



Board of Zoning Appeals Division II (December 13, 2022) Meeting Agenda

Meeting Details

Notice is hereby given that the Metropolitan Board of Zoning Appeals will hold public hearings on:

Date: Tuesday, December 13, 2022 **Time:** 1:00 PM

Location: Public Assembly Room, 2nd Floor, City-County Building, 200 E. Washington Street

Business:

Adoption of Meeting Minutes

Special Requests

PETITIONS REQUESTING TO BE CONTINUED:

1. 2022-DV2-045 | 1251 South Alabama Street | Center Township, CD #16, Zoned D-5

David M Rollings, by Mark & Kim Crouch

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to legalize the existing ten-inch front, rear and northern side yard setbacks (front setback of zero-ten feet required for Terrace Frontages, 20-foot rear yard, five-foot side yard setback required) with no off-street parking provided (one space required); and to provide for a roofline change along a non-conforming setback and vertical expansion (not permitted), all within the clear sight triangle of Alabama and the intersecting alley (encroachment of clear sight triangles not permitted).

2. 2022-DV2-046 | 14 East Caven Street | Center Township, CD #16, Zoned D-5

Shelby Holdings LLC, by Mark & Kim Crouch

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a multi-unit house on a 30-foot wide, 3,000-square foot lot (minimum 35-foot wide, 3,500-square foot lot required), encroaching into the clear sight triangles of Caven Street and the intersecting alley, and the intersecting alleys along the rear and western lot lines (encroachment of clear sight triangles not permitted).

3. 2022-UV2-010 | 2400 Roosevelt Avenue | Center Township, CD #17, Zoned I-3 (WITHDRAWN)

Reagan Outdoor Advertising, by Michelle Noppenberger

Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 70-foot tall (maximum 40-foot tall permitted), 14-foot by 48-foot digital off-premise advertising sign (digital off-premise sign not permitted), with an eight-foot setback from Interstate 70 (60-foot setback required), within Interstate 465 (not permitted), within 100 feet of a protected district (300-foot separation required), adjacent to an exit roadway (not permitted) and to allow for digital messages to display for minimum of eight seconds (minimum of ten second display permitted).

4. 2022-UV2-027 | 3445 Washington Boulevard | Center Township, CD #9, Zoned D-3

Caitlin M Hannon & Chuck W Brewer, by David Kingen & Emily Duncan

Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for a mixed-use development (not permitted), including:

- a) A 3,580-square foot dwelling unit on the first and second floor; and
- b) 6,410 square feet of office and warehouse space on the first floor; and
- c) 1,810 square feet of workspace for: a single contractor operating a live-workspace within the basement; or a three-employee office; or a single dwelling unit.; and
- d) A four-foot by six-foot non-illuminated ground sign (not permitted).

Petitions for Public Hearing

PETITIONS TO BE EXPEDITED:

5. 2022-DV2-044 | 305 North Beville Avenue | Center Township, CD #17, Zoned D-8

Indianapolis Neighborhood Housing Partnership, by Jeff Hasser

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a single-family dwelling with a rear patio maintaining a seven-foot rear setback (15-foot rear setback required).

PETITIONS FOR PUBLIC HEARING (Transferred Petitions):

6. 2022-UV3-025 (Amended) | 3335 North Sherman Drive | Center Township, CD #17, Zoned D-5

Shantae Flemons, by David Kingen & Emily Duncan

Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a childcare facility (not permitted).

PETITIONS FOR PUBLIC HEARING (Continued Petitions):

7. 2022-DV2-042 | 21 North Chester Avenue | Center Township, CD #25, Zoned D-5 (TOD)

Jose L. Tellez Vargas, by Sarah Walters

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building renovation and roof line alteration resulting in a third story with a three-foot seven-inch northern side yard setback (maximum 2.5 stories permitted, five-foot side setback required).

8. 2022-DV2-043 | 220 West 81st Street | Washington Township, CD #2, Zoned D-S

Mark O & Shelley R Blakely, by Clete Kuncle

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to legally establish a 0.8-acre lot with a lot width of 140 feet, along an unimproved right-of-way (minimum one-acre required, 150-foot frontage upon an improved street required) and provide for:

- a) the construction of a building addition to an existing dwelling, resulting in a roof overhang with an 8.5-foot rear yard setback (25-foot rear yard setbacks required);
- b) the extension of an existing wall with a 4.8-foot rear yard setback; and
- c) The construction of a detached shed with a 17.75-foot rear yard setback
- d) Resulting in an open space of 81% (minimum open space of 85% required).

9. 2022-UV2-009 | 1251 West 96th Street | Washington Township, CD #2, Zoned C-1

Reagan Outdoor Advertising, by Michelle Noppenberger

Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 40-foot tall, 14-foot by 48-foot digital off-premise advertising sign (off-premise signs not permitted in C-1, digital off-premise sign not permitted), with an 7.9-foot setback from 96th Street (10-foot setback required), within 200 feet of a protected district (300-foot separation required for off-premise signs, 600-foot separation for digital signs), within 250 and 1,306 feet of other off-premise advertising signs along I-465 (1,500 separation required along I-465), with 436 feet of separation from another off-premises advertising sign (1,000 feet of radial

separation required) and to allow for digital messages to display for minimum of eight seconds (minimum of ten second display permitted).

10. 2022-UV2-011 | 1355 West 96th Street | Washington Township, CD #2, Zoned C-1

Reagan Outdoor Advertising, by Jon R. Campbell

Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 35-foot tall, single-faced, 14-foot by 48-foot digital off-premise advertising sign (off-premise signs not permitted in C-1, digital off-premise sign not permitted), with a four-foot setback from Ditch Road (10-foot setback required), within 83 feet of a protected district (300-foot separation required for off-premise signs, 600-foot separation for digital signs), within 1,306 feet of another off-premise advertising sign along I-465 (1,500 separation required along I-465) and to allow for digital messages to display for minimum of eight seconds (minimum of ten second display permitted).

11. 2022-UV2-012 | 9333 Haver Way | Washington Township, CD #2, Zoned C-5

Reagan Outdoor Advertising, by Michelle Noppenberger

Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 60-foot tall, 14-foot by 48-foot digital off-premise advertising sign (maximum 40-foot height permitted, digital off-premise sign not permitted), within 907 feet of another off-premise advertising sign (1,000 feet of radial separation required) and to allow for digital messages to display for minimum of eight seconds (minimum of ten second display permitted), and to be located along an interstate entrance roadway (advertising signs not permitted within 500 feet of an entrance roadway).

PETITIONS FOR PUBLIC HEARING (New Petitions):

Additional Business:

**The addresses of the proposals listed above are approximate and should be confirmed with the Division of Planning. Copies of the proposals are available for examination prior to the hearing by emailing planneroncall@indy.gov. Written objections to a proposal are encouraged to be filed via email at dmdpubliccomments@indy.gov, before the hearing and such objections will be considered. At the hearing, all interested persons will be given an opportunity to be heard in reference to the matters contained in said proposals. The hearing may be continued from time to time as may be found necessary. For accommodations needed by persons with disabilities planning to attend this public hearing, please call the Office of Disability Affairs at (317) 327-5654, at least 48 hours prior to the meeting. - Department of Metropolitan Development - Current Planning Division.

STAFF REPORT

Item 1.

Department of Metropolitan Development
Division of Planning
Current Planning Section

Case Number: 2022-DV2-045
Address: 1251 South Alabama Street (approximate address)
Location: Center Township, Council District #16
Zoning: D-5
Petitioner: David M Rollings, by Mark & Kim Crouch
Request: Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to legalize the existing ten-inch front, rear and northern side yard setbacks (front setback of zero-ten feet required for Terrace Frontages, 20-foot rear yard, five-foot side yard setback required) with no off-street parking provided (one space required); and to provide for a roofline change along a non-conforming setback and vertical expansion (not permitted), all within the clear sight triangle of Alabama and the intersecting alley (encroachment of clear sight triangles not permitted).

The petitioner has requested that this petition **be continued from the December 13, 2022, hearing of Board II, and transferred to the January 3, 2023, hearing, of Board I.** This will allow time for Staff to review new information recently submitted by the petitioner and provide a recommendation and Staff report.

Staff has no objection to this first continuance request.

RU

STAFF REPORT

Department of Metropolitan Development
Division of Planning
Current Planning Section

Case Number: 2022-DV2-046
Address: 14 East Caven Street (approximate address)
Location: Center Township, Council District #16
Zoning: D-5
Petitioner: Shelby Holdings LLC, by Mark & Kim Crouch
Request: Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a multi-unit house on a 30-foot wide, 3,000-square foot lot (minimum 35-foot wide, 3,500-square foot lot required), encroaching into the clear sight triangles of Caven Street and the intersecting alley, and the intersecting alleys along the rear and western lot lines (encroachment of clear sight triangles not permitted).

A timely automatic continuance was filed by a registered neighborhood organization, continuing this petition from the **December 13, 2022, hearing of Division II to the January 10, 2022**, hearing of Division II.

This would require the Board's acknowledgement.

GLH

STAFF REPORT

Item 3.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-UV2-010
Address: 2400 Roosevelt Avenue (approximate address)
Location: Center Township, Council District #17
Zoning: I-3
Petitioner: Reagan Outdoor Advertising, by Michelle Noppenberger
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 70-foot tall (maximum 40-foot tall permitted), 14-foot by 48-foot digital off-premise advertising sign (digital off-premise sign not permitted), with an eight-foot setback from Interstate 70 (60-foot setback required), within Interstate 465 (not permitted), within 100 feet of a protected district (300-foot separation required and 600-foot separation for digital), adjacent to an exit roadway (not permitted) and to allow for digital messages to display for minimum of eight seconds (minimum of ten second display permitted).

ADDENDUM FOR DECEMBER 13, 2022

This petition was continued for cause from the September 13, 2022, hearing to the December 13, 2022, hearing at the request of the petitioner due to lack of quorum.

The petitioner has submitted **a request to withdraw this petition**. This would require the Board's acknowledgement.

ADDENDUM FOR SEPTEMBER 13, 2022

This petition was continued for cause from the August 9, 2022, hearing to the September 13, 2022, hearing at the request of the petitioner.

August 9, 2022

This petition was automatically continued from the May 17, 2022, hearing to the June 14, 2022, hearing at the request of a registered neighborhood organization.

This petition was automatically continued from the June 14, 2022, hearing to the July 12, 2022, hearing at the request of the petitioner.

This petition was continued for cause from the July 12, 2022, hearing to the August 9, 2022, hearing at the request of the petitioner.

RECOMMENDATIONS

Staff **recommends denial** of this request.

(Continued)

SUMMARY OF ISSUES**LAND USE****EXISTING ZONING AND LAND USE**

Compact	I-3	Commercial Contractor
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SURROUNDING ZONING AND LAND USE

North	D-5	Single-Family Dwellings
South	D-5	Single-Family Dwellings
East	I-3	Warehouses
West	D-5	Single-Family Dwellings

COMPREHENSIVE PLAN

The Comprehensive Plan recommends Light Industrial uses for the site.

- ◇ The grant of the petition would allow for an off-premises sign to be erected inside the Interstate 465 beltway, on a site that is closer to Interstate 70 and closer to a protected district than the Ordinance's minimum separation distances would allow, and to display digital images that change more frequently than the Ordinance's minimum duration requirement would allow.
- ◇ "In April 2022, The Supreme Court of the United States held that local Zoning Ordinances can draw a distinction between off-premise and on-premises signs that is based on the location of the sign in question while still remaining content neutral and observant of the sign owner's First Amendment rights. (CITY OF AUSTIN, TEXAS v. REAGAN NATIONAL ADVERTISING OF AUSTIN, LLC, ET AL.(2022))"
- ◇ Section 36-7-4-918.5(a) of the Indiana Code provides:
 - (a) A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. The board may impose reasonable conditions as a part of the board's approval. A variance may be approved under this section only upon a determination in writing that:
 - (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community.
 - (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
 - (3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.
- ◇ This statute does not give the Board discretion to act on an application to vary development standards for grounds other than satisfaction of § 36-7-4-918.5(a) (1), (2) and (3). "Because a petitioner for a variance must establish the existence of **all** of the prerequisites, the failure of proof on any one will be sufficient to defeat the request." *Sam's E., Inc. v. United Energy Corp.*, 927 N.E.2d 960, 964 (Ind. Ct. App. 2010) (emphasis added).

(Continued)

STAFF REPORT 2022-UV2-010 (Continued)

Practical difficulties

- ◇ Regarding the third of these statutory preconditions for departures from development standards, the petitioner's proposed findings of fact state that there are no objective standards by which to determine whether the strict application of the terms of this title will result in practical difficulties in the use of the property. That assertion is incorrect. Indiana's appellate courts have defined the concept of "practical difficulties in the use of property," making it unnecessary for the City or the State to have done so. In the most recent published decision on this topic, the Indiana Court of Appeals defined it in a way that focuses primarily on three considerations:

We have articulated several factors for a reviewing court to consider in determining whether compliance with a zoning ordinance will result in practical difficulties:

(1) whether "significant economic injury" will result if the ordinance is enforced;

(2) whether the injury is self-created; and

(3) whether there are feasible alternatives.

- ◇ *Caddyshack Looper, LLC v. Long Beach Advisory Bd. of Zoning Appeals*, 22 N.E.3d 694, 704 (Ind. Ct. App. 2014) (emphasis added). The Indiana Court of Appeals continues to apply these criteria for practical difficulties.
- ◇ Because Indiana law gives the Board the benefit of a specific definition of the key terms of the third requirement (practical difficulties), making that requirement (as defined by Indiana law) relatively more precise than the first and second requirements, and because a failure to establish even one of the statutory requirements deprives the Board of authority to grant a departure from development standards, Staff recommends that the Board start (and perhaps end) its consideration of the variance petition by analyzing whether the application satisfies the "practical difficulties" statutory requirement.
- ◇ First, regarding whether some or all of the three *Caddyshack* factors are satisfied by this application, the Board should consider that in 2019, the City amended the Ordinance to make otherwise-compliant off-premises signs permitted uses in many locations along freeways and expressways or inside places zoned Industrial, C-4, C-5, and C-7, so long as they are located outside the I-465 beltway. But petitioner's pending petition involves a location *inside* the I-465 beltway.
- ◇ It is also relevant that even after a 2016 federal court order upheld the constitutionality of the City's ban on digital off-premises signs, the City relaxed that ban in 2019. Specifically, the City replaced it with a combination of (1) conditions on the location and operation of digital off-premises signs; and (2) conditions on the operation of all digital displays. See Sections 744-911 & 744-907(C)(4). Petitioner's pending petition seeks to take advantage of the City's replacement of its former ban, but proposes a sign that—because of its size, location, and shorter duration between images—would not satisfy the conditions imposed by the 2019 amendment that replaced the ban.

(Continued)

Self-created injury

- ◇ One of the three *Caddyshack* factors is “whether the injury is self-created.” In several different respects, the structure’s violations of applicable standards are the result of choices made by the petitioner.
- ◇ As Staff understands petitioner’s business model, it is not tied to its ownership of a particular location, as would be the case for a petitioner that holds fee title to a parcel and would therefore be in a more difficult position to sell the parcel to acquire a site in a differently zoned area of the City. Instead, petitioner’s business model involves acquiring non-fee interests in particular sites that it identifies and then negotiating leaseholds with the fee owners of such sites. In these circumstances, even if the petitioner has already entered into leases for locations within the beltway despite the City’s prohibition, that effect is self-created. If the petitioner has not yet entered into such leases, it is free to pursue the leasing of parcels where the type of use is lawful.
- ◇ Second, the property currently is, and can continue to be developed with I-3 uses by right as zoned without the need for variances. This is a further reason why building an unpermitted structure on that site would be a self-created injury.
- ◇ Third, the petitioner has requested variances to allow for digital messages to display for minimum of eight seconds where a minimum of ten-second display is permitted. The reduction to the time of digital display is a drastic departure from what is permitted by the Ordinance for digital signs. Seeking to build a sign with more frequent changes in displays, in violation of the applicable standards, creates the need to seek additional variances from standards. Because the petitioner could also choose to build a compliant sign, the need for the duration variance is a self-created injury.
- ◇ The submitted petition does not address the need for a variance from the size and duration requirements, but the petitioner’s proposed findings of fact state regarding height that “the location’s lack of visibility from I-70 due to the height of the road’s bridge deck limits development opportunities other than for the construction of the proposed 70’ tall digital billboard which would make the best economic use of the property.” The more visible a sign is, the greater its value might be. But many structures would be more valuable if they could be constructed in disregard of height limitations. That, however, that does not make compliance with the height limits a practical difficulty under the *Caddyshack* factors.
- ◇ Fourth, the petitioner has requested a variance to allow for an eight-foot setback from Interstate 70, where a 60-foot setback is required. The site, is approximately 120 feet wide at the location of the proposed sign, and wider on other areas of the parcel, which could accommodate the required setback. The purported need for the setback variance is a self-created difficulty since the newly constructed/installed signs could be developed to meet the Ordinance standards by right without the need of a setback variance.

