

BOARD OF ZONING APPEALS DIVISION I

September 2, 2025

Case Number: 2025-UV1-016

Property Address: 9743 Indian Creek Road South (*approximate address*)

Location: Franklin Township, Council District #25

Petitioner: David & Margaret Sisk, by David A. Retherford

Current Zoning: D-A

Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a lawnmower repair business with accessory outdoor storage and operations (not permitted), accessory structures with a two-foot western side yard setback and a two-foot rear yard setback (15-foot side and rear yard setbacks required), and a rear deck resulting in an open space of 82.5% (minimum 85% required), and one portable sign with an area of 6 square feet (not permitted), per filed plan of operation.

Current Land Use: Residential

Staff

Recommendations: Staff recommends **denial** of this petition.

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- 9743 Indian Creek Road South is a residential property that is currently improved with a single-family residence and four (4) accessory structures within the rear yard. Adjacent land uses are residential to the north, west, and south and undeveloped to the east. The four (4) accessory structures range in size from 80 to 192 square feet, and a chain-link fence exists along the southern portion of the site (no buffering exists along the western property line). A wooden deck is also partially constructed along the southern portion of the existing residence.
- The accessory structures, placed in the 1990s, are below the square-footage threshold for requiring Improvement Location Permits or permanent foundations but would still be required to comply with Ordinance standards for height, setbacks, and overall open space at the property.

- VIO25-003756 was opened in April 2025 because of an anonymous complaint filed with the Mayor's Action Center. That violation cited the property for various zoning non-conformities, including the operation of a lawnmower repair business with accessory outdoor storage within the D-A zoning district: the outdoor storage in question included lawnmowers and related equipment, vehicle parts (including tires and batteries), an unlicensed trailer, and miscellaneous items such as tarps and plywood. Additionally, the violation mentioned both the partial construction of a deck without the required permits and placement of portable signage (full text within Exhibits).
- Approval of this variance would allow for **(a)** the continued operation of a lawnmower repair business with outdoor storage and operations per the filed Plan of Operation; **(b)** legally establishing the accessory structures at the site with setbacks two (2) feet away from property lines to the west and south (15-foot separation required); **(c)** construction of the deck which, in conjunction with the other primary and accessory structures, would result in an open space of 82.5% (85% required); and **(d)** placement of a portable sign advertising the business.
- The subject site is zoned D-A to allow for a variety of agricultural uses as well as for large estate development of single-family dwellings. The Pattern Book recommends it to the Suburban Neighborhood living typology to allow for predominantly single-family housing supported by a variety of neighborhood-serving businesses, institutions, and amenities. The Plan recommendation is for a greater residential density than the Rural or Estate Neighborhood typology, and no residential zones or typologies contemplate the placement of contractor uses or accessory outdoor storage related to contractor uses (a heavy commercial or industrial use).
- The Plan of Operation filed by the petitioner indicates that their business would be limited to the owner-occupant and would operate from late February to late October with hours from 8 AM to 6:30 PM. Operation of the business would include sharpening, minor welding, and repair of engines both within the accessory buildings as well as within outdoor areas surrounding those buildings near adjacent properties to the west and south (see site plan within Exhibits). Any drop-off and pickup of mowers or equipment would utilize the residential driveway, and that mower engines would be left running at idle "except for short periods of time as necessary".
- Regulations on the placement of heavy commercial primary uses and outdoor accessory uses (and signage advertising those uses) exist to ensure that residential areas remain distinct from areas contemplated for more intense development and to limit negative externalities of noise, dust, odor, etc. on adjacent properties. The continued operation of this use would result in a continuation of those negative externalities with limited buffering and setbacks that have already resulted in three (3) separate complaints about this property. Staff would also note that no undue hardship exists that would preclude this property from alternate use (residential), and that site-specific practical difficulty hasn't been identified for the variances of development standards.
- Although the substandard size of the D-A lot (0.36-acre when 3 acres are required) might limit the size of a new residence or addition, staff would note that the current reduction in setbacks that is being requested and the open space variance are only needed based on the desire for an accessory deck *and* four (4) separate buildings associated with the heavy commercial use.

