

**BOARD OF ZONING APPEALS DIVISION III**

January 21<sup>st</sup>, 2025

**Case Number:** 2025-UV3-001  
**Property Address:** 385 South Franklin Road (Approximate Address)  
**Location:** Warren Township, Council District #20  
**Petitioner:** We Care Tree Service LLC, by Tim J. Brown  
**Current Zoning:** D-2  
**Request:** Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a tree and vegetation removal contractor with the outdoor storage of commercial vehicles and equipment (not permitted) and the storage of a recreational vehicle in a non-permitted location.  
**Current Land Use:** Residential  
**Staff Recommendations:** Staff recommends **denial** of this variance petition.  
**Staff Reviewer:** Kiya Mullins, Associate Planner

**PETITION HISTORY**

This is the first public hearing for this variance petition.

**STAFF RECOMMENDATION**

Staff recommends **denial** of this variance petition.

**PETITION OVERVIEW**

- This variance is requesting three items: 1) to allow for the operation of a tree and vegetation removal contractor within a D-2 zoning district, 2) to allow the outdoor storage of commercial vehicles and equipment, and 3) to allow the outdoor storage of a recreational vehicle.
- This property is within a D-2 zoning district, in a location where the land use plan suggests a Suburban Neighborhood.
- The We Care Tree Service LLC will be opened Monday through Saturday from 7 am to 6 pm. No tree services will occur on the property, but instead be a parking location for eight to ten (8-10) business vehicles, around six (6) pieces of equipment (stone grinders, woodchipper, skid steers, etc.), and the owner’s personal recreational vehicle. There is 3 to 7 staff members with one office manager. The office manager will stay on the property during hours of operation while the other employees will be dispatched to the various work locations.

- There are no plans to extend the existing structures or make any changes to the current state of the property. The petitioners are already operating business on this location.
- At this site there is industrial uses to the north and west but residential uses to the east and south.
- A D-2 zoning district within the Indianapolis Marion County Zoning Ordinance is intended for use in suburban areas, which permits single family detached dwellings, two family dwellings, group homes, greenways, park or playgrounds, gardens, wireless communications facilities, and other accessory uses including home occupation. Commercial primary uses are not allowed in D-2 zoning districts unless a variance is granted.
- Staff recommends **denial** of this variance petition because this is an intense use in a residential area. It's true that there are industrial uses close by, but in this location the business is next door to the residential homes and using Beechwood Avenue as one of its point of access. The site and structure have been used as a residence previously, so Staff finds no practical difficulty in the use of the property. Staff would note that home occupation businesses – small home offices – are permitted as an accessory use in D-2; however, the introduction of employees, commercial vehicles and outdoor storage elevate the current use to a commercial use.

## GENERAL INFORMATION

<b>Existing Zoning</b>	D-2	
<b>Existing Land Use</b>	Residential	
<b>Comprehensive Plan</b>	Suburban Neighborhood	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Surrounding Context</b>
North:	I-2	North: Light Industrial
South:	D-2	South: Suburban Neighborhood
East:	D-2	East: Suburban Neighborhood
West:	D-A	West: Light Industrial
<b>Thoroughfare Plan</b>		
Franklin Road	Primary Arterial	33 feet of right of way existing and 90 feet proposed.
Beechwood Avenue	Local Street	29 feet of right of way existing and 50 feet proposed.
<b>Context Area</b>	Metro	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	No	
<b>Wellfield Protection Area</b>	Yes	
<b>Site Plan</b>	1/2/2025	
<b>Site Plan (Amended)</b>	N/A	
<b>Elevations</b>	N/A	
<b>Elevations (Amended)</b>	N/A	
<b>Landscape Plan</b>	N/A	
<b>Findings of Fact</b>	1/2/2025	

**Findings of Fact  
(Amended)**

N/A

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Blue Line Transit Oriented Development Strategic Plan

### Pattern Book / Land Use Plan

- The Suburban Neighborhood typology is predominantly made up of single family housing, but is interspersed with attached and multifamily housing where appropriate. This typology should be supported by a variety of neighborhood-serving businesses, institutions, and amenities. Natural Corridors and natural features such as stream corridors, wetlands, and woodlands should be treated as focal points or organizing systems for development. Streets should be well-connected, and amenities should be treated as landmarks that enhance navigability of the development. This typology generally has a residential density of 1 to 5 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park. (pg 17)
- The Light Industrial typology provides for industrial, production, distribution, and repair uses conducted within enclosed structures and unlikely to create emissions of light, odor, noise, or vibrations. This typology is characterized by freestanding buildings or groups of buildings, often within industrial parks. Typical uses include warehousing, self-storage, assembly of parts, laboratories, wholesaling, and printing. Industrial or truck traffic should be separated from local/residential traffic. (pg 21)

