

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-UV1-004
Address: 5201 West Raymond Street (approximate address)
Location: Wayne Township, Council District #22
Zoning: SU-9 / D-4
Petitioner: Speed Way Inc., by Pat Rooney
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a repair shop with outdoor storage (not permitted) and a six-foot tall fence within the front yard (maximum 42-inch fence height permitted).

RECOMMENDATIONS

Staff **recommends denial** of this request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

EXISTING ZONING AND LAND USE

D-4/ SU-9	Compact	Commercial
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SURROUNDING ZONING AND LAND USE

North	D-5	Residential (Single-family dwellings)
South	D-4	Residential (Single-family dwellings)
East	D-4	Residential (Single and Two-family dwellings)
West	D-4	Residential (Single-family dwellings)

COMPREHENSIVE PLAN	The Comprehensive Plan recommends suburban neighborhood development.
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- ◇ The 1.52-acre subject site consists of two parcels with one, zoned SU-9, developed with a commercial building and associated parking areas and the second, zoned D-4, an undeveloped lot. It was once a fire station and then used for the commercial installation and servicing of auto telephone and radio systems for government agencies and private companies. There were two previous attempts to use the site for truck storage and maintenance facility through a variance of use and rezoning, but both petitions were withdrawn.
- ◇ The subject property is abutted by residences on all sides and is in the middle of an established residential area.
- ◇ It is now subject to a zoning violation, VIO22-007295, for an unpermitted use of the site and a six-foot tall fence with more than 30% opacity in the front yard.

(Continued)

STAFF REPORT 2023-UV1-004 (Continued)

VARIANCE OF USE

- ◇ The grant of the request would provide for the operation of a repair shop with outdoor storage in the SU-9 and D-4 districts.
- ◇ The purpose of the D-4 district is intended for low or medium intensity single-family and two-family residential development. Land in this district needs good thoroughfare access, relatively flat topography, and nearby community and neighborhood services and facilities with pedestrian linkages. Provisions for recreational facilities serving the neighborhood within walking distance are vitally important. Trees fulfill an important cooling and drainage role for the individual lots in this district. The D-4 district has a typical density of 4.2 units per gross acre. This district fulfills the low-density residential classification of the Comprehensive General Land Use Plan. The SU-9 district only permits government buildings or grounds.
- ◇ Truck or Heavy Vehicle Sales, Rental, or Repair is only permitted in the C-7, I-3 or I-4 districts per Table 743-1: Use Table. Automobile, Motorcycle, and Light Vehicle Service or Repair is only permitted in C-4, C-5, C-7 and I-3 or I-4 districts. The request does not specify the type of vehicles to be repaired on site.
- ◇ Commercial or industrial uses, when located on accurately zoned properties, require transitional yards to buffer such intense uses from protected districts which include dwellings and schools. In this instance, the proposed use would not be required to provide such buffer areas since it is not zoned appropriately for the proposed use. Therefore, the site provides insufficient screening to the surrounding dwellings, which staff finds concerning since this site is surrounded by residential development.
- ◇ The petitioner would commit to limiting outdoor storage of vehicles to 10 commercial vehicles at the rear of the property and eight non-commercial vehicles in the front parking area. Additionally, there would not be semi-trailers parked or stored on the property. These commitments would need to be provided on the correct form for the newly proposed variance of use request, but staff would not be supportive of the request even with the proposed commitments.
- ◇ Although the outdoor storage area would be fenced, staff has concerns that the business and outdoor storage could potentially expand based on the availability of open land to the east.

VARIANCE OF USE FINDINGS OF FACT

- ◇ Staff determined that the grant would be injurious to the general welfare of the community since a commercial operation would attract additional traffic and unnecessary noise from the commercial vehicles on site.
- ◇ The use and value of the area adjacent to the property included in the variance would be adversely affected by the development of this proposed commercial use in the area by decreasing the desirability of the area for potential residents, largely due to the siting of a heavy commercial use in a well-established residential area. Furthermore, the site would be directly visible from the surrounding properties during the winter.