(Continued)

The existence of feasible alternatives

- ◇ The third *Caddyshack* factor is “whether there are feasible alternatives.” The burden of satisfying the requirements for obtaining a variance lies with the petitioner. “It is the burden of the petitioner for a variance to establish the existence of each of the statutory prerequisites.” *Maxey v. Bd. of Zoning Appeals*, 480 N.E.2d 589, 592 (Ind. Ct. App. 1985). The petitioner has not demonstrated that there are no alternative, feasible location for the subject sign.

Whether significant economic injury will result

- ◇ There may be financial advantages to petitioner in their choosing of a site in the City where its proposed use is prohibited and then obtaining, through a variance, what is effectively a license to do something lawfully that remains forbidden to the petitioner’s competitors. But the inability to obtain that kind of competitive advantage through a variance is not a “significant economic injury” to the petitioner.

Injurious to safety

- ◇ As noted above, the Board is justified in denying the variance request on the basis of petitioner’s failure to satisfy the “practical difficulties” criterion alone. However, the petitioner’s failure to satisfy the requirement that the variance not injure the “public health, safety, morals, and general welfare of the community” furnishes additional grounds for denial. Although this statutory prong includes some imprecise phrases, it cannot be satisfied where the petitioner is unable to show that approval would not be injurious to safety. There are reasons to believe that the variance, if granted, would indeed be injurious to public safety. The proposed digital outdoor advertising sign would be located adjacent to Interstate I-70. In order to prevent unnecessary distractions and promote public safety, the Sign Regulations prohibit signs of the kind proposed. In Staff’s opinion, at this location the proposed sign would unnecessarily distract motorists, traveling at a high speed, from other traveling vehicles in traffic, thereby negatively affecting public safety.
- ◇ This portion of Interstate I-70 has a large amount of Interstate traffic. It is visually difficult to take in any signage at this location, while continuing to maneuver safely in the travel lanes. If a large digital sign is added, it could severely distract attention away from legally installed directional signage and other commercial signage making them less effective to those established businesses.
- ◇ Providing for the reduced setback from Interstate 70 would not be supportable, as it would increase the intensity of the sign by locating it closer to motorists that would be distracted by the changing content. Additionally, it would bring the activities on the site closer to adjacent properties, including protected districts, without adequate buffering
- ◇ The Ordinance has been constructed to limit these signs near protected districts, because of their scrolling displays, brightness, and aesthetic impact.

(Continued)

- ◇ The Sign Regulations “facilitate an easy and agreeable communication between people...and serve an important function.” The purpose of the Sign Regulations is to “eliminate potential hazards to motorists, and pedestrians; to encourage signs which, by their good design, are integrated with and harmonious to the buildings and site which they occupy; and which eliminate excessive and confusing sign displays.” Proliferation of signs causes those signs that are permitted and legal to become less effective and reduces their value. Additionally, the Sign Regulations preserve and improve the appearance of the City as a place in which to live and work.
- ◇ In this case, D-5 Districts are located approximately 100 feet to the south, 250 feet to the west, and 300 feet to the north. The Ordinance was developed to limit the incidence of these signs near protected districts because of their scrolling displays, brightness, and negative aesthetic impact for 24 hours a day, 365 days a year.
- ◇ The 1,000-foot off-premise advertising sign separation requirement is designed to mitigate the proliferation of freestanding signs and the visual conflicts and negative aesthetics associated with signs in close proximity to one another. Decreasing sign separation inhibits the ability of motorists to properly read and react to sign messages in a safe and efficient manner. Given the size of each of the respective signs that would be present in this area if the variance is approved, and the close proximity to one another, Staff cannot conclude that approval would not be injurious to safety.
- ◇ At the proposed height, there are no buildings or landscaping that would obscure the proposed digital sign from the impacted protected districts to the south, west, and north. This sign, therefore, would clearly impact those protected districts because of its changing and/or scrolling display, brightness, and aesthetic impact.
- ◇ The requested change in separation from the protected districts would degrade the quality of life in the area. The proposed 70-foot tall sign has no physical barriers that limit the view of the sign from the nearby protected districts. There is no reason that a sign that meets the Sign Ordinance could not be used, along with alternative communication methods.
- ◇ In Staff’s opinion, the requested sign height increase coupled with the separation deviations would result in signage that would not reflect the character of the area and would continue to be detrimental to the surrounding neighborhood.

GENERAL INFORMATION**THOROUGHFARE PLAN**

This portion of Roosevelt Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 24-foot existing and proposed half right-of-way.

This portion of I-70 is classified in the Official Thoroughfare Plan for Marion County, Indiana as a freeway, with a 215-foot existing half right-of-way.

SITE PLAN

File-dated April 7, 2022.

FINDINGS OF FACT

File-dated April 7, 2022.

(Continued)

ZONING HISTORY

98-Z-210; 2411 Roosevelt Avenue and 18 other addresses (south of site), requested the rezoning of 6.6 acres, being in the D-5 and C-3 Districts, to the I-3 classification to provide for medium industrial uses, **approved**.

87-HOV-109; 2503 Roosevelt Avenue (northeast of site), requested a variance of development standards to provide for the development of the subject site without the required public street frontage, **granted**.

86-HOV-29; 2502 Roosevelt Avenue (east of site), requested a variance of development standards to provide for the development of the subject site without the required public street frontage, **granted**.

84-HOV-66; 2507 Roosevelt Avenue (south of site), requested a variance of development standards to provide for an additional to an existing manufacturing facility within the required front yard setback with no landscaping in the front yard, and with loading maneuvering encroaching into the right-of-way, **granted**.

RU

2022-UV2-010: Location Map







Subject site, proposed sign location, looking north



Subject site, existing commercial contractor use, looking northeast.



D-5 zoned Single-family dwellings protected district to the south.



D-5 zoned Single-family dwellings protected district to the south, looking north at proposed sign location.

STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2022-UV2-027
Address: 3445 Washington Boulevard (approximate address)
Location: Center Township, Council District #9
Zoning: D-3
Petitioner: Caitlin M Hannon & Chuck W Brewer, by David Kingen & Emily Duncan
Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for a mixed-use development (not permitted), including:

- a) A 3,580-square foot dwelling unit on the first and second floor; and
- b) 6,410 square feet of office and warehouse space on the first floor; and
- c) 1,810 square feet of workspace for: a single contractor operating a live-workspace within the basement; or a three-employee office; or a single dwelling unit.; and
- d) A four-foot by six-foot non-illuminated ground sign (not permitted).

The petitioner has indicated that they will be requesting a **continuance for cause from the December 13, 2022 hearing to the January 10, 2022 hearing** to allow additional time for new information to be submitted. Staff has no objection to this request.

MI

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-DV2-044
Address: 305 North Beville Avenue (approximate address)
Location: Center Township, Council District #17
Zoning: D-8
Petitioner: Indianapolis Neighborhood Housing Partnership, by Jeff Hasser
Request: Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a single-family dwelling with a rear patio maintaining a seven-foot rear setback (15-foot rear setback required).

RECOMMENDATIONS

Staff **recommends approval** of this request.

SUMMARY OF ISSUES

LAND USE

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-8	Undeveloped
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SURROUNDING ZONING AND LAND USE

North - D-5	Single-family dwelling
South - D-8	Single-family dwelling
East - D-8	Undeveloped
West - C-3	Commercial retail

COMPREHENSIVE PLAN

The Comprehensive Plan recommends Traditional Neighborhood uses with a Blue Line Transit Oriented Overlay for the site.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ Development Standards of the Consolidated Zoning and Subdivision Ordinance, specifically those relating to setbacks are intended to provide a minimum distance between property improvements and help reduce drainage overflows onto adjacent properties. Additionally, setbacks provide the required space needed to construct and maintain structures on a property without requiring access through adjacent properties.

(Continued)

STAFF REPORT 2022-DV2-044 (Continued)

- ◇ The requested seven-foot rear setback is a result of the reduced lot size and depth. The subject site, at approximately 72 feet deep, is shorter than other typical lots. The proposed dwelling with the seven-foot rear setback, would roughly match the rear setback of other existing dwellings in the area. Therefore, Staff believes the reduced rear setback would have no impact on the surrounding property owners, and would represent a minor deviation from the Ordinance
- ◇ The proposed seven-foot rear setback would still provide sufficient area for accessibility and maintenance without negatively impacting the adjoining property.
- ◇ Generally, Staff supports property improvements if their location and characteristics do not negatively impact adjoining residential areas by causing a nuisance to the surrounding neighborhood. Staff believes that this would be true for this particular variance request, and additionally that no public safety or health risks would come from the grant of this variance.

THOROUGHFARE PLAN

This portion of Beville Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 60-foot existing and proposed right-of-way.

SITE PLAN

File-dated November 9, 2022.

FINDINGS OF FACT

File-dated November 9, 2022.

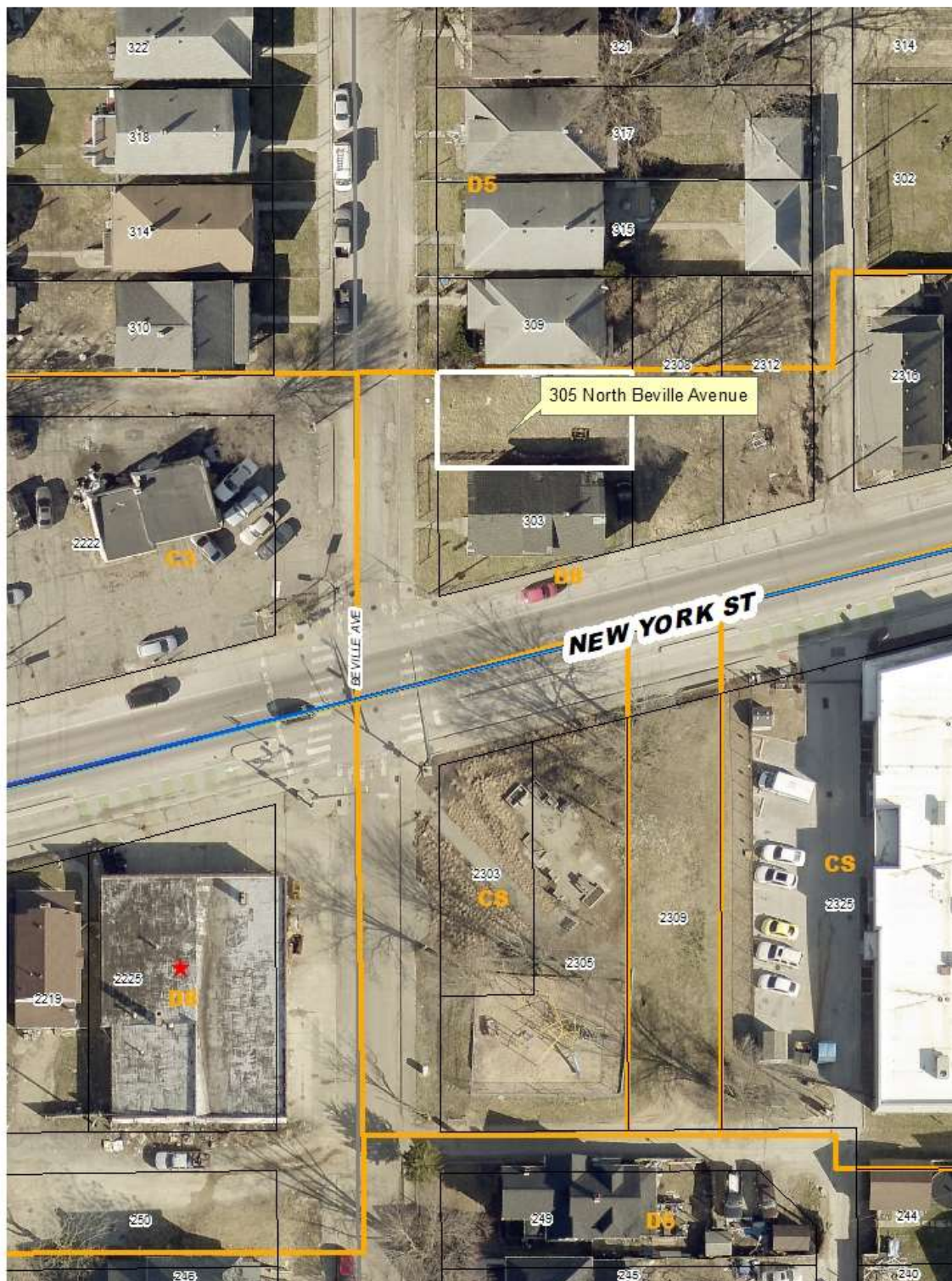
ZONING HISTORY

2001-ZON-803 / 2001-VAR-803; 2222 East New York Street (west of site), requested the rezoning of 0.306 acre from D-8 to C-3, to provide for commercial uses, **approved**; and a variance of use of the Commercial Zoning Ordinance to provide for automobile detailing within an existing commercial building, **granted**.

2000-UV1-050; 321 North Beville Avenue (north of site), requested a variance of use to provide for a painting company, with storage of paint and paint materials within an existing detached garage, **withdrawn**.

96-UV2-113; 2209-2211 East New York Street (west of site), requested a variance of use and development standards to legally establish zero off-street parking spaces and a major livability ratio of .0068 for an existing 4-unit multi-family dwelling structure, **granted**.

RU







Subject site, looking east.



Adjacent property to the south, looking east.



Adjacent property to the north, looking east.



Adjacent undeveloped property to the east, looking north.

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-UV3-025 (Amended)
Address: 3335 North Sherman Drive (approximate address)
Location: Center Township, Council District #17
Zoning: D-5
Petitioner: Shantae Flemons, by David Kingen & Emily Duncan
Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a childcare facility.

ADDENDUM FOR DECEMBER 13, 2022

This petition was continued from the November 15, 2022 hearing to the December 13, 2022 hearing at the request of the petitioner.

Staff **continues to recommend denial** of the amended request.

If the Board is inclined to vote against Staff's recommendation, staff would request a limit of 16 children for the childcare facility.

ADDENDUM FOR NOVEMBER 15, 2022

This petition was continued and transferred from the October 18, 2022 hearing of Division I to the November 15, 2022 hearing of Division II at the request of the petitioner.

An amended final plan of operation was submitted by the petitioner noting the total number of anticipated children on site reduced to 24, but this change did not alter staff's recommendation on the matter. Therefore, staff **continues to recommend denial** of the amended request.

October 18, 2022

This petition was continued from the August 20, 2022 hearing to the October 18, 2022 hearing at the request of the petitioner.

RECOMMENDATIONS

Amendment: The petitioner filed a revised site plan to eliminate the variances for the one-foot southern side setback for the pedestrian gate and walkway and the two-foot north side setback for the building addition.

Staff **recommends denial** of this request.

(Continued)

STAFF REPORT 2022-UV3-025 (Continued)**SUMMARY OF ISSUES**

The following issues were considered in formulating the recommendation:

LAND USE**EXISTING ZONING AND LAND USE**

D-5	Compact	Residential / Child Care Home
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SURROUNDING ZONING AND LAND USE

North	D-5	Residential (Single-family dwelling)
South	D-5	Residential (Single-family dwelling)
East	D-5	Residential (Single-family dwelling)
West	D-5	Residential (Single-family dwelling)

COMPREHENSIVE PLAN	The Comprehensive Plan recommends traditional neighborhood development.
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- ◇ The 0.46-acre subject site is developed with a single-family dwelling that has been operated as a child-care home. It is located mid-block and is surrounded by single-family dwellings with associated accessory structures.

VARIANCE OF USE

- ◇ The grant of the request would allow for the operation of a childcare facility, which is classified as a Day Care Center, in the D-5 district.
- ◇ Day Care Centers are permitted by-right within the C-1, C-3, C-4, MU-2, MU-3, MU-4, I-1, I-2 and all of the CBD Districts. They are not permitted within any of the dwelling districts.
- ◇ A special exception would be required for Day Care Centers within the D-6, D-6II, D-7, and D-8 districts and would be allowed as accessory uses in the D-9, D-10, and D-11 districts. Furthermore, Day Care Centers must meet the use-specific standards of Article III. Section 03.C that address a harmonious design of the facility with the surrounding neighborhood and providing adequate parking, loading, and drop-off facilities.
- ◇ Child Care Homes are permitted within the dwelling districts, as an accessory use, so long as the provider maintains the dwelling as their permanent residence, maintains their licensure with the State and complies with all provisions of Indiana Code Title 12.
- ◇ Child Care Homes are limited by the number of children that may be cared for at any given time, whereas Day Care Centers are not limited in this respect. Class I Child Care Homes must care for at least six children, but no more than 12 children at any given time with an exception for an additional three children during the school year who are enrolled in at least full-day kindergarten. Class II Child Care Homes must care for at least 12 children, but no more than 16 children at any given time. Neither type of operation may provide care for any individual child for a period which exceeds 24 consecutive hours.

