn there will be a hardship to the owners to the
extent of not having a secure place to store
materials and trucks pertaining to the concrete
business.

- (b) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and district, but which is denied to the property in question:

Because of the difference in square footage in
the old structure and the new structure, a variance
is necessary for continued operation of the non-
conforming use. Around the corner, "THE HERB BARN"
has operated continuously for several years as a

- retail business.
(c) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the

property or improvements in such vicinity and district in which the property is located:

NO, existing barn is potential health and safety
hazard- not to mention an eyesore.

(d) That the granting of such variance will not alter the land use characteristics of the vicinity and district, diminish the marketable value of adjacent land and improvements, or increase the congestion in the public streets:

NO, the use itself is non-conforming and the new
building is not substantially larger than the old
barn. Traffic coming and going will be no greater
than at present.

The Applicant hereby certifies that the information contained in and accompanying this application is true and correct.

Stanley E. Banks
Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS 15 day of

May, 1977.

Mary Lou Thatcher
Notary Public

My Commission Expires:

Dec. 30, 1979

NOTICE

The Applicant is responsible for giving appropriate notice of his variance application and hearing thereon. Notice must be published twice in a daily newspaper of general circulation

in Hamilton County, with the first publication being at least thirty days prior to the hearing and the second publication being one week later. Proof of publication must be delivered to the Town Hall of Westfield at least five days prior to the hearing. Every contiguous landowner must receive notice by certified mail and returned receipts shall be delivered to the Town Hall of Westfield at least five days prior to the hearing.

The Applicant hereby certifies that every contiguous landowner was appropriately notified by certified mail of his variance application and hearing thereon and return receipts from such certified mailings are hereby delivered to the Town Hall of Westfield.

Applicant

Date Proof of Publication received: May 25, 1979
Date return receipts received: May 25, 1979
Date fee paid: May 25, 1979
Received by: Virginia C. Morris

(Signature)

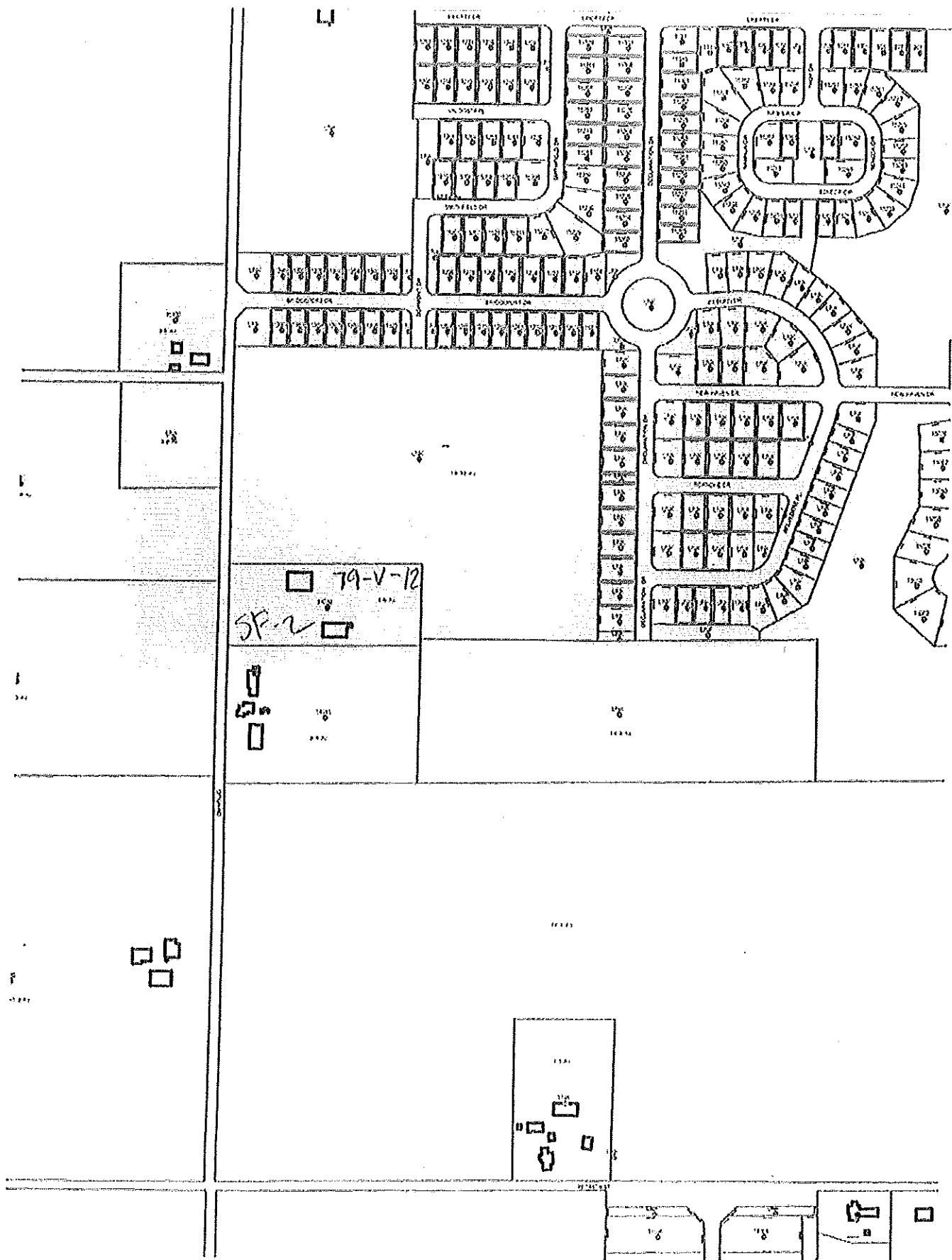
14939 Ditch Road. A variance of use to permit construction of an additional storage building and continued operation of a non-conforming concrete construction business and removal of an existing building as per plans filed is requested by Pettijohn & Banks.

Comments:

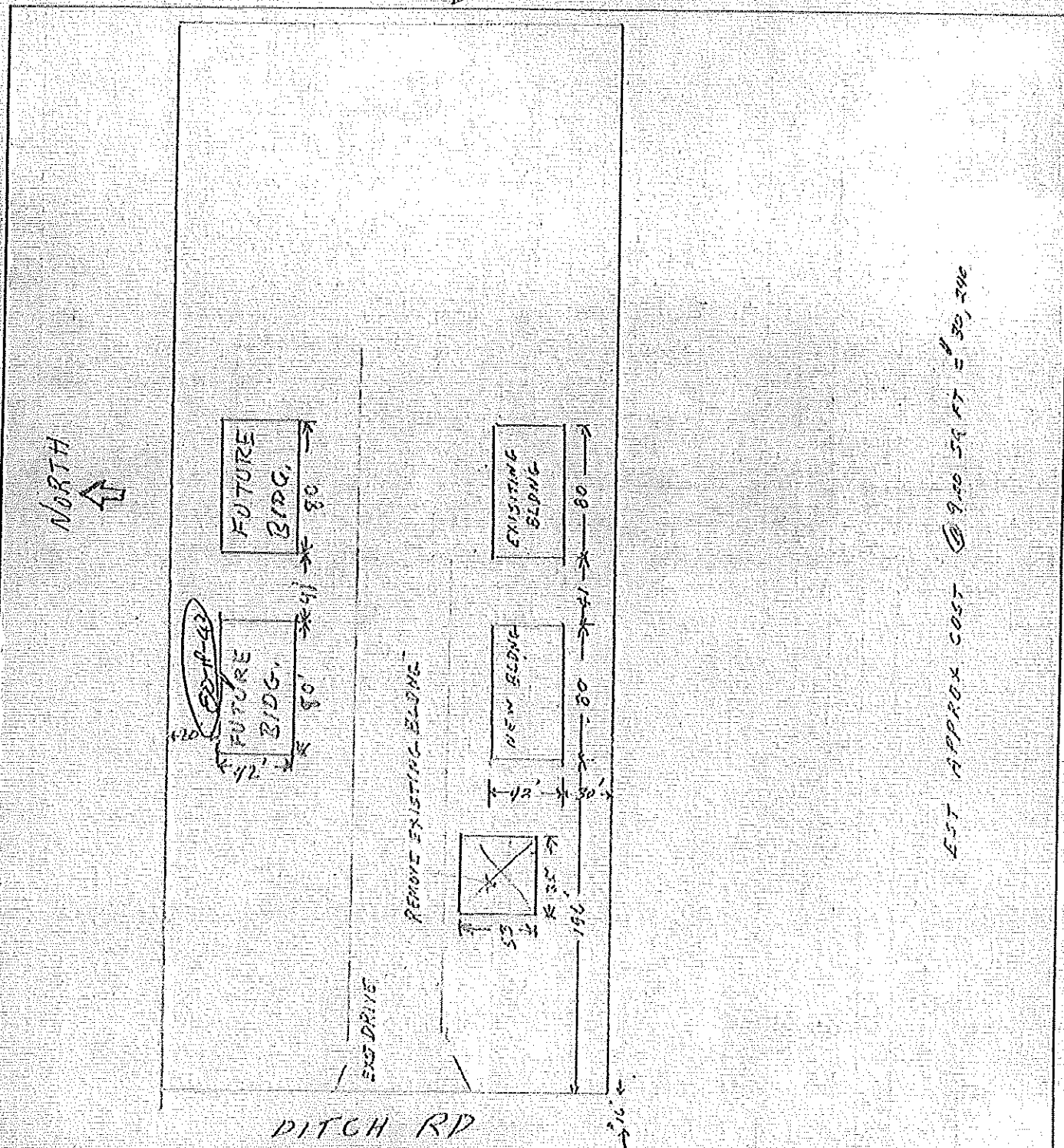
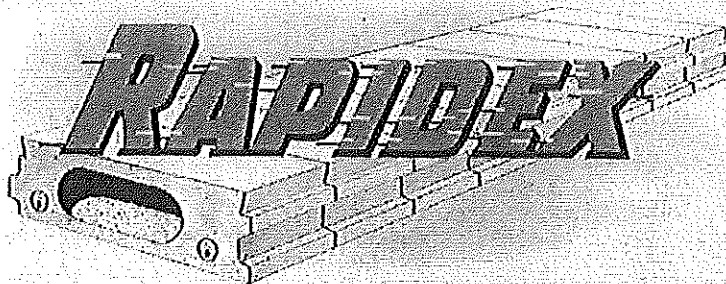
1. The use itself is non-conforming as the business was conducted there before the property was in the jurisdiction of Westfield-Washington Township.
2. Since the proposed new structure is slightly larger than the existing barn, which the petitioner proposes to remove, construction of the new storage building constitutes enlargement of a non-conforming use. Such enlargement requires a variance. Locations of future buildings have also been shown for future permit purposes.
3. The proposed new structure is to be of the same type as the concrete structure presently located on the site. The front, side, and rear setback requirements of both the residential and industrial districts have been exceeded.
4. The building which the petitioner proposes to remove is a badly deteriorated barn-type structure.

Recommendations:

Driving past the site, two conditions are readily obvious: the amount of vehicles and materials being stored outside, and the deteriorated condition of the barn. Both conditions constitute potential health and safety hazards. The barn should be removed in any event, and materials presently stored outside should be stored inside the new structure if it is approved.



- FIRE RESISTIVE
- PRE-ARCHED
- LONG SPAN
- UNIFORM TEXTURE

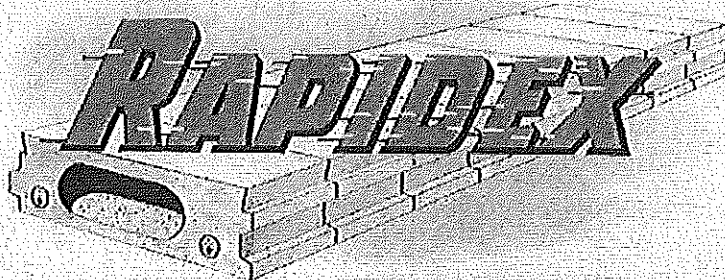


EST APPROX COST @ 9.00 SQ FT = 30,740

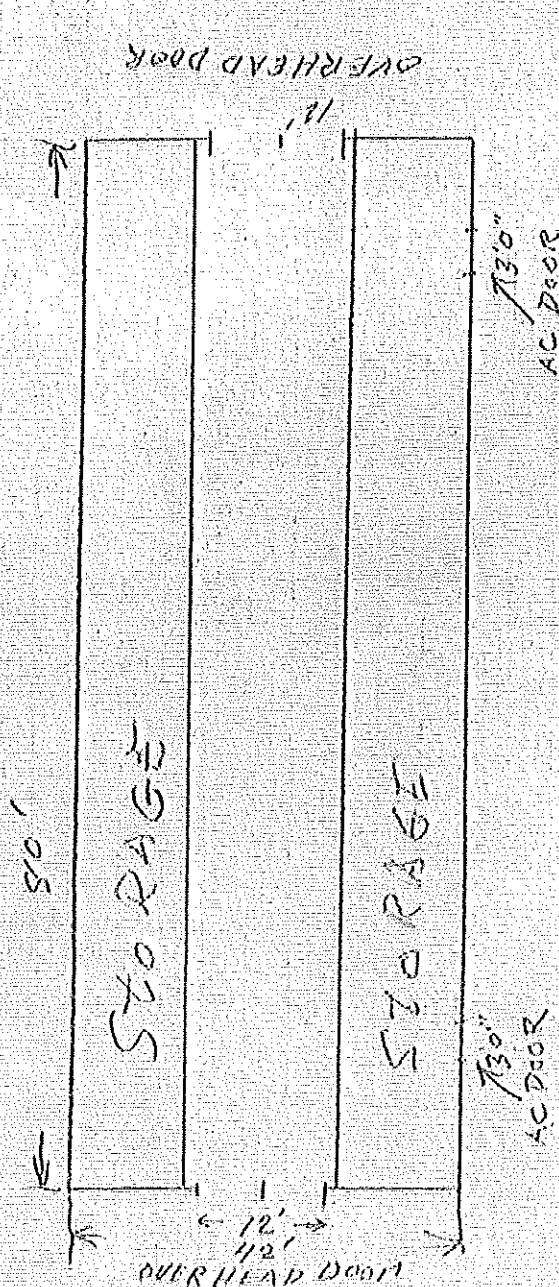
SPICKELMIER INDUSTRIES, INC.

