

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-ZON-092 and 2022-VAR-010 (Amended)
Address: 3301 North Raceway Road (*Approximate Address*)
Location: Wayne Township, Council District #6
Petitioner: Sammy and Annie Dotlich, by Joseph D. Calderon
Request: Rezoning of 3.75 acres from the D-4 district to the I-1 district to legally establish a commercial/building contractor.

ADDENDUM FOR APRIL 19, 2023, METROPOLITAN DEVELOPMENT COMMISSION

This petition was heard by the Hearing Examiner on March 23, 2023. During the hearing the variance portion of the request was withdrawn.

After a full hearing, the Hearing Examiner recommended approval of the rezoning portion of the petition. The Hearing Examiner's decision was appealed by a remonstrator and set for hearing by the Metropolitan Development Commission on April 19, 2023. The Hearing Examiner's memorandum can be found below.

With the withdrawal of the variance petition, staff believes that the submitted site plan will likely need to be modified to meet the development standards of the Ordinance and that some clarification and modification of the commitments would be advisable. The petitioners have indicated that some modifications are under consideration, but they have not been submitted in time for the publication of this Staff Report. **Although staff is recommending approval of the petition, if updated materials are not submitted in time for staff to review, staff will request a continuance to the May 3, 2023 hearing.**

ADDENDUM FOR MARCH 23, 2023, HEARING EXAMINER

To accommodate the schedule of the remonstrator's representative, a continuance for cause from the February 23, 2023 hearing to the March 23, 2023 hearing was requested and granted.

An updated site plan and an expanded list of commitments have been submitted to the file. The updated site plan expands the size of the proposed building from 4500 square feet to 8000 square feet and moves it somewhat to the west. Several of staff's previously requested commitments have been added to the list of commitments proposed by the petitioner. Staff continues to **recommend approval** subject to the commitment below.

A 75-foot half right-of-way shall be dedicated along the frontage of Raceway Road, as per the request of the Hendricks County Engineer. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).



LOCATION MAP N.T.S.

OWNER/DEVELOPER INFO

LAND DESCRIPTION
Tract 44-20-15000034/2

Part of the Southwest Quarter of Section 36, Township 36N, Range 12E, the Second Principal Meridian, Nebraska.

GENERAL NOTES:

This drawing is not intended to be representative of a reconnaissance or original boundary survey, a route survey or a Swampy Location Report. The topographic data was gathered using 3D high definition laser scanning, and by global positioning equipment, utilizing the Real Time Kinematic Zena's on the Indiana GPS Network, NTRIP using State Plane NAD83 and NAVD83 Geoid12.

The elevations on natural surfaces are accurate to within 0.10 feet and on hard surfaces to within 0.05 feet.

This drawing shows owner proposed data improvements on a topographic map prepared by Survey Trist, LLC. This is an exhibit only and not approved.

FLOOD STATEMENT

The accuracy of any Flood Hazard Data shown on this survey is subject to map scale uncertainty and to any other uncertainty in location or elevation on the referenced flood insurance rate map. The Subject survey area lies within that Special Flood Hazard Zone 2 (areas outside of the annual 1% chance of flooding) per COMMUNITY PANEL 8-18007001056 of the flood insurance rate map(s) for Marion County, Indiana dated 4/19/2016.

UTILITIES

This survey reflects above ground indications of utilities and information available from utility companies. The compiler makes no guarantee that the underground utilities shown comprise all such utilities in this area, whether in service or abandoned. The surveyor further does not warrant that the underground utilities shown are in the exact location indicated, although they are located as well as possible based upon the information provided. Except as indicated by further elevations or notes, this is the best information that can be physically located by underground utilities. IUPPS 02002143247

CERTIFICATION

I, the undersigned hereby certify that, to the best of my professional knowledge and belief that the within topographic survey plot accurately represents a survey performed under my supervision. The field survey was completed 2/13/2022.