(Continued)

STAFF REPORT 2022-UV3-025 (Continued)

- ◇ The initial request was to care for a total of 40 children but was reduced to a total of 28 children. The Day Care Center would be open Monday through Friday between 6:30 a.m. to 6:30 p.m. with drop-offs to occur between 7 a.m. to 10 a.m. and pick-ups to occur between 3 p.m. to 6:30 p.m. The business would have four employees and would propose four parking spaces on site.
- ◇ The operator includes time frames for anticipated drop-off and pick-up times throughout the day, but the City would not be able to enforce the proposed schedule to ensure that there would not be issues with traffic during rush hour. If the request is approved, Staff requests that it be subject to the plan of operation in the form of a recorded commitment.
- ◇ The neighborhood where the subject site is located is a long-established residential area. Staff finds that the need for the variance indicates that the operation has outgrown its current location and should be relocated to a new site that is appropriately zoned with a larger building to house the anticipated number of children and would allow for the additional traffic pattern proposed with an increased capacity.
- ◇ Additionally, the request would be a more intense use of the site and would constitute an undue commercial encroachment. Given the area's zoning, comprehensive plan recommendation, and existing development pattern, neighboring and nearby homeowners have a reasonable expectation of protection from commercial development, therefore, Staff finds that the request would negatively impact adjacent properties.
- ◇ Since the existing site could continue to be operated with the appropriate limitations of a Child Care Home, particularly if the residence were to continue to be the operator's primary residence, Staff determined that there would not be a hardship associated with the site warranting a recommendation of approval.

GENERAL INFORMATION

THOROUGHFARE PLAN	Sherman Drive is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial, with a 60-foot existing right-of-way and a 56-foot proposed right-of-way.
SITE PLAN	File-dated August 17, 2022.
AMENDED SITE PLAN	File-dated September 15, 2022.
FINAL SITE PLAN	File-dated September 26, 2022.
FLOOR PLAN	File-dated September 26, 2022.
PLAN OF OPERATION	File-dated August 17, 2022.
AMENDED PLAN OF OPERATION	File-dated September 7, 2022.

(Continued)

STAFF REPORT 2022-UV3-025 (Continued)

3RD AMENDED PLAN OF OPERATION File-dated September 9, 2022.

FINAL PLAN OF OPERATION File-dated September 26, 2022.

AMENDED FINAL PLAN OF OPERATION File-dated October 21, 2022.

FINDINGS OF FACT File-dated August 17, 2022.

ZONING HISTORY – SITE**EXISTING VIOLATIONS**

None.

PREVIOUS CASES

None.

ZONING HISTORY – VICINITY

2019-HOV-052; 3366 North Denny Street (northeast of site), Variance of development standards of the Consolidated Zoning and Subdivision Control Ordinance to provide for a single-family dwelling and a detached garage with a four-foot rear setback from an alley (five-foot rear setback required), **granted.**

2018-HOV-018; 3365 North Denny Street (northeast of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a front porch addition to a single-family dwelling, with a nine-foot front setback (minimum 18-foot front setback required), **granted.**

2017-DV1-070; 3394 North Denny Street (northeast of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for an 18-foot tall, detached garage, taller than the primary dwelling (not permitted), **granted.**

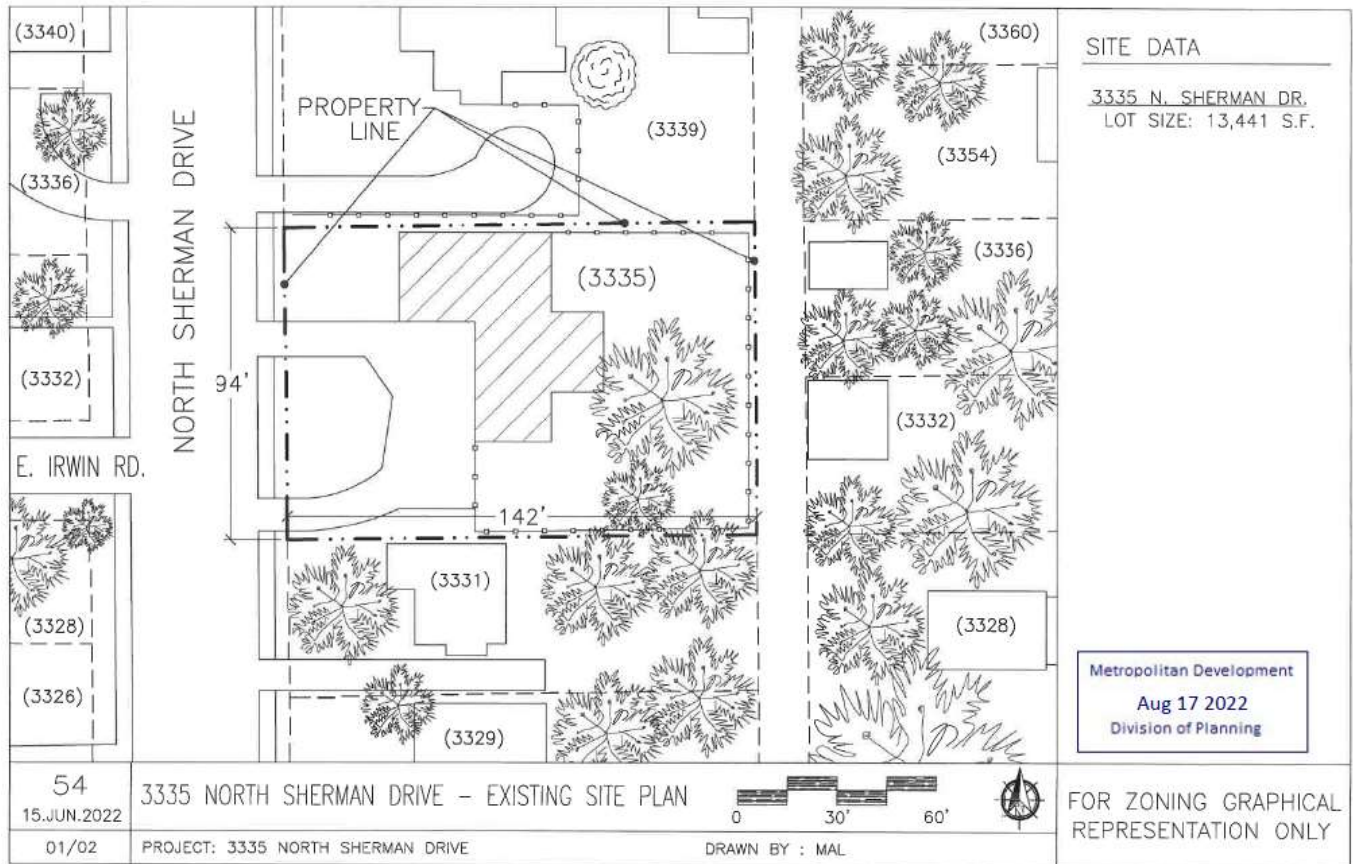
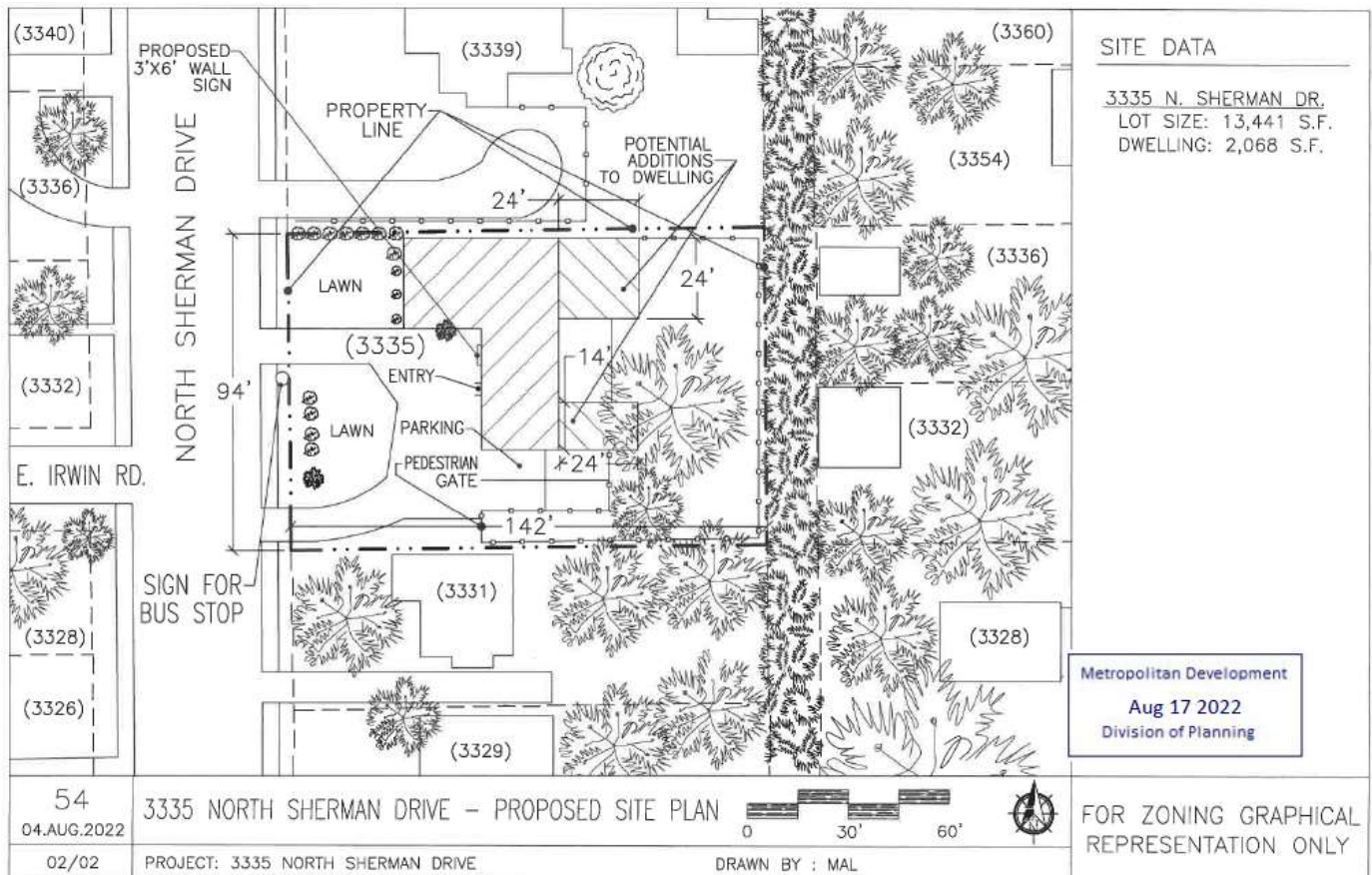
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2022-UV3-025; Location Map

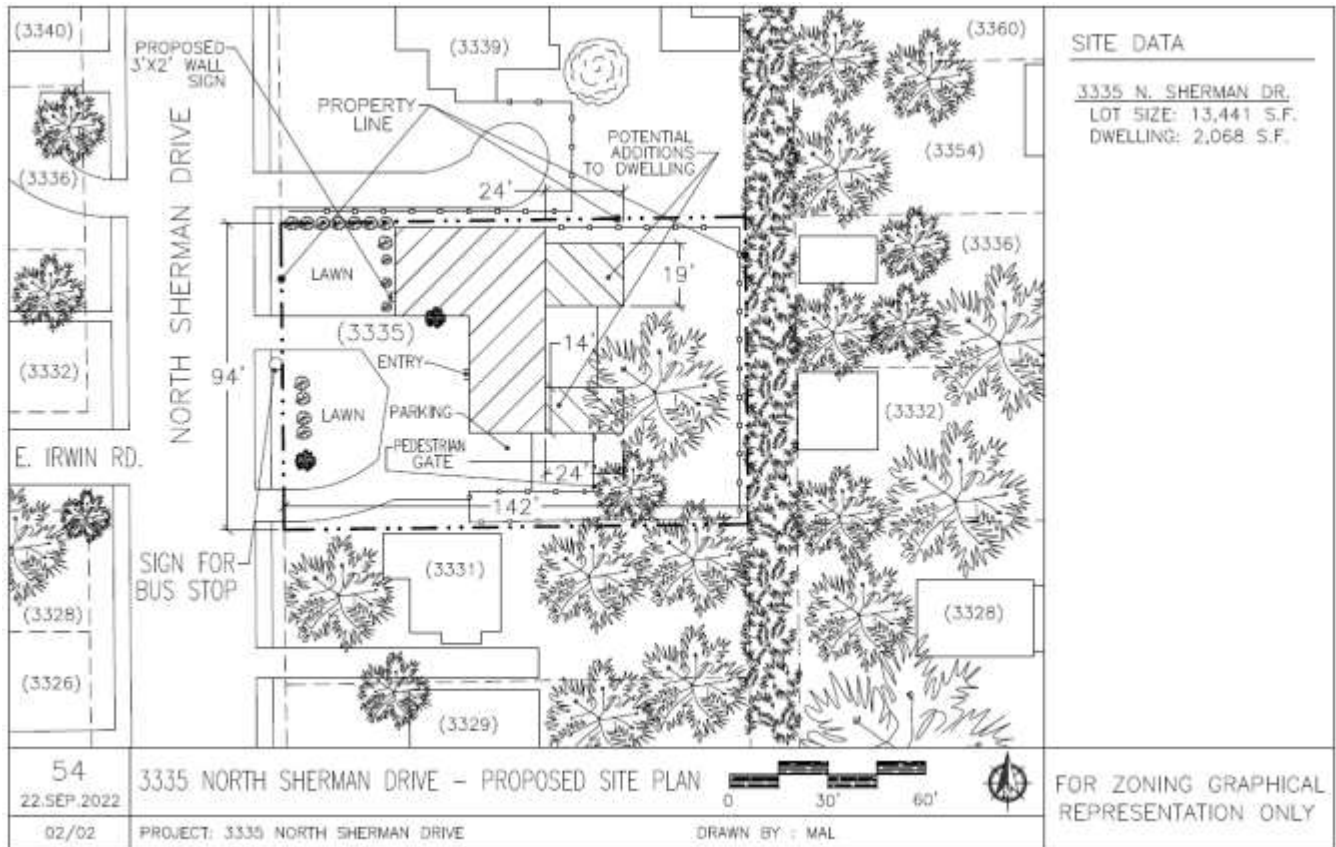


2022-UV3-025; Aerial Map

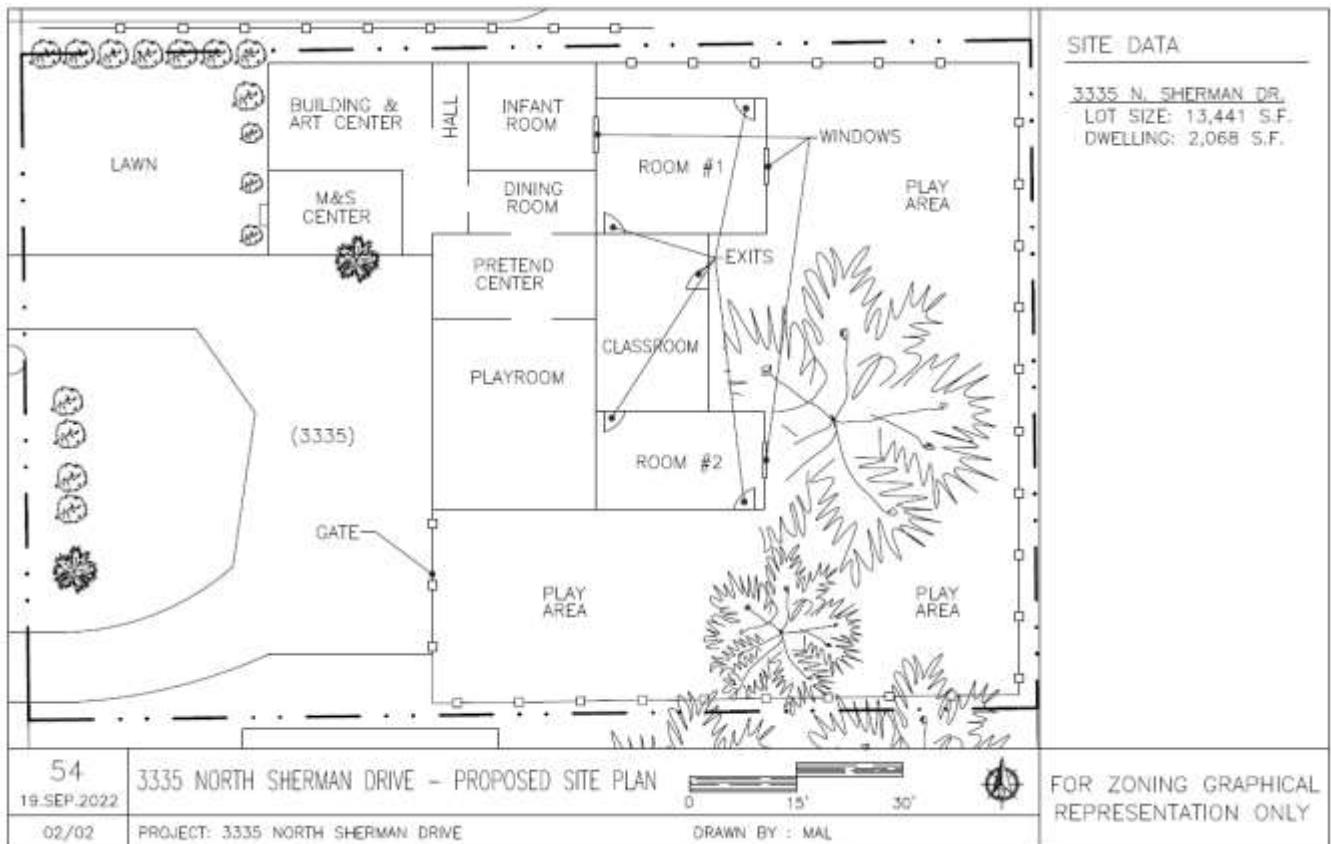


2022-UV3-025; Existing Site Plan**2022-UV3-025; Proposed Site Plan**

2022-UV3-025; Amended Site Plan



2022-UV3-025; Floor Plan



3335 North Sherman Drive

Plan of Operation

Fruit of the Holy Spirit Childcare (FHS) has been operating as a Class II Childcare Facility, serving children ages 6 weeks to 12 years, since January 2019.

