

## STAFF REPORT

Department of Metropolitan Development  
Division of Planning  
Current Planning Section

**Case Number:** 2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859 (Amended)  
**Address:** 3838 East 46th Street (approximate address)  
**Location:** Washington Township, Council District #9  
**Petitioner:** Habitat for Humanity of Greater Indianapolis, Inc., by Chris Barnett  
**Requests:** Rezoning of 4.22 acres from the SU-1 (FW) (FF) to the D-5 (FW) (FF) district to provide for residential uses.

Variance of Development Standards to provide for an access drive extending 34-feet into the Stream Protection Corridor of Devon Creek for a maximum length of 107 feet (100-foot Stream Protection Corridor Required) and a 68-foot front setback along 46<sup>th</sup> Street for property address 3860 East 46<sup>th</sup> Street (front building line range of 20 to 50 feet required).

Approval of a Subdivision Plat, to be known as Devon Creek, dividing 4.22-acres into ten single-family detached lots and one common area, including the vacation of an irregular portion of right-of-way at the northwest corner of the intersection of East 46th Street and Millersville Road containing 2,307.8 square feet, with a waiver of the sidewalk requirement along a 65-foot segment of Millersville Road.

### ADDENDUM FOR JANUARY 11, 2024 HEARING EXAMINER

This petition was continued from the December 14, 2023 hearing to the January 11, 2024 hearing at the request of a remonstrator. No additional information has been provided to the case file.

### ADDENDUM FOR DECEMBER 14, 2023 HEARING EXAMINER

This petition was continued from the November 9, 2023 hearing, to the December 14, 2023 hearing at the request of a staff to amend the request to include a vacation of the right-of-way request and allow sufficient time to provide new notices.

**Amendment:** The amendment included a vacation of right-of-way at the northwest corner of the intersection of East 46th Street and Millersville Road containing 2,307.8 square feet.

Staff determined that the section of street right-of-way to be vacated was not being utilized as a street since it is overgrown with grass and would not prevent safe passage at this intersection. Furthermore, the use of the proposed vacation would be in the public's best interest to ensure additional housing options can be developed.

(Continued)

**STAFF REPORT 2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859 (Continued)**

For these reasons, staff is **recommending approval** of the request as amended.

**November 9, 2023**

**RECOMMENDATIONS**

Staff recommends **approval of the rezoning** petition.

Staff recommends **approval of the variance of development standards** petition.

Staff recommends that the Hearing Examiner **approve** and find that the plat, file-dated October 3, 2023, complies with the standards of the Subdivision regulations, subject to the following conditions:

1. That the applicant provides a bond, as required by Section 741-210, of the Consolidated Zoning and Subdivision Ordinance.
2. Subject to the Standards and Specifications of the Department of Public Works, Sanitation Section.
3. Subject to the Standards and Specifications of the Department of Public Works, Drainage Section.
4. Subject to the Standards and Specifications of the Department of Public Works, Transportation Section.
5. That addresses and street names, as approved by the Department of Metropolitan Development, be affixed to the final plat, prior to recording.
6. That the Enforcement Covenant (Section 741-701, of the Consolidated Zoning and Subdivision Ordinance) be affixed to the final plat, prior to recording.
7. That the Site Distance Covenant (Section 741-702, of the Consolidated Zoning and Subdivision Ordinance) be affixed to the final plat, prior to recording.
8. That the Sanitary Sewer Covenant (Section 741-704, of the Consolidated Zoning and Subdivision Ordinance) be affixed to the final plat, prior to recording.
9. That the Storm Drainage Covenant (Section 741-703, of the Consolidated Zoning and Subdivision Ordinance) be affixed to the final plat, prior to recording.
10. That the plat restrictions and covenants, done in accordance with the rezoning commitments, be submitted, prior to recording the final plat.
11. That all the standards related to secondary plat approval listed in Sections 741-207 and 741-208 of the Consolidated Zoning and Subdivision Ordinance are met, prior to the recording of the final plat.
12. That the final plat or covenants shall include who will be responsible for maintenance and upkeep of the common area.

(Continued)

## **STAFF REPORT 2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859 (Continued)**

### **SUMMARY OF ISSUES**

The following issues were considered in formulating the recommendation:

#### **LAND USE**

- ◇ The subject site is comprised of an undeveloped parcel that is zoned SU-1. It is bordered to the north, west, and east by a sports club and associated wooded land, zoned SU-34, and across 46<sup>th</sup> street to the south by single-family dwellings, zoned D-2.
- ◇ This petition would subdivide the property into ten single-family detached lots and one common area with a partial waiver of sidewalks and associated variance of development standards.