 Timothy D. Higgins, P.S.
 Professional Surveyor #20100067
 State of Indiana
 DATE: 9/28/2022
 tm@surveyfirst.net



LEGEND

A SECTION CORNER AS NOTED
 ○ IRON PIN FOUND
 ● SANITARY MANHOLE
 % UTILITY POLE
 @ TELEPHONE PEDestal
 E ELECTRIC METER
 □ ELECTRIC TRANSFORMER
 T HYDRANT
 ○ WOOD FENCE POST FOUND
 ■ SIGN
 II MAILBOX
 — UNDERGROUND ELECTRIC LG.
 — UNDERGROUND GAS LINE
 — UNDERGROUND WATER LINE
 — UNDERGROUND SEWER LINE
 — CHAIN LINK FENCE

**EXHIBIT DRAWING ONLY
NOT FOR CONSTRUCTION**

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. Outdoor storage of vehicles and equipment shall be limited to the areas shown on the site plan attached as Exhibit "B" ("Site Plan"), until such time that a future storage building is erected on the Subject Property, at which time, vehicles and equipment that can reasonably be stored inside (such as dump trucks) shall be located in the storage building. Any other vehicles and equipment that is stored outside shall be limited to those areas shown on the Site Plan, and shall further be limited to outside storage for no more than ten (10) consecutive days, no more than ten (10) times per year. The future storage building shall be erected and placed in service no later than December 1, 2023.
3. Storage of materials used in connection with off-site projects shall be directly delivered to job site when available. However, any materials shipped to the Subject Property shall be limited to the areas shown on the Site Plan, and shall be limited to no more than ten (10) consecutive days, no more than six (6) times per year.
4. Existing areas consisting of dirt and/or debris piles shall be removed promptly following issuance of any required excavation/drainage permits, but no later than June 30, 2023.
5. Owner will apply for a drainage or land alteration permit for all existing improvements, including the existing pond, and comply with all terms and conditions of same. Owner will provide a copy of the drainage or land alteration, permit, and associated plans to The Town of Clermont.
6. Parking areas for customers, visitors, vendors and employees shall be limited to the areas as shown on the Site Plan.
7. Only one free-standing sign shall be permitted, and shall be located along the Raceway Road frontage north of the access drive. The free-standing sign shall meet all requirements of monument signs in commercial districts; however, it shall not exceed six feet (6') in height and six feet (6') in width.
8. Proposed perimeter and transitional yard landscaping shall be submitted on a plan prepared by a professional landscape architect for Administrator's Approval, prior to issuance of an improvement location permit for the future storage building. The landscaping shall feature a combination of evergreens, deciduous trees and shrubs to create a reasonable screen along the south property line installed within twelve (12) months following the erection of the future storage building.
9. A decorative wrought iron style aluminum fence shall be installed along the Rockville Road frontage at the maximum height permitted by the City of Indianapolis Consolidated Zoning/Subdivision Ordinance (the "Zoning Ordinance"). Fencing along the south property line may be a vinyl coated chain link fence up to six feet (6') in height.

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10. Owner will pave the existing stone entry drive with asphalt or other hard surface material permitted by the City of Indianapolis Consolidated Zoning/Subdivision Ordinance. The width of the driveway entrance shall be reduced to match the existing driveway on the west side of Raceway Road, but not less than thirty-six feet (36'), and shall be subject to the approval of Hendricks County.
 11. All new freestanding or building mounted exterior lighting on the Subject Property shall meet the requirements of the Zoning Ordinance.
 12. There shall be no vehicle entrance to the Subject Property along the south property line, unless required by the Indianapolis Fire Department.
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ADDENDUM FOR FEBRUARY 23, 2023, HEARING EXAMINER

A valid Automatic Continuance was filed by a registered neighborhood organization, the Town of Clermont, continuing this petition from the December 15, 2022 hearing to the January 12, 2023 hearing. To accommodate the schedules of both the petitioner's representative and the remonstrator's representative, a continuance for cause was requested and granted continuing this petition from the January 12, 2023 hearing to the February 23, 2023 hearing.

ADDENDUM FOR DECEMBER 15, 2022, HEARING EXAMINER

This petition was continued from the December 1, 2022 hearing to the December 15, 2022 hearing to provide time for new notice to be given.

December 1, 2022 Staff Report

This petition was continued from the September 29, 2022 hearing to the December 1, 2022 hearing at the request of the petitioner to allow time to amend the petition and send updated notice.

An Automatic Continuance was filed by the petitioner, continuing the petition from the August 25, 2022 hearing to the September 29, 2022 hearing.

RECOMMENDATION

Staff originally recommended denial of this petition. The petition has since been amended and staff now **recommends approval** of this request, subject to the following commitments being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. A 75-foot half right-of-way shall be dedicated along the frontage of Raceway Road, as per the request of the Hendricks County Engineer. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).

(Continued)

STAFF REPORT 2022-ZON-092 / 2022-VAR-010 (Continued)

2. Development of the site shall be in substantial compliance with the site plan dated September 28, 2022.
3. The storage building proposed on the site plan shall be constructed by December 21, 2024. If not constructed by that time, the amount of outdoor storage on the site shall be reduced by 4,500 square feet.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation.