Hours of Operation:

- Monday – Friday from 6:30am – 5:30pm *(closed on all major holidays)*
 - Drop Off:
 - 7:00am – 9:30am *(typical, but dependent on needs of individual families)*
 - Pick Up:
 - 4:00pm – 5:30pm *(typical, but dependent on needs of individual families)*

Staff:

- Currently employs 3 staff members
 - Current Hours: 8:30am – 5:30pm
 - Shift 1: 8:30am – 4:30pm
 - Shift 2: 12:00pm – 5:30pm
 - Proposed Hours: 6:30am – 5:30pm
 - Shift 1: 6:30am – 5:30pm
 - Shift 2: 8:00am – 5:00pm
 - Shift 3: 8:00am – 5:30pm

Parking:

- Currently 3 parking spaces (2 utilized by staff)
 - 4 spaces proposed *(per site plan on file)*
- *Typical day consists of no more than 2-4 cars doing drop off/pick up at the same time*

Signage:

- 2 - 3' x 6' Non-illuminated wall sign *(per site plan on file)*

Lighting:

- Typical residential lighting

Trash Removal:

- Enclosed dumpster buffered by landscaping *(per site plan on file)*

3335 North Sherman Drive**Plan of Operation**

Fruit of the Holy Spirit Childcare (FHS) has been operating as a Class II Childcare Facility, serving children ages 6 weeks to 12 years, since January 2019.

Children:

- Currently serving: 16
- Anticipated number: 28

Hours of Operation:

- Monday – Friday from 6:30am – 6:30pm (*closed on all major holidays*)
 - Drop Off: 7:00am – 10:30am (*typical, but dependent on needs of individual families*)
 - Pick Up: 3:00pm – 6:30pm

Staff:

- Currently employs 4 staff members
 - Current Hours: 8:30am – 5:30pm
 - Shift 1: 8:30am – 4:30pm
 - Shift 2: 12:00pm – 5:30pm
- Anticipate employing 4 staff members
 - Proposed Hours: 6:30am – 6:30pm
 - Shift 1: 6:30am – 6:30pm
 - Shift 2: 8:00am – 5:00pm
 - Shift 3: 8:00am – 6:30pm

Parking:

- Currently 3 parking spaces (2 utilized by staff)
 - 4 spaces proposed (*per site plan on file*)

Cars:

- Currently, 12 cars doing drop off/pick up throughout the day
 - 7-7:45am = 8
 - 8-8:30am = 3
 - 10-10:30am = 1
 - 3-3:45pm = 4
 - 4-5pm = 4
 - 5-5:30pm = 4
- Anticipate 19 cars throughout the day
 - 7-7:45am = 10
 - 8-9am = 5
 - 9-10am = 3
 - 10:30am = 1
 - 3-3:45pm = 4
 - 4-5pm = 8
 - 5-6:30 = 7

Signage: 1 - six square foot non-illuminated wall sign (*per site plan on file*)

Lighting: Typical residential lighting

2022-UV3-025; Amended Final Plan of Operation**DRAFT****3335 North Sherman Drive****Plan of Operation**

Fruit of the Holy Spirit Childcare (FHS) has been operating as a Class II Childcare Facility, serving children ages 6 weeks to 12 years, since January 2019.

Children:

- Currently serving: 16
- Anticipated number: 24

Hours of Operation:

- Monday – Friday from 6:30am – 6:30pm (closed on all major holidays)
 - Drop Off: 7:00am – 10:30am (typical, but dependent on needs of individual families)
 - Pick Up: 3:00pm – 6:30pm

Staff:

- Currently employs 4 staff members
 - Current Hours: 8:30am – 5:30pm
 - Shift 1: 8:30am – 4:30pm
 - Shift 2: 12:00pm – 5:30pm
- Anticipate employing 4 staff members
 - Proposed Hours: 6:30am – 6:30pm
 - Shift 1: 6:30am – 6:30pm
 - Shift 2: 8:00am – 5:00pm
 - Shift 3: 8:00am – 6:30pm

Parking:

- Currently 3 parking spaces (2 utilized by staff)
 - 4 spaces proposed (per site plan on file)

Cars:

- Currently, 12 cars doing drop off/pick up throughout the day
 - 7-7:45am = 8
 - 8-8:30am = 3
 - 10-10:30am = 1
 - 3-3:45pm = 4
 - 4-5pm = 4
 - 5-5:30pm = 4
- Anticipate 13 cars throughout the day
 - 7-7:45am = 5
 - 8-9am = 4
 - 9-10am = 3
 - 10-10:30am = 1
 - 3-3:45pm = 4
 - 4-5pm = 3
 - 5-6:30 = 5

Signage: 1 - six square foot non-illuminated wall sign (per site plan on file)

Lighting: Typical residential lighting



Photo of the Subject Property: **3335 North Sherman Drive**



Photo of the existing driveway.



Photo of the sidewalk and curbcuts.



Photo of the southern property boundary and abutting single-family dwelling.



Photo of the single-family dwellings to the north.

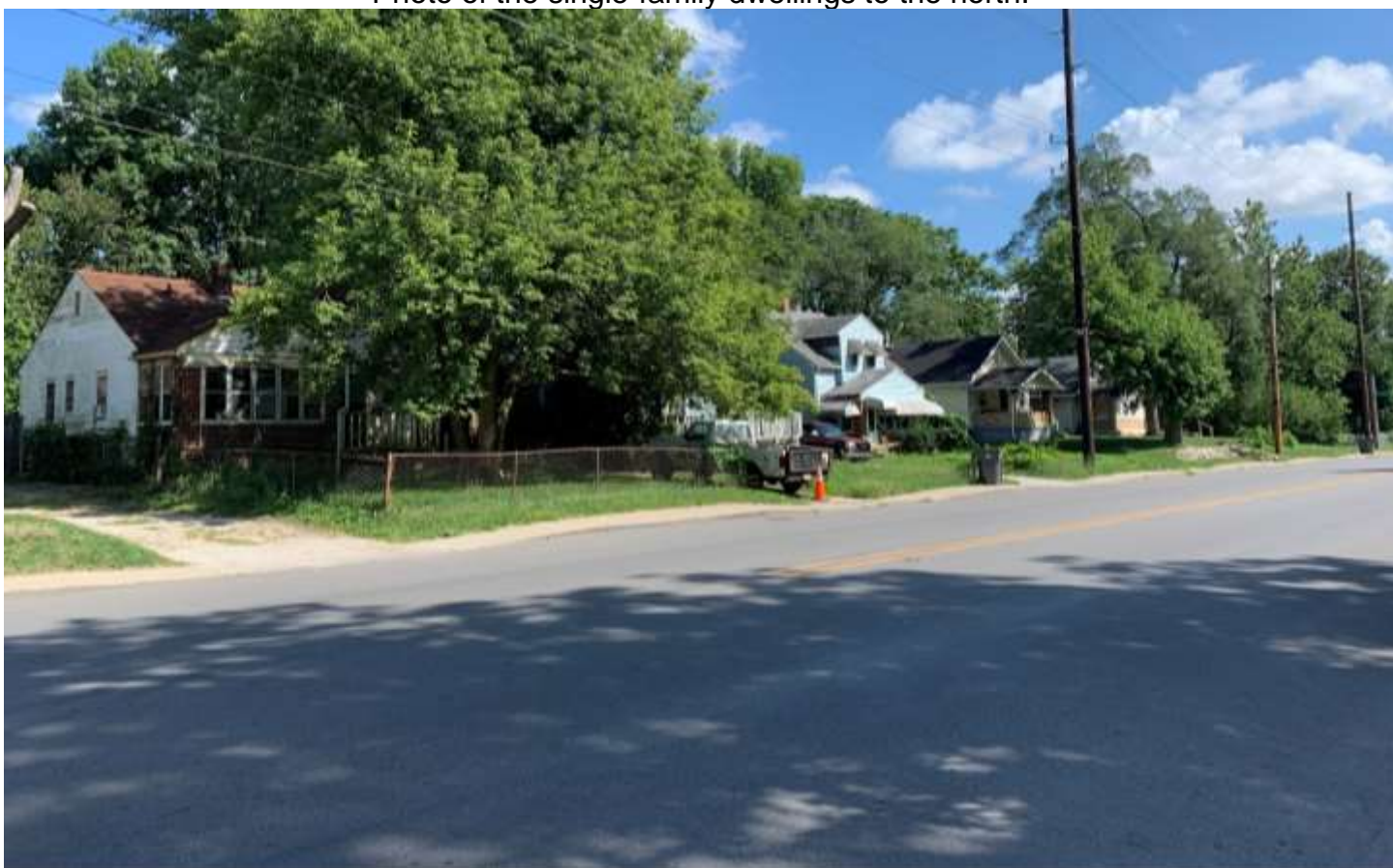


Photo of the single-family dwellings to the south.

STAFF REPORT

Item 7.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-DV2-042
Address: 21 North Chester Avenue (approximate address)
Location: Center Township, Council District #25
Zoning: D-5 (TOD)
Petitioner: Jose L. Tellez Vargas, by Sarah Walters
Request: Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building renovation and roof line alteration resulting in a third story with a three-foot seven-inch northern side yard setback (maximum 2.5 stories permitted, five-foot side setback required).

ADDENDUM FOR DECEMBER 13, 2022

This petition was continued from the November 15, 2022, hearing to the December 13, 2022, hearing at the request of the petitioner. No new information has been provided to the file.

November 15, 2022

RECOMMENDATIONS

Staff **recommends approval** of the request to provide for a three-foot seven-inch northern side yard setback.

Staff **recommends denial** of the request to provide for a building renovation and roof line alteration resulting in a third story.

SUMMARY OF ISSUES

LAND USE

EXISTING ZONING AND LAND USE

D-5	Single-family dwelling
-----	------------------------

SURROUNDING ZONING AND LAND USE

North -	D-5	Single-family dwelling
South -	D-5	Undeveloped
East -	D-5	Single-family dwelling / Undeveloped
West -	D-5	Two-family dwelling

COMPREHENSIVE PLAN

The Comprehensive Plan recommends traditional neighborhood uses for the parcel, with an overlay for the Blue Line Transit Oriented Development.

(Continued)

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The request to provide for a three-foot seven-inch northern side yard setback, is the result of the proposed new construction/renovation of the third story addition. The three-foot seven-inch northern side yard setback would be considered legally non-conforming as it was originally developed at that setback and was Ordinance compliant at the time of that development. There is no proposed expansion of the setback, therefore it will continue to exist as it has since the dwelling was originally developed. Therefore, in Staff's opinion, the request is a minor deviation and supportable by Staff.
- ◇ The maximum structural design height permitted for a building in the D-5 district is two and a half stories. A half story is a volume with a headroom clearance of seven feet or more and limited to 60 percent of the floor area of the story directly below it. The second floor has an area of 810 square feet. The half story above may be up to 486 square feet. The proposed floor area is approximately 783 square feet. The proposed floor area could be reduced to meet this standard.
- ◇ Aesthetic Considerations listed in the Infill Housing Guidelines recommend using the neighborhood context and street types to guide appropriate massing. Local streets are appropriate for smaller massing, which would not support the variance for a third story. Designs should match the context of the neighborhood, including things like dividing larger facades into smaller components, or stepping back upper stories. A full third story would not align with these guidelines, and the increased massing would have a negative effect on adjoining structures.
- ◇ The petitioner's findings indicate the proposed height of the dwelling is consistent with the surrounding dwellings. The original dwelling was previously the same height as surrounding dwellings. With the proposed third story, the original attic walls would be increased five feet in height, making it taller than the surrounding dwellings. In addition, there are no three-story dwellings in the vicinity, so the dwelling would not match the context of the neighborhood.
- ◇ Any practical difficulty for the third story is self-imposed by the petitioner's desire for a larger floor area for additional storage, when additional storage area could be accomplished through an addition to the rear of the dwelling or a detached accessory dwelling. Therefore, Staff does recommend denial of the request for a building renovation and roof line alteration resulting in a third story.

GENERAL INFORMATION

THOROUGHFARE PLAN	This portion of Chester Avenue is classified in the Official Thoroughfare Plan as a local street, with a 48-foot existing and proposed right-of-way.
SITE PLAN	File-dated, October 4, 2022
FINDINGS OF FACT	File-dated, October 4, 2022

(Continued)

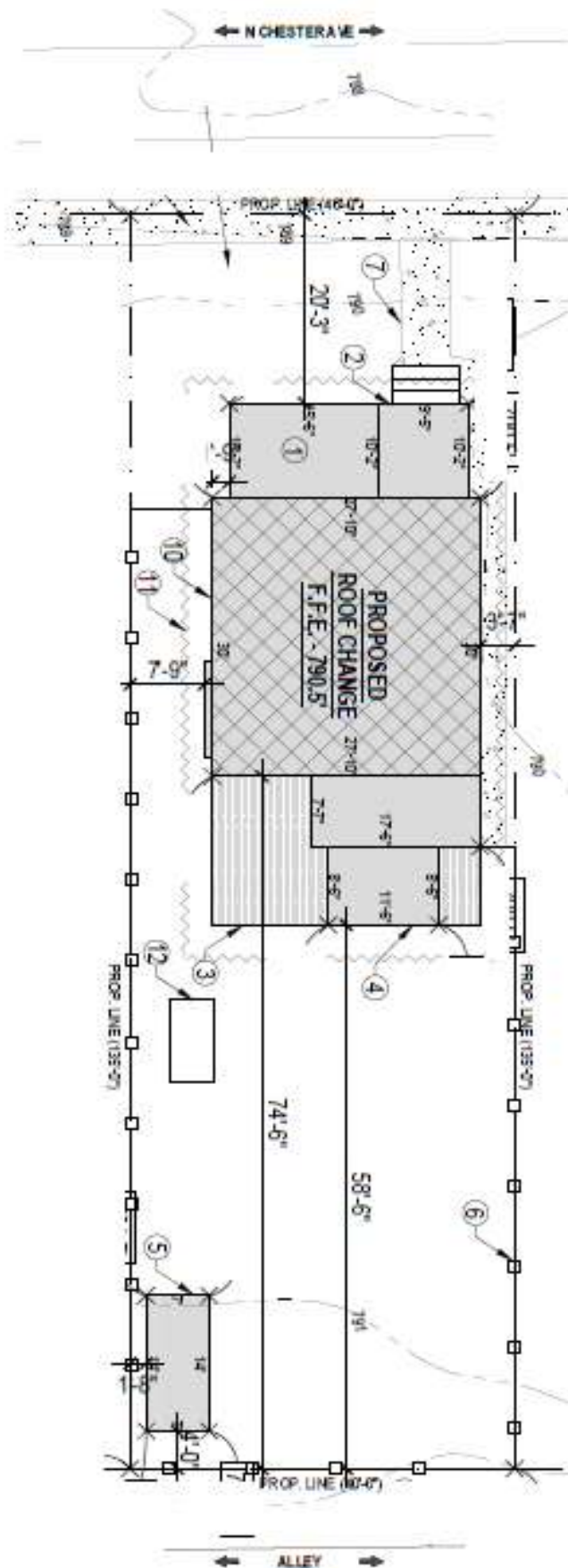
ZONING HISTORY

97-UV3-94; 56 North Denny Street (west of site), requested a variance of use and development standards to legally establish two dwelling units within an existing residential structure originally constructed as a single-family dwelling, with one unit having a floor ratio of 800.40 square feet, **granted.**

95-V2-34; 4002 East Washington Street (south of site), requested a variance of development standards to legally establish a tavern use within an existing building, being 53 feet from a protected district, with 14 parking spaces provided, with a gravel/stone driveway being zero feet from the north property line, with an asphalt interior drive zero feet from Washington and Chester streets, granted subject to conditions, **granted.**

RU







STAFF REPORT 2022-DV2-042; Proposed Elevations





Subject site existing dwelling with third story under construction, looking east.



