

BZA STAFF REPORT #1

PLANNING & BUILDING DEPARTMENT

Town of Avon, Indiana
6570 East U.S. Highway 36
Avon, IN 46123

Case Number: VAR 10-03
Case Name: Avon Vet Hospital
Report Date: May 20, 2010

GENERAL INFORMATION

- A. Applicant: D and R Futures Real Estate LLC
7253 E. US 36
Avon In, 46123
- B. Owners Same
- C. Requested Action: Variance of development standards to provide for reduced front yard parking lot landscaped area and setback, to legally establish a reduced side yard building setback, to legally establish a reduced side yard parking lot setback, and to permit a lot size less than the minimum requirement of the US 36 Overlay District.
- D. Applicable Regulations: Section 15-3, minimum 20' parking setback from US 36;
Section 15-3, minimum 5' parking setback from side lot line;
Section 10, Table 10-3, minimum 10' side yard for structures;
Section 23-8, US 35 Overlay one acre minimum lot size.
- E. Exhibits: 1. Staff Report, 05/20/10
2. Location Map, 05/20/10
3. Applicant's Site Plan, 04/10/10
- F. Staff Reviewer: Al Salzman

SITE INFORMATION

- A. Location: 7253 East US 36 East County Road 150
- B. Lot Size: +/- 0.88 acres
- C. Existing Land Use: Veterinary Hospital
- D. Existing Zoning: C-2 General Commercial

E. Surrounding Properties

	<u>Zoning</u>	<u>Land Use</u>
North	C-2	Commercial
South	C-2	Educational
East	C-2	Commercial
West	C-2	Educational

F. Related Petitions:

DPR 10-02	Development Plan Review of proposed expansion (<i>pending</i>)
MIP 10-01	Minor Plat to consolidate multiple parcels (<i>pending</i>)

PETITION HISTORY

The May 20, 2010 hearing represents the first public hearing for this petition.

This petition was submitted to the Planning and Building Department on April 10, 2010.

PROCEDURAL

- Notification of the May 20, 2010 public hearing was provided to abutting property owners in accordance the Rules of Procedure on or before May 10, 2010.
- Notice of the May 20, 2010 public hearing was published in the Hendricks County Flyer newspaper in accordance with the Rules of Procedure.
- Variance of Development Standards requires a public hearing.
- The Board of Zoning Appeals may approve, conditionally approve, continue, or deny the requested variance. Any conditions should be determined through agreement of the BZA and the petitioner. Any continuance should also be determined through agreement of the BZA and the petitioner.
- A written Findings of Fact accompanies the petition.

SUMMARY

The request would allow for the partial redevelopment of the subject site with a reduced front yard parking lot landscaped area and setback, and allow for the development of a lot that does not meet the minimum area requirement of the US 36 Overlay District. The request would also legally establish a reduced side yard building setback and legally establish a reduced side yard parking lot setback, which would be necessary prior to any expansion or intensification of the legally non-conforming characteristics.

Staff recommends approval of VAR 10-03 because the findings of fact have been satisfied as discussed below.

ANALYSIS

The subject site is comprised of multiple parcels and consists of approximately 0.88 acres. The subject site is improved with the Avon Veterinary Hospital facility. The site is also improved with paved surface parking, a ground sign, and a grass-covered area for pet exercise. The subject site abuts the public right-of-way to US 36 to the north, and is accessed via two curb cuts from the south right-of-way line of the Highway.

A related petition submitted for the subject site would provide for the expansion of the existing structure by approximately 3,300 square feet. This proposed expansion would require the provision of additional parking to accommodate the additional building square footage, which would necessitate modification to the existing paved parking area. The existing side yard setbacks for both the structure and the parking area fail to meet the current standards of the Avon Zoning Ordinance, but are considered pre-existing non-conforming conditions as they pre-date the incorporation of the Town in 1996 and are unmodified since that time.