LAND USE

- ◇ The subject site is the north parcel of two residentially-zoned parcels owned and used by a contracting business.
- ◇ The site is within the historic town of Clermont, which is an included town of Indianapolis/Marion County under UniGov. It abuts the CSX Railroad to the north and sits north of the Westwood Park subdivision, which was platted in 1925. Historic aerial photography indicates that the site was in use in 1937, but by the mid-1950s began to become grown-over. In 2000 it was a woodland, but by 2005 the site had been cleared and it appears to have been used to stockpile materials since that time.
- ◇ The 2018 Comprehensive Land Use Plan recommends Traditional Neighborhood for the site. This typology envisions a full spectrum of housing types, ranging from single family homes to large-scale multi-family housing with a development pattern that is compact and well-connected. This typology usually has a residential density of five to fifteen dwelling units per acre, but a higher density in proximity of a transit line, greenway, or park.
- ◇ The site is currently the subject of four zoning violations. These violations are for the operation of a construction contractor in a dwelling district, outdoor storage, parking of commercial vehicles, outdoor storage of junk, trash and debris, and failure to obtain an Improvement Location Permit.

ZONING

- ◇ This site and the abutting parcel to the south were the subject of a petition (2021-UV1-029) for a variance of use to provide for a construction services company in a D-4 district. This petition was withdrawn.

(Continued)

STAFF REPORT 2022-ZON-092 / 2022-VAR-010 (Continued)

- ◇ This petition would rezone the subject site from D-4 to I-1. The current zoning district provides for low to medium intensity single-family and two-family development. The established residential neighborhoods to the northwest and south are also zoned D-4.
- ◇ The proposed zoning district, I-1, is a Light Industrial district for those industries that present minimal risk and typically do not create objectionable characteristics such as dirt, noise, glare, heat, or odor that extend beyond the lot lines. Typical uses in the I-1 district are laboratories, contractors, light manufacturing, self-storage facilities, warehousing, wholesaling, and distribution. In the I-1 district, land uses are expected to conduct their entire operation within completely enclosed buildings so that no nuisance factors are created or emitted. Outdoor storage of raw materials, manufactured products or any other materials is very limited and not permitted at all within 500 feet of a protected district. Any outdoor storage must be no higher than ten feet and must be solidly screened to that height.
- ◇ The proposed district does not meet the Traditional Neighborhood recommendation of the Comprehensive Land Use Plan. However, due to the site's location abutting a well-used railroad track, staff is amenable to a light industrial use of the site.
- ◇ Staff would not encourage any further expansion of industrial or other non-residential uses beyond this site. The large residentially-zoned site to the south abuts an established neighborhood and the site's development as anything other than residential uses would negatively affect the neighboring properties. Staff considers the south site a viable residential site easily integrated into the existing Westwood Park subdivision via Mabel and Elizabeth streets.

VARIANCES

- ◇ Two variances of development standards have been requested. The first would provide for outdoor storage in excess of 25% of the area of the site's enclosed buildings. The second variance would provide for outdoor storage within 500 feet of a protected district.
- ◇ As noted above the I-1 district intentionally limits outdoor storage to a minimal amount. As is the case with this site, the I-1 district is frequently found abutting protected districts such as residential areas. For residential and industrial uses to be compatible neighbors, the industrial use must limit its negative impacts, which is largely done by enclosing all operations and strictly limiting outdoor storage.
- ◇ The proposed site plan indicates two outdoor storage areas. They total approximately 7,175 square feet. This compares to about 540 square feet of outdoor storage that would be permitted based on the site's building area.

(Continued)

STAFF REPORT 2022-ZON-092 / 2022-VAR-010 (Continued)

- ◇ The south outdoor storage area would be approximately 30 feet from a protected district and 320 feet from a protected district that has been developed with a dwelling. The north outdoor storage area would be approximately 80 feet from a protected district and 200 feet from a protected district that has been developed with a dwelling.
- ◇ The site plan proposes a security fence around the active portion of the site, mounding partially around the active portion of the site and a future 4,500 square-foot storage building. Construction of the storage building would increase the permitted amount of outdoor storage by 1,125 square feet for a total of approximately 1,665 square feet.
- ◇ A proposed commitments would limit outdoor storage of vehicles and equipment to the proposed storage areas “until such time that a future storage building is erected.” No time frame is given for construction of the building. Because construction of the proposed storage building is integral to staff’s support of the variances, staff is requesting a deadline for its construction.
- ◇ Another proposed commitment would limit the storage of materials used in connection with off-site projects to the proposed storage areas. The materials would remain for no more than 21 consecutive days.