### Red Line / Blue Line / Purple Line TOD Strategic Plan

- Blue Line Transit Oriented Development Strategic Plan (pg 132-133)
  - Existing Conditions of Franklin Road and Washington Street
    - To the west is an interstate interchange allowing access to I-465.
    - Immediately around the station is primarily suburban oriented large footprint retail and warehousing with large amount of surface parking.
    - To the northeast is a residential area with a grid pattern.
  - Land Use and Property Control
    - The north side of the Washington Street corridor has small commercial lots with low density residential beyond.
    - The south side of Washington Street corridor has large commercial lots with industrial beyond.
    - The south side of the corridor has multiple large commercial properties.



**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 - SURROUNDING AREA

- 2000-DV1-037: 8631 Beechwood Avenue
  - 1200 sqft pole barn
    - AP
- 2000-DV2-021: 8201 Rawles Avenue
  - Pylon/EVMS sign
    - AP
- 2000-SE1-003: 404 Peach Tree Lane
  - Manufactured home
    - AP
- 2002-DV1-031: 802 South Franklin Road
  - 33-foot-tall pylon/ 170 feet from PR district/EVMS.
    - D
- 2002-DV2-016: 403 South Franklin Road
  - Front setback, transitional yards
    - AP
- 2002-DV2-034: 8401 Rawles Avenue
  - 16 sqft pylon sign zero feet from right of way, 27 feet from PRT district.
    - AP
- 2005-PLT-045: 8730 Beechwood Avenue
  - A replat of Lots 51-54 in Hartman Dale Addition combining four lots into two.
    - AP
- 2006-DV1-016: 404 Peach Tree Lane
  - Variance of Development Standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a 2-story, 20-foot tall, 1,008 square foot garage (maximum 16-foot height permitted) and to legally establish a single-family dwelling with a 15-foot north front yard setback (minimum 25-foot front yard setback required).
    - AP
- 2009-DV1-049: 230 South Fenton Avenue
  - Variance of Development Standards of the Dwelling Districts Zoning Ordinance to provide for a 4.833-foot-tall fence in the required front yard (maximum 42-inch fence height permitted in the front yard).
    - Approved
- 2012-CVR-815: 415 South Franklin Road
  - Variance of Development Standards of the Industrial Zoning Ordinance to provide for a 31-foot-tall building addition (maximum 22-foot tall building height permitted), with a 45-foot front building setback and a zero-foot parking and access drive setback (minimum

100-foot setback required), with 45,000 square-feet of outdoor truck/trailer storage (maximum 41,058 square feet or 25% of the total gross floor area of enclosed buildings permitted).

- Approved
- 2012-CZN-815: 416 South Franklin Road
  - Rezoning of 12.41 acres from the I-2-S and D-A Districts to the I-2-S classification to provide for industrial uses.
    - Approved
- 2012-ZON-025: 416 South Franklin Road
  - Rezoning of 3.9 acres, from the D-A District, to the I-2-S classification.
    - Approved
- 2015-UV1-041: 370 South Franklin Road
  - Variance of Use and Development Standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a 5,000-square foot maintenance storage building (not permitted) for an adjacent boat sales business, with paved off-street parking and gravel storage areas (not permitted), per plans filed.
    - Approved
- 2017-DV1-048: 549 South Franklin Road
  - Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to legally establish a 1,600 square foot pole barn (pole barn cannot be larger than the 1,238-square foot primary building).
    - Approved
- 2018-UV1-028: 370 South Franklin Road
  - Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the expansion of a maintenance / storage building for an adjacent boat sales business (not permitted) with a 28-foot south side setback (30-foot side setback required).
    - Approved
- 2019-DV1-017: 335 South Fenton Avenue
  - Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a 22-foot tall, detached garage taller (not permitted) than the primary dwelling.
    - Approved
- 2019-ZON-039: 549 South Franklin Road
  - Rezoning of 2.5 acres from the D-A district to the SU-1 classification.
    - Approved
- 2020-DV3-012: 375 South Franklin Road
  - Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for additions to an existing single-family dwelling and garage with a 0.5-foot north side setback (seven-foot side setback required).
    - Approved
- 2022-CPL-864: 370 South Franklin Road
  - Approval of a Subdivision Plat to be known as M.B. Rapp Acres, dividing 6.82 acres into two lots.

