

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-MOD-008
Address: 10832 Portside Court (*Approximate Address*)
Location: Lawrence Township, Council District #5
Zoning: D-P (FF)
Petitioner: Raymond and Kimberly Peck, by Russell L. Brown
Request: Modification of the development statement for 79-Z-107 (79-DP-3) for Lot 160 of Feather Cove, Section Five, to legally establish a paver patio (with table, stairs, railing and fire pit), with zero-foot side setbacks (eight-foot side and 22-foot aggregate side setback required).

A valid Automatic Continuance was received from a remonstrator that continued this petition from the May 25, 2023 hearing to the June 29, 2023 hearing.

RECOMMENDATIONS

Staff **recommends denial** of this request. If the request was modified to provide for three-foot side setbacks, staff would recommend approval of the request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE ISSUES

- ◇ This 0.50-acre site is developed with a single-family dwelling. It is located on the corner of Portside Court and Skipjack Drive with a 25-foot wide, approximately 126-foot long “panhandle” extending to the shore of Geist Reservoir. The parcel is surrounded by single-family dwellings.
- ◇ Fall Creek was dammed in 1941 to create Geist Reservoir. Residential development around the lake began in early 1980s. The dwelling on the subject site was built in the late 1980s.
- ◇ The 2018 Comprehensive Land Use Plan recommends Suburban Neighborhood for the site. This typology is primarily intended for single-family dwellings.

(Continued)

STAFF REPORT 2023-MOD-008 (Continued)

MODIFICATION

- ◇ This site was part of a petition that was approved in 1979 (79-ZON-107, DP-3) that rezoned 516 acres from a Special Use district to the D-P district. The D-P zoning district was established to encourage a more creative approach in land and building site planning and to accommodate site treatments not contemplated in other kinds of districts. Petition 79-Z-107 (79-DP-3) provided for approximately 500 acres of residential development and approximately 15 acres of retail development.
- ◇ Petitions for the D-P district must include a development statement and a preliminary site plan that identifies the locations and types of land uses and proposed layout of streets, open space, parking and other basic elements of the plan.
- ◇ The development statement for 79-Z-107 (79-DP-3) provides for minimum side setbacks to ensure that there are ample yards. The development statement requires side yard setback lines to be no less than an aggregate of 22 feet, provided, however, no side yard may be less than eight feet. Put another way, the widths of the two side yards must total at least 22 feet, but no individual side yard may be less than eight feet in width. If one side yard is eight feet, the other must be at least 14 feet in order to total 22 feet.
- ◇ This request would modify the development statement for 79-Z-107 (79-DP-3) for Lot 160 of Feather Cove, Section Five, to eliminate the requirement for side setbacks and thus legally establish an existing paver deck with zero-foot side setbacks. This petition would modify the development statement for just this one lot in the development. The standards of the 1979 petition would remain in effect for the rest of the lots.
- ◇ A similar request was made for this site in September 2017 in petition 2017-MOD-015. The petition was filed following enforcement action by the Department of Business & Neighborhood Services for construction of the existing paver patio with table, stairs, railing and fire pit without a drainage permit, Improvement Location Permit, electrical permit or structural permit, for placing the structure in the required side yards, and for continuing work after the issuance of a Stop Work order.
- ◇ Staff recommended denial of 2017-MOD-015. On March 7, 2018 the petition was withdrawn.
- ◇ Structural, drainage and the Improvement Location permits were eventually applied for and issued.
- ◇ Materials submitted with this petition indicate that the “panhandle” of the subject property is 25 in width and that the patio area is 25 feet wide.

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- ◇ Staff understands the desire to provide an area near the water for outdoor entertaining and enjoyment.
- ◇ The 25-foot width of the panhandle coupled with the required 22-foot aggregate side yards leave a three-foot wide buildable area. This makes utilization of the panhandle area difficult. Staff believes it would be reasonable to support a reduction in the setbacks that would provide an area near the water for leisure activities.
- ◇ However, a structure with zero setbacks is not appropriate. Setbacks provide the vital space that is necessary to construct and maintain any structure. Eliminating that space creates the need to inappropriately trespass onto abutting properties and increases the probability of damaging neighbors’ structures and landscaping.
- ◇ Decreasing the size of the patio would allow adequate space for outdoor entertaining and enjoyment without trespassing onto the abutting properties and creating a burden for neighboring property owners.

GENERAL INFORMATION

EXISTING ZONING, CONTEXT AREA, AND LAND USE

D-P	Metro	Single-family dwelling
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SURROUNDING ZONING AND LAND USE

North	D-P	Single-family dwelling
South	D-P	Single-family dwelling
East	D-P	Single-family dwelling
West	D-P	Single-family dwelling

COMPREHENSIVE LAND USE PLAN	The Lawrence Township Comprehensive Land Use Plan (2018) recommends Suburban Neighborhood.
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THOROUGHFARE PLAN	<p>This portion of Portside Court is private street, with a 36-foot wide right-of-way.</p> <p>Skipjack Drive 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.</p>
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FLOODWAY / FLOODWAY FRINGE A portion of the site is located in the floodway fringe of Geist Reservoir.