Subject site existing dwelling with third story under construction rear, looking west.



Adjacent two-story single-family dwellings to the north of subject site, looking northeast.



Adjacent 2.5 story two-family dwelling to the west of subject site.

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-DV2-043
Address: 220 West 81st Street (approximate address)
Location: Washington Township, Council District #2
Zoning: D-S
Petitioner: Mark O & Shelley R Blakely, by Clete Kunce
Request: Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to legally establish a 0.8-acre lot with a lot width of 140 feet, along an unimproved right-of-way (minimum one-acre required, 150-foot frontage upon an improved street required) and provide for:

- a) the construction of a building addition to an existing dwelling, resulting in a roof overhang with an 8.5-foot rear yard setback (25-foot rear yard setbacks required);
- b) the extension of an existing wall with a 4.8-foot rear yard setback; and
- c) The construction of a detached shed with a 17.75-foot rear yard setback

Resulting in an open space of 81% (minimum open space of 85% required)

ADDENDUM FOR DECEMBER 13, 2022

This petition was automatically continued by a registered neighborhood organization, continuing the petition from the November 15, 2022, hearing to the December 13, 2022, hearing of Division II.

On November 22, 2022, the petitioner's representative provided elevations and floor plans of the proposed addition. These documents have been included further in this Staff Report. No changes have been made to the proposed site plan.

Staff would note that there is some practical difficulty in developing the subject site, due to the unimproved right of way, which is considered the technical front yard. However, the proposed addition could be situated elsewhere on the subject site, without the need for variances. Because of this, Staff recommends denial, where this proposed development would be considered a self-imposed practical difficulty.

RECOMMENDATIONS

Staff **recommends denial** of this request.

(Continued)

STAFF REPORT 2022-DV2-043 (Continued)**SUMMARY OF ISSUES**

The following issues were considered in formulating the recommendation:

LAND USE**EXISTING ZONING AND LAND USE**

D-S	Metro	Single-family dwelling
-----	-------	------------------------

SURROUNDING ZONING AND LAND USE

North	D-1	Single-family dwelling
South	D-S	Single-family dwelling
East	D-S	Single-family dwelling
West	D-S	Single-family dwelling

LAND USE PLAN

The Marion County Land Use Plan (2019) recommends Suburban neighborhood development.

LAND USE PLAN

Environmentally Sensitive (Forest Alliance Woodlands)

- ◇ The subject site is 0.81 acre located in the Claffey's Spring Mill Road Subdivision in the Meridian Hill / Williams Creek neighborhood. The subject site is accessed from a drive (easement) off Claffey Drive, which goes through the adjacent property to the south. To the east of the subject site, there is an unimproved street. The existing improvements on the site include a single-family dwelling, with a stream located at the east lot line of the property. The surrounding neighborhood consists of single-family dwellings to the north, south, east and west. Most of the properties, including the subject site, are within an environmentally sensitive area for Forest Alliance Woodlands.
- ◇ The subject site is zoned D-S (Dwelling Suburban District). The D-S district is intended for suburban areas of extreme topography, areas conducive to estate development, or areas where it is desirable to permit only low-density development (such as adjacent to floodplains, aquifers, urban conservation areas, within the extended alignment of airport runways, etc.). Generous front yards with trees along roadways that follow the natural terrain of the land are envisioned for the D-S district. Estate development in a natural setting is the typical realization of the district. The D-S district provides for single-family residential lots consisting of at least one acre. A typical density for the D-S district is 0.4 units per gross acre. This district fulfills the lowest density residential classification of the Comprehensive General Land Use Plan. Development plans would likely use the cluster option when subdividing and should incorporate and promote environmental and aesthetic considerations, working within the constraints and advantages presented by existing site considerations, including vegetation, topography, drainage and wildlife.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The request would legally establish a 0.8-acre lot with a lot width of 140 feet, along an unimproved right-of-way and provide for the construction of a building addition to an existing dwelling, resulting in a roof overhang with an 8.5-foot rear yard setback, the extension of an existing wall with a 4.8-foot rear yard setback, the construction of a detached shed with a 17.75-foot rear yard setback, resulting in an open space of 81%.

(Continued)

STAFF REPORT 2022-DV2-043 (Continued)

- ◇ The subject site is located behind another dwelling located at 202 West 81st St. The subject site's technical frontage is on Kenwood Avenue, which is an unimproved street, and instead has driveway access from Claffey Drive (20-foot easement access, see Plat map). The subject site's front lot line would be the east lot line, the side lot lines would be on the north and south lot lines, and finally, the rear lot line would be on the west lot line.
- ◇ The subject site is zoned D-S, which requires a lot area of one acre and a minimum lot width of 90 feet. The existing lot area is 0.8 acre, with a lot width of 140 feet. The subject site is deficient in size for the D-S district. The required open space for the D-S district is 85%. The proposed open space percentage is 81%. The required rear setback for the D-S district, Metro Context Area, is 25 feet. The proposed rear setback for the roof overhang would be 8.5 feet. The proposed rear setback for the wall extension would result in a 4.8-foot rear setback. Lastly, the detached shed would have a 17.75-foot rear setback.
- ◇ Staff is opposed to all requests, for open space and rear setbacks. Staff believes that there is practical difficulty in the use of the subject site, however, the proposed requests are considered self-imposed practical difficulties. Staff considered that the addition and proposed storage could be located on the eastern portion of the subject site and the square footage could be reduced to not result in a need for variances.

GENERAL INFORMATION**THOROUGHFARE PLAN**

81st Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 50-foot existing right-of-way and a 50-foot proposed right-of-way.
Claffey Drive is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 54-foot existing right-of-way and a 50-foot proposed right-of-way.
Kenwood Avenue (unimproved) is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 50-foot existing right-of-way and a 50-foot proposed right-of-way.

SITE PLAN

File-dated October 13, 2022.

FINDINGS OF FACT

File-dated October 13, 2022.

ZONING HISTORY – SITE

EXISTING VIOLATIONS: None.

PREVIOUS CASES

2016-DV1-058; 220 West 81st Street (subject site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a portion of a fence to be eight feet tall, **approved**.

(Continued)

STAFF REPORT 2022-DV2-043 (Continued)**ZONING HISTORY – VICINITY**

90-V3-105; 202 West 81st Street (south of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to permit the placement of a 12-foot-tall privacy fence, **withdrawn**.

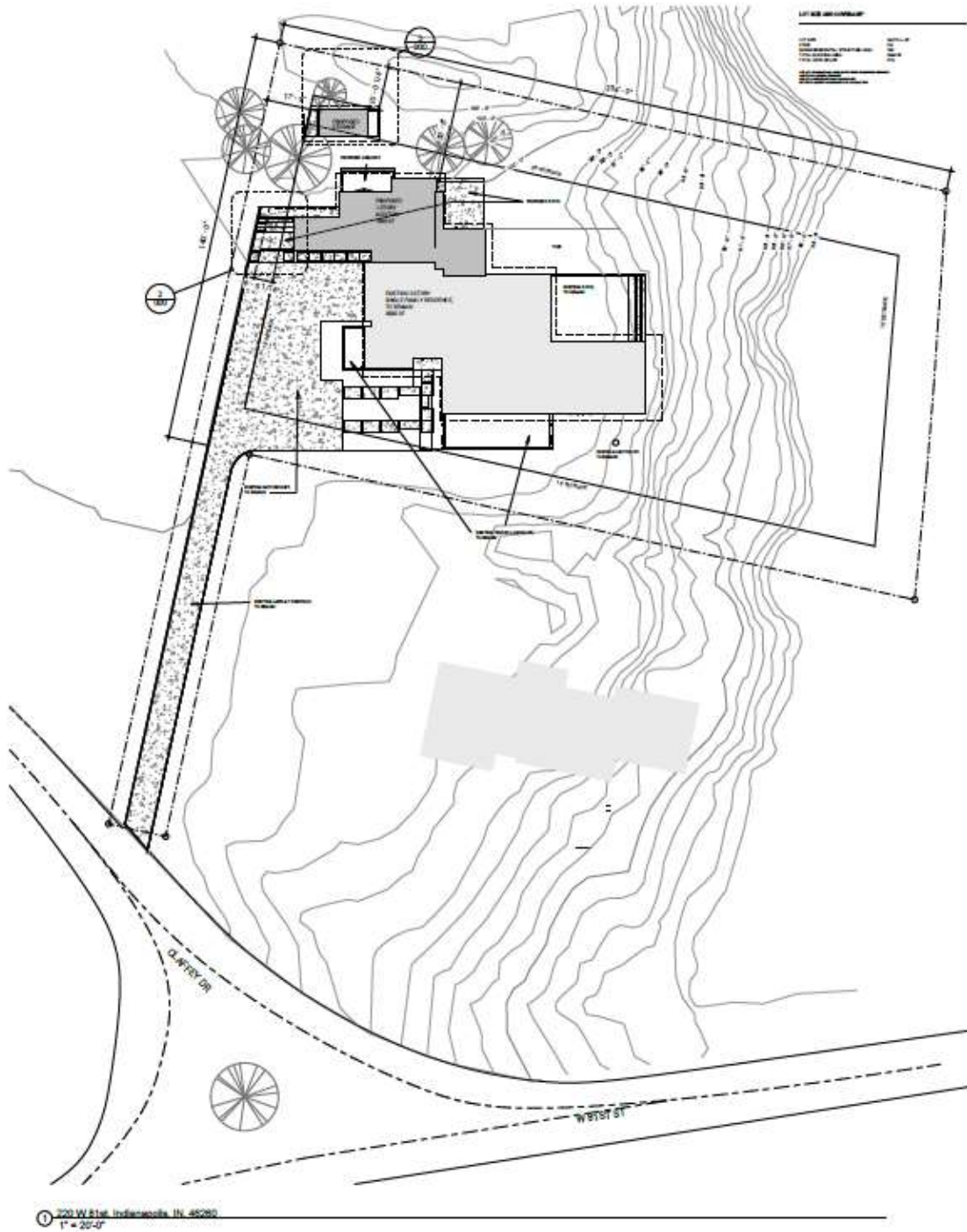
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(Continued)

2022-DV2-043; Aerial Map



(Continued)



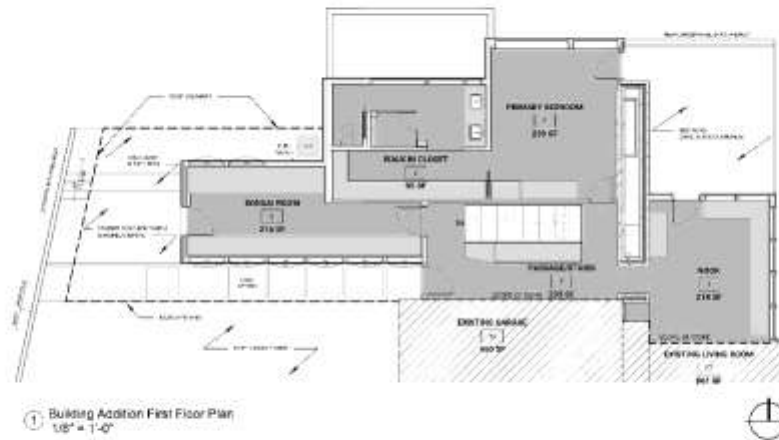
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(Continued)

2022-DV2-043; Floor Plans



**ONE 10 STUDIO
ARCHITECTS**

220 W 61st Street, Suite 200, Indianapolis, IN 46260
Tel: 317.344.0000 | Email: info@one10studio.com | www.one10studio.com

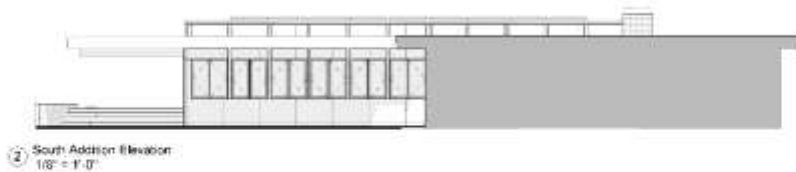
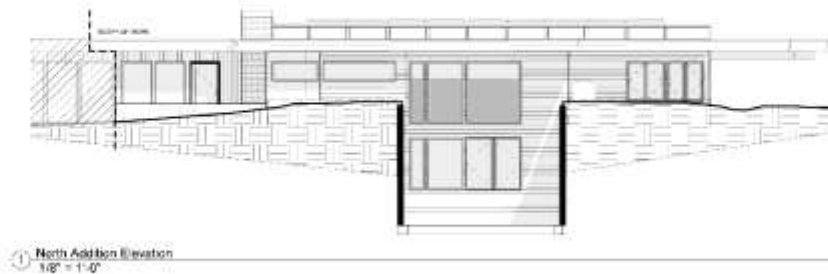
Blakely Residence Addition

220 W 61st Street
Indianapolis, IN 46260
11.22.2022

SHEET NUMBER

05

2022-DV2-043; Elevations



**ONE 10 STUDIO
ARCHITECTS**

220 W 61st Street, Suite 200, Indianapolis, IN 46260
Tel: 317.344.0000 | Email: info@one10studio.com | www.one10studio.com

Blakely Residence Addition

220 W 61st Street
Indianapolis, IN 46260
11.22.2022

SHEET NUMBER

06

(Continued)



ONE 10 STUDIO
ARCHITECTS

ONE 10 STUDIO, LLC, 220 W 81st Street, Indianapolis, IN 46260
PH: (317) 614-0001 | INFO@ONE10STUDIO.COM | WWW.ONE10STUDIO.COM

Blakely Residence Addition

220 W 81st Street
Indianapolis, IN 46260
11.22.2022

SHEET NUMBER

11



ONE 10 STUDIO
ARCHITECTS

ONE 10 STUDIO, LLC, 220 W 81st Street, Indianapolis, IN 46260
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Blakely Residence Addition

220 W 81st Street
Indianapolis, IN 46260
11.22.2022

SHEET NUMBER

12

(Continued)



**ONE 10 STUDIO
ARCHITECTS**
300 VANDERBILT AVENUE, SUITE 200, INDIANAPOLIS, INDIANA 46202
P: 317.462.1010 | F: 317.462.1011 | WWW.ONE10STUDIO.COM

Blakely Residence Addition

220 W 81st Street
Indianapolis, IN 46260
11.22.2022

SHEET NUMBER

10

(Continued)

Petition Number _____

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

1. The use of the property remains unchanged as a single family dwelling

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

1. The main proposed structure does not exceed the standard of setback in D-S district. The encroachment of the roof does not create any privacy concerns to the adjacent lot.

2. The proposed structures will improve the overall aesthetics of the property and adjacent area

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

1. The lot area (0.81 acre) is below the minimum lot area of 1 acre per Table 742-102-2. Lot is smaller than the one acre required for a D-S district and more in line with the D-1 districts to the north. The open area is 81% which would be allowable in a D-1 (80% open), but would require a variance in a D-S district.

2. The side yard setback in the D-1, which is more appropriate for this site (0.81 acre), would change the side yard setbacks from 15' (D-S) to 8' (D-1) bringing the designed addition and roof overhang within compliance.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____



Photo of driveway from Claffey Drive.



Photo of abutting property to the south of subject site, with easement access for driveway.

(Continued)



Photo of subject site : 220 West 81st Street



Photo looking towards north/east lot line (rear yard).

(Continued)



Photo of rear yard, with environmentally sensitive area (Forest Alliance Woodlands).



Photo of location for proposed addition.

(Continued)



Photos of location of proposed addition.
(Continued)



Photo of rear yard, looking towards east lot line (Kenwood Avenue, right of way).



Photo of rear yard, looking towards proposed addition location.

(Continued)



Photo of subject site.



Photo of vehicular access to Claffey Drive.

STAFF REPORT

Item 9.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-UV2-009
Address: 1251 West 96th Street (approximate address)
Location: Washington Township, Council District #2
Zoning: C-1
Petitioner: Reagan Outdoor Advertising, by Michelle Noppenberger
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 40-foot tall, 14-foot by 48-foot digital off-premise advertising sign (off-premise signs not permitted in C-1, digital off-premise sign not permitted), with an 7.9-foot setback from 96th Street (10-foot setback required), within 200 feet of a protected district (300-foot separation required for off-premise signs, 600-foot separation for digital signs), within 250 and 1,306 feet of other off-premise advertising signs along I-465 (1,500 separation required along I-465), with 436 feet of separation from another off-premises advertising sign (1,000 feet of radial separation required) and to allow for digital messages to display for minimum of eight seconds (minimum of ten second display permitted).