GENERAL INFORMATION

EXISTING ZONING, CONTEXT AREA, AND LAND USE

D-4	Metro	Commercial/building contractor
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SURROUNDING ZONING AND LAND USE

Northeast	D-4	Railroad track, contractor, single-family dwellings
South	D-4	Commercial/building contractor
West	Hendricks County	Mobile home park, industrial uses

COMPREHENSIVE LAND USE PLAN	The Wayne Township Comprehensive Plan (2018) recommends Traditional Neighborhood.
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THOROUGHFARE PLAN	Raceway Road is classified in the Official Thoroughfare Plan for Marion County, Indiana as a Primary Arterial, with a 20-foot existing half right-of-way and a 95-foot proposed right-of-way. The Hendricks County Thoroughfare Plan classifies Raceway Road as a Minor Arterial and proposes a 150-foot right-of-way.
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(Continued)

STAFF REPORT 2022-ZON-092 / 2022-VAR-010 (Continued)

FLOODWAY / FLOODWAY FRINGE	This site is not located within a floodway or floodway fringe.
STREAM PROTECTION CORRIDOR	This site is not located within a stream protection corridor.
WELLFIELD PROTECTION DISTRICT	This site is not located within a wellfield protection district.

ZONING HISTORY – SITE

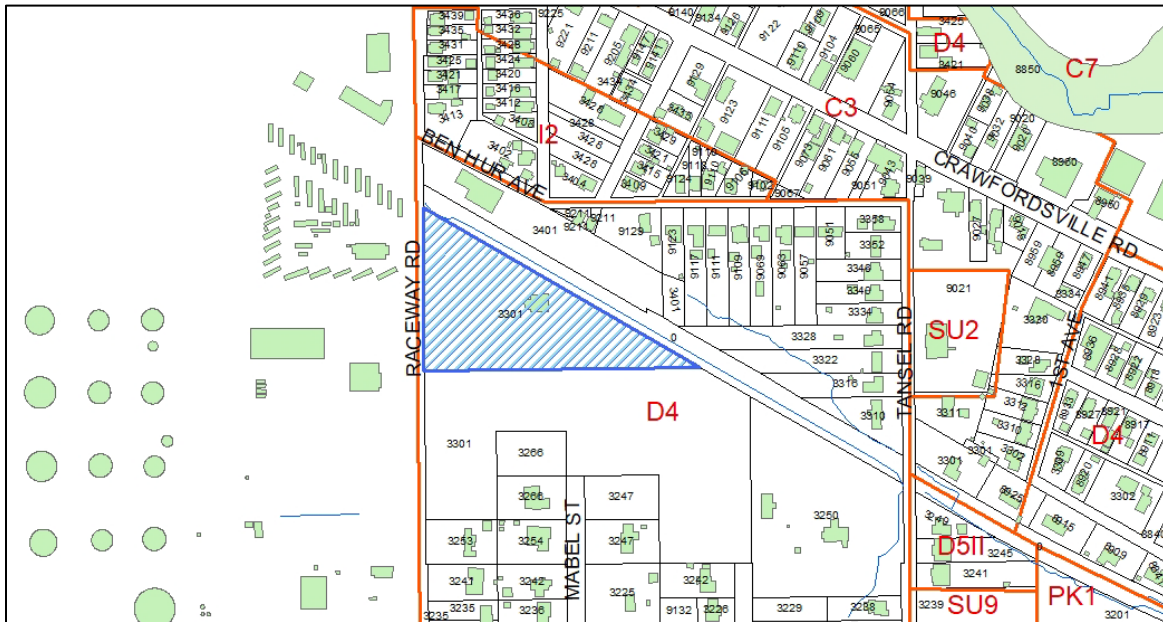
2021-UV1-029; 3301 North Raceway Road, requested a variance of use to provide for a construction services company in a D-4 district, **withdrawn**.