- The proposed contractor use involving outdoor repairs and lawnmower noise and odors would be very near adjacent residences with minimal buffering. Practical enforcement of the noise restrictions within the Plan of Operation would also be difficult, and staff would note that the previous placement of structures without permanent foundations within required setbacks would be a self-imposed difficulty. Staff recommends denial of the proposed variances.

GENERAL INFORMATION

Existing Zoning	D-A	
Existing Land Use	Residential	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	<u>Zoning</u>	Surrounding Context
North:	D-A	North: Residential
South:	D-A	South: Residential
East:	D-A	East: Undeveloped
West:	D-A	West: Residential
Thoroughfare Plan		
Indian Creek Rd S	Primary Collector	40-foot existing right-of-way and 80-foot proposed right-of-way
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	06/27/2025	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	06/27/2025	
Findings of Fact (Amended)	08/25/2025	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommend this site to the Suburban Neighborhood living typology to allow for predominantly single-family housing supported by a variety of neighborhood-serving businesses, institutions, and amenities. Heavy commercial uses such as a contractor and outdoor displays and operations are not contemplated for the typology.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.

ZONING HISTORY

ZONING HISTORY – SITE

N/A

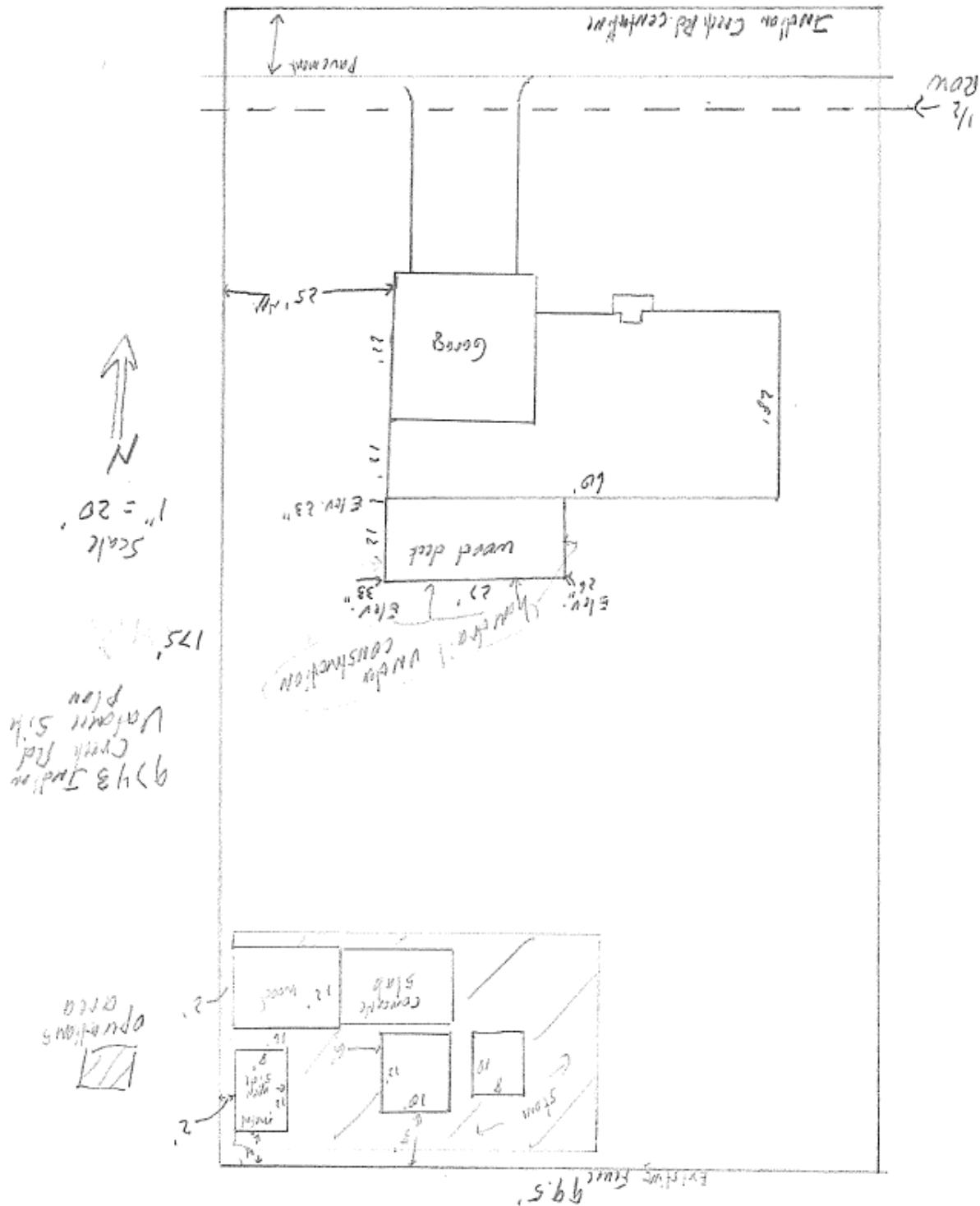
ZONING HISTORY – VICINITY

2021HOV012 ; 9755 Indian Creek Road S (east of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a single-family dwelling and attached garage with a 30-foot front setback, 19-foot and 20-foot side setbacks, a 43-foot rear setback and 69% open space (35-foot front setback, 35-foot side setback, 75-foot aggregate side setback, 75-foot rear setback and 85% open space required), **approved**.

EXHIBITS

2025UV1016 ; Aerial Map





2025UV1016 ; Notice of Violation (VIO25-003756)

Section 740 -1005.A.1. Civil Zoning Violation

Specific Violation: The location, erection, or maintenance of any sign not specifically permitted by the Zoning Ordinance; (744-903.G.5. - Portable signs are prohibited).

Section 740 -1005.A.2. Civil Zoning Violation

Specific Violation: The failure to obtain an Improvement Location Permit when one is required by the terms and provisions of the Zoning Ordinance; (740-801.A.2. - Failure to obtain an Improvement Location Permit (ILP) for a deck exceeding 18 inches in height).