1000 East 52nd Street • Indianapolis 5, Indiana

LIGHT WEIGHT •
 ACOUSTICAL •
 ECONOMICAL •
 INSULATING •



• FIRE RESISTIVE
 • PRE-ARCHED
 • LONG SPAN
 • UNIFORM TEXTURE



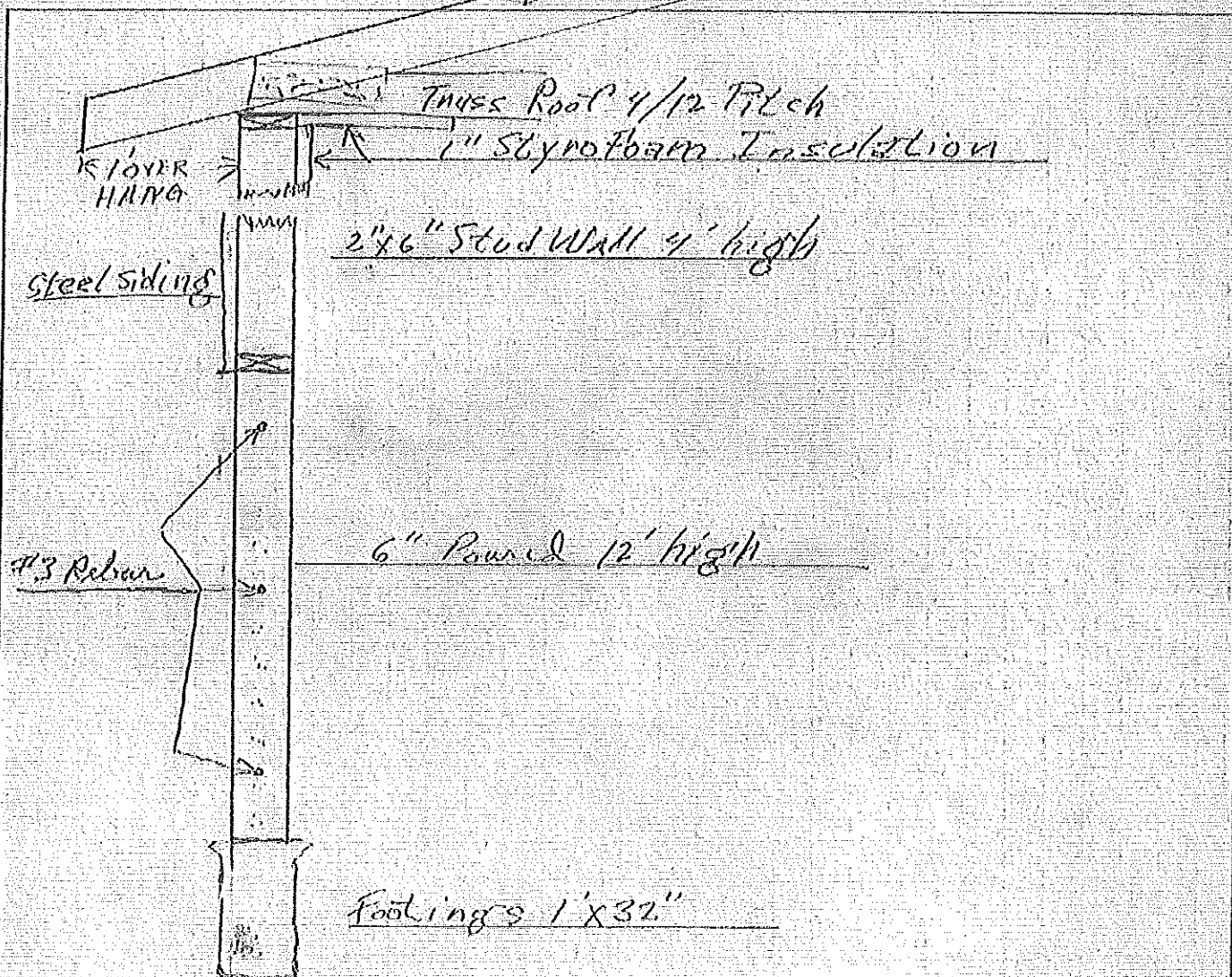
SPICKELMIER INDUSTRIES, INC.

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LIGHT WEIGHT •
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• FIRE RESISTIVE
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SPICKELMIER INDUSTRIES, INC.

1100 East 52nd Street • Indianapolis 5, Indiana

Town of Westfield

130 PENN STREET
P.O. BOX 322
WESTFIELD, INDIANA 46074

June 20, 1979

Pettijohn & Banks
15111 Oak Road
Carmel, Indiana 46032

Gentlemen:

On Monday, June 18, 1979, the Westfield-Washington Board of Zoning Appeals met to consider your application #79-V-12 requesting a variance of use to permit construction of an additional storage building and continued operation of a non-conforming concrete business and removal of an existing building, for the property located at 14939 Ditch Road. The Board of Appeals by a vote of 4 to 0 unanimously approved and granted your petition.

When you are ready to begin construction, you may obtain an Improvement Location Permit at the office of the Building Commissioner. The hours are Monday, Tuesday, Thursday, and Friday from 9:00 A.M. until 3:00 P.M. and Wednesday from 9:00 A.M. until noon.

Yours truly,

Virginia C. Norris

Virginia C. Norris
Secretary, Board of Zoning Appeals

Chapter 34 - ENVIRONMENT⁽¹⁾*Footnotes:**... (1) ...**Cross reference— Animals, ch. 10; buildings and building regulations, ch. 14; civil emergencies, ch. 22; community development, ch. 26; fire prevention and protection, ch. 38; impact fees, ch. 40; streets, sidewalks and other public places, ch. 54; utilities, ch. 62.**State Law reference— Environment, IC 13-1-1-1 et seq.; actions for nuisance, IC 34-1-52-1 et seq.; protection of public health, safety and welfare, IC 36-8-2-4.*

ARTICLE I. - IN GENERAL.

Secs. 34-1—34-30. - Reserved.

ARTICLE II. - NUISANCES⁽²⁾*Footnotes:**... (2) ...**State Law reference— Planning and zoning violation as common nuisance, IC 36-7-4-1012.*

DIVISION 1. - GENERALLY

Sec. 34-31. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Garbage means rejected food wastes and shall include every waste, accumulation of animal, fruit or vegetable matter used or intended for food or used in the preparation, use, cooking, sale or storage of meat, fish, fowl, vegetables or fruits.

Gutter means concrete improvements constructed along the edge of roads or streets designed to collect and carry water to a storm sewer or other drainage system.

Litter means garbage and rubbish as these terms are defined in this section, newspapers, handbills, circulars and all other waste material which, if thrown or deposited as prohibited in this article, tends to create a danger to public health, safety and welfare.

Rubbish means such matter as ashes, cans, scrap metal, broken glass, crockery, foul and filthy substances, dirt, sweepings, boxes, wood, grass, weeds or waste matter of any kind.

Scrap metal means pieces or parts of steel, iron, tin, zinc, copper, aluminum or any alloy thereof, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its originally intended purpose.

(Ord. No. 96-30, § 1(8.04.010), 12-9-96)

Cross reference— Definitions generally, § 1-2.

Sec. 34-32. - Litter in public places.

No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the city except in public receptacles or in authorized private receptacles for collection.

(Ord. No. 96-30, § 1(8.04.020), 12-9-96)

Sec. 34-33. - Placement of litter in receptacles so as to prevent scattering.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place, or upon private property.

(Ord. No. 96-30, § 1(8.04.030), 12-9-96)

Sec. 34-34. - Sweeping litter in gutters prohibited.

No person shall sweep into or deposit in any gutter, street or other public place within the city, the accumulation of litter from any building, lot or any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises of litter.

(Ord. No. 96-30, § 1(8.04.040), 12-9-96)

Sec. 34-35. - Property owners' or occupants' duty to keep sidewalks free from obstruction.

Persons owning or occupying property shall keep all publicly owned sidewalks and gutters adjacent to sidewalks and streets clear of litter, goods, wares, merchandise, boxes, trash receptacles, automobiles and obstructions of any nature.

(Ord. No. 96-30, § 1(8.04.050), 12-9-96; Ord. No. 98-18, §§ 1, 2, 8-10-98)

Sec. 34-36. - Litter thrown from vehicles.

No person, while a driver or passenger of a vehicle, shall throw, deposit or cause to be deposited, litter upon any street or other public place or upon private property.

(Ord. No. 96-30, § 1(8.04.060), 12-9-96)

Sec. 34-37. - Truck loads causing litter.

No person shall drive or move any truck or other vehicle unless such vehicle is constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. No person shall drive or move any vehicle or truck within the city, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

(Ord. No. 96-30, § 1(8.04.070), 12-9-96)

Sec. 34-38. - Litter in private places.

No person shall throw, deposit or cause to be deposited, litter in or upon any private property, whether owned by such person or not, except that the owner or person in control of private property may maintain private receptacles for collection in such manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place, or upon any private property.

(Ord. No. 96-30, § 1(8.04.080), 12-9-96)

Sec. 34-39. - Storage of scrap metal.

The storage of scrap metal within the incorporated city, except on premises authorized by the city for such purposes, shall not be permitted.