ADDENDUM FOR DECEMBER 13, 2022

Due to the lack of a quorum, this petition was continued for cause from the September 13, 2022, hearing to the December 13, 2022 hearing at the request of the petitioner. Staff **continues to recommend denial** of this request.

In summary, the Petitioner is requesting multiple development standard variances and to allow a billboard with digital display. To remind the Board, in 2019 the City-County Council considered and explicitly rejected amendments to the Sign Ordinance that would allow the type of digital display sought by the Petitioner. It is Staff's opinion that if the Petitioner wants billboards with digital display anywhere in Marion County, they need to once again ask the City-County Council to amend the Sign Ordinance. Instead, the Petitioner has come to this Board and ask them to make a policy decision contrary to the City-Council's 2019 decision. The role of the BZA is to uphold the Zoning Ordinance or require the Petitioner to prove that each statutory finding of fact has been met in order to grant the variance. After a thorough review, Staff believes the Petitioner has failed to meet each and every required finding of fact and therefore recommends denial of this Petition.

ADDENDUM FOR SEPTEMBER 13, 2022

This petition was continued for cause from the August 9, 2022, hearing to the September 13, 2022, hearing at the request of the petitioner. Staff **continues to recommend denial** of this request.

(Continued)

August 9, 2022

This petition was automatically continued from the May 17, 2022, hearing to the June 14, 2022, hearing at the request of a registered neighborhood organization.

This petition was automatically continued from the June 14, 2022, hearing to the July 12, 2022, hearing at the request of the petitioner.

This petition was continued for cause from the July 12, 2022, hearing to the August 9, 2022, hearing at the request of the petitioner.

RECOMMENDATIONS

Staff **recommends denial** of this request.

SUMMARY OF ISSUES**LAND USE****EXISTING ZONING AND LAND USE**

Metro	C-1	Nursing Home / Off-Premise Advertising Sign
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SURROUNDING ZONING AND LAND USE

North	Hamilton County	Single-Family Dwellings
South	D6-II	Multi-Family Dwellings
East	D6-II / D-P	Multi-Family Dwellings
West	C-1	Office Commercial

COMPREHENSIVE PLAN

The Comprehensive Plan recommends Office Commercial uses for the site.

- ◇ The grant of the petition would allow for an off-premises sign to be erected along the Interstate 465 beltway, on a site that is closer to West 96th Street, closer to two other existing off-premise signs, and closer to a protected district than the Ordinance's minimum separation distances would allow, and to display digital images that change more frequently than the Ordinance's minimum duration requirement would allow.
- ◇ In April 2022, The Supreme Court of the United States held that local Zoning Ordinances can draw a distinction between off-premise and on-premises signs that is based on the location of the sign in question while still remaining content neutral and observant of the sign owner's First Amendment rights. (CITY OF AUSTIN, TEXAS v. REAGAN NATIONAL ADVERTISING OF AUSTIN, LLC, ET AL.(2022).

(Continued)

◇ Section 36-7-4-918.5(a) of the Indiana Code provides:

(a) A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. The board may impose reasonable conditions as a part of the board's approval. A variance may be approved under this section only upon a determination in writing that:

(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community.

(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

(3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.

◇ This statute does not give the Board discretion to act on an application to vary development standards for grounds other than satisfaction of § 36-7-4-918.5(a) (1), (2) and (3). "Because a petitioner for a variance must establish the existence of **all** of the prerequisites, the failure of proof on any one will be sufficient to defeat the request." *Sam's E., Inc. v. United Energy Corp.*, 927 N.E.2d 960, 964 (Ind. Ct. App. 2010) (emphasis added).

Practical difficulties

◇ Regarding the third of these statutory preconditions for departures from development standards, the petitioner's proposed findings of fact state that there are no objective standards by which to determine whether strict application of the terms of this title will result in practical difficulties in the use of the property. That assertion is incorrect. Indiana's appellate courts have defined the concept of "practical difficulties in the use of property," making it unnecessary for the City or the State to have done so. In the most recent published decision on this topic, the Indiana Court of Appeals defined it in a way that focuses primarily on three considerations:

We have articulated several factors for a reviewing court to consider in determining whether compliance with a zoning ordinance will result in practical difficulties:

- (1) whether "significant economic injury" will result if the ordinance is enforced;**
- (2) whether the injury is self-created; and**
- (3) whether there are feasible alternatives.**

◇ *Caddyshack Looper, LLC v. Long Beach Advisory Bd. of Zoning Appeals*, 22 N.E.3d 694, 704 (Ind. Ct. App. 2014) (emphasis added). The Indiana Court of Appeals continues to apply these criteria for practical difficulties.

(Continued)

- ◇ Because Indiana law gives the Board the benefit of a specific definition of the key terms of the third requirement (practical difficulties), making that requirement (as defined by Indiana law) relatively more precise than the first and second requirements, and because a failure to establish even one of the statutory requirements deprives the Board of authority to grant a departure from development standards, Staff recommends that the Board start (and perhaps end) its consideration of the variance petition by analyzing whether the application satisfies the “practical difficulties” statutory requirement.
- ◇ First, regarding whether some or all of the three *Caddyshack* factors are satisfied by this application, the Board should consider that in 2019, the City amended the Ordinance to make otherwise-compliant off-premises signs permitted uses in many locations along freeways and expressways or inside places zoned Industrial, C-4, C-5, and C-7, so long as they are located outside the I-465 beltway.
- ◇ It is also relevant that even after a 2016 federal court order upheld the constitutionality of the City’s ban on digital off-premises signs, the City relaxed that ban in 2019. Specifically, the City replaced it with a combination of (1) conditions on the location and operation of digital off-premises signs; and (2) conditions on the operation of all digital displays. See Sections 744-911 & 744-907(C)(4). Petitioner’s pending petition seeks to take advantage of the City’s replacement of its former ban, but proposes a sign that—because of its size, location, and shorter duration between images—would not satisfy the conditions imposed by the 2019 amendment that replaced the ban.

Self-created injury

- ◇ One of the three *Caddyshack* factors is “whether the injury is self-created.” In several different respects, the structure’s violations of applicable standards are the result of choices made by the petitioner.
- ◇ As Staff understands petitioner’s business model, it is not tied to its ownership of a particular location, as would be the case for a petitioner that holds fee title to a parcel and would therefore be in a more difficult position to sell the parcel to acquire a site in a differently zoned area of the City. Instead, petitioner’s business model involves acquiring non-fee interests in particular sites that it identifies and then negotiating leaseholds with the fee owners of such sites. In these circumstances, even if the petitioner has already entered into leases for locations within the beltway despite the City’s prohibition, that effect is self-created. If the petitioner has not yet entered into such leases, it is free to pursue the leasing of parcels where the type of use is lawful.
- ◇ Second, the property currently is, and can continue to be developed with C-1 uses by right as zoned without the need for variances. This is a further reason why building an unpermitted structure on that site would be a self-created injury.

(Continued)

- ◇ Third, the petitioner has requested variances to allow for digital messages to display for minimum of eight seconds where a minimum of ten-second display is permitted. The reduction to the time of digital display is a drastic departure from what is permitted by the Ordinance for digital signs. Seeking to build a sign with more frequent changes in displays, in violation of the applicable standards, creates the need to seek additional variances from standards. Because the petitioner could also choose to build a compliant sign, the need for the duration variance is a self-created injury.
- ◇ The submitted petition does not address the need for a variance from the duration requirements,
- ◇ Fourth, the petitioner has requested a variance to allow for a 7.9-foot setback from West 96th Street, where a 10-foot setback is required. The site, at approximately 100 feet wide at the location of the existing sign, could accommodate the required setback. The purported need for the setback variance is a self-created difficulty since the newly constructed/installed signs could be developed to meet the Ordinance standards by right without the need a setback variance.

The existence of feasible alternatives

- ◇ The third *Caddyshack* factor is “whether there are feasible alternatives.” The burden of satisfying the requirements for obtaining a variance lies with the petitioner. “It is the burden of the petitioner for a variance to establish the existence of each of the statutory prerequisites.” *Maxey v. Bd. of Zoning Appeals*, 480 N.E.2d 589, 592 (Ind. Ct. App. 1985). The petitioner has not demonstrated that there are no alternative, feasible location for the subject sign.
- ◇ The existing C-1 zoning does not allow for a billboard on site with a standard vinyl changeable face. However, because the existing sign was zoning compliant when it was erected, it is considered legally non-conforming, and since it could continue to meet the standards of the Ordinance as erected, there are feasible alternatives to the proposed structure. That further prevents the petitioner from satisfying the “practical difficulties” test as defined in *Caddyshack*.

Whether significant economic injury will result

- ◇ There may be financial advantages to petitioner in their choosing of a site in the City where its proposed use is prohibited and then obtaining, through a variance, what is effectively a license to do something lawfully that remains forbidden to the petitioner’s competitors. But the inability to obtain that kind of competitive advantage through a variance is not a “significant economic injury” to the petitioner.

(Continued)

Injurious to safety

- ◇ As noted above, the Board is justified in denying the variance request on the basis of petitioner's failure to satisfy the "practical difficulties" criterion alone. However, the petitioner's failure to satisfy the requirement that the variance not injure the "public health, safety, morals, and general welfare of the community" furnishes additional grounds for denial. Although this statutory prong includes some imprecise phrases, it cannot be satisfied where the petitioner is unable to show that approval would not be injurious to safety. There are reasons to believe that the variance, if granted, would indeed be injurious to public safety. The proposed digital outdoor advertising sign would be located adjacent to Interstate I-465. In order to prevent unnecessary distractions and promote public safety, the Sign Regulations prohibit signs of the kind proposed. In Staff's opinion, at this location the proposed sign would unnecessarily distract motorists, traveling at a high speed, from other traveling vehicles in traffic, thereby negatively affecting public safety.
- ◇ This portion of Interstate I-465 has a large amount of Interstate traffic. It is visually difficult to take in any signage at this location, while continuing to maneuver safely in the travel lanes. If a large digital sign is added, it could severely distract attention away from legally installed directional signage and other commercial signage making them less effective to those established businesses.
- ◇ Providing for the reduced setback from West 96th Street would not be supportable, as it would increase the intensity of the sign by locating it closer to motorists that would be distracted by the changing content. Additionally, it would bring the activities on the site closer to adjacent properties, including protected districts, without adequate buffering
- ◇ The Ordinance has been constructed to limit these signs near protected districts, because of their scrolling displays, brightness, and aesthetic impact.
- ◇ The Sign Regulations "facilitate an easy and agreeable communication between people...and serve an important function." The purpose of the Sign Regulations is to "eliminate potential hazards to motorists, and pedestrians; to encourage signs which, by their good design, are integrated with and harmonious to the buildings and site which they occupy; and which eliminate excessive and confusing sign displays." Proliferation of signs causes those signs that are permitted and legal to become less effective and reduces their value. Additionally, the Sign Regulations preserve and improve the appearance of the City as a place in which to live and work.
- ◇ In this case, a D6-II is located approximately 200 feet to the south and east, and a S-1 district in the City of Carmel is located approximately 200 feet to the north. The Ordinance was developed to limit the incidence of these signs near protected districts because of their scrolling displays, brightness, and negative aesthetic impact for 24 hours a day, 365 days a year.
- ◇ The 1,000-foot off-premise advertising sign separation requirement is designed to mitigate the proliferation of freestanding signs and the visual conflicts and negative aesthetics associated with signs in close proximity to one another. Decreasing sign separation inhibits the ability of motorists to properly read and react to sign messages in a safe and efficient manner. Given the size of each of the respective signs that would be present in this area if the variance is approved, and the close proximity to one another, Staff cannot conclude that approval would not be injurious to safety.

(Continued)

- ◇ At the proposed increase in height to 40 feet, there are no buildings or evergreen landscaping that would obscure the proposed digital sign from the impacted protected districts to the south and north. This sign, therefore, would clearly impact those protected districts because of its changing and/or scrolling display, brightness, and aesthetic impact.
- ◇ This site has existed as a nursing home facility for approximately the past 27 years without the need for a digital sign. The requested change in separation from the protected districts would degrade the quality of life in the area. The proposed 40-foot tall sign has no physical barriers that limit the view of the sign from the nearby protected districts. There is no reason that a sign that meets the Sign Ordinance could not be used, along with alternative communication methods.
- ◇ In Staff's opinion, the requested sign height increase coupled with the separation deviations would result in signage that would not reflect the character of the area and would continue to be detrimental to the surrounding neighborhood.

GENERAL INFORMATION

THOROUGHFARE PLAN

This portion of West 96th Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a secondary arterial, with a 70-foot existing and proposed half right-of-way.

This portion of I-465 is classified in the Official Thoroughfare Plan for Marion County, Indiana as a freeway, with a 150-foot existing half right-of-way.

SITE PLAN

File-dated April 8, 2022.

FINDINGS OF FACT (Revised)

File-dated June 22, 2022.

ZONING HISTORY

2009-UV2-022; 1329 West 96th Street (west of site), requested a variance of use to provide for a catering business for on-site events of up to 200 people and off-site events, **granted**.

2005-UV3-036; 1329 West 96th Street (west of site), requested a variance of use to provide for a beauty salon and day spa, in C-1, **granted**.

2000-UV2-032; 1355 West 96th Street (west of site), requested a variance of use and development standards to provide for the construction of a 10,000-square foot physical training center, with 46 parking spaces, with two spaces located within the front transitional yard, in C-1, **granted**.

89-ZON-139; 9592 Ditch Road (west of site), requested the rezoning of 5 acres, being in the A-2 District, to the D-5 classification to provide for the development of 20 detached single-family homes, **approved**.

89-CV-22; 9592 Ditch Road (west of site), requested a variance of development standards to provide for the development of a single-family residential subdivision with private streets, fifteen-foot interior front setbacks, minimum perimeter setbacks of twenty-five feet along Ditch Road, and to reduce minimum lot width and eliminate the requirement for 30 feet of public street frontage, **granted**.

RU

2022-UV2-009: Location Map







Subject site, existing sign, looking north



Subject site, existing nursing home, looking southwest.



Multi-family dwellings protected district to the south.



Subject site, existing sign location setback from West 96th Street, looking south.



Single-family dwelling S-1 protected district to the north.



Separation from existing sign along I-465 to the east / southeast.

STAFF REPORT

Item 10.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-UV2-011
Address: 1355 West 96th Street (approximate address)
Location: Washington Township, Council District #2
Zoning: C-1
Petitioner: Reagan Outdoor Advertising, by Jon R. Campbell
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 35-foot tall, single-faced, 14-foot by 48-foot digital off-premise advertising sign (off-premise signs not permitted in C-1, digital off-premise sign not permitted), with a four-foot setback from Ditch Road (10-foot setback required), within 83 feet of a protected district (300-foot separation required for off-premise signs, 600-foot separation for digital signs), within 1,306 feet of another off-premise advertising sign along I-465 (1,500 separation required along I-465) and to allow for digital messages to display for minimum of eight seconds (minimum of ten second display permitted).

ADDENDUM FOR DECEMBER 13, 2022

Due to the lack of a quorum, this petition was continued for cause from the September 13, 2022, hearing to the December 13, 2022, hearing at the request of the petitioner. Staff **continues to recommend denial** of this request.

In summary, the Petitioner is requesting multiple development standard variances and to allow a billboard with digital display. To remind the Board, in 2019 the City-County Council considered and explicitly rejected amendments to the Sign Ordinance that would allow the type of digital display sought by the Petitioner. It is Staff's opinion that if the Petitioner wants billboards with digital display anywhere in Marion County, they need to once again ask the City-County Council to amend the Sign Ordinance. Instead, the Petitioner has come to this Board and ask them to make a policy decision contrary to the City-Council's 2019 decision. The role of the BZA is to uphold the Zoning Ordinance or require the Petitioner to prove that each statutory finding of fact has been met in order to grant the variance. After a thorough review, Staff believes the Petitioner has failed to meet each and every required finding of fact and therefore recommends denial of this Petition.

ADDENDUM FOR SEPTEMBER 13, 2022

This petition was continued for cause from the August 9, 2022, hearing to the September 13, 2022, hearing at the request of the petitioner. Staff **continues to recommend denial** of this request.

(Continued)

August 9, 2022

This petition was automatically continued from the May 17, 2022, hearing to the June 14, 2022, hearing at the request of a registered neighborhood organization.

This petition was automatically continued from the June 14, 2022, hearing to the July 12, 2022, hearing at the request of the petitioner.

This petition was continued for cause from the July 12, 2022, hearing to the August 9, 2022, hearing at the request of the petitioner.

RECOMMENDATIONS

Staff **recommends denial** of this request.