#### **REZONING**

- ◇ This petition would rezone this site from SU-1 (FW) (FF) to the D-5 (FW) (FF) district to provide for residential uses.
- ◇ The SU-1 district only permits religious uses to be developed on site.
- ◇ The D-5 district is intended for medium and large-lot housing formats, primarily for detached houses, but may incorporate small-scale multi-unit building types in strategic locations. This district can be used for new, walkable suburban neighborhoods or for infill situation in established urban areas, including both low density and medium density residential recommendations of the Comprehensive Plan, and the Suburban Neighborhood and Traditional Neighborhood Typologies of the Land Use Pattern Book.
- ◇ The Millersville at Fall Creek Valley Village and Corridor Plan (2015) recommends 3.5 to 5 residential units per acre development, which would be permitted in the proposed D-5 district.

#### **FLOODWAY / FLOODWAY FRINGE**

- ◇ The subject site lies within the floodway and floodway fringe of Devon Creek and is subject to the Flood Control Secondary Zoning Districts regulations.

#### **VARIANCE OF DEVELOPMENT STANDARDS**

- ◇ This petition would provide for an access drive extending 34 feet into the 100-foot Stream Protection Corridor of Devon Creek for a maximum length of 107 feet. Early in the planning phase of the development Planning Staff and the Department of Public Works recommended that rear access be provided for the proposed lots since it was determined that the encroachment into the stream protection corridor would be minimal and would prevent the alternative of unnecessary curb cuts along 46<sup>th</sup> Street.

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**STAFF REPORT 2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859 (Continued)**

- ◇ This petition would also provide for a 68-foot front setback along 46<sup>th</sup> Street for property address 3860 East 46<sup>th</sup> Street where a front building line range of 20 to 50 feet is required. Due to the anticipated access easement along the eastern property boundary, the proposed location of the single-family dwelling was pushed back to meet the front setback along Millersville Road.

**PLAT**

- ◇ The plat would subdivide the subject site into ten single-family detached lots and one common area. The proposed plat meets the standards of the D-5 (FW) (FF) zoning classification as proposed in the companion rezoning except for the 68-foot front setback along 46<sup>th</sup> Street for property address 3860 East 46<sup>th</sup> Street as proposed in the companion variance petition.
- ◇ The request includes a partial waiver of the sidewalk requirement along a 65-foot segment of Millersville Road.
- ◇ Staff is requesting a commitment to ensure that the final plat or covenants note who will be responsible for maintenance and upkeep of the common area.

**TRAFFIC / STREETS**

- ◇ The proposed lots would front on 46<sup>th</sup> Street with a 34-foot-wide access easement along the northern property boundaries of the ten lots that wraps around to Millersville Road. No new streets are proposed as part of this petition.

**SIDEWALKS**

- ◇ Sidewalks are required on 46<sup>th</sup> Street and Millersville Road.
- ◇ This petition includes a waiver of the sidewalk requirement along a 65-foot segment of Millersville Road. The Department of Public Works determined that the waiver is necessary due to the limited space between the guard rail and pavement to install a proper sidewalk. Additionally, the location of the creek and its topography creates a practical difficulty for the development of a sidewalk along the 65-foot stretch that the waiver is being requested for.

**GENERAL INFORMATION**

**EXISTING ZONING, CONTEXT AREA, AND LAND USE**

SU-1	Metro	Undeveloped
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**SURROUNDING ZONING AND LAND USE**

North	SU-34	Sports Club
South	D-2	Residential (Single-family dwellings)
East	SU-34	Undeveloped
West	SU-34	Undeveloped

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**STAFF REPORT 2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859 (Continued)**

NEIGHBORHOOD PLAN	The Millersville at Fall Creek Valley Village and Corridor Plan (2015) recommends 3.5 to 5 residential units per acre development.
THOROUGHFARE PLAN	Millersville Road is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial street, with a 107-foot existing and a 102-foot proposed right-of-way.
THOROUGHFARE PLAN	46th Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 50-foot existing and proposed right-of-way.
SITE PLAN	File-dated October 3, 2023.
PRELIMINARY PLAT	File-dated October 3, 2023.
FINDINGS OF FACT	File-dated October 3, 2023.
VACATION FINDINGS OF FACT	File-dated November 9, 2023.

**ZONING HISTORY – SITE**

EXISTING VIOLATIONS

None.

PREVIOUS CASES

**98-Z-200; 4602 Millersville Road** (subject site), Rezoning of 4.223 acres, being in the SU-34 District, to the SU-1 classification to provide for a religious use, **approved**.