- Approved
- 2022-CZN-864A: 370 South Franklin Road
  - Rezoning of 3.543 acres from the D-A district to the C-7 district.
    - Approved
- 2022-CZN-864B: 370 South Franklin Road
  - Rezoning of 3.45 acres from the D-A district to the I-2 district.
    - Approved
- 2024-CPL-839: 7747 Mountain Stream Way
  - Approval of a Subdivision Plat, to be known as Fisher Creek Condominiums, dividing 0.49-acre into three lots.
    - Approved
- 2024-CZN-839: 7747 Mountain Stream Way
  - Rezoning of 0.49-acre from the D-6II district to the D-5II district to provide for a single-family development.
    - Scheduled
- 2024-UV3-016: 435 South Gibson Avenue
  - Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the storage and occupancy of more than two recreational vehicles for more than 15 days per year (maximum of two recreational vehicles may be parked outside per lot, may not be occupied for more than 15 days) within gravel parking areas (hardscaping required) and the location of a six-foot tall privacy fence within the front yard of Gibson Avenue and encroaching within the clear sight triangle of the driveway (limited to 3.5-foot tall, encroachment of clear sight triangles not permitted).
    - Scheduled
- 2024-ZON-036: 365 South Franklin Road
  - Rezoning of three acres from the D-2 district to the I-2 district to provide for light industrial uses including indoor storage of boats, trailers, and other recreational vehicles within a proposed 11,760-square foot storage building.
    - Approved
- 2024-VAR-006: 365 South Franklin Road
  - Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a caretaker or on-site employee within the existing single-family dwelling and a 15-foot south transitional yard for the storage building (50-foot south transitional yard required).
    - Approved

**EXHIBITS**

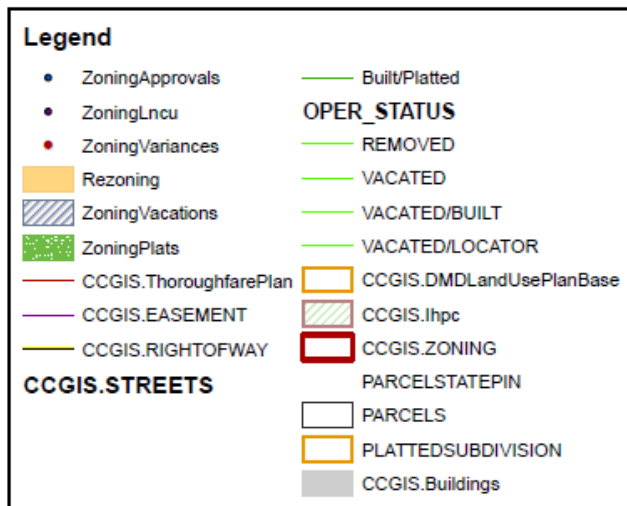
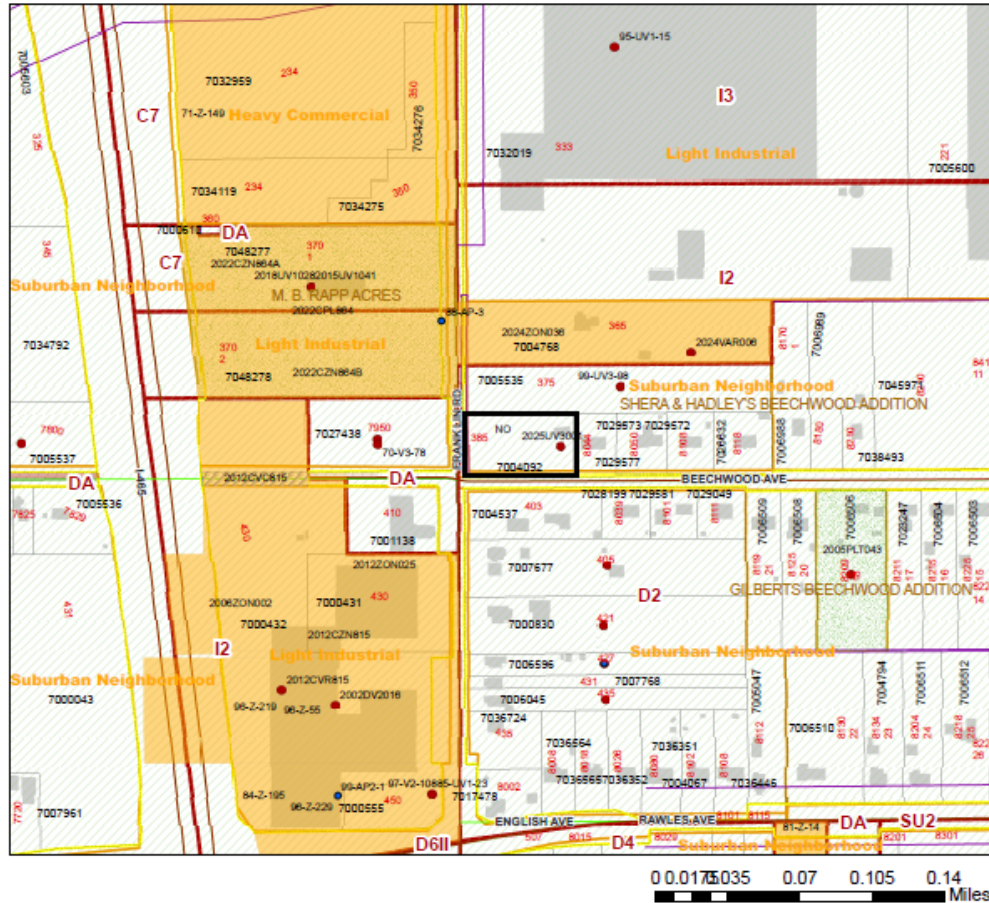


