

# STAFF REPORT

## Department of Metropolitan Development Division of Planning Current Planning Section

**Case Number:** 2023-AP1-001  
**Address:** 1511, 1531, 1539 and 1555 Deloss Street (approximate address)  
**Location:** Center Township, Council District #17  
**Zoning:** I-2  
**Petitioner:** Cameron Perisutti  
**Request:** Appeal of the Administrator's Decision determining that the existing facility and associated accessory uses are legally established non-conforming uses.

### RECOMMENDATIONS

Staff recommends denial of the request.

### SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

#### LAND USE

##### EXISTING ZONING AND LAND USE

I-2	Compact	Waste Disposal
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##### SURROUNDING ZONING AND LAND USE

North	I-2	Commercial Structures
South	D-5	Single Family Dwellings
East	I-2	Commercial Structures
West	I-2	Commercial Structures

##### COMPREHENSIVE PLAN

The Comprehensive Plan recommends Traditional Neighborhood development.

- ◇ This .74-acre lot, zoned I-2, is currently improved with a commercial structure and an attached partially enclosed vehicular storage structure. North, west and east of the subject site are various commercial structures within the I-2 District. South of the subject site is a residential neighborhood, predominantly single-family dwellings, within the D-5 District.
- ◇ The Land Use Pattern Book recommends Traditional Neighborhood development.
- ◇ In 1922, upon the adoption of zoning in the City of Indianapolis, this property was initially zoned U-4 First Industrial. This district permitted a wide array of uses, including, but not limited to manufacture or industrial operation of any kind, with limited exception; job printing/newspaper printing; steam laundry; central distributing station; black smithing, horseshoeing and stables; and streetcar repair; scrap iron or junk storage.

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## **STAFF REPORT 2023-AP1-001 (Continued)**

- ◇ In 1963 a new Industrial Zoning Ordinance an enacted that created the I-2-U District which has carried forward under such names as “light industrial” and “I-2” in subsequent amendments to the Consolidated Zoning Ordinance of Indianapolis-Marion County. The first comprehensive revision to the Consolidated Zoning Ordinance came in 1969, which we use as a basis for modern zoning. From 1963 to 1969, the Industrial Zoning Districts were iterative: with each set of uses that were allowed in the less restrictive districts to be permitted in the more intense districts.
- ◇ The passage of 96-AO-03 further refined the development standards for the I-2-U District. Under this amendment, the Ordinance changed from strictly iterative to allowing more intense operations as a Special Exception in more restrictive districts. If uses were already legally established, it can be proven that they were in operation prior to 1996, they would not have been required to seek a Special Exception as they were legally established.
- ◇ In regard to the subject addresses, Staff finds that prior to 1969, the use as described would have been comparable to other uses that were allowed by-right (without a variance) in I-2-U as part of the permitted uses or the iterative uses from I-1-U. Staff concludes that the nature of the business was similar to other types of manufacturing and/or processing in the I-U-1/2 districts and was consistent with the enclosed and unenclosed storage regulations as well.
- ◇ Subsequently, in 1992, when the current business began and permits were granted, the uses were still within the parameters of the I-2U- uses. In 1996, when the Ordinance was updated, the uses were legally established and would not require a variance. Subsequently, this would apply when the Ordinance was updated again in 2015 and 2021.
- ◇ In addition, Staff would note that a history of permit issuance may be factored into legally establishing a non-conforming use, as upheld in cases such as:
  - Metropolitan Development Com’N of Marion County v. Schroeder (2000)
  - Atwell v. City of Indianapolis (2019)
  - City of Rushville Board of Zoning Appeals v. McCormick (2020)
  - Town of Avon v. Harville (1999)
  - BBL, Inc. v. City of Angola (2014)
  - Jacobs v. Mishawaka Bd. Of Zoning Appeals (1979)
  - Ashley v. City of Bedford (1974)
  - Wesner v. Metropolitan Development Com’n of Marion County (1993)
  - Dandy Co., Inc. v. Civil City of South Bend, County-City Complex (1980)
  - Metropolitan Development Com’n of Marion County v. Goodman (1992)
  - Hannon v. Metropolitan Development Com’n of Marion County (1997)
  - Kraimer v. City of Schofield (2004)
  - Board of Zoning Appeals, Bloomington, Ind. V. Leisz (1997)
  - Ragucci v. Metropolitan Development Com’n of Marion County (1997)
  - Hieb v. Metropolitan Development Commission of Marion County (1980)

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## STAFF REPORT 2023-AP1-001 (Continued)

### ADMINISTRATOR'S DETERMINATION

- ◇ It is the Administrator's opinion that the legally established uses continued without interruption from **1996-2016** when Indy Rezone (the next comprehensive update to the Consolidated Zoning and Subdivision Ordinance) was adopted. The property transitioned to an I-2 zoning designation; again, the uses were legally established when the City adopted a new Ordinance, so the owner would not have been required to seek a variance. The use has been **established since 1992** establishing itself as a Legally Established Nonconforming Use.
  