**92-Z-86; 4650 Millersville Road** (subject site), Rezoning of 70 acres, being in the SU-34 District, to the D-P classification to provide for two-family development, **denied**.

**83-Z-188; 4650 Millersville Road** (subject site), Rezoning of 70 acres, being in the SU-34 District, to the D-6 classification to provide for multi-family development, **withdrawn**.

(Continued)

**STAFF REPORT 2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859 (Continued)**

**ZONING HISTORY – VICINITY**

**94-Z-57; 4650 Millersville Road** (north of site), Rezoning of 49.897 acres, being in the SU-34 District, to the D-P classification to provide for residential development in the floodway fringe, **approved.**

**90-Z-199; 4221-4231 East 46<sup>th</sup> Street** (southeast of site), Rezoning of 2.01 acres from the SU-34/FP/FF District to the D-2/FP/FW classification to provide for a single-family dwelling, **approved.**

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**2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859; Aerial Map**

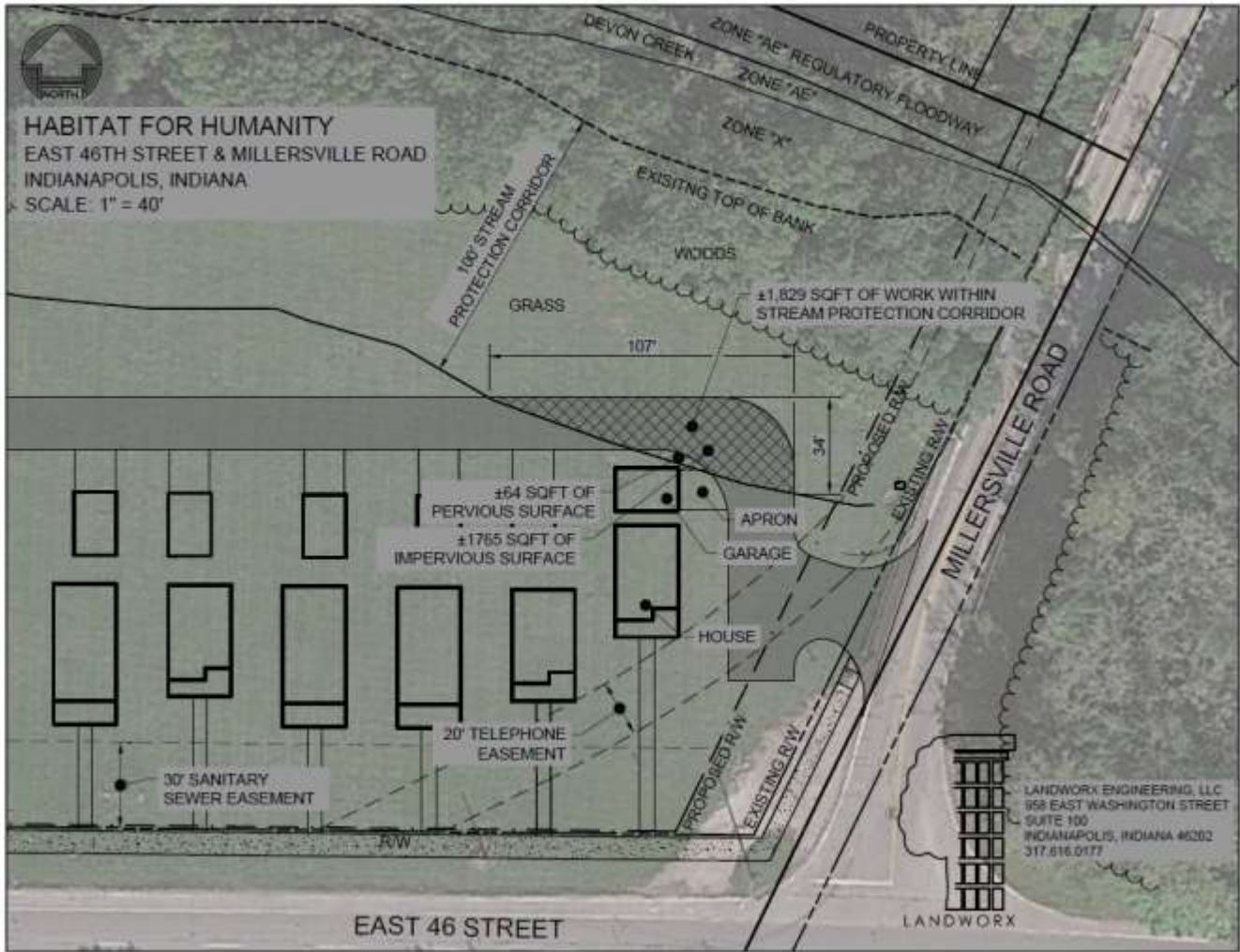








**2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859; Stream Protection Encroachment**











**2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859; Findings of Fact**

**METROPOLITAN DEVELOPMENT COMMISSION  
HEARING EXAMINER  
METROPOLITAN BOARD OF ZONING APPEALS, Division [REDACTED]  
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 intrusion into the Stream Protection Corridor is minimal and necessary to support development of this otherwise difficult-to-develop parcel as per the Area Plan recommendation (3.5-5 dwelling units per acre).