Exhibit 1: Area map of the surrounding area around 385 S Franklin Rd.





**METROPOLITAN DEVELOPMENT COMMISSION  
HEARING EXAMINER  
METROPOLITAN BOARD OF ZONING APPEALS, Division III \_\_\_\_\_  
OF MARION COUNTY, INDIANA**

**PETITION FOR VARIANCE OF USE**

**FINDINGS OF FACT**

**1. THE GRANT WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE COMMUNITY BECAUSE**

The proposed use is limited to parking area, which will not generate significant traffic, loud noises, pollution, or nuisances.  
Vehicles will be moved out during business operations hours and returned to the Property at the end of business day.  
Owner erected a privacy fence that resulted in a self-contained area that poses no aesthetic issues and assists with safety and security.  
Additionally, Owner is willing to move back the existing fence in compliance with clear sight triangular area requirements.

**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 BECAUSE**

No industrial or commercial operations will be conducted on the property; thus, the use of the property to park vehicles should not impact the values or the comprehensive plan of the adjacent area in any substantially adverse manner.  
Zoning near the Subject Property is of residential, commercial, or quasi commercial use.  
Petitioner's Variance of Use will not create more activity than that generated by the existing surrounding properties.

**3. THE NEED FOR THE VARIANCE ARISES FROM SOME CONDITION PECULIAR TO THE PROPERTY INVOLVED BECAUSE**

The Subject Property's location facilitates access to and from major thoroughfares.  
This is of great benefit to Petitioner/Owner's business, because it allows for enhanced efficiency of its operation related to time savings and route planning. To a small business with small profit margins, these are of the utmost viability importance.

**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**

Petitioner/Owner's business is a small business with limited financial resources. It must have the ability to park its vehicles in a designated area. Requiring this business to forgo the use of its Property in the manner requested will negatively impact its chances to operate; thus, its very survival. This in turn will cause hardship to employees who depend on its business to earn their livelihood, and to the City's tax revenue from the business.

**5. THE GRANT DOES NOT INTERFERE SUBSTANTIALLY WITH THE COMPREHENSIVE PLAN BECAUSE**

There will be no significant changes of traffic or noise by use of the Subject Property as a parking location; therefore, it does not substantially or materially interfere with the comprehensive plan.

Exhibit 2: Findings of Fact submitted by the petitioner.