(Ord. No. 96-30, § 1(8.04.090), 12-9-96)

Sec. 34-40. - Nuisances enumerated.

It shall be unlawful for any owner, occupant, manager or person having control of any property within the incorporated city to permit or cause a public nuisance to develop, including, but not limited to the following:

- (1) *Airborne matter.* Emission of a significant amount of odor, dust, smoke or other matter into the atmosphere which renders ordinary use and enjoyment of property in the vicinity uncomfortable or impossible (see IC 36-8-2-8).
- (2) *Noise.* Emissions of a significant amount of noise which renders ordinary use and enjoyment of property in the vicinity uncomfortable or impossible (see IC 36-8-2-8).
- (3) *Infestation.* The causing or permitting of any significant rodent or insect population to exist on any property, or to cause or permit any condition which would attract such population (see IC 16-1-27-4).
- (4) *Other offenses.* In addition to what is declared in this article to be a public nuisance, those offenses which are known in common law and state statutes as public nuisances may be treated as such and be proceeded against as is provided in this article or in accordance with any other applicable law.

(Ord. No. 96-30, § 1(8.04.100), 12-9-96)

Sec. 34-41. - Owner to maintain premises free of litter and nuisances.

The owner or person in control of any private property shall at all times maintain the premises free of litter and nuisances, provided that this section shall not prohibit the storage of litter in authorized private receptacles for collection.

(Ord. No. 96-30, § 1(8.04.110), 12-9-96)

State Law reference— Violations on private property, IC 36-1-6-2.

Sec. 34-42. - Nuisances created by others.

It is not essential that litter or nuisances be created or contributed to by the owner, occupant, manager or person having control of property, but merely that a nuisance be created or contributed to by licensees, invitees, guests or other persons whose conduct the owner, occupant, manager or person having control of property is responsible for.

(Ord. No. 96-30, § 1(8.04.120), 12-9-96)

State Law reference— Air pollution as public nuisance, IC 13-1-1-7.

Sec. 34-43. - Penalties.

Violations outlined in this article are punishable as class C infractions pursuant to IC 34-4-32-4, which allows for a judgment of up to \$500.00. The payment of a penalty for the violation of any provision of this article shall not excuse the violation or permit it to continue. A separate offense shall be deemed committed each day such violation occurs or continues.

(Ord. No. 96-30, § 1(8.04.130), 12-9-96)

Sec. 34-44. - Outdoor storage of environmentally hazardous materials prohibited.

- (a) The council finds that the outdoor storage of environmentally hazardous materials poses a threat

to the health, welfare and safety of the citizens of the city.

- (b) The city hereby forbids outdoor storage of environmentally hazardous materials within the corporate limits of the city.

(Ord. No. 05-19, §§ I, II, 5-26-05)

Secs. 34-45—34-50. - Reserved.

DIVISION 2. - NOISE

Sec. 34-51. - Prohibitions.

No person shall play, use or operate any machine or device for the producing or reproducing or sound, including, but not limited to, loudspeakers, radios, CD players, television sets, musical instruments, phonographs, cassette players or any other machine designed or intended to produce or reproduce sound, not operate any motor vehicle that contains a modified or defective exhaust system, if such machine, device or vehicle is located in or on any of the following:

- (1) Any public property, including any public right-of-way, highway, building, sidewalk, public space, park or thoroughfare and the sound generated therefrom is clearly audible 40 feet or more from its source, or is at a level of 90 decibels or more when measured from a distance of not less than six feet from its source; or
- (2) Any private property and the sound generated therefrom is clearly audible 40 feet or more outside of said private property line, or is at a level of 90 decibels or more when measured from a distance of not less than six feet from said private property line.

(Ord. No. 02-34, § I, Exh. A, 11-11-02)

Sec. 34-52. - Exemptions.

The following are exempted from the provisions of this subchapter:

- (1) Sounds emitted from authorized emergency vehicles.
- (2) Lawn mowers, garden tractors, construction equipment, and power tools, when properly muffled, between the hours of 7:00 a.m. and 10:00 p.m. only.
- (3) Burglar alarms and other warning devices when properly installed, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time.
- (4) Parades, festivals, carnivals, fairs, celebrations, concerts, artistic performances or other events authorized by the city council or another appropriate governmental entity.
- (5) Attendant noise connected with the actual performance of athletic or sporting events and practices related thereto.
- (6) The emission of sound for the purposes of alerting persons to the existence of an emergency, or for the performance of emergency work.
- (7) Sounds associated with the use of legal fireworks.
- (8) Sounds associated with the use of an approved public safety training facility between the hours of 7:00 a.m. and 10:00 p.m.
- (9) Sounds associated with the normal conduct of legally established non-transient businesses when such sounds are customary, incidental and within the normal range appropriate for such use.

(Ord. No. 02-34, § I, Exh. A, 11-11-02)

Sec. 34-53. - Violations.

Any person who violates the provisions of this subchapter shall be guilty of an infraction, punishable by a fine of not more than:

- (1) First offense: up to \$250.00.
- (2) Second offense within two years: up to \$500.00.
- (3) Third offense within two years: up to \$1,000.00.
- (4) Fourth and subsequent offenses within two years: up to \$2,500.00.

(Ord. No. 02-34, § I, Exh. A, 11-11-02)

Sec. 34-54. - Penalty.

- (a) A separate offense shall be deemed committed upon each day during or on which the violation occurs or continues.
- (b) The payment of a penalty for the violation of any provision of this chapter shall not excuse the violation or permit it to continue. Nor shall such payment be held to prevent the enforced correction of the prohibited conditions by the court in which any complaint based on these sections shall be filed, or by separate action as provided for herein.
- (c) In addition to any penalties provided for herein the city shall have the right to enforce compliance with the code or to enjoin the acts in violation of the code by filing the necessary actions for injunctive relief. If injunctive relief is granted by any court, the city shall further be entitled to recover the costs of prosecuting the suit, which costs shall include attorney fees or other necessary expenses.
- (d) Violations of any of the sections of this section may be brought by the city or its authorized agent on a form complaint and summons.

(Ord. No. 02-34, § I, Exh. A, 11-11-02)

Secs. 34-55—34-60. - Reserved.

ARTICLE III. - TREES AND SHRUBS

Sec. 34-61. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Owner means the person whose name appears on the current tax duplicate in the office of the auditor of the county as the owner of such real estate.

(Ord. No. 96-30, § 1(8.06.010), 12-9-96)

Cross reference— Definitions generally, § 1-2.

Sec. 34-62. - Planting of trees and shrubs.

Within the city, no person shall plant trees or shrubs between the street and the sidewalk or property line, except under the following conditions:

- (1) No tree or shrub shall exceed a height of 18 feet at maturity; and
- (2) No shrub, exceeding a height of three feet, or tree shall be planted within 20 feet of any other

tree or shrub, or within 20 feet of an intersection.

(Ord. No. 96-30, § 1(8.05.020), 2-19-96)

Sec. 34-63. - Vegetation obstructing public rights-of-way.

No trees or other vegetation shall be permitted to grow with less than 14 feet of clearance over streets or less than eight feet over sidewalks.

(Ord. No. 96-30, § 1(8.05.030), 12-9-96)

Sec. 34-64. - Duty of property owners.

The owner or person in control of real estate adjacent to the area between the street and the sidewalks or right-of-way line on which any tree or shrub is planted shall be responsible for the maintenance and removal of the tree or shrub if such removal is necessary. If, after notice from the city, the owner or person in control fails to remove a dead tree or shrub or any dead or dangerous limbs or branches thereon, the city may remove the shrub or limbs and collect the costs thereof from the owner.

(Ord. No. 96-30, § 1(8.05.040), 12-9-96)

Sec. 34-65. - Obstruction of visibility.

If any tree or shrub shall, in the opinion of the city council, create a hazardous obstruction to vision which may endanger vehicular or pedestrian traffic, then the tree or shrub shall be appropriately trimmed or removed.