SUMMARY OF ISSUES**LAND USE****EXISTING ZONING AND LAND USE**

Metro	C-1	Physical Training Center / Off-Premise Advertising Sign
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SURROUNDING ZONING AND LAND USE

North	C-1	Commercial Offices
South	D6-II	Multi-Family Dwellings
East	C-1	Office Commercial / Nursing Home
West	D-5	Single-Family Dwellings

COMPREHENSIVE PLAN

The Comprehensive Plan recommends Office Commercial uses for the site.

- ◇ The grant of the petition would allow for an off-premises sign to be erected along the Interstate 465 beltway, on a site that is closer to Ditch Road, closer to one other existing off-premise sign, and closer to a protected district than the Ordinance's minimum separation distances would allow, and to display digital images that change more frequently than the Ordinance's minimum duration requirement would allow.
- ◇ In April 2022, The Supreme Court of the United States held that local Zoning Ordinances can draw a distinction between off-premise and on-premises signs that is based on the location of the sign in question while still remaining content neutral and observant of the sign owner's First Amendment rights. (CITY OF AUSTIN, TEXAS v. REAGAN NATIONAL ADVERTISING OF AUSTIN, LLC, ET AL.(2022).

(Continued)

◇ Section 36-7-4-918.5(a) of the Indiana Code provides:

(a) A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. The board may impose reasonable conditions as a part of the board's approval. A variance may be approved under this section only upon a determination in writing that:

(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;

(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

(3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.

◇ This statute does not give the Board discretion to act on an application to vary development standards for grounds other than satisfaction of § 36-7-4-918.5(a) (1), (2) and (3). "Because a petitioner for a variance must establish the existence of **all** of the prerequisites, the failure of proof on any one will be sufficient to defeat the request." *Sam's E., Inc. v. United Energy Corp.*, 927 N.E.2d 960, 964 (Ind. Ct. App. 2010) (emphasis added).

Practical difficulties

◇ Regarding the third of these statutory preconditions for departures from development standards, the petitioner's proposed findings of fact state that there are no objective standards by which to determine whether strict application of the terms of this title will result in practical difficulties in the use of the property. That assertion is incorrect. Indiana's appellate courts have defined the concept of "practical difficulties in the use of property," making it unnecessary for the City or the State to have done so. In the most recent published decision on this topic, the Indiana Court of Appeals defined it in a way that focuses primarily on three considerations:

We have articulated several factors for a reviewing court to consider in determining whether compliance with a zoning ordinance will result in practical difficulties:

- (1) whether "significant economic injury" will result if the ordinance is enforced;**
- (2) whether the injury is self-created; and**
- (3) whether there are feasible alternatives.**

◇ *Caddyshack Looper, LLC v. Long Beach Advisory Bd. of Zoning Appeals*, 22 N.E.3d 694, 704 (Ind. Ct. App. 2014) (emphasis added). The Indiana Court of Appeals continues to apply these criteria for practical difficulties.

(Continued)

- ◇ Because Indiana law gives the Board the benefit of a specific definition of the key terms of the third requirement (practical difficulties), making that requirement (as defined by Indiana law) relatively more precise than the first and second requirements, and because a failure to establish even one of the statutory requirements deprives the Board of authority to grant a departure from development standards, Staff recommends that the Board start (and perhaps end) its consideration of the variance petition by analyzing whether the application satisfies the “practical difficulties” statutory requirement.
- ◇ First, regarding whether some or all of the three *Caddyshack* factors are satisfied by this application, the Board should consider that in 2019, the City amended the Ordinance to make otherwise-compliant off-premises signs permitted uses in many locations along freeways and expressways or inside places zoned Industrial, C-4, C-5, and C-7, so long as they are located outside the I-465 beltway.
- ◇ It is also relevant that even after a 2016 federal court order upheld the constitutionality of the City’s ban on digital off-premises signs, the City relaxed that ban in 2019. Specifically, the City replaced it with a combination of (1) conditions on the location and operation of digital off-premises signs; and (2) conditions on the operation of all digital displays. See Sections 744-911 & 744-907(C)(4). Petitioner’s pending petition seeks to take advantage of the City’s replacement of its former ban, but proposes a sign that—because of its location, and shorter duration between images—would not satisfy the conditions imposed by the 2019 amendment that replaced the ban.

Self-created injury

- ◇ One of the three *Caddyshack* factors is “whether the injury is self-created.” In several different respects, the structure’s violations of applicable standards are the result of choices made by the petitioner.
- ◇ As Staff understands petitioner’s business model, it is not tied to its ownership of a particular location, as would be the case for a petitioner that holds fee title to a parcel and would therefore be in a more difficult position to sell the parcel to acquire a site in a differently zoned area of the City. Instead, petitioner’s business model involves acquiring non-fee interests in particular sites that it identifies and then negotiating leaseholds with the fee owners of such sites. In these circumstances, even if the petitioner has already entered into leases for locations within the beltway despite the City’s prohibition, that effect is self-created. If the petitioner has not yet entered into such leases, it is free to pursue the leasing of parcels where the type of use is lawful.
- ◇ Second, the property currently is, and can continue to be developed with C-1 uses by right as zoned without the need for variances. This is a further reason why building an unpermitted structure on that site would be a self-created injury.

(Continued)

- ◇ Third, the petitioner has requested variances to allow for digital messages to display for minimum of eight seconds where a minimum of ten-second display is permitted. The reduction to the time of digital display is a drastic departure from what is permitted by the Ordinance for digital signs. Seeking to build a sign with more frequent changes in displays, in violation of the applicable standards, creates the need to seek additional variances from standards. Because the petitioner could also choose to build a compliant sign, the need for the duration variance is a self-created injury.
- ◇ The submitted petition does not address the need for a variance from the duration requirements,
- ◇ Fourth, the petitioner has requested a variance to allow for a four-foot setback from Ditch Road, where a 10-foot setback is required. The site, at approximately 250 feet wide at the location of the existing sign, could accommodate the required setback. The purported need for the setback variance is a self-created difficulty since the newly constructed/installed signs could be developed to meet the Ordinance standards by right without the need a setback variance.

The existence of feasible alternatives

- ◇ The third *Caddyshack* factor is “whether there are feasible alternatives.” The burden of satisfying the requirements for obtaining a variance lies with the petitioner. “It is the burden of the petitioner for a variance to establish the existence of each of the statutory prerequisites.” *Maxey v. Bd. of Zoning Appeals*, 480 N.E.2d 589, 592 (Ind. Ct. App. 1985). The petitioner has not demonstrated that there are no alternative, feasible location for the subject sign.
- ◇ The existing C-1 zoning does not allow for a billboard on site with a standard vinyl changeable face. However, because the existing sign was zoning compliant when it was erected, it is considered legally non-conforming, and since it could continue to meet the standards of the Ordinance as erected, there are feasible alternatives to the proposed structure. That further prevents the petitioner from satisfying the “practical difficulties” test as defined in *Caddyshack*.

Whether significant economic injury will result

- ◇ There may be financial advantages to petitioner in their choosing of a site in the City where its proposed use is prohibited and then obtaining, through a variance, what is effectively a license to do something lawfully that remains forbidden to the petitioner’s competitors. But the inability to obtain that kind of competitive advantage through a variance is not a “significant economic injury” to the petitioner.

(Continued)

Injurious to safety

- ◇ As noted above, the Board is justified in denying the variance request on the basis of petitioner's failure to satisfy the "practical difficulties" criterion alone. However, the petitioner's failure to satisfy the requirement that the variance not injure the "public health, safety, morals, and general welfare of the community" furnishes additional grounds for denial. Although this statutory prong includes some imprecise phrases, it cannot be satisfied where the petitioner is unable to show that approval would not be injurious to safety. There are reasons to believe that the variance, if granted, would indeed be injurious to public safety. The proposed digital outdoor advertising sign would be located adjacent to Interstate I-465. In order to prevent unnecessary distractions and promote public safety, the Sign Regulations prohibit signs of the kind proposed. In Staff's opinion, at this location the proposed sign would unnecessarily distract motorists, traveling at a high speed, from other traveling vehicles in traffic, thereby negatively affecting public safety.
- ◇ This portion of Interstate I-465 has a large amount of Interstate traffic. It is visually difficult to take in any signage at this location, while continuing to maneuver safely in the travel lanes. If a large digital sign is added, it could severely distract attention away from legally installed directional signage and other commercial signage making them less effective to those established businesses.
- ◇ Providing for the reduced setback from Ditch Road would not be supportable, as it would increase the intensity of the sign by locating it closer to motorists that would be distracted by the changing content. Additionally, it would bring the activities on the site closer to adjacent properties, including protected districts, without adequate buffering
- ◇ The Ordinance has been constructed to limit these signs near protected districts, because of their scrolling displays, brightness, and aesthetic impact.
- ◇ The Sign Regulations "facilitate an easy and agreeable communication between people...and serve an important function." The purpose of the Sign Regulations is to "eliminate potential hazards to motorists, and pedestrians; to encourage signs which, by their good design, are integrated with and harmonious to the buildings and site which they occupy; and which eliminate excessive and confusing sign displays." Proliferation of signs causes those signs that are permitted and legal to become less effective and reduces their value. Additionally, the Sign Regulations preserve and improve the appearance of the City as a place in which to live and work.
- ◇ In this case, a D-5 District is located approximately 83 feet to the west and a D6-II District is located approximately 150 feet to the south. The Ordinance was developed to limit the incidence of these signs near protected districts because of their scrolling displays, brightness, and negative aesthetic impact for 24 hours a day, 365 days a year.
- ◇ The 1,000-foot off-premise advertising sign separation requirement is designed to mitigate the proliferation of freestanding signs and the visual conflicts and negative aesthetics associated with signs in close proximity to one another. Decreasing sign separation inhibits the ability of motorists to properly read and react to sign messages in a safe and efficient manner. Given the size of each of the respective signs that would be present in this area if the variance is approved, and the close proximity to one another, Staff cannot conclude that approval would not be injurious to safety.

(Continued)

- ◇ At the proposed increase in height from 22 feet to 35 feet, there are no buildings or evergreen landscaping that would obscure the proposed digital sign from the impacted protected districts to the south and west. This sign, therefore, would clearly impact those protected districts because of its changing and/or scrolling display, brightness, and aesthetic impact.
- ◇ This subject site has existed with a static off-premise advertising sign for approximately the past 50 years without the need for a digital sign. The requested change in separation from the protected districts would degrade the quality of life in the area. The proposed 35-foot tall sign has no physical barriers that limit the view of the sign from the nearby protected districts. There is no reason that a sign that meets the Sign Ordinance could not be used, along with alternative communication methods.
- ◇ In Staff's opinion, the requested digital sign coupled with the separation deviations would result in signage that would not reflect the character of the area and would continue to be detrimental to the surrounding neighborhood.

GENERAL INFORMATION

THOROUGHFARE PLAN

This portion of Ditch Road is classified in the Official Thoroughfare Plan for Marion County, Indiana as a secondary arterial, with a 65-foot existing and proposed half right-of-way.

This portion of I-465 is classified in the Official Thoroughfare Plan for Marion County, Indiana as a freeway, with a 150-foot existing half right-of-way.

SITE PLAN

File-dated April 11, 2022.

FINDINGS OF FACT

File-dated April 12, 2022.

ZONING HISTORY

2009-UV2-022; 1329 West 96th Street (north of site), requested a variance of use to provide for a catering business for on-site events of up to 200 people and off-site events, **granted**.

2005-UV3-036; 1329 West 96th Street (north of site), requested a variance of use to provide for a beauty salon and day spa, in C-1, **granted**.

2000-UV2-032; 1355 West 96th Street (includes subject site), requested a variance of use and development standards to provide for the construction of a 10,000-square foot physical training center, with 46 parking spaces, with two spaces located within the front transitional yard, in C-1, **granted**.

89-ZON-139; 9592 Ditch Road (west of site), requested the rezoning of 5 acres, being in the A-2 District, to the D-5 classification to provide for 20 detached single-family homes, **approved**.

89-CV-22; 9592 Ditch Road (west of site), requested a variance of development standards to provide for the development of a single-family residential subdivision with private streets, fifteen-foot interior front setbacks, minimum perimeter setbacks of twenty-five feet along Ditch Road, and to reduce minimum lot width and eliminate the requirement for 30 feet of public street frontage, **granted**.

RU







Subject site, existing sign, looking west



Subject site, looking northeast.



Multi-family dwellings protected district to the south.



Subject site, existing sign location setback from Ditch Road, looking south.



Single-family dwelling D-5 protected district to the west.



View of sign location from existing protected district, looking east.

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-UV2-012
Address: 9333 Haver Way (approximate address)
Location: Washington Township, Council District #2
Zoning: C-5
Petitioner: Reagan Outdoor Advertising, by Michelle Noppenberger
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 60-foot tall, 14-foot by 48-foot digital off-premise advertising sign (maximum 40-foot height permitted, digital off-premise sign not permitted), within 907 feet of another off-premise advertising sign (1,000 feet of radial separation required) and to allow for digital messages to display for minimum of eight seconds (minimum of ten second display permitted), and to be located along an interstate entrance roadway (advertising signs not permitted within 500 feet of an entrance roadway).

ADDENDUM FOR DECEMBER 13, 2022

Due to the lack of a quorum, this petition was continued for cause from the September 13, 2022 hearing to the December 13, 2022 hearing at the request of the petitioner. Staff **continues to recommend denial** of this request.

In summary, the Petitioner is requesting multiple development standard variances and to allow a billboard with digital display. To remind the Board, in 2019 the City-County Council considered and explicitly rejected amendments to the Sign Ordinance that would allow the type of digital display sought by the Petitioner. It is Staff's opinion that if the Petitioner wants billboards with digital display anywhere in Marion County, they need to once again ask the City-County Council to amend the Sign Ordinance. Instead, the Petitioner has come to this Board and ask them to make a policy decision contrary to the City-Council's 2019 decision. The role of the BZA is to uphold the Zoning Ordinance or require the Petitioner to prove that each statutory finding of fact has been met in order to grant the variance. After a thorough review, Staff believes the Petitioner has failed to meet each and every required finding of fact and therefore recommends denial of this Petition.

ADDENDUM FOR SEPTEMBER 13, 2022

This petition was continued for cause from the August 9, 2022 hearing to the September 13, 2022 hearing at the request of the petitioner. Staff **continues to recommend denial** of this request.

August 9, 2022

This petition was automatically continued from the May 17, 2022 hearing to the June 14, 2022 hearing at the request of a registered neighborhood organization.

(Continued)

STAFF REPORT 2022-UV2-012 (Continued)

This petition was automatically continued from the June 14, 2022 hearing to the July 12, 2022 hearing at the request of the petitioner.

This petition was continued for cause from the July 12, 2022 hearing to the August 9, 2022 hearing at the request of the petitioner.

RECOMMENDATIONS

Staff **recommends denial** of this request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE**EXISTING ZONING AND LAND USE**

C-5	Metro	Car dealership
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SURROUNDING ZONING AND LAND USE

North	C-5	Commercial (Car dealership)
South	C-5	Commercial (Car repair/maintenance)
East	C-5	Commercial (Car dealership)
West	C-5	Commercial

COMPREHENSIVE PLAN	The Comprehensive Plan recommends community commercial development.
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- ◇ The subject site is developed with an auto sales business and a 40-foot tall static and trivision billboard. It is surrounded by other similar uses such as car dealerships and car repair and maintenance.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The grant of the petition would allow for a 60-foot tall digital off-premises sign to be located within 907 feet of another off-premise advertising sign and along an interstate entrance roadway with digital messages that change more frequently than the Ordinance's minimum duration requirement would allow.
- ◇ In April 2022, The Supreme Court of the United States held that local Zoning Ordinances can draw a distinction between off-premise and on-premises signs that is based on the location of the sign in question while still remaining content neutral and observant of the sign owner's First Amendment rights. (CITY OF AUSTIN, TEXAS v. REAGAN NATIONAL ADVERTISING OF AUSTIN, LLC, ET AL.(2022)

(Continued)

STAFF REPORT 2022-UV2-012 (Continued)

◇ Section 36-7-4-918.5(a) of the Indiana Code provides:

(a) A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. The board may impose reasonable conditions as a part of the board's approval. A variance may be approved under this section only upon a determination in writing that:

(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;

(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

(3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.

◇ This statute does not give the Board discretion to act on an application to vary development standards for grounds other than satisfaction of § 36-7-4-918.5(a) (1), (2) and (3). "Because a petitioner for a variance must establish the existence of **all** of the prerequisites, the failure of proof on any one will be sufficient to defeat the request." *Sam's E., Inc. v. United Energy Corp.*, 927 N.E.2d 960, 964 (Ind. Ct. App. 2010) (emphasis added).