- ◇ A Legally Established Nonconforming Use is defined as: "Any continuous, lawful land use having commenced prior to the time of adoption, revision or amendment of the Zoning Ordinance, or granted a variance of the Zoning Ordinance, but that fails, by reason of such adoption, revision, amendment or variance to conform to the present requirements of the Zoning Ordinance.:"
  
- ◇ Legally established uses cannot violate other laws established by local, state or federal jurisdictions. Violations could still be assessed if an enforcement agency determined that they existed. In this case, BNS and IDEM have conducted inspections and provided report to the owner. However, within the context of Planning and Zoning the Administrator has determined the use of the property is not a violation of the Consolidated Zoning and Subdivision Ordinance of Indianapolis-Marion County due to being an established business prior to 1996.

### GENERAL INFORMATION

#### THOROUGHFARE PLAN

This portion of Deloss Street is classified as a Local Street in the Official Thoroughfare Plan for Marion County, Indiana with an existing and proposed 48-foot right-of-way.

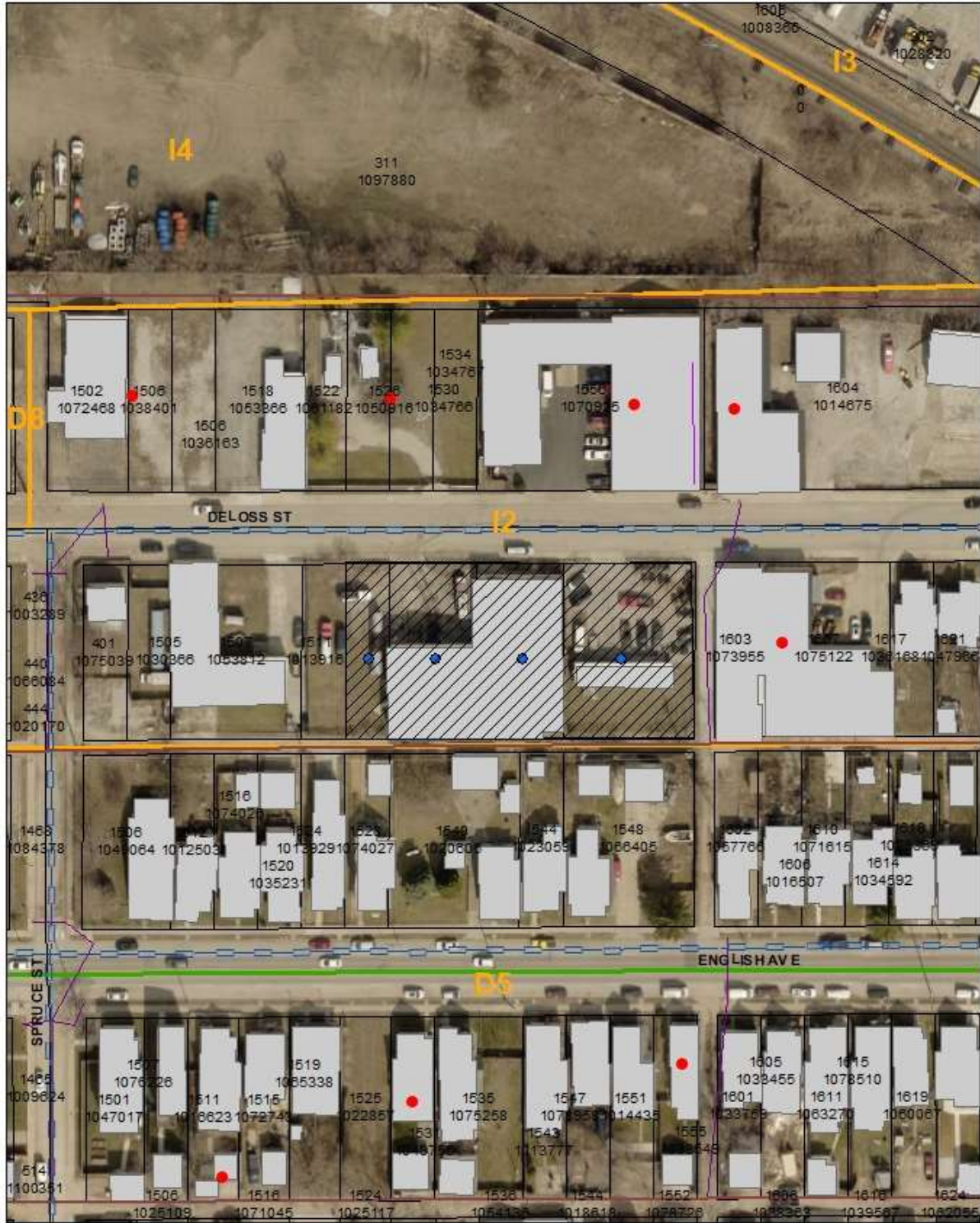
### ZONING HISTORY – SITE

None.

