

**BOARD OF ZONING APPEALS DIVISION I**

**March 5, 2024**

**Case Number:** 2023-UV1-021  
**Property Address:** 7040 Rockville Road (approximate address)  
**Location:** Wayne Township, Council District #15  
**Petitioner:** Donald P. Quass, by David Gilman  
**Current Zoning:** D-3  
**Request:** Variance of use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a secondary dwelling unit, without an owner living on site (not permitted), with a zero-foot west side yard setback (six-foot side yard setback required).  
**Current Land Use:** Residential  
**Staff Recommendations:** Staff **recommends approval** of the zero-foot west side yard setback; however, Staff **recommends denial** of the remainder of the petition  
**Staff Reviewer:** Noah Stern, Associate Planner

**PETITION HISTORY**

**ADDENDUM FOR MARCH 5, 2024 BZA DIVISION I HEARING**

- This petition was continued from the November 14, 2023 hearing to the December 5, 2023 hearing for additional variance requests. The petitioner did not meet the publishing deadline for the December 5, 2023 hearing and requested a 2-month continuance to the February 6, 2024 hearing.
- The petitioner requested a continuance to the March 5, 2024 BZA I hearing which was granted.

**STAFF RECOMMENDATION**

Staff **recommends approval** of the zero-foot west side yard setback; however, Staff **recommends denial** of the remainder of the petition.

**PETITION OVERVIEW**

- This petition would provide for a secondary dwelling unit, without an owner living on the site (not permitted), with a zero-foot west side yard setback (six-foot side yard setback required).
- The petitioner filed for a Certificate of Legal Non-Conforming Use (2024-LNU-001) which would legally establish the accessory structure and its west side yard setback location of zero feet. This structure has been in existence since approximately 1946 and predates the setback standards currently in place for this site, qualifying it for LNU status. The LNU Certificate, which remains in review, would effectively render the portion of the request pertaining to the west side yard setback



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

unnecessary and, therefore, would not need to be included in this petition. Staff has no preference as to which method (either through this variance request or the LNU) of legally establishing the accessory structure and its location is chosen and would leave that decision up to the petitioner.

- Given the legally non-conforming nature of the secondary dwelling unit, Staff is not opposed to the variance of development standards to allow for the zero-foot side yard setback and would recommend approval if the petitioner elects to keep it as a portion of this petition.
  
- The petition also requests a use variance to allow for the secondary dwelling unit to be used as such without the property owner living on site. This portion of the request does not comply with the use standards set out by 743-301.GG of the Consolidated Zoning and Subdivision Ordinance. While secondary dwelling units are legal in all dwelling districts, operating a secondary unit without the owner living on site is not a permitted use per 743-301.GG. Further, Staff does not see any practical difficulty or justifiable reason in which the owner is not able to comply with the regulations set forth by the Ordinance, which explicitly prohibits the requested use. Therefore, Staff is opposed to and recommends denial of the use variance to allow for the secondary dwelling unit to be in operation without the property owner living on the site. |

**GENERAL INFORMATION**

<b>Existing Zoning</b>	D-3	
<b>Existing Land Use</b>	Residential	
<b>Comprehensive Plan</b>	Suburban Neighborhood	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Surrounding Context</b>
North:	D-4	North: Single-Family Residential
South:	D-5	South: Single-Family Residential
East:	D-3	East: Single-Family Residential
West:	D-3	West: Single-Family Residential
<b>Thoroughfare Plan</b>		
Rockville Road	Primary Arterial	140-foot right-of-way existing and 112-foot proposed
<b>Context Area</b>	Metro	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	No	
<b>Wellfield Protection Area</b>	No	
<b>Site Plan</b>	9/8/23	
<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>	9/8/23	
<b>Findings of Fact (Amended)</b>	N/A	

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Infill Housing Guidelines |

### Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Suburban Neighborhood living typology for this site. |

### 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

- Infill Housing Guidelines (IHG) document is used to promote good practice with regards to form, massing, aesthetics, landscaping, etc. of new infill housing projects of all scales and types.
- With regards to secondary dwelling units, the Infill Housing Guidelines document recommends:
  - Locate accessory structures behind primary building
  - Access accessory buildings from alleys, when possible
    - With the site not containing alley access, the secondary dwelling unit is accessible via the driveway on the east side of the primary structure
  - Don't overshadow primary building
- The proposal is in accordance with these recommendations. |

### Indy Moves

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

- Not Applicable to the Site |

## ZONING HISTORY

### ZONING HISTORY - SITE

**99-V2-83**, Variance of Development Standards of the Dwelling Districts Zoning Ordinance to legally establish a six-foot tall fence in the front yard along Rockville Road (maximum 42 inches permitted), **denied**.

### ZONING HISTORY – VICINITY

**77-Z-123; 55 N Girls School Road (west of site)**, request rezoning of 3.28 acres, being in the C-3 & D-3 district, to C-4 classification to permit commercial development, **approved**.

**89-Z-114; 7040 Rockville Road (north of site)**, request rezoning of 5.7 acres, being in the D-3 district, to the D-4 classification to provide for residential development by platting, **approved**.