ZONING HISTORY – VICINITY

2004-UV2-020; 3250 Tansel Road (southeast of site), requested a variance of use to provide for a bed-and-breakfast in a D-4 district, **approved**.

klh

STAFF REPORT 2022-ZON-092 / 2022-VAR-010, Location



STAFF REPORT 2022-ZON-092 / 2022-VAR-010, Aerial photograph (2021)



MEMORANDUM OF EXAMINER'S DECISION

**2022-ZON-092, 2022-VAR-010
(Amended)**

3301 N. Raceway Road

The petitions request the rezoning of 3.75 acres from the D-4 district to the I-1 district to legally establish a commercial/building contractor, and a variance of development standards to permit outdoor storage in excess of 25% of enclosed buildings and within 500 feet of a protected district. The variance petition was withdrawn at the hearing, and this memo only addresses the rezoning petition.

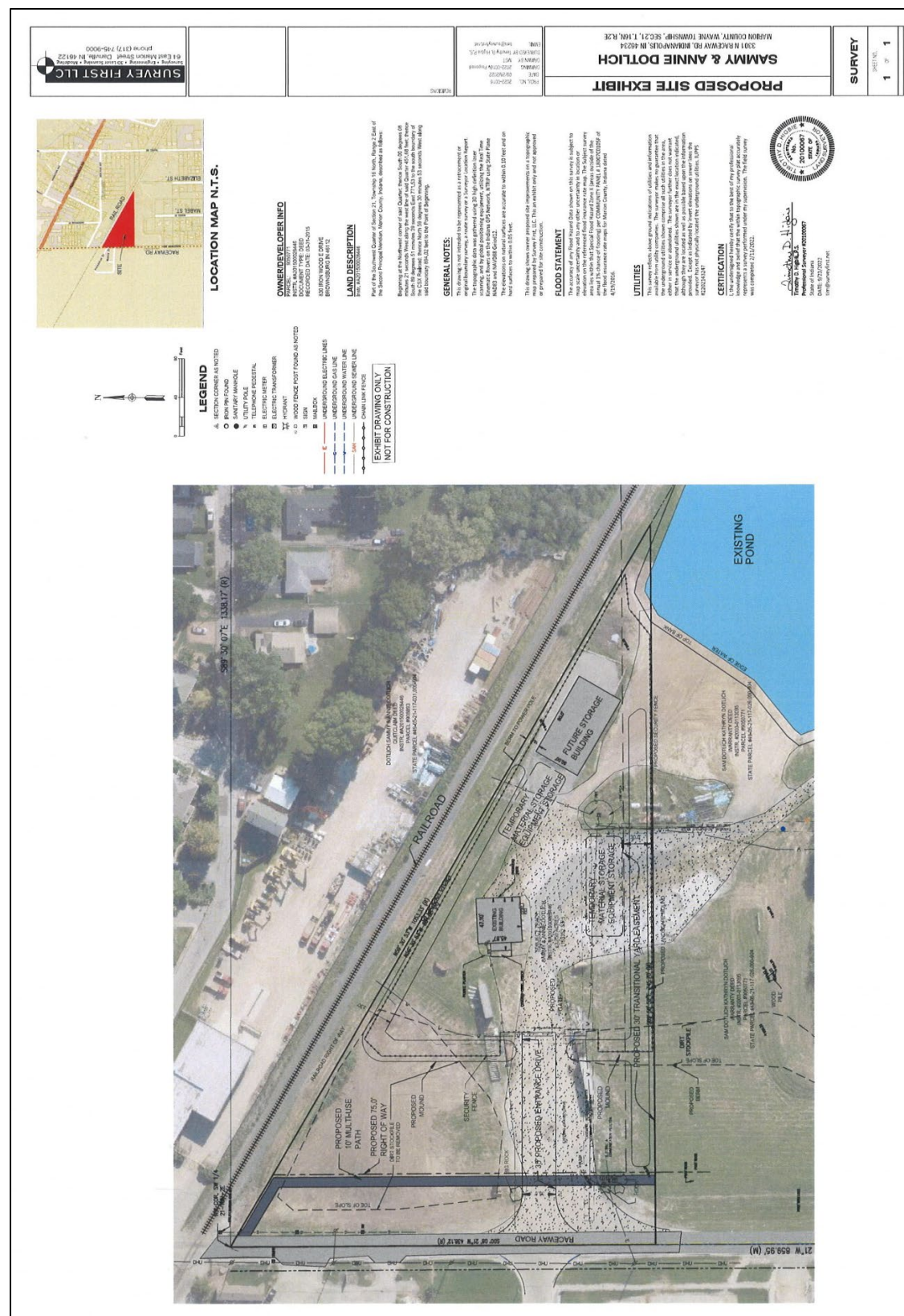
Your Hearing Examiner visited the site prior to the hearing and noted the generally orderly nature of it. The substantial oil tank farm west of the site and the railroad tracks and industrial use north of the site were also noted, along with residential development south of undeveloped parcel south of the site.