Practical difficulties

◇ Regarding the third of these statutory preconditions for departures from development standards, the petitioner's proposed findings of fact state that "there are no objective standards by which to determine whether the strict application of the terms of this title will result in practical difficulties in the use of the property." That assertion is incorrect. Indiana's appellate courts have defined the concept of "practical difficulties in the use of property," making it unnecessary for the City or the State to have done so. In the most recent published decision on this topic, the Indiana Court of Appeals defined it in a way that focuses primarily on three considerations:

We have articulated several factors for a reviewing court to consider in determining whether compliance with a zoning ordinance will result in practical difficulties:

(1) whether "significant economic injury" will result if the ordinance is enforced;

(2) whether the injury is self-created; and

(3) whether there are feasible alternatives.

◇ *Caddyshack Looper, LLC v. Long Beach Advisory Bd. of Zoning Appeals*, 22 N.E.3d 694, 704 (Ind. Ct. App. 2014) (emphasis added). The Indiana Court of Appeals continues to apply these criteria for practical difficulties

(Continued)

STAFF REPORT 2022-UV2-012 (Continued)

- ◇ Because Indiana law gives the Board the benefit of a specific definition of the key terms of the third requirement (practical difficulties), making that requirement (as defined by Indiana law) relatively more precise than the first and second requirements, and because a failure to establish even one of the statutory requirements deprives the Board of authority to grant a departure from development standards, Staff recommends that the Board start (and perhaps end) its consideration of the variance petition by analyzing whether the application satisfies the “practical difficulties” statutory requirement.
- ◇ First, regarding whether some or all of the three *Caddyshack* factors are satisfied by this application, the Board should consider that in 2019, the City amended the Ordinance to make otherwise-compliant off-premises signs permitted uses in many locations along freeways and expressways or inside places zoned Industrial, C-4, C-5, and C-7, so long as they are located along the I-465 beltway and meet the sign regulations for off-premise signs. But petitioner’s pending petition involves a sign that exceeds the height limitation, separation requirements, duration time, and display type.
- ◇ It is also relevant that even after a 2016 federal court order upheld the constitutionality of the City’s ban on digital off-premises signs, the City relaxed that ban in 2019. Specifically, the City replaced it with a combination of (1) conditions on the location and operation of digital off-premises signs; and (2) conditions on the operation of all digital displays. See Sections 744-911 & 744-907(C)(4). The petitioner’s pending request seeks to take advantage of the City’s replacement of its former ban, but proposes a sign that—because of its height, location, and shorter duration between images—would not satisfy the conditions imposed by the 2019 amendment that replaced the ban.

Self-created injury

- ◇ One of the three *Caddyshack* factors is “whether the injury is self-created.” In several different respects, the structure’s violations of applicable standards are the result of choices made by the petitioner.
- ◇ As Staff understands the petitioner’s business model, it is not tied to its ownership of a particular location, as would be the case for a petitioner that holds fee title to a parcel and would therefore be in a more difficult position to sell the parcel to acquire a site in a differently zoned area of the City. Instead, petitioner’s business model involves acquiring existing billboard sites that it identifies and then negotiating leaseholds with the fee owners of such sites. In these circumstances, even if the petitioner has already entered into leases for locations the existing billboards could still be utilized without the need for additional variances to convert them to digital billboards.
- ◇ Second, the property currently is and can continue to be developed with C-5 uses by right as zoned without the need for variances. This is a further reason why building an unpermitted structure on that site would be a self-created injury.

(Continued)

STAFF REPORT 2022-UV2-012 (Continued)

- ◇ Third, the petitioner has requested variances to allow for an increase in permitted sign height from 40 feet to 60 feet in height, deficient separation from another off-premise sign and interstate entrance roadway, and to allow for digital messages to display for minimum of eight seconds where a minimum of ten-second display is permitted. The increase in height, the deficient separation, and the reduction to the time of digital display is a drastic departure from what is permitted by the Ordinance for digital signs. Seeking to build an excessively tall sign with more frequent changes in displays, in violation of the applicable standards, creates the need to seek additional variances from standards. Because the petitioner could also choose to maintain the existing sign, the needs for height, separation, and duration variances are self-created injuries.
- ◇ The submitted findings note that “due to the increase in height, of the Keystone Avenue bridge deck, the need arises to increase the height of the sign from 40’ overall height to 60’ overall height, so the sign can be viewed from southbound traffic”. The more visible a sign is, the greater its value might be. But many structures would be more valuable if they could be constructed in disregard of height limitations. That, however, does not make compliance with the height limits a practical difficulty under the *Caddyshack* factors.

The existence of feasible alternatives

- ◇ The third *Caddyshack* factor is “whether there are feasible alternatives.” The burden of satisfying the requirements for obtaining a variance lies with the petitioner. “It is the burden of the petitioner for a variance to establish the existence of each of the statutory prerequisites.” *Maxey v. Bd. of Zoning Appeals*, 480 N.E.2d 589, 592 (Ind. Ct. App. 1985). The petitioner has not demonstrated that there are no alternative, feasible location for the subject sign.
- ◇ The existing C-5 zoning allows for a 40-foot tall billboard on site with a standard vinyl changeable face. Because the sign could meet the standards of the Ordinance with regard to height and face, there are feasible alternatives to the proposed structure. That further prevents the petitioner from satisfying the “practical difficulties” test as defined in *Caddyshack*.
- ◇ The submitted findings note that “the industry standard for digital displays is eight (8) seconds”, which is why the request would be to reduce the duration time from 10 seconds to eight seconds. The alternative of meeting the 10 second standard of the Ordinance could be accomplished without difficulty.

Whether significant economic injury will result

- ◇ There may be financial advantages to the petitioner in their choosing of a site in the City where its proposed use is prohibited and then obtaining, through a variance, what is effectively a license to do something lawfully that remains forbidden to the petitioner’s competitors. But the inability to obtain that kind of competitive advantage through a variance is not a “significant economic injury” to the petitioner.

(Continued)

Injurious to safety

- ◇ Although Section 36.7-4-918.5(a)(1) (“the approval will not be injurious to the public health, safety, morals, and general welfare to the community”) includes some imprecise phrases, it cannot be satisfied where the petitioner is unable to show that approval would not be injurious to safety. There are reasons to believe that the variance, if granted, would be injurious to public safety. The proposed digital outdoor advertising sign would be located along a heavily trafficked area. In order to prevent unnecessary distractions and promote public safety, the Sign Regulations prohibit signs of the kind proposed. In Staff’s opinion, at this location the proposed sign would unnecessarily distract motorists, traveling at a high speed, from other traveling vehicles in traffic, thereby negatively affecting public safety. This is particularly important at the subject site because the sign is located at the beginning of an entrance ramp, when maneuvering between lanes and ramps increases.
- ◇ This portion of Keystone Avenue has a large amount of Interstate traffic. It is visually difficult to take in any signage at this location, while continuing to maneuver safely in the travel lanes. Making matters worse, it would be located adjacent to an entrance roadway of Interstate 465, which for safety reasons is not permitted. If a large digital sign is added, it could severely distract attention away from legally installed directional signage and other commercial signage making them less effective to those established businesses.
- ◇ The Sign Regulations “facilitate an easy and agreeable communication between people...and serve an important function.” The purpose of the Sign Regulations is to “eliminate potential hazards to motorists, and pedestrians; to encourage signs which, by their good design, are integrated with and harmonious to the buildings and site which they occupy; and which eliminate excessive and confusing sign displays.” Proliferation of signs causes those signs that are permitted and legal to become less effective and reduces their value. Additionally, the Sign Regulations preserve and improve the appearance of the City as a place in which to live and work.
- ◇ At the existing 40-foot height, there are no buildings or landscaping that would obscure the proposed EVMS to warrant a height increase. This height change, however, would clearly impact the motorists traveling along I-465 who would not have otherwise been drawn to the existing billboard because of its proposed changing and/or scrolling display, brightness and aesthetic impact.
- ◇ There is no reason that the existing sign could not be used, along with alternative communication methods.
- ◇ In Staff’s opinion, the requested sign height increase coupled with the digital display would result in signage that would not reflect the character of the area and would be detrimental to the motorists.

(Continued)

STAFF REPORT 2022-UV2-012 (Continued)**GENERAL INFORMATION**

THOROUGHFARE PLAN	Keystone Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial, with a 248-foot existing right-of-way and a 124-foot proposed right-of-way.
SITE PLAN	File-dated April 8, 2022.
PLAN OF OPERATION	File-dated April 8, 2022.
FINDINGS OF FACT	File-dated April 8, 2022.
REVISED FINDINGS OF FACT	File-dated June 13, 2022.

ZONING HISTORY – SITE**EXISTING VIOLATIONS**

None.

PREVIOUS CASES

2005-ZON-185; 9402 Haver Way (subject site), Rezoning of 3.55 acres, being in the C-6 District, to the C-5 classification to provide for automotive related uses, **approved**.

2001-ZON-168; 9333 Haver Way (subject site), Rezoning 1.6 acres from the C-3, C-6 and C-S to C-5 to provide for general commercial uses, **approved**.

2000-AP1-006; 9402 Haver Way (subject site), Modification of conditions, related to petition 99-V2-132, terminating condition #4 which required the removal of an existing advertising sign, and to modify condition #2 to reduce the maximum height of the on-premises signs to 87 feet (maximum 102-foot tall signs previously permitted), **granted**.

99-V2-132; 9402 Haver Way (subject site), Variance of development standards of the Sign Regulations to provide for an 80-foot tall, 316-square foot illuminated pole sign (maximum 40 feet in height permitted), **granted**.

93-HOV-53; 9333 Haver Way (subject site), Variance of development standards of the Sign Regulations of Marion County to provide for the placement of an illuminated awning (non-illuminated permitted), **granted**.

(Continued)

STAFF REPORT 2022-UV2-012 (Continued)**ZONING HISTORY – VICINITY**

2020-DV1-009; 9510 Aronson Drive (northeast of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a 40-foot tall, 148-square foot pole sign with a zero-foot front setback and a pylon sign along Aronson Drive (maximum 20-foot tall, 135-square square foot pole sign permitted, five-foot front setback required, pylon signs not permitted along private streets), **granted**.

2020-DV2-006; 3232 Harper Road (east of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a 61-foot tall, 210-square foot freestanding pylon sign (maximum 25-foot tall pylon sign and 200 square feet permitted for frontage less than 500 feet), **withdrawn**.

99-V2-132; 9402 Haver Way (west of site), Variance of development standards of the Sign Regulations to provide for an 80-foot tall, 316 square foot illuminated pole sign (maximum 40 feet in height permitted), **granted**.

95-V1-121; 9445 Threel Road (east of site), Variance of use and development standards of the Sign Regulations to provide for the placement of an additional pole sign located within an integrated center (not permitted), measuring 5.58 by 28 feet and being 30 feet in height, **granted**.

94-UV1-7; 9444 -9512 Haver Way (northwest of site), Variance of use of the Commercial Zoning Ordinance to provide for an existing veterinary clinic to relocate from one building to another within an existing retail service/shopping center (not permitted), **granted**.

94-V3-16; 2110 West 42nd Street (northeast of site), Variance of development standards of the Dwelling Districts Zoning Ordinance to legally establish a fence 74 inches in height within the required front yard, and within the right-of-way and clear sight area of 42nd Street and within the clear sight area of West 42nd Street and Knollton Road, **granted**.

89-V3-76; 9455 Haver Way (north of site), Variance of development standards of the Sign Regulations to provide for an illuminated awning, **granted**.

87-V1-40; 9431 Threel Road (east of site), Variance of development standards of the Sign Regulations to provide for the erection of a 14 by 48-foot advertising pole sign on a site that does not have public street frontage, **denied**.

85-UV1-2; 9431 Threel Road (east of site), Variance of use of the Commercial Zoning Ordinance to provide for new and used vehicle sales with indoor and outdoor display and wall signs, **granted**.

85-UV2-95; 9431 Haver Way (north of site), Variance of use of the Commercial Zoning Ordinance to provide for the construction and use of a drive-through car wash, **granted**.

84-UV1-20; 9431 Threel Road (east of site), Variance of use of the Commercial Zoning District Ordinance to provide for the construction of a 60 by 20-foot building to be used as an automobile sales facility with offices and outdoor display of automobiles and with wall signs, **denied**.

(Continued)

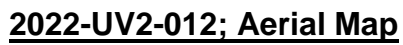
STAFF REPORT 2022-UV2-012 (Continued)

83-HOV-62; 9445 Threel Road (northeast of site), Variance of development standards of the Sign Regulations to allow the erection of a roof sign on a building in an integrated center, **granted.**

79-A2-1; 3201 East 96th Street (east of site), Appeal of denial of sign permit application, **denied.**

78-V1-129; 3235 Harper Road; (east of site), Variance to permit remodeling and maintenance of existing sign, to include an electronic message center, **denied.**

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PLAN OF OPERATION

Reagan Outdoor Advertising is requesting a variance to convert an existing off-premises' static outdoor advertising sign to digital. Upon approval, of the currently requested variance, the plan of operation is as follows:

- Convert one 14'x48' static face and one 14'x48' trivision face of the existing off-premises' s advertising sign to digital.
- Upon conversion the digital signs will display static digital messages with hold times no less than 8 seconds and transitioning in less than a second which contain light sensing technology which will dim the sign in relation to surrounding ambient light, be protected with programmatic safeguards and cyber security protocols to prevent unauthorized messages, and go to "full black" in the event of a catastrophic failure.
- The digital messages will consist of off-premise message content as well as non-commercial message content.
- Each face will be oriented toward Keystone Avenue.
- The sign will be part of the national AMBER ALERT network to be utilized for messages regarding abducted children to provide information to the motoring public when seconds count to find and save an abducted child.

1995 Aerial Map from GIS Maps:

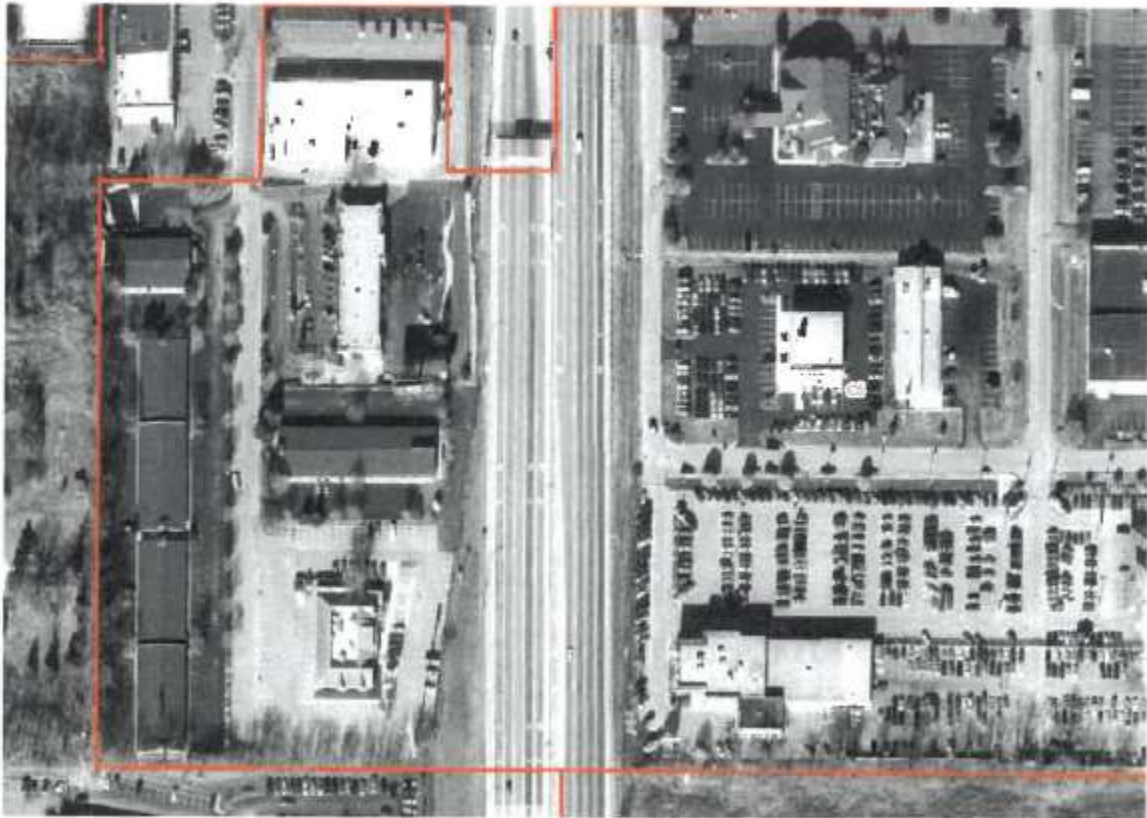




Photo of the existing billboard looking north.



Photo of the existing billboard looking south.



Photo of the Subject Property: 9333 Haver Way



Photo of the interstate entrance ramp and Keystone Avenue looking north.



Photo of the interstate entrance ramp and Keystone Avenue looking south.



Photo of the existing billboard sign.