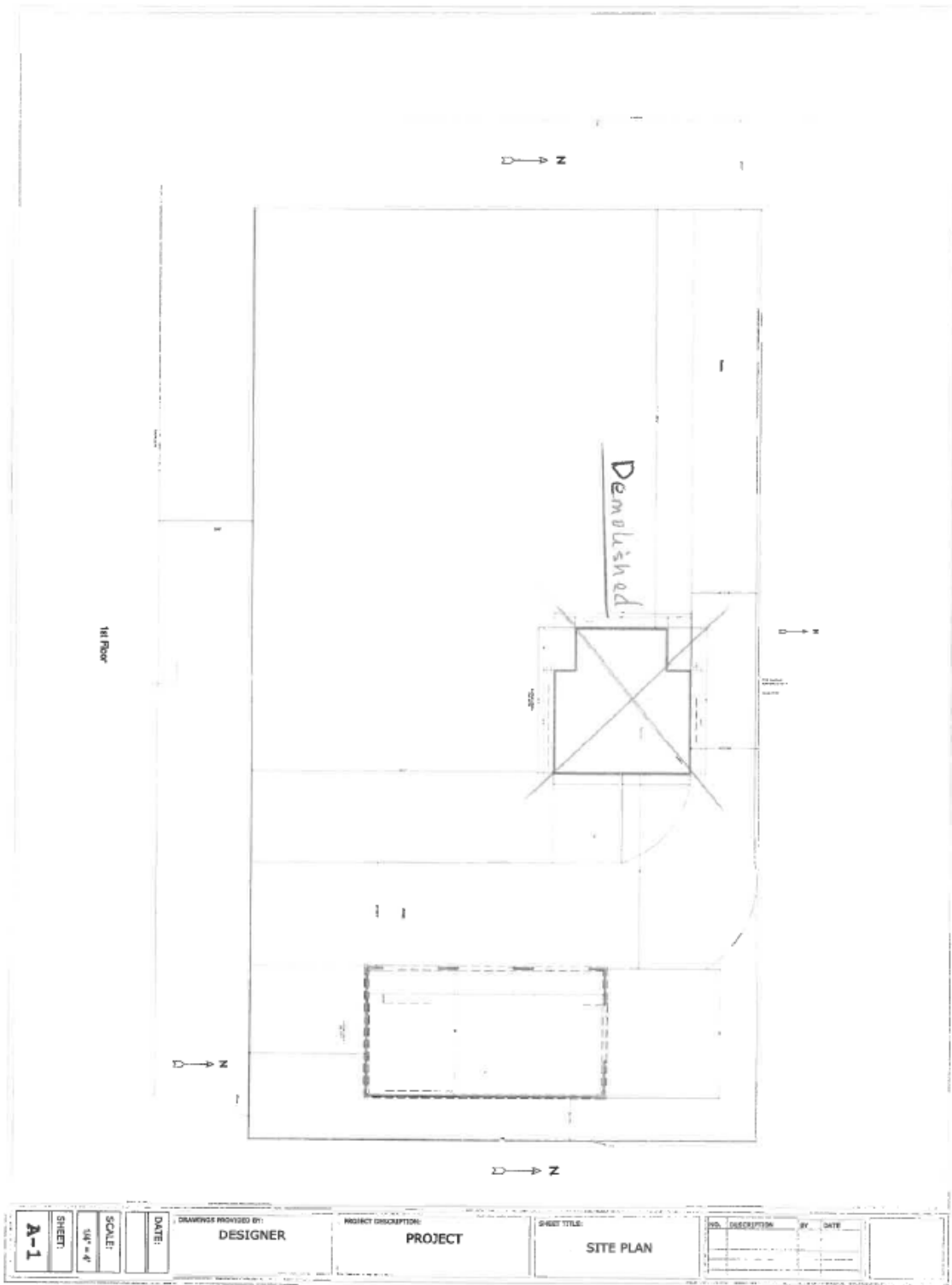


Exhibit 3: Submitted site plan.



**VARIANCE OF USE PETITION:  
PLAN OF OPERATION**

**PETITIONER:** We Care Tree Service, LLC  
**SUBJECT PROPERTY:** 385 S. Franklin Rd, Indianapolis, IN 46219

We Care Tree Service, LLC (“Petitioner”) is a small locally owned business that operates tree cutting services. Petitioner operates Monday through Saturday from 7am to 6pm. Petitioner employs between 3 to 7 people, subject to seasonal needs.

Petitioner will not conduct any industrial activities as it conducts its tree trimming operations at on-site locations as contracted with its customers. The Property’s use will be limited to parking eight to ten (8-10) business vehicles and about six pieces of small equipment, such as stone grinders, wood chipper, and skid steers, primarily outside hours of business operation. Also, Owner will park a recreational vehicle, which is only sporadically used. No hazardous material or explosives will be stored at the Property.

Periods of peak activity should not exceed three (3) hours per day at the start and end of the business day when vehicles are dispatched to their working locations. From the Property, Petitioner will station its office manager, who is responsible for administrative duties. Similar to operations of a home office, the activities will not generate any sort of nuisance factors, such as unreasonable noises, light or pollution.

Exhibit 4: Plan of operation for We Care Tree Services, LLC.



Exhibit 5: The We Care Tree Services, LLC office on the property.



Exhibit 6: Vehicles parked on the property.



Exhibit 7: Open/green space on the subject property.



Exhibit 8: The entrance to the property off of Beechwood Avenue.



Exhibit 9: Looking east down Beechwood Avenue.





Exhibit 10: Looking west down Beechwood Avenue towards Franklin Road.



Exhibit 11: The industrial business across Franklin Road from the subject property.



Exhibit 12: Residential homes across Beechwood Avenue from the subject property.



Exhibit 13: The residential home behind (to the west) of the subject property.



Exhibit 14: Fence on one of the fronts of the subject property looking at Franklin Road.