Section 740 -1005.A.3. Civil Zoning Violation

Specific Violation: The outdoor storage of junk, trash, or debris in any zoning district, the provisions of which do not specifically permit such a use; (Tarps, plywood, and other miscellaneous items throughout the property).

Section 740 -1005.A.4. Civil Zoning Violation

Specific Violation: The outdoor storage of inoperable vehicles in any zoning district, the provisions of which do not specifically permit such a use; (Any motor vehicle, racing vehicle, recreational vehicle, trailer, camper, boat, airplane, bus, truck, or similar vehicle, that cannot be driven, towed or hauled on a city street without being subject to the issuance of a traffic citation by reason of its operating condition or the lack of a valid license plate, or flat tires; or that is otherwise partially dismantled or mechanically inoperable...unlicensed trailer).

Section 740 -1005.A.4. Civil Zoning Violation

Specific Violation: The outdoor storage of vehicle parts in any zoning district, the provisions of which do not specifically permit such a use; (Vehicle tires, battery, and other miscellaneous vehicle parts throughout the property).

Section 740 -1005.A.5. Civil Zoning Violation

Specific Violation: The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Trailer, open or enclosed, holding landscaping or construction equipment...lawnmower and lawncare equipment).

Section 740 -1005.A.7. Civil Zoning Violation

Specific Violation: The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - Lawnmower repair is not a permitted use in a D-A zoning district).

Section 740 -1005.A.7. Civil Zoning Violation

Specific Violation: The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - Outdoor storage and operations is not a permitted accessory use in a D-A zoning district...lawnmowers, lumber, plastic piping, hand dollies, etc.).

2025UV1016 ; Plan of Operation

1). Operation: Petitioner will operate a small seasonal lawn mower repair business, including sharpening, minor welding, and small engine repair and associated uses on the subject property.

2). Details of Operation:

A. The four existing accessory buildings (without foundations) located behind the Petitioner's residence (the "buildings") and also the outdoor concreted, stone covered, or grass covered areas generally abutting those buildings comprise the "Operations Area" shown on the Site Plan. The Operations Area is the only area on the site in which the authorized uses may be performed.