(Ord. No. 96-30, § 1(8.05.050), 12-9-96)

Sec. 34-66. - Damage to street or sidewalk.

If any tree or shrub shall cause damage to any street, curb or sidewalk, then the tree or shrub causing such damage shall be removed and the damage shall be repaired by the owner or person in control of the property on which such tree or shrub is located.

(Ord. No. 96-30, § 1(8.05.060), 12-9-96)

Sec. 34-67. - Access.

The city and public utilities retain their ownership and right of access to the areas between the street and right-of-way lines and retain the right to reasonably remove any tree or shrub impeding necessary work to be performed by the city, public utilities or other authorized users.

(Ord. No. 96-30, § 1(8.05.070), 12-9-96)

Sec. 34-68. - City and public utility not liable.

Neither the city, public utilities nor other authorized users of the city's property located between the street and the sidewalk or right-of-way line shall be liable for any damages done to trees or shrubs located upon city property as a result of the action of the city, public utilities or other authorized users in the performance of their duties.

(Ord. No. 96-30, § 1(8.05.080), 12-9-96)

Sec. 34-69. - Penalties.

Violations outlined in this article are punishable as class C infractions pursuant to IC 34-4-32-4, which allows for a judgment of up to \$500.00. The payment of a penalty for the violation of any provision of this article shall not excuse the violation or permit it to continue. A separate offense shall be deemed committed each day such violation occurs or continues.

(Ord. No. 96-30, § 1(8.05.090), 12-9-96)

Secs. 34-70—34-90. - Reserved.

ARTICLE IV. - WEEDS, RANK VEGETATION AND DEBRIS⁽³⁾

Footnotes:

--- (3) ---

Editor's note—Ord. No. 12-20, §§ 1—11, adopted July 9, 2012, repealed former Art. IV, §§ 34-91—34-100, in its entirety and enacted new provisions as herein set out. Former Art. IV pertained to similar subject matter and derived from Ord. No. 11-14, §§ 1—11, adopted July 11, 2011.

Sec. 34-91. - Definitions.

Debris shall include the remains of something broken-down or destroyed.

Rank vegetation shall include those weeds and growing vegetation which is excessively vigorous in growth, shockingly conspicuous, malodorous and/or flagrant. This definition shall also apply to any and all vegetation that inhibits a safe field of view along any public roadway.

Weeds shall include any plant that is not valued where it is growing, and is of rank growth, tends to overgrow or choke out more desirable plants and/or is listed as a weed in the U.S. Department of Agriculture publication entitled Common Weeds of the United States, or in any similar government publication.

(Ord. No. 12-20, § 2, 7-9-12)

Sec. 34-92. - Violation.

It is a violation of this article to have weeds, rank vegetation and/or debris on any real property ("property") located within the city's corporate limits.

(Ord. No. 12-20, § 3, 7-9-12)

Sec. 34-93. - Requirement to cut.

All owners of property located within the city shall cut and remove weeds and other rank vegetation growing thereon that exceeds a height of 12 inches, and shall keep their property clear of debris.

(Ord. No. 12-20, § 4, 7-9-12)

Sec. 34-94. - Violation notice.

In the event of a violation of this article, the director and/or his designee, or an officer of the police or fire department shall issue a written notice ("violation notice") to the violating landowner. The violation notice shall identify the violation and order the landowner to correct the same within ten calendar days from the date on which the violation notice is served on the landowner ("abatement period"). Posting notice conspicuously on the property in violation, personal service, service by U.S. certified mail, regular mail or any other manner service recognized in the Indiana Rules of Trial Procedure shall constitute proper service upon the landowner for purposes of this article.

(Ord. No. 12-20, § 5, 7-9-12)

Sec. 34-95. - Appeal.

Any violation notice issued pursuant to this article may be appealed to the board of public works and safety ("board") if written notice of appeal is served by the landowner on the city within the time period contained in the violation notice. The timely appeal of a violation notice shall toll the abatement period pending the issuance of a decision thereon by the board. Service of this notice shall be to the community development department.

(Ord. No. 12-20, § 6, 7-9-12)

Sec. 34-96. - City to abate.

If the landowner fails to timely abate each violation set forth in a violation notice, the landowner shall be deemed to have granted permission to the city to enter the landowner's property for the limited purpose of inspecting, cutting and/or removing such debris, weeds or rank vegetation located thereon and identified in the violation notice. In such case, the director, or his designee, shall prepare a certified statement as to the actual administrative and other costs incurred by the city in taking such action, and serve a copy of the invoice on the landowner. The landowner shall, within seven calendar days from the date on which the landowner is served with such invoice ("payment period"), pay in full the amount stated thereon to the department of community development ("department").

(Ord. No. 12-20, § 7, 7-9-12)

Sec. 34-97. - Appeal of costs.

Any invoice issued pursuant to this article may be appealed to the board of public works and safety if written notice of appeal is served on the director within seven calendar days from the date on which the invoice is served on the landowner. The timely appeal of an invoice shall toll the payment period pending the issuance of a decision thereon by the board.

(Ord. No. 12-20, § 8, 7-9-12)

Sec. 34-98. - Failure to pay.

If the landowner fails to timely pay an invoice issued pursuant to this article, the director, or his designee, shall certify to the county auditor the amount of the invoice, plus any additional administrative costs incurred in the certification of the same. The auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the city.

(Ord. No. 12-20, § 9, 7-9-12)

Sec. 34-99. - Time of appeals.

The board shall hear any timely requested appeal of a notice of violation or invoice within 30 calendar days following receipt of the same, and shall thereafter promptly issue a written decision granting or denying, in whole or in part, the appeal. The date on which the board's decision is served on the landowner shall thereafter become the first calendar day of the abatement period or payment period, as applicable.

(Ord. No. 12-20, § 10, 7-9-12)

Sec. 34-100. - Penalty.

Any person who violates any provision of this article shall be subject to the general penalties set forth in § 1-6 of the Code. Each day that a violation continues shall constitute a separate offense.

(Ord. No. 12-20, § 11, 7-9-12)

Secs. 34-101—34-110. - Reserved.

ARTICLE V. - EROSION AND SEDIMENT CONTROL⁽¹⁾

Footnotes:

... (1) ...

Editor's note—Ord. No. 06-52, §§ 1—8, adopted Nov. 13, 2006, amended Art. V in its entirety to read as herein set out. Former Art. V, §§ 34-111—34-118, pertained to similar subject matter, and derived from Ord. No. 06-16, §§ 1—8, adopted April 10, 2006.

Sec. 34-111. - Purpose and intent.

The primary purpose of this article is to ensure perimeter sediment and erosion control, with best management practices (BMP's) being utilized to prevent and minimize sediment and erosion discharge from leaving the construction site. The intent of this article is to prevent non-storm water discharges, erosion and minimize sediment from leaving the site. Failure to do so can result in damage to adjacent property, damage to the MS4's storm sewer system, and contribute to the polluting of streams, lakes and rivers.

The City of Westfield Improvement Location Permit Application ("ILP"), generally known as a building permit, permittee (the "permittee") is responsible for ensuring that adequate BMP's are in place and functioning until the construction project obtains a certificate of occupancy ("C of O") from the city building department. The property owner, after the C of O is issued, is responsible to maintain the erosion control measures until adequate ground cover (70% mature growth) is established and the property is required to have established adequate ground cover within two years from the issuance of the C of O.

Compliance with this article shall be the responsibility of the party listed on the ILP filed with the city.

(Ord. No. 06-52, § 1, 11-13-06)

Sec. 34-112. - Best Management Practices (BMP's) for construction lots.