The petitioner's representative stated this site has been used as a contracting business for about 20 years. A variance petition was originally filed, and then it was refiled as a rezoning petition requesting the C-S district and it included the parcel adjacent to the south. In an effort to address concerns of staff and remonstrators, the southern parcel was excluded from the petition, and it was amended to request I-1. The petitioner's representative described site plan changes and commitments that were made to improve the site, including increasing the size of the storage building and moving it west, narrowing and hardsurfacing the entrance, adding landscaping, and using the parcel south of the site, which is owned by the petitioner, as an additional buffer.

About 10 remonstrators appeared at the hearing, and letters of remonstrance were also offered. Primary concerns expressed were outdoor storage, excessive noise and dust, non-conformance with the Comp Plan, and encouraging more industrial development in the area.

Staff reviewed the changes that were made from the original filing, and discussed commitments that would hinder site expansion to the south. It cited the abutting active rail line as a reason to support light industrial development on this site.

In your Hearing Examiner's opinion, because of adjacent industrial uses and the rail line, it is unreasonable to expect residential development on this site. In addition to all development standards that must be met, the revised site plan and commitments limit what may occur on the site. Approval of this petition was recommended.

STAFF REPORT 2022-ZON-092 / 2022-VAR-010, Site Plan

STAFF REPORT 2022-ZON-092 / 2022-VAR-010, Findings of Fact

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 outside storage will be limited in scope and only for temporary periods, and will not interfere with traffic, visibility or any other health or safety measure.

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 petitioners own property to the south of the outside storage areas, there is an active rail line separating the outside storage areas from residences to the north, and the outside storage will be limited in scope and only be for temporary periods.

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

the proposed use as a contractor's operation is permitted, and outdoor storage is a normal accessory use. The 500 restriction contains no exceptions which might mitigate any concern about storage and proximity to a protected district.

DECISION

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

Adopted this _____ day of _____, 20 ____

_____	_____
_____	_____
_____	_____

STAFF REPORT 2022-ZON-092 // 2022-VAR-010, Proposed Commitments

STATEMENT OF COMMITMENTS

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

Legal Description: See Exhibit "A" Attached Hereto And Incorporated By Reference (the "Subject Property").

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. Outdoor storage of vehicles and equipment shall be limited to the areas shown on the site plan attached as Exhibit "B" ("Site Plan"), until such time that a future storage building is erected on the Subject Property, at which time, vehicles and equipment required to be stored overnight shall be located in the storage building.
3. Storage of materials used in connection with off-site projects shall be limited to the areas shown on the Site Plan, and shall be limited to no more than 21 consecutive days.
4. Existing areas consisting of dirt and/or debris piles shall be removed promptly following issuance of any required excavation/drainage permits.
5. Owner will apply for a drainage permit for all existing improvement and comply with all terms and conditions of same. Owner will provide a copy of the drainage permit and associated plans to The Town of Clermont.

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6. Owner will pave the existing stone entry drive with asphalt or other hard surface material permitted by the City of Indianapolis Consolidated Zoning/Subdivision Ordinance. The width of the driveway entrance shall be reduced to match the existing driveway on the west side of Raceway Road, but not less than thirty-six feet (36'), and shall be subject to the approval of Hendricks County.
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These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other person acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A" which is attached hereto and incorporated herein by reference.

These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition # 2022-ZON-092 by the City-County Council changing the zoning classification of the real estate from a D-4 zoning classification to a I-1 zoning classification; or
- (b) the adoption of approval petition # _____ by the Metropolitan Development Commission;

and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the I-1 zoning classification or until such other time as may be specified herein.

These COMMITMENTS may be enforced jointly or severally by:

1. The Metropolitan Development Commission;
 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, and all owners of real estate within the area included in the petition who were not petitioners for the rezoning or approval. 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. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning or approval under the rules in force at the time the commitment was made);
 3. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and
 4. Town of Clermont, Indiana.
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STAFF REPORT 2022-ZON-092 / 2022-VAR-010, Photographs



Looking east at the building on the subject site.



Looking south from the site.



Looking north along the Raceway Road frontage of the site.



Looking west across Raceway Road at the neighbor to the west.



Looking west across Raceway Road at the neighbor to the west.



Looking south along the Raceway Road frontage from the northwest corner of the site.



Looking southeast along the CSX railroad tracks. The subject site is to the right.



Looking east at the neighbor to the north.