B. The storage of mowers, equipment, the Petitioner's lightweight single axle trailer, tools, parts, and associated material shall be permitted only within the Operations Area.

C. The drop-off and pickup of the mowers/blades/projects worked on will generally occur using the existing driveway in front of the residence. This drop-off and pick-up activity, and transferring the items to and from the driveway and the Operations Area are the only significant activities related to the work authorized by this use variance that are allowed to occur outside of the Operations Area.

D. For clarity, the office related work associated with the permitted uses shall occur in the Petitioner's residence, on the site; and that activity shall not be considered a significant activity.

3). Limits on Days and Hours of Operation: The uses authorized by this variance are a seasonal business, generally commencing when it starts warming up in late February or early March, and slowing down through the Fall until the mowing season generally ends around late October. On the days the work is done, it shall not start any earlier than 8:00 AM and shall not continue any later than 6:30 PM.

4). Owner to Reside On-Site: The business will be owned and managed solely by the Petitioner David Sisk, and in any case the variance of use shall expire at the time David Sisk no longer resides in the residence on the subject property.

5). Sign: During the season in which the business operates, the Petitioner shall be permitted to install a yard sign (not larger than 2' X 3' in the front yard, advertising the services offered and the contact phone number.

6). Limit on Employees: The Petitioner David Sick is the only employee permitted to work for the business authorized hereby.

7). Limit on Growth: The Operations Area shown on the Site Plan shall not be enlarged, and while the existing buildings may be maintained, moved, or even replaced, the total square footage of buildings within the Operations Area shall not be increased.

8). Noise: To reduce the possibility that noise related to the operation of the business could negatively impact the abutting property owners:

i. No equipment being repaired in the business shall be left with the motor running continuously outside for more than a 10 minute long period of time.

ii. Motors being tested outside shall generally have the motor running at idle except for short periods of time as necessary.

9). Trash: No trash generated from the operation of the business shall be allowed to accumulate outside of the residence or the buildings within the Operations Area.

2025UV1016 ; Findings of Fact (Use)

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: The business has operated from this site for approximately 15 years without creating any such injury, and permitting the property to continue to be used by the owner who also resides on the site, with the restrictions on the business operations as set forth in the Plan of Operation, presents no reasonable risk of any such injury.

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: Several potentially impacted neighbors have signed a Petition in Support of the requested variances stating that they are aware of what is being requested, and that in their opinion the approval of the variances will not create such substantial adverse impact on their property or any others in the area. The property to the South is approximately 45 acres containing an existing power station which is owned by AES. The variance is also temporary. It expires when the Petitioner either moves away or is unable to operate the small business by himself; and he is already past retirement age. The Plan of Operation limits the operations significantly, and the business has already operated at this same site under basically the same rules for over 15 years without creating any such impact. The presence of the petitioner's home directly in front of the area in which the business operates makes it unlikely that the Petitioner would operate the business in a manner that would negatively impact his own property.

3. The need for the variance arises from some condition peculiar to the property involved and the condition is not due to the general condition of the neighborhood because: The subject property is easily large enough to accommodate a seasonal part time business on a small scale such as this one. This type of setup with existing small buildings and a confined space in the backyard is unique in that it allows a low enough overhead to allow these types of services to be provided at a reasonable price. As shown by the support from the community, the need is significant for someone with the Petitioner's knowledge and experience to provide these types of repairs and sharpening; and since the Allied Appliance business in Wanamaker went out of business two years ago the Petitioner is likely the last option available on the far southeast side of Indianapolis.

4. The strict application of the terms of the zoning ordinance constitutes an unusual and unnecessary hardship if applied to the property for which the variance is sought because: The site is large enough to easily and safely support this type of seasonal small business as an accessory use without negatively impacting others, but rezoning it to a commercial classification would not make good planning; both because the primary use remains residential, and adding such a small area of commercial to accommodate the small Operations Area in play here would be spot zoning. Approving the variance permits a small, seasonal temporary use for the Petitioner only. Without a variance the Petitioner would have to stop providing services which supplement his retirement but which also provide a unique and valuable benefit to the citizens in Franklin Township who need the services he provides.