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STAFF REPORT 2023-UV1-004 (Continued)

- ◇ While staff recognizes that the re-use of a vacant fire station is a worthwhile objective, that re-use must be sensitive to surrounding development. The need for the variance does not arise from a condition peculiar to the property in question because the existing building could be utilized for a religious use or infill development that could consist of residential uses to fit within the context of the neighborhood. Staff would be more supportive of those uses with associated variances or rezoning since they would be more appropriate within the neighborhood.
- ◇ Lastly, the proposed use would not align with the suburban neighborhood recommendation of the Comprehensive Plan. In Staff's opinion, the request would represent a wholly inappropriate deviation from the Plan and would be a major commercial intrusion into a stable residential area.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The grant of the request would allow for a six-foot tall fence in the front yard where it is not permitted.
- ◇ Per Table 744-510-2, the D-4 district is limited to a maximum height of 3.5 feet in the front yard or 4 feet if 30% opacity or less is provided. The SU-9 district would be limited to 3.5 feet in the front yard as well.
- ◇ Staff determined that there is no practical difficulty with the use of the site since the fence could be relocated to align with the front building façade to be out of the front yard without the need for a variance.
- ◇ Additionally, the petitioner was informed that the fence would need to have more than 30% opacity or else another variance for 0% opacity would be required at the front yard. Staff would prefer that a wooden privacy fence be aligned with the front building façade to be more aesthetically pleasing, but this would not alter staff's denial recommendation of the request.
- ◇ A final issue of the site would be the unenclosed dumpster on site, which would need to be enclosed per the Screening of Facilities and Equipment section of the Ordinance. Otherwise, another variance would be required.

GENERAL INFORMATION

THOROUGHFARE PLAN	Raymond Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 75-foot existing right-of-way and a 48-foot proposed right-of-way.
SITE PLAN	File-dated January 19, 2023.
PLAN OF OPERATION	File-dated January 19, 2023.
PETITIONER'S COMMITMENTS	File-dated January 19, 2023.
FINDINGS OF FACT	File-dated January 19, 2023. (Continued)

STAFF REPORT 2023-UV1-004 (Continued)

ZONING HISTORY – SITE

EXISTING VIOLATIONS

1. VIO22-007295

- a. 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: - Vehicle storage is not a permitted primary use in a SU-9 zoning district).
- b. 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: - A trucking company is not a permitted use in a SU-9 zoning district...BROWNSBURG TRUCKING COMPANY).
- c. Failure to comply with use-specific standards and zoning district development standards for the SU-9 district; (Table 744-510-2: - Fence height exceeding 42 inches in the front yard with more than 30% opacity...privacy fence).
- d. Failure to comply with use-specific standards and zoning district development standards for the SU-9 district; (744-510.A.1. - Barbed/razor wire fences are prohibited).

PREVIOUS CASES

85-UV3-9; 5201 West Raymond Street (subject site), Variance of use for the commercial installation and servicing of auto telephone and radio systems, **granted**.

84-UV1-52; 5201 West Raymond Street (subject site), Variance of use of the Dwelling Districts Zoning Ordinance and the Special Use Districts Zoning Ordinance to provide for the use of an existing building and adjacent lot as a truck dispatching office with maintenance and storage of semi-tractors and trailers, **withdrawn**.

83-Z-208; 5201 West Raymond Street (subject site), Rezoning of 1.6 acres, being in the SU-9 and D-4 districts, to the C-7 classification, to provide for a truck maintenance facility and offices, **withdrawn**.

ZONING HISTORY – VICINITY

98-CP-30V; 2214-2215 Beulah Avenue (east of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for a two-family residence, **granted**.

97-AP3-2; 5202 East Raymond Street (north of site), Approval to waive the Rules of Procedure to permit the refilling of a petition less than 12 months after 96-V3-68 was denied by the Metropolitan Board of Zoning Appeals, **granted**.

96-V3-68; 5202 East Raymond Street (north of site), Variance of development standards to provide for the construction of a barn, for agricultural purposes, with reduced setbacks, and the placement of three temporary detached garage structures which exceed the main floor area of the primary residence, **denied**.