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 minimal intrusion into the Stream Protection Corridor will not remove tree cover along the stream, nor will it exacerbate runoff or flooding downstream of the subject property.

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

such terms would prevent the required rear access to the property when development is configured to meet other terms of the zoning ordinance that are required to implement the residential use and density recommended by the Area Plan. An additional complicating factor is a pre-existing easement in favor of AT&T which takes so much space at the corner of E. 46th and Millersville that it pushes building sites at the east end of the property so far back that the access drive must of necessity intrude into the Stream Protection Corridor.



**2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859; Findings of Fact**

**METROPOLITAN DEVELOPMENT COMMISSION  
PLAT COMMITTEE  
HEARING EXAMINER  
OF MARION COUNTY, INDIANA**

**WAIVER OF THE SUBDIVISION REGULATIONS  
FINDINGS OF FACT**

1. The granting of the waiver or modification will not be detrimental to the public health, safety, or welfare or injurious to other property because:

There is currently no sidewalk along Millersville Road in its entire length between 46th Street and Emerson Way. The subdivision plan proposes to provide such a sidewalk along most of the development's Millersville Road frontage.

2. The conditions upon which the request is based are individual to the property for which the relief is sought and are not applicable generally to other property because:

There is not sufficient width between guard rail and pavement at this specific location, nor is there a sidewalk on the Millersville Road bridge over Devon Creek (adjacent to the subject development to the north) to which a public sidewalk on the subdivision site could be connected.

3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out:

There is not sufficient width between guard rail and pavement at this specific location to install a regulation sidewalk, and the topography of the site would not allow the guardrail to be moved far enough away from the pavement edge to accommodate a sidewalk.

4. The resulting subdivision fulfills the purpose and intent of these regulations at an equal or higher standard than what would have been possible without the deviation because:

The subdivision plan provides public sidewalk along the rest of its frontage, which could be connected to a new sidewalk on the Millersville Road bridge over Devon Creek should Indianapolis DPW ever redesign and rebuild the bridge to accommodate a pedestrian way.

5. The relief sought shall not in any manner vary from the provisions of the Zoning Ordinance, or official zoning base maps, except as those documents may be amended in the manner prescribed by law because:

there exists local and practical difficulty in compliance with the regulation.

**2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859; Findings of Fact**

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

**METROPOLITAN DEVELOPMENT COMMISSION  
PLAT COMMITTEE  
HEARING EXAMINER  
OF MARION COUNTY, INDIANA**

**PETITION FOR VACATION OF A PUBLIC WAY, EASEMENT OR PUBLIC PLACE**

**FINDINGS OF FACT**

1. THE PROPOSED VACATION IS IN THE PUBLIC INTEREST because:  
The former roadway, "old Millersville Road", was abandoned by Marion County in 1956, has been unused and un-maintained since then, and it should be reunited with the adjoining Greater Indy Habitat parcel to support use of the (previously undeveloped) adjoining land for affordable housing development.

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**DECISION**

IT IS THEREFORE the decision of this body that this VACATION petition is APPROVED, subject to any conditions stated in the minutes (which conditions are incorporated herein by reference and made a part of this decision).

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

**2023-CZN-859 / 2023-CVR-859 / 2023-CPL-859; Site Photos**



Photo of the street frontage looking west along 46<sup>th</sup> Street.



Photo of the subject site looking northwest from 46<sup>th</sup> Street.





Photo of the subject site looking north from 46th Street.



Photo of the subject site looking northeast from 46<sup>th</sup> Street.





Photo of the street frontage looking east along 46th Street.



Photo of the entire southern street frontage.





Photo of the eastern street frontage looking north on Millersville Road.



Photo of the eastern street frontage looking south on Millersville Road.





Photo looking west towards where the access easement would be proposed.



Photo looking south at Devon Creek located along the northern property boundary.





Photo of the driveway north of the site that leads toward the sports club.



Photo of single-family dwellings north of the sports club driveway.