5. The grant does not interfere substantially with the Comprehensive Plan because: The is comp planned for Suburban neighborhood, but the undeveloped property to the East and South is proposed for large lot farm type uses or utility expansion. As limited by the Plan of Operation this short term, seasonal temporary variance is not likely to impact the manner in which the existing large lot homes to the North and West, or the undeveloped areas to the South and East are used or developed.

2025UV1016 : Findings of Fact (Setbacks, Open Space & Signage)

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: Permitting the existing buildings to remain as they have been placed over 15 years present no reasonable likelihood of such and injury, and during the 15 years they have been in these locations not such injury has yet occurred.

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: The two abutting neighbors who could be impacted by these buildings remaining in their current location have signed a Petition in Support of the requested variances stating that they are aware of what is being requested, and that in their opinion the approval of the variances will not create such substantial adverse impact on their property or any others in the area. The accessory building on the property to the South is similarly close to the property line without causing any such impact.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: The four buildings all packed closely together in this corner of the subject property, plus the related abutting concrete pad and stone covered areas, plus the various associated decorative landscape beds, have all existed at their current locations for at least 15 years without causing problems for anyone. These buildings and the area surrounding them are mostly full of personal items and some parts, tools and equipment related to the small business which the associated use variance addresses. If the two buildings in question have to be moved to comply with the applicable side and rear yard setbacks, the entire associated area which has been created by the Petitioner over a forty year period would have to be rebuilt. In addition, all of the items in the buildings would have to be removed and then placed back in the buildings. The combined burden imposed upon the Petitioner if the ordinance is strictly enforced is not justified by the resulting benefit to the abutting properties or the community at large.

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: A minor reduction in the open space on this site in order to permit the Petitioner to complete the partially completed deck on the back side of the home presents no reasonable likelihood of such injury.

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: The only two abutting neighbors who could possibly be impacted by the completion of the deck have signed a Petition in Support of the requested variance stating that they are aware of what is being requested, and that in their opinion the approval will not create such substantial adverse impact on their property or any others in the area. The completion of the deck is more likely to improve property values than reduce them.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: The open space ratio for D-A zoned parcels was created based on a 3 acre minimum lot. As a legally established non-conforming lot that only contains .48 acres, a practical difficulty is created if the same ratio is used. Without a variance, the Petitioner would be unable to complete the same proposed deck which would easily be in compliance with the ratio if the lot was even close to the 3 acre lot size assumed by the ordinance.

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: Permitting the petitioner to seasonally display the proposed small sign describing the services offered by the seasonal business approved via the companion use variance, which said sign is similar in all dimensions to a typical real estate For Sale sign, presents no reasonable likelihood of such injury.

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: The only two abutting neighbors who could possibly be impacted by the display of the sign have signed a Petition in Support of the requested variances stating that they are aware of what is being requested, and that in their opinion the approval will not create such substantial adverse impact on their property or any others in the area.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: The ordinance permits temporary yard signage at the same size and location as what the Petitioner is proposing, but letting the public know that "mower repair, sharpening and minor welding" are offered by the Petitioner's seasonal small business approved via the companion use variance is not a purpose for which the existing ordinance permits yard signs on D-A zoned property. Therefore, without a variance the Petitioner would not be able to display the informational sign needed during the periods when his seasonal business is operating, as described in the approved Plan of Operation.

2025UV1016 ; Photographs



Photo 1: Subject Site Viewed from North (July 2024)



Photo 2: Adjacent Property + Subject Site Viewed from Southwest on Hickory Road (May 2025)

2025UV1016 ; Photographs (continued)



Photo 3: Existing Signage at Subject Site (April 2025)



Photo 4: Rear Yard Structures + Work Area (April 2025)

2025UV1016 ; Photographs (continued)



Photo 5: Outdoor Mowers + Proposed Deck (April 2025)



Photo 6: Additional Outdoor Equipment (April 2025)