Examples of BMP's include but are not limited to: Sediment fence, straw mat, seed, mulch, coconut and fiber rolls, or other types approved by the Westfield Public Works Department ("WPWD"). The sequence of installation shall be:

- (1) *Grading/excavating.* Install all BMP's prior to any grading or excavating activities, where practical.
- (2) *Inlet protection.* Ensure that the BMP's are in place and functioning for both yard inlets and curb inlets around the perimeter of the lot.
- (3) *Protection of adjacent lots.* Install BMP's along the common lot line of adjacent lots.
- (4) *Stabilize stockpiles.* Install BMP's to stabilize stockpiles to prevent erosion and sediment from entering the street.
- (5) *Installation of BMP's.* Follow manufacturer's recommendations and requirements for the

Installation of all BMP's.

- (6) *Temporary construction entrance.* A temporary stone access drive is required for all lots and shall be utilized for access onto the lot.
- (7) *Maintenance.* The builder is responsible for maintaining and repairing all BMP's as needed throughout construction.
- (8) *Final grading.* BMP's may be removed in order to complete final grading on the lot. However, BMP's will be required to be reinstalled until seed germination establishes 70 percent mature growth. On lots where sod is installed erosion control measures are not required to be installed, unless requested by the WPWD. For lots where sod installation is delayed, the contractor will be required to maintain BMP's until the sod can be installed effectively.
- (9) *Concrete wash out.* Required onsite or within development.

(Ord. No. 06-52, § 2, 11-13-06)

Sec. 34-113. - Responsibilities of permittee.

- (a) The permittee is responsible for ensuring that a BMP's measures remain in place during the construction process and that the installation and continuous maintenance of all lot erosion and sediment control devices are monitored.
- (b) Periodic inspection will be necessary to ensure that erosion and sediment control measures are functioning as designed and installed per the manufacturer's specifications. In addition, to standard periodic inspections, this article requires that the permittee conduct inspections after each rain event of one-half-inch or more in a 24-hour period. Any problems noted during these inspections shall be corrected immediately.
- (c) Once the permittee has started construction, the permittee is responsible for the maintenance of erosion and sediment control measures protecting yard inlets on and/or adjacent to their lots, as well as curb inlets along the street frontage. Sediment must not be allowed to enter the storm sewer system and allowing such is a violation of this article.
- (d) A temporary construction entrance provides a place for parking vehicles off of the street and a spot where material can be off loaded. This requirement is to provide a stable surface for parking vehicles where mud and other debris will not to be tracked onto the street. Proper maintenance of the area is required until such time as a permanent driveway is installed.
- (e) During the entire construction process the permittee is responsible to ensure that mud, dirt, rocks, and other debris are not allowed to erode onto streets and sidewalks, nor tracked onto the streets by construction vehicles. At no time shall any mud or other debris be deposited onto the street.
- (f) Failure to keep streets clear of mud sediment, and debris will result in an enforcement action by the WPWD under the authority of the City of Westfield's Stormwater Management Ordinance (05-30). The permittee will be responsible for incurring all costs associated with cleaning the streets.

(Ord. No. 06-52, § 3, 11-13-06)

Sec. 34-114. - Administration and application.

- (a) The WPWD will administer, implement, and enforce the provisions of this article.
- (b) This article shall apply to all construction activity, (direct or indirect stormwater discharges, and illicit discharges) entering within the storm drainage system, MS4, or receiving waters under the jurisdiction of the city.

- (c) Any permittee subject to an NPDES stormwater discharge permit shall comply with all provisions of such permit. If provisions of this ordinance are more restrictive than the NPDES stormwater discharge permit, proof of compliance with said permit and this article may be required in a form acceptable to the WPWD prior to allowing discharges to the MS4.
- (d) The provisions of this article shall be deemed as additional requirements to minimum standards required by other provisions of the City of Westfield Code, and as supplemental requirements to Indiana's Rule 5 regarding stormwater discharge associated with construction activity and Indiana's Rule 13 regarding stormwater runoff associated with MS4 conveyances. In case of conflicting requirements, the most restrictive shall apply. Unless otherwise stated, the most recent versions or editions of said codes, ordinances, laws, and statutes shall apply.
- (e) The city, by and through its council, has the authority to modify, grant exemptions, and/or waive any and all the requirements of this article. A meeting with the WPWD may be requested by an permittee to discuss the applicability of various provisions of the article with regard to unique or unusual circumstances. However, any initial determination of such applicability shall not be binding on future determinations of the WPWD.
- (f) The City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual, and amendments thereto, are hereby incorporated herein by reference, with copies of the same being maintained in the WPWD for public inspection during regular business hours.
- (g) Technical words and technical phrases that are not defined in this Ordinance, but which have acquired particular meanings in law or in technical usage shall be construed according to such meanings and as defined in 327 IAC 15-13 and 327 IAC 15-5 of the Indiana Code and other provisions of the City of Westfield Code.
- (h) The city shall be permitted to enter and inspect any premise subject to regulation under this article. It shall be unlawful for the permittee of any premise to refuse to allow the WPWD to enter upon the premise for the purposes set forth in this article.

(Ord. No. 06-52, § 4, 11-13-06)

Sec. 34-115. - Enforcement.

(a) *Notice of violation and stop work order.*

- (1) In the event a permittee has violated the terms of this article, the city may order compliance by written notice of violation to the permittee. Such notice may require:
 - a. Issuance of a pending stop work order or issuance of a stop work order.
 - b. The restoration or installation of new BMP measures;
 - c. Payment of a fine; and/or
 - d. Revocation or suspension of the erosion control inspection permit.
- (2) The city may, without prior notice of stop work order or violation, suspend storm drainage system or MS4 access to a permittee when storm water discharges present or may present imminent and substantial danger.
- (3) The notice of a stop work order due to a violation will:
 - a. Be in writing;
 - b. Include a description of the property for identification;
 - c. Include a statement of the violation(s) and section violated and why the notice or order is being issued;

- d. Failure to comply with the conditions set forth in this article will result in an initial verbal warning. If the violation is not corrected within one day from the verbal warning, a pending stop work order will be issued and a penalty of \$50.00 will be assessed for a re-inspection. After the third day from the initial verbal warning, a stop work order will be issued and an additional penalty of \$50.00 will be assessed for a re-inspection to ensure that the repairs and improvements required to the property are in compliance with the provisions of this article.
- (4) Reinspection of remedied violations will be assessed a re-inspection fee in accordance with the fee schedule in this article.
- (5) If the permittee fails to comply with a stop work order, then the WPWD will take steps as deemed necessary to prevent or minimize damage or remediate a violation. All reasonable costs associated with the abatement or restoration shall be assessed against the owner of the property and may be filed as a lien against the property in the amount of the assessment. It shall be unlawful for any permittee, owner, agent or person in possession of any premise to refuse to allow the WPWD or its designee to enter upon the premise for the purposes set forth above.
- (6) In the event of a stop work order, the city shall not reinstate the erosion control inspection permit or MS4 access to the permittee until the permittee presents proof, satisfactory to the city, that the corrections have been made. Permittee violates this article if the permittee reinstates MS4 access to the premises terminated pursuant to this section, without the prior approval of the city.
- (7) In addition to the penalties listed above, if construction activities are conducted contrary to the provisions of this article, the city may order the work stopped by notice in writing, in the form of a stop work order, served on any permittee engaged in the doing or causing of such work to be done; and any such permittee shall forth with stop such work until authorized by the WPWD to proceed with the work.
- (b) *Appeal of notice of violation.*
 - (1) Any permittee receiving a notice of violation may appeal the determination of violation to the council, for rescission of the notice or order, or for a modification, variance, or extension of time for compliance on one or more of the following bases: (i) a stop work order served in accordance with this article is in error, or (ii) should, due to hardship, be modified or entitled to a variance from enforcement, or (iii) that a reasonable extension of time for the compliance should be granted upon the grounds of a demonstrated case of hardship and evidence of an actual undertaking to correct the violation, together with a legitimate intent to comply within a reasonable time period.
 - (2) A request for rescission, modification, variance, or extension of time shall be made in writing, within ten days of the permittee's receipt of a copy of the notice or order, to the City of Westfield clerk-treasurer's office, to be placed on the council agenda. The council shall schedule a hearing within 30 days of receipt of the request.
 - (3) All hearings before the council shall be open to the public. The permittee, the permittee's representative, and any persons whose interests are affected shall be given an opportunity to be heard.
 - (4)

At the conclusion of the hearing the council may reverse, affirm, or modify the order, notice, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as justice would require. The council's determination and findings of fact shall be recorded and if a notice or order is affirmed or modified, the Council shall, in the determination on appeal, re-establish a reasonable timeline to make the repairs and improvements required to bring the violation into compliance with the provisions of this article.