**91-V3-18; 35 Ponsonby Court (north of site)**, requests a Variance of Development Standards of the Dwelling District Zoning Ordinance to permit the construction of a single-family residence with a rear yard setback of 15 feet (20 feet required), **approved**

**91-Z-102; 7201 Rockville Road (west of site)**, Variance of Development Standards to permit a reduction of the number of off-street parking spaces required to one for each 284 square feet of gross floor space in the structures on the site (one space for each 200 square feet required) and to permit parking and driveways in the front transitional yards, **approved**.

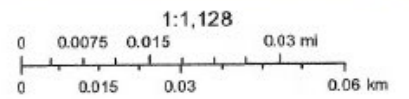
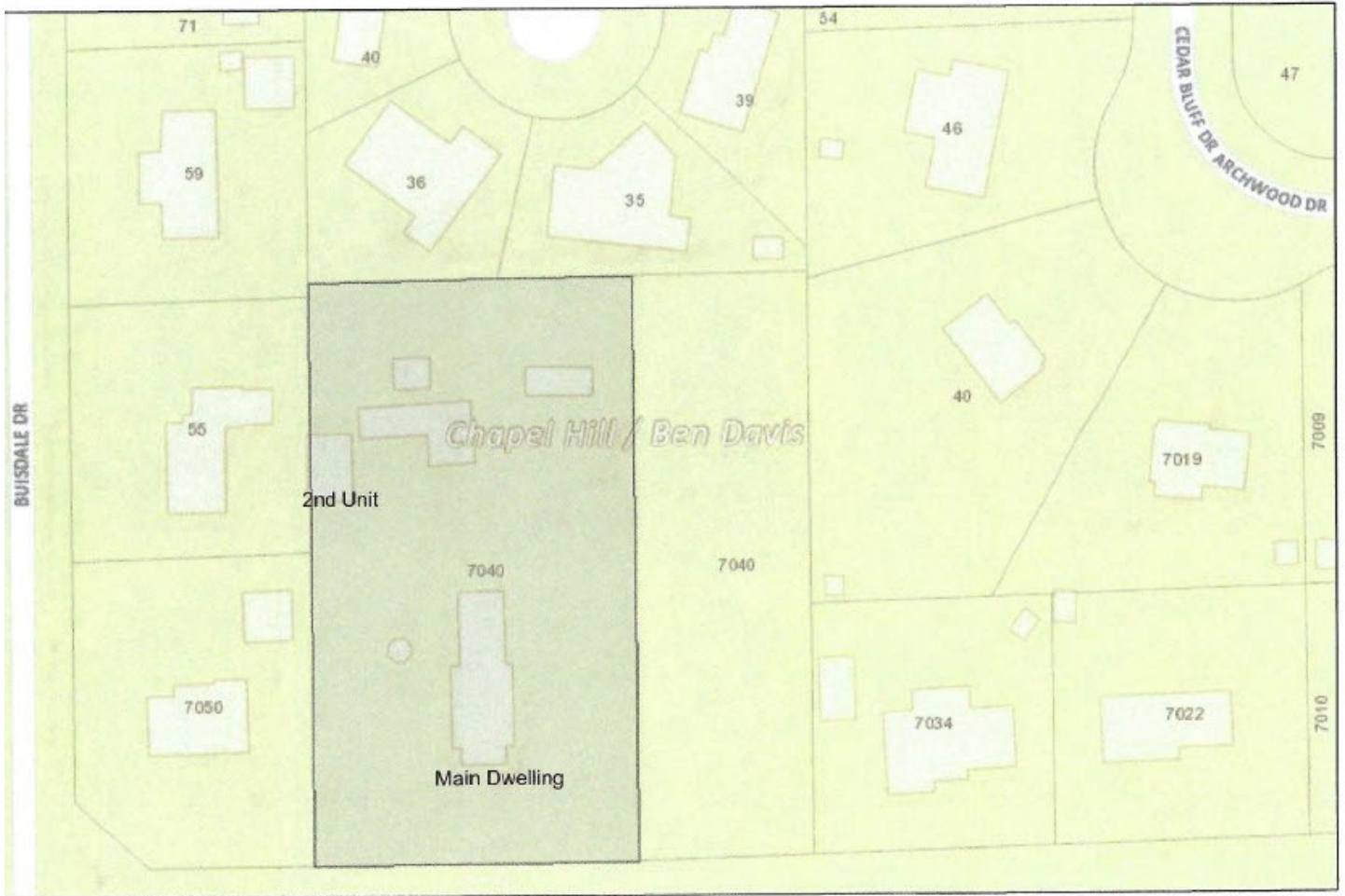
**2002SE1001; 7035-7045 Rockville Road (south of site)**, Special exception of the Dwelling Districts Zoning Ordinance to provide for the construction of a church, **approved**.

**2010DV1037; 7222 Rockville Road (west of site)**, Variance of development standards of the Commercial Zoning Ordinance to provide for 3360-square feet of outdoor play area (200 square feet or one percent (1%) of the floor area, whichever is greater, permitted) for a doggie-daycare/boarding facility, **approved**.