WELLFIELD PROTECTION DISTRICT This site is not located within a wellfield protection district.

ZONING HISTORY - Site

2017-MOD-015; 10832 Portside Court, requested a Modification of the development statement for 79-Z-107 (79-DP-3) for Lot 160 of Feather Cove, Section Five, to legally establish a paver deck, with zero-foot side setbacks, **withdrawn**.

79-Z-107 (79-DP-3) 8302 Oaklandon Road, requested rezoning of 515.9 acres from the S-U Districts to the D-P classification to provide for residential development, **approved**.

klh

[illegible]

SU39 Geist Reservoir

CAPTAINS CT

SKIPJACK DR

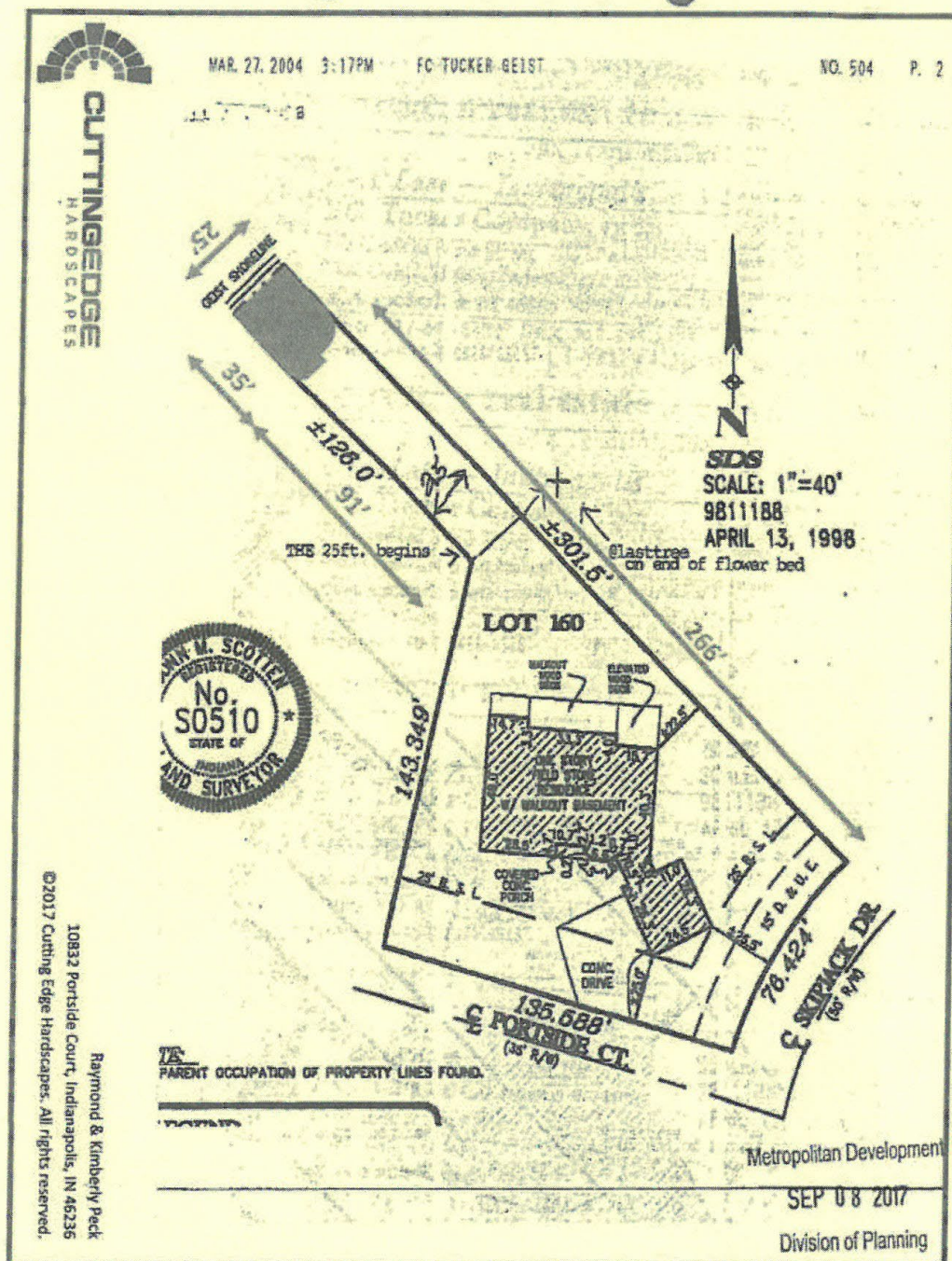
HALYARD WAY

GALLEY CT

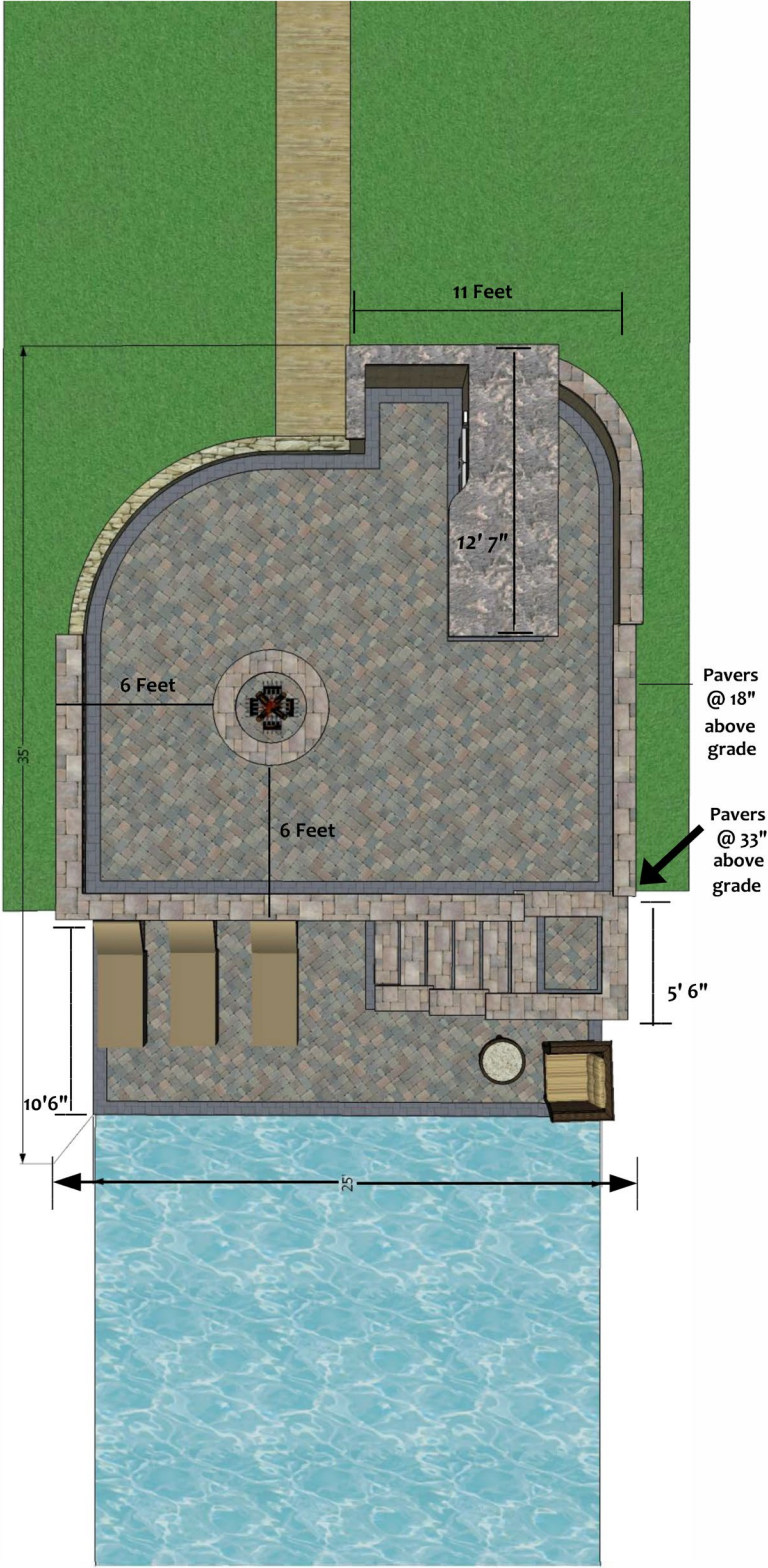
PORTSIDE CT

DP

STAFF REPORT 2023-MOD-008, Site Plan



STAFF REPORT 2023-MOD-008, Patio Site Plan



STAFF REPORT 2023-MOD-008, Proposed Commitments

STATEMENT OF MODIFICATION OR TERMINATION OF COVENANTS OR COMMITMENTS

COVENANTS OR COMMITMENTS MODIFYING OR TERMINATING EXISTING COVENANTS OR COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH AN APPROVAL PETITION, REZONING OF PROPERTY, A VARIANCE PETITION OR SPECIAL EXCEPTION PETITION

In accordance with I.C. 36-7-4-918.8 and I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of covenants or commitments concerning the use and development of that parcel of real estate:

Legal Description: LOT 160 IN SECTION 5 OF FEATHER COVE, A SUBDIVISION RECORDED AS INSTRUMENT 8493368 IN THE MARION COUNTY RECORDER'S OFFICE.

Statement of MODIFICATION OR TERMINATION of Covenants or Commitments:

1. Modification of Section 5(D) of Covenants and Restrictions included in 79Z017 to legally establish an above ground structure with side yard setback of variable width (from 1' to 0') on 25' of waterfront lot frontage where 22' total setback with minimum 8' minimum is require for side yard.
2. _____
3. _____
4. _____
5. _____

STAFF REPORT 2023-MOD-008, Photos



View of site looking north.



View looking northwest from rear porch.



View of patio looking northwest.



View of patio looking northwest.



View of patio fixtures looking southwest.



View from patio looking southeast.



View of patio looking northeast.



View of patio looking southwest.



View of patio from boat dock



View of patio from boat dock



View of abutting property to the northeast



View of abutting property from on-site patio