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STAFF REPORT 2023-UV1-004 (Continued)

95-SE3-12; 5137 West Regent Street (north of site), Special Exception of the Dwelling Districts Zoning Ordinance to provide for the placement of a manufactured home for residential use, **granted.**

84-UV1-14; 5224 West Kelley Street (southwest of site), Variance of use of the Dwelling District Zoning Ordinance to provide for an addition to an existing detached garage to be used as a second residence on the property, **granted.**

83-UV1-94; 5015 West Raymond Street (east of site), Variance of use and development standards of the Dwelling Districts Zoning Ordinance to allow for more than one single-family residence on one lot, **granted.**

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2023-UV1-004; Location Map



2023-UV1-004; Aerial Map



PLAN OF OPERATIONS

The Petitioner plans to have the subject property continue with its operation as an existing repair shop. All repairs shall continue to be completed inside of the building during normal business hours. As further described in the site plan, up to (10) commercial vehicles shall be parked in the rear, and up to eight (8) non-commercial vehicles shall be parked in the front. There shall be no semi-trailers stored on the property.

**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: See attached.

Statement of MODIFICATION OR TERMINATION of Covenants or Commitments:

1. Commitment No 3 from the Commitments recorded as Instrument No. 850006658 shall be terminated and replaced with the following: There shall be no permanent outside storage of vehicles or other equipment and materials, except solely for up to ten (10) commercial vehicles in the parking spaces in the rear and up to eight (8) non-commercial vehicles in front, all as shown in the site plan submitted herewith. For avoidance of doubt, there shall be no semi-trailers being parked or stored on the Property.
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850006658

EXHIBIT A

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NOTE: Article VI, Section 6(b) of the rules of the Metropolitan Board of Zoning Appeals and Article VI, Section 7(b) of the rules of the Hearing Officer require use of this form in recording commitments made with respect to variance or special exception cases in accordance with I.C. 36-7-4-921.

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
MADE IN CONNECTION WITH VARIANCE OR SPECIAL EXCEPTION GRANT.

In accordance with I.C. 36-7-4-921, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning to the use and development of that parcel of real estate:

Legal Description: See Exhibit A, attached hereto and by this reference incorporated herein.

Statement of COMMITMENTS:

1. Present Company policy shall be maintained to restrict new installations for government agencies and private companies to five (5) vehicles per day and servicing of equipped vehicles to fifteen (15) vehicles per day.
2. All work shall be performed entirely within the building.
3. There shall be no permanent outside storage of vehicles or other equipment and materials, and not more than two vehicles, and only in emergency situations, shall be stored overnight to the rear of the building.
4. Final site and landscape plans, together with any signage, shall be subject to review and approval of the Administrator of the Division of Development Services.

These COMMITMENTS shall be binding on the owner, subsequent owners, and other persons acquiring an interest in the real estate. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Board of Zoning Appeals made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the grant of variance or special exception petition # 85-UV3-9 by the Metropolitan Board of Zoning Appeals or the Hearing Officer.

These COMMITMENTS may be enforced jointly and severally by:

1. The Metropolitan Development Commission; and
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six hundred sixty (660) feet from the perimeter of the real estate; Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various township assessors of Marion County, which list the current owners of record at the time the notice shall be sent. (This paragraph defines the category of persons entitled to receive personal notice of the variance or special exception under the rules in force at the time the COMMITMENT was made); and,

3.

RECEIVED 850006658
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MARION CO.

The undersigned hereby authorizes the Division of Development Services of

PETITION

NO. 5

CAUSE NO. 85-UV3-9

PB

2023-UV1-004; Photographs



Photo of the Subject Property: 5201 West Raymond Street



Photo of the Subject Property: 5201 West Raymond Street



Photo of the Subject Property looking east towards the single-family dwellings.



Photo of the Subject Property looking southeast.



Photo of the proposed parking area next to the existing building.



Photo of the dumpster that would need to be enclosed.



Photo of the proposed outdoor parking/storage area.



Photo of the proposed outdoor parking/storage area.



Photo of the single-family dwellings west of the site.



Photo of the single-family dwellings north of the site.



Photo of the single-family dwellings north of the site.