- (c) *Transfer of ownership.* No owner of any premise upon whom a stop work order has been served shall sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the notice of violation have been complied with, or until such owner first furnishes the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the city and furnishes to the city a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice of violation and fully accepting the responsibility without condition for making corrections or repairs required by such notice of violation.
- (d) *Penalties for violations.* Any person found in violation of any provisions of this article shall be responsible for a civil infraction and subject to a maximum fine of \$200.00 for the first offense, \$1,000.00 for the second offense, and a maximum of \$7,500.00 for a subsequent offense, plus cost, damages, and expenses. Each day such violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day. The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law. An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this article.

Any person who aids or abets a person in violation of this article shall be subject to the penalties provided in this section.

For purposes of this section, "subsequent offense" means a violation of the provisions of this article committed by the same person within 12 months of a previous violation of the same provision of this article for which said person admitted responsibility or was adjudicated to be responsible.

(Ord. No. 06-52, § 5, 11-13-06)

Sec. 34-116. - WPWD erosion control inspections.

- (a) The WPWD erosion control inspector will inspect erosion and sediment control measures in conjunction with routine inspections. Inspections will ensure that proper placement and installation of erosion and sediment control measures are in place.
- (b) The first inspection will occur at the time prior to the pushing of the pad and foundation installation. standard items to be checked are: protection of adjacent lots, protection of inlets, grading/excavating, and that stockpiles are stabilized. If BMP's are not installed in the correct location and/or not installed correctly, the inspection may be denied, a stop work order required or fees may be applied.
- (c) It is anticipated that by the time the foundation inspection is requested, backfilling of the foundation will have been complete and all erosion and sediment control measures will have been installed. If the permittee fails to install the proper erosion and sediment control measure, this may result in the inspection being denied, a stop work order required or fees may be applied.

- (d) For unique situations the erosion control inspector will be available to discuss erosion and sediment control measures for any lot and the sequencing for installation of BMP's.

(Ord. No. 06-52, § 6, 11-13-06)

Sec. 34-117. - WPWD erosion control inspection fees.

Fees for erosion control inspections shall be:

- (1) Residential lots two acres or less \$100.00 each.
- (2) Residential lots greater than two acres will be assessed at \$100.00 per one-quarter-acre or portion thereof.
- (3) Industrial, commercial, and retail outlets will be assessed at \$100.00 per one-quarter-acre or portion thereof.
- (4) Additional re-inspections for denied and/or stop work orders or fines will be assessed at \$50.00 per re-inspection.

(Ord. No. 06-52, § 7, 11-13-06)

Sec. 34-118. - Forms.

The applicable permit forms are attached to [Ordinance No. 06-52] as Exhibit A.

(Ord. No. 06-52, § 8, 11-13-06)

Secs. 34-119--34-140. - Reserved.

ARTICLE VI. - PUBLIC TREES⁽⁵⁾

Footnotes:

... (5) ...

Editor's note—The city parks departments maintains master lists for trees and shrubs suitable for different locations and conditions. These lists were attached to Ord. No. 12-38, adopted Dec. 10, 2012.

Sec. 34-141. - Intent.

The city finds that trees are an important asset to the natural ecosystem, beneficially contribute to the character of the community, and positively influence the quality of life within the community. The purpose of this section is to provide minimum standards for street and park trees throughout the city. Trees are viewed as a critical element to promote the desired image of the community, enhance the visual appearance and land values, and protect the health, safety and welfare of the public. The street and park tree elements of the section are intended to:

- (1) Provide for the protection, preservation, replacement, and proper maintenance of trees within and overhanging public property including rights-of-way;
- (2) Protect the integrity of streetscapes and park property;
- (3) Provide a tree planting maintenance program;
- (4) Provide the minimum regulation necessary to ensure that trees within and overhanging public property, including rights-of-way, are preserved wherever possible.

(Ord. No. 07-27, Exh. A, § A, 12-10-07)

Sec. 34-142. - Prohibitions.

It shall be a violation of this code for any person other than the City of Westfield or its designee, or a private utility or their designee, to:

- (1) Tie, tack, nail, wire or otherwise attach any sign, poster, handbill, or other object to any street tree, park tree, or other woody vegetation on public property;
- (2) Prune, spray, treat, top, or remove park trees, except when overhanging private property;
- (3) Prevent, delay, or interfere with the city or its designee engaged in the planting, cultivating, mulching, pruning, spraying, treating, removal, or otherwise maintain woody vegetation on public property.

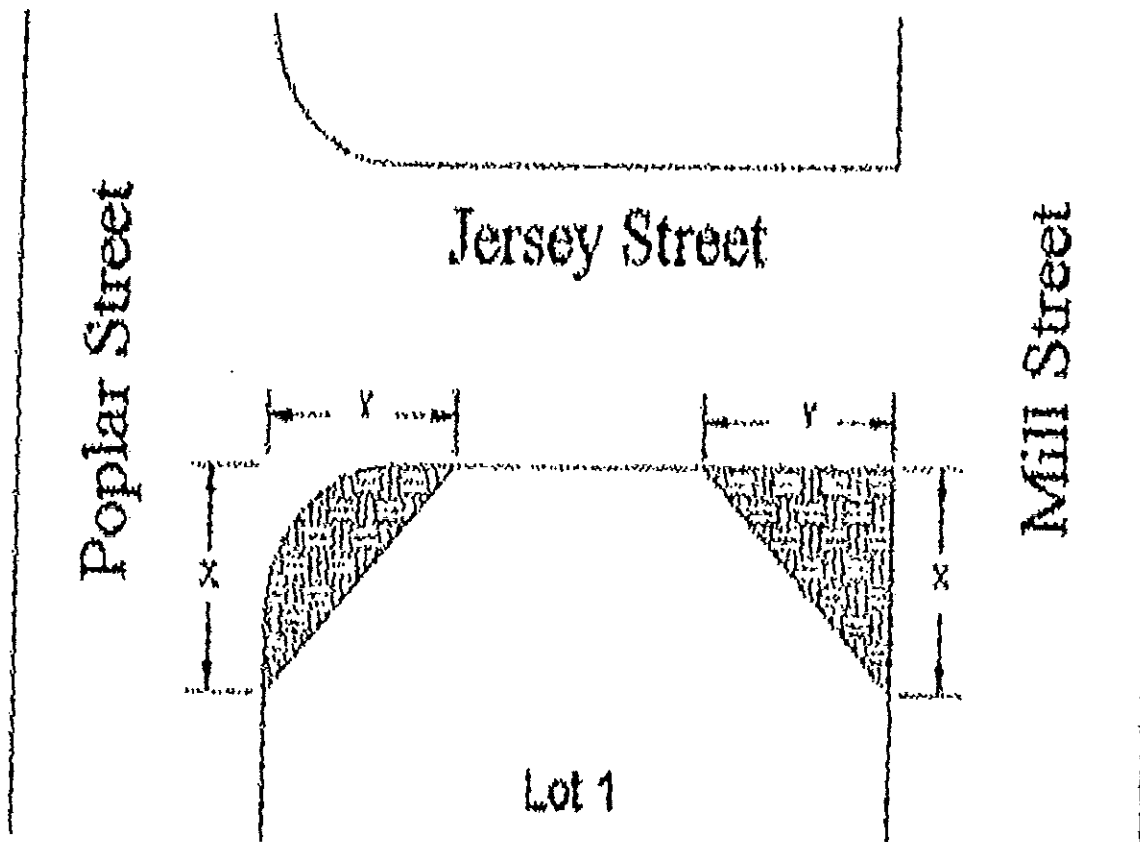
(Ord. No. 07-27, Exh. A, § B, 12-10-07)

Sec. 34-143. - Definitions.