The related petition does not propose any reduction of the existing non-conforming characteristic (the side yard setback for both the structure and the parking area), but as the structure and parking area would undergo expansion and intensification they must both be legally established before such modification can occur. As the modifications would not increase the non-conformity itself, and as requiring the relocation of the structure or further reconfiguration of the parking area would result in practical difficulty in the use of the subject site, the requested variances to reduce the building and parking area side yard setbacks should be approved.

The site plan submitted in support of this request depicts the access point of the subject site as being relocated from the current, central location to a location near the east property line of the subject site. This relocation would provide the opportunity for the subject site to develop with the appropriate number of required parking spaces, as well as provide parking spaces of a compliant area and access aisles of a compliant width. However, the provision of the required spaces with appropriately-sized aisles and areas would result in the reduction of the required front yard parking lot setback along the right-of-way of US 36. Evaluation of the site and attempts to generate an alternative parking configuration that would not require the proposed reduction in setback were unsuccessful; alternative designs would have resulted in requests for reductions of other development standards. As development of the subject site with compliant parking facilities could not be accomplished without relief from some element of the development standards, the requested reduction in front yard parking lot setback should be considered a response to a practical difficulty and should be approved.

Another related petition would provide for the combination of two existing lots into a single parcel to facilitate the improvements to the subject site. Both parcels in question pre-date the incorporation of Avon as a Town in 1996, as well as the adoption of minimum lot area of one acre contained in the US 36 Overlay District in 2007. Neither of the existing parcels meets the one acre standard by itself, and while the combination of the two parcels does not create a compliant lot it does represent a reduction in the extent of the nonconformity. Given the size of the lots pre-dating the application of the Town's Zoning Ordinance at the time of incorporation and the recent adoption of the increased lot minimum, requiring the site to meet the one acre minimum lot size would impose a practical difficulty upon the subject site. For this reason, the requested variance should be approved.

GENERAL CONSIDERATIONS

Physical features of a site that pre-date the application of a zoning district are considered protected, and allowed to remain without need for formal relief from the terms of the Zoning Ordinance until expanded or intensified. Should a modification to a site expand, intensify, or otherwise modify the non-conforming aspects of a site, it is then necessary to seek formal relief from the terms of the Ordinance.

Many Boards of Zoning Appeals make it a common practice to tie the approval of a Variance of Development Standards to a submitted site plan. This practice ensures development of the site in a

manner consistent with the information presented at the public hearing, and establishes a clear expectation as to the end result once development of the site has occurred. However, in this instance, compliance with the submitted site plan cannot be assured until a separate public board (the Avon Plan Commission) has heard and approved a related petition – a petition which is discretionary in nature, and is not guaranteed to be approved. For this reason, placing any condition of approval on this request requiring compliance with the submitted site plan should be avoided, as the final layout of the site plan could be subject to modification during the actions of the other board.

FINDINGS OF FACT

The Board of Zoning Appeals shall approve, conditionally approve or deny variances of use from the Avon Zoning Ordinance. A variance may be approved under IC 36-7-4-918.5 only upon a determination in writing that:

Finding #1 The approval will not be injurious to the public health, safety, morals and general welfare of the community.

Staff Finding: The requested approval would not be likely to be injurious. The non-conforming aspects of the site have existed for many years without harmful impact on abutting properties, and the requested reductions of standards result from factors outside of the control of the property owner.

Finding #2: The use and value of the area adjacent to the property would not be affected in a substantially adverse manner.

Staff Response: The requested variances would facilitate the expansion and improvement of the existing facility, which would not be likely to have a substantial adverse effect on the use and value of the adjacent area.

Finding #3: The strict application of the terms of the zoning ordinance will result in a practical difficulty in the use of the property.

Staff Response: The strict application of the terms of the zoning ordinance would result in limiting the ability of the subject site to be redeveloped and improved, and would impose practical difficulty in the use of the property.

RECOMMENDATION

The Town of Avon Staff makes the following recommendation:

Staff recommends that **VAR 10-03, Avon Veterinary Hospital, be approved**, subject to the staff Findings of Fact.

Submitted By:

Al Salzman, AICP

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Director, Avon Planning & Building