**2014DV3019; 36 Ponsonby Court (north of site)**, Variance of development standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a 12 by 16-foot sunroom, with a 15-foot rear setback (20-foot rear setback required), **approved**.

EXHIBITS

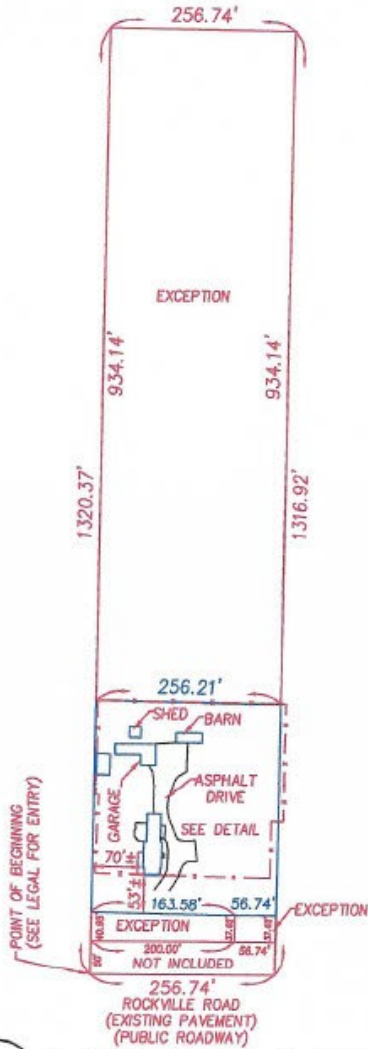
7040 Location Map



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand)

## SURVEYOR LOCATION REPORT

I hereby certify to the parties named above that the real estate described herein was inspected under my supervision on the date indicated and that to the best of my knowledge, this report conforms with the requirements contained in Sections 27 through 29 of 865 IAC 1-1-12 for a SURVEYOR LOCATION REPORT. Unless otherwise noted there is no visible evidence of possession lines found.



SCALE: 1"=200'

### LEGEND

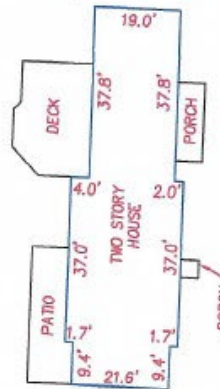
--- FENCE ±

NOTE: OBTAINING ACCURATE AND COMPLETE DATA ON OR NEAR THE PERIMETER OF LARGER TRACTS IS BEYOND THE SCOPE OF THE REPORT. THE LOCATION OF ANY IMPROVEMENTS AND FENCES SHOWN HAVE BEEN ESTIMATED. DUE TO THE SIZE OF THE TRACT AND INADEQUATE REFERENCE MONUMENTATION, THE ACCURACY OF THIS REPORT IS LIMITED TO ±5 FEET. A STAKED BOUNDARY RETRACEMENT SURVEY IS RECOMMENDED IF PRECISE LOCATIONS ARE DESIRED.

NOTE: EASEMENTS CONTAINED WITHIN SCHEDULE B, SECTION II WERE NOT PROVIDED FOR THIS REPORT.

### HOUSE DETAIL

(NOT TO SCALE)



**HAHN SURVEYING GROUP, INC.**  
 Land Surveyors  
 8925 N. Meridian Street, Suite 120  
 Indianapolis, IN 46260  
 PHONE: (317) 846-0840 / (317) 846-4119  
 EMAIL: orders@hahnsurveying.com  
 www.hahnsurveying.com



CERTIFIED: 08/15/2023

*Chad L. Brown*  
 Chad L. Brown  
 Registered Land Surveyor,  
 Indiana #21100002  
 Drawn By: JEC  
 Job No.: S23-19232  
 Sheet 2 of 3



Petition Number \_\_\_\_\_

METROPOLITAN DEVELOPMENT COMMISSION  
HEARING EXAMINER  
METROPOLITAN BOARD OF ZONING APPEALS, Division \_\_\_\_\_  
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 2nd dwelling unit was established in 1946 and has been consistently used for human occupancy. The site has direct access to a public street with adequate open space for proper drainage. The dwellings have all utilities available to them.

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

The second dwelling has been established per the Assessor's records since 1946. The subject dwelling was established before the adjacent residence.

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

The second dwelling was established per the Assessor's Property Report approximately 1946, prior to the adoption of the Dwelling District Zoning Ordinance.

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

To legally establish the use for the 2nd dwelling for the past 77 years without interruption would be difficult due to the limited availability of historic public records and aerial photography.

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

The site is zoned D-3 which allows 2.6 units per acre and falls within the topology of the land use recommendation of Suburban Residential.

DECISION

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_



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:

The subject site has direct access to a public street, adequate open space for proper drainage and all utilities to the subject dwellings.

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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 subject dwelling was established in 1946 according to the Assessor's Property Report. The rear yard setback and square footage of the dwelling were established prior to the development of the adjacent residences.

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

To move the residence or to add to its footprint would be difficult and create an unnecessary hardship for the owners.

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DECISION

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

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