Abutting property owner. Adjacent or bordering holder or proprietor of land.

Caliper. A standard trunk diameter measurement for trees. Caliper measurements are taken six inches above the finished grade for trees with a diameter of four inches or less and 12 inches above the finished grade for larger sizes.

Clear vision triangle. A triangular area located at the intersection of two streets, two sides of which are measured from their corner intersection for a distance specified within the ordinance. The third side of the triangle is a line across the corner of the lot joining the end of the other two sides. Where the lot lines at intersection have rounded corners, the lot lines will be extended in a straight line to a point of intersection. See diagram below.



Deciduous tree. A tree that sheds its foliage at the end of the growing season.

Evergreen tree. A tree that has foliage that persists and remains green throughout the year.

Large tree(s). Mature tree height over 40 feet.

Medium tree(s). Mature tree height 20 to 40 feet.

Ornamental tree. A deciduous tree that is typically grown because of its shape, flowering characteristics or other attractive features and typically grows to a mature height of 20 feet or less.

Park tree(s). A tree located within a City of Westfield park.

Public tree(s). A tree located in the public right-of-way, within a City of Westfield park, or on City of Westfield property.

Small tree(s). Mature tree height under 20 feet.

Street tree(s). A tree located in the public right-of-way strip adjacent to a road, street, drive, court, or alley.

Tree. A woody plant which at maturity is 13 feet or more in height with an erect perennial trunk and having a definite crown of foliage.

Tree lawn. That part of a street or highway, not covered by sidewalk or other paving, lying within the public street right-of-way.

(Ord. No. 07-27, Exh. A, § C, 12-10-07)

Sec. 34-144. - Tree standards.

(a) *General.*

- (1) All trees shall be hardy to the region, be free of disease and insects at time of planting and conform to the American Standard for Nursery Stock of the American Association of Nurserymen.
- (2) Tree stakes, guy wires and tree wrap will be installed at time of planting and removed after one year.

(b) *Species.*

- (1) The city's parks and recreation department shall establish, update, and maintain a listing of appropriate street and park trees for planting within public property.
- (2) A copy of the list shall be available in the city's parks and recreation department offices during regular business hours.

(c) *Caliper.*

- (1) Deciduous trees shall measure at minimum two caliper inches 12 inches above grade.
- (2) Evergreen trees shall measure at minimum six feet from grade.
- (3) Ornamental trees shall measure at minimum two caliper inches six inches above finished grade.

(Ord. No. 07-27, Exh. A, § D, 12-10-07)

Sec. 34-145. - Tree maintenance.

- (a) The city, or its designee, shall plant, prune, maintain and if necessary, remove, all street and park trees, as well as other woody vegetation, within or overhanging public property, including rights-of-way, as determined to be reasonably appropriate to enhance public safety with consideration given to symmetry and beauty of public grounds.
- (b) Trees that were planted, and approved, as part of an overall development plan, are the responsibility of the property management group, homeowners association, or adjoining property owner to the right of way.
- (c) Property owners abutting public rights-of-way who have trees encroaching on right-of-way shall be required to remove tree branches that hang above any sidewalk or street to a distance of eight feet above the surface of a sidewalk or a distance of 12 feet above a street.
- (d) The city reserves the right to remove any and all trees from public property or rights-of-way when it becomes necessary and expedient to remove in order to carry out any plan of street sidewalk, curb improvement, street improvement, or other infrastructure project adopted by the City.
- (e) Trees located in a public right-of-way may be removed by the City of Westfield, or its designee, based on any one of the following criteria. Trees not meeting these criteria may be removed at the abutting property owner's expense.
 - (1) Tree(s) is dead or dying
 - (2) Tree(s) is deemed hazardous for which the condition can not be resolved or corrected through pruning or other reasonable arboricultural practices.
 - (3) When tree(s) are not deemed dead, dying or hazardous, the following factors will be considered:
 - a. Life expectancy of the tree;
 - b. Desirability of the tree species;
 - c. Amount of space for growth;
 - d. Overall quality and structural integrity of the tree;
 - e. Persistent and uncontrollable insect, disease, or fruiting problems;
 - f. Frequency and extensiveness of maintenance requirements;
 - g. Feasibility and timeliness in which a replacement may be planted;
 - h. Proximity and quality of trees near to tree marked for removal;
 - i. Wishes and desires of the abutting property owner;
 - j. Quality and extend of past pruning and other tree maintenance practices;
 - k. Extent and frequency of damage being caused to surrounding infrastructure such as, but not limited to, sidewalks, streets, and sewers;
 - l. Location with regard to street lights, traffic control devices, clear vision triangle, and growing space requirements.

(Ord. No. 07-27, Exh. A, § E, 12-10-07)

Sec. 34-146. - General requirements.

Except as specifically authorized by the city parks and recreation department and the city public works department the spacing of trees shall be in accordance with the following sizes and no tree may be planted (as measured from the center of the tree):

- (1) Closer than the following:
 - a. Small trees, 25 feet;
 - b. Medium trees, 35 feet;
 - c. Large trees, 45 feet.
- (2) Closer to any curb, curb line, or sidewalk than the following:
 - a. Small trees, two feet;
 - b. Medium trees, three feet;
 - c. Large trees, four feet.
- (3) Within clear vision triangle of 40 feet on collectors, local roads and streets, and 75 feet for primary arterials and secondary arterials, measured from the point of the nearest intersection curbs or curb lines.
- (4) Within ten feet of any fire hydrant.

(Ord. No. 07-27, Exh. A, § F, 12-10-07)

Sec. 34-147. - Permitting.

- (a) Individual property owners desiring to plant a tree(s) in the public right-of-way strip abutting the owner's property shall obtain a permit from the city parks and recreation department. Application shall include:
 - (1) Site plan showing:
 - a. Location of existing and proposed plantings;
 - b. Identification of each species of tree at each existing and proposed location;
 - c. Identification and location of other structures within public rights-of-way (including but not limited to: regulatory signs, hydrants, manholes, or storm drains).
 - (2) Plant schedule listing the type and number of trees to be planted;
 - (3) Proof of ownership of abutting property;
 - (4) Watering plan.
 - (b) Permit shall be wired to the tree with a City of Westfield issued tag for a period of six months.
- (Ord. No. 07-27, Exh. A, §§ G, H, 12-10-07)

Sec. 34-148. - Violations.

- (a) *Notification.* Whenever a tree is found not to be in compliance with tree maintenance, section 34-145, the city code enforcement officer shall give the abutting property owner written notice to trim such trees within seven days of receipt of notice.
- (b) *Failure to comply.* On failure of the owner to cause said violations to be brought into compliance, the city or designee shall trim the trees in accordance with applicable standards.
- (c) *Cost of corrective actions.* The cost of causing the violations to be brought into compliance shall be charged to the abutting property owner, and shall be payable within 30 days of the completion of the corrective actions.
- (d) *Recovery of costs.* If within 30 days of billing the abutting property owner fails to pay charges, the city shall file suit to collect the amount due for the work completed.
- (e) *Continued violation.* Payment of the penalty for any violation of any provision of this chapter shall not excuse the violation or permit it to continue, nor shall payment be withheld to prevent enforcement correction of the prohibited conditions.

(Ord. No. 07-27, Exh. A, § I, 12-10-07)

Sec. 34-149. - Appeals process.

Should a property owner be denied a permit or found to be in violation of this ordinance section, they may appeal to the city board of public works. Application may be submitted to the city public works department.

(Ord. No. 07-27, Exh. A, § J, 12-10-07)