EDH

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**2023-AP1-001; Location Map**



00.006.01 0.02 0.03 0.04 Miles





July 21, 2023

Cameron Perisutti  
cameronperisutti@gmail.com

Regarding: 1531/1535 Deloss Street, Indianapolis, IN (Marion County)

Dear Mr. Perisutti,

The Department of Metropolitan Development – Division of Planning has been tasked to make an official determination regarding use conformity on 1531/1539 Deloss Street (the “Property”) in Indianapolis, IN. The Property is currently zoned I-2 Light Industrial District.

### **Property Zoning History**

The first official Zoning Ordinance in Indianapolis was established in 1922. This Ordinance established general zoning districts throughout the City. Industrial Districts, at the time, permitted residential housing which is why there may be areas of the City with a mix of industrial uses and residential uses. Between 1922 and 1963, the Zoning Ordinance was amended making smaller changes to the code. However, in 1963, the City adopted 1963-AO-4: Industrial Zoning Ordinance which established multiple industrial zoning districts and development standards for said districts. This Ordinance established I-2-U zoning district which has carried forward under such names as ‘light industrial’ and “I-2” in subsequent amendments to the Consolidated Zoning Ordinance of Indianapolis Marion County. The first comprehensive revision to the Consolidated Zoning Ordinance came in 1969, which we use as a basis for modern zoning. From 1963 to 1969, the Industrial Zoning Districts were iterative: each set of uses that were allowed in the less restrictive districts were allowed in the next most intense district (i.e. — I-1-U uses were allowed in I-2-U, etc.). 96-AO-03 further refined the development standards for I-2-U. At this time, the Ordinance changed from strictly iterative to allowing more intense operations as a Special Exceptions in more restrictive districts. If uses were already legally established—it can be proven that they were in operation prior to 1996, they would not have been required to seek a Special Exception as they were legally established.

With regard to 1531/1539 Deloss Street, we find that prior to 1969, the use as described would have been comparable to other uses that were allowed by-right (without a variance) in I-2-U as part of the permitted uses or the iterative uses from I-U-1. **Subsequently, in 1992, when the current business began and permits were granted, the uses were still within the parameters of the I-2-U uses.** In



## 2023-AP1-001; Exhibit A (Continued)

1996, when the Ordinance was updated, the uses were legally established and would not require a variance. Subsequently, this would apply when the Ordinance was updated again in 2015 and 2021.

### **Administrator's Determination**

It is the Administrator's opinion that the legally established uses continued without interruption from 1996-2016 when Indy Rezone (the next comprehensive update to the Consolidated Zoning and Subdivision Ordinance) was adopted. The property transitioned to an I-2 (Light Industrial) zoning designation; again, the uses were legally established when the City adopted a new Ordinance, so the owner would not have been required to seek a variance. The use has been established since 1992 establishing itself as a Legally Established Nonconforming Use.

A Legally Established Nonconforming Use is defined as: "Any continuous, lawful land use having commenced prior to the time of adoption, revision or amendment of the Zoning ordinance, or granted a variance of the Zoning Ordinance, but that fails, by reason of such adoption, revision, amendment or variance to conform to the present requirements of the Zoning Ordinance."

Legally established uses cannot violate other laws established by local, state or federal jurisdictions. Violations could still be assessed if an enforcement agency determined that they existed. However, in this case, the Administrator has determined the use of the property is not a violation of the Consolidated Zoning and Subdivision Ordinance of Indianapolis-Marion County due to being an established business prior to 1996.

If you have any questions, please contact me at [matt.pleasant@indy.gov](mailto:matt.pleasant@indy.gov).

Thank you,

By:  Date: July 21, 2023.  
*Matt Pleasant, AICP*  
*Current Planning Administrator, Division of Planning*  
*Department of Metropolitan Development*  
*Suite 1842, City-County Building*  
*200 East Washington Street*  
*Indianapolis, Indiana 46204*

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**2023-AP1-001; Photographs**



Photo One: Looking West Along Deloss Street.



Photo Two: Looking East Along Deloss Street.



Photo Three: Looking South Towards Subject Site.



Photo Four: Commercial Vehicle Parking On Subject Site.





Photo Five: Building Located On Subject Site.



Photo Six: Structures Located Within Covered Structure.