

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-UV2-007
Address: 128 North Traub Avenue (approximate address)
Location: Center Township, Council District #16
Zoning: D-5 (TOD)
Petitioner: CK Rents LLC, by Kewin Martinez
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a four-unit multi-unit house and a detached accessory dwelling (not permitted), each with a three-foot south side yard setback (five-foot side yard setback required).

RECOMMENDATIONS

Staff **recommends denial** of this request.

SUMMARY OF ISSUES

LAND USE

EXISTING ZONING AND LAND USE

Compact	D-5	Four-unit multi-unit house and a detached accessory dwelling
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SURROUNDING ZONING AND LAND USE

North	D-5	Undeveloped
South	D-5	Single-family dwelling
East	D-5	Single-family dwelling
West	D-5	Single-family dwelling / Duplex dwelling

COMPREHENSIVE PLAN	The Comprehensive Plan recommends five to eight residential units per acre development.
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- ◇ The 0.14-acre subject site was originally developed with a single-family dwelling that was later converted into four units and a detached accessory structure or garage that was later converted into a fifth dwelling unit.
- ◇ The proposed/existing use is currently zoning compliant as it was approved, under a previous owner, for a Certificate of Legal Non-Conforming Use (2011-LNU-028) to legally establish a total of five dwelling units where the primary structure consists of no more than four dwelling units, and where the detached accessory structure located at the rear of the property consists of no more than one dwelling unit. The Legally Non-Conforming Use Certificate (LNCU) legally establishes the property as-is, where-is, as it had existed prior to the current zoning classification.

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VARIANCE OF USE

- ◇ The purpose of the D-5 (Dwelling District Five) district is intended for medium intensity residential development and is not intended for suburban use. The application of this district will be found within urban, build-up areas of the community and where all urban public and community facilities and services are available. The D-5 district typically has a density of 4.5 units per gross acre. This district fulfills the low and medium density residential classification of the Comprehensive General Land Use Plan.
- ◇ Per Table 743-1: Use Table, a single-family or two-family dwelling is permitted in the D-5 District. However, five dwelling units are not permitted on a single lot in this district.
- ◇ The LNCU Certificate (2011-LNU-028) for this multi-family property allows for up to a 2/3's repair and renovation. Any damage that exceeds more than 2/3's would require the property to be legally compliant with the current zoning ordinance. The grant of this petition would allow for the five dwelling units to be rebuilt on this site if the existing structures should be damaged more than 2/3rds.
- ◇ While the previous owner has proved the presence of the five dwelling units existed prior to April 1969, Staff would note that such construction would have predated the implementation of current zoning and zoning ordinance requirements in Marion County.
- ◇ Staff believes that if the site should need to be repaired or renovated more than the 2/3rd allowance, then the new construction should adequately align with modern development standards in order to better preserve the intent of each development standard. In Staff's opinion, by granting a variance to allow the multi-family units on an original single-family lot, with reduced setbacks, with a significant increase in density over the previous structure's use, would provide for increased intensity and negatively impact adjacent properties.
- ◇ The findings note that the request is for insurance purposes. According to the Marion County Assessor's records, the owner Kewin Martinez purchased the site on June 12, 2019, with the LNCU status intact. Therefore, no peculiar condition exists on site for staff to be supportive of the request. Instead, this is a self-imposed difficulty since the dwelling could be remodeled to accommodate the existing D-5 zoning without the need for variances and meet insurance purposes.
- ◇ The strict application of the Ordinance would not constitute and unnecessary hardship since there are multiple options for residential development without the need for a variance of use.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The grant of this petition would allow for the multi-unit house and a detached accessory dwelling with each having a three-foot south side yard setback, where a five-foot side yard setback is required.

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- ◇ Development Standards of the Consolidated Zoning and Subdivision Ordinance, specifically those relating to building setbacks, are intended to ensure orderly development and protect surrounding property values, by providing for open buffer areas along lot lines and to ensure adequate access around buildings, as well as to prevent fires from spreading between buildings.
- ◇ The existing three-foot south side setbacks for the existing structure and detached accessory structure are currently zoning compliant as they are considered legally non-conforming. Therefore, they can continue to exist as-is, where-is as long as no repairs exceeding a 2/3rds rebuild is requested.
- ◇ If a renovation or rebuild exceeds 2/3rds of the structure, then Staff does feel the new construction / rebuild should meet the current zoning Ordinance side setback requirement, especially with a potential expanded use of five dwelling units. Staff believes that meeting the current Ordinance side setback would decrease the intensity of the use, and preserve the intent of the Ordinance, while maintaining the development viability of the site.
- ◇ The strict application of the Ordinance would not constitute an unnecessary hardship since there are multiple options for residential development without the need for a variance of development standards.

GENERAL INFORMATION

THOROUGHFARE PLAN	This portion of North Traub Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 60-foot existing and proposed right-of-way.
OVERLAY	This site is in a Transit-Oriented Development (TOD) overlay, specifically the Bus Rapid Transit Blue Line.
SITE PLAN	File-dated June 13, 2023.
FINDINGS OF FACT	File-dated June 13, 2023.

ZONING HISTORY – SITE

PREVIOUS CASES

2011-LNU-028; 128 North Traub Avenue (subject site), requested a Certificate of Legal Non-Conforming Use to legally establish a total of five dwelling units and where the primary structure consists of no more than four dwelling units, and where the detached accessory structure located at the rear of the property consists of no more than one dwelling unit, **approved**.

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ZONING HISTORY – VICINITY

2021-LNU-005; 115 North Traub Avenue (southeast of site), requested a Certificate of Legal Non-Conforming Use to legally establish a total of three dwelling units and where the primary structure consists of no more than two dwelling units, and where the detached accessory structure located at the rear of the property consists of no more than one dwelling unit, **withdrawn**.

2020-UV3-011; 115 North Traub Avenue (southeast of site), requested a variance of use of the Consolidated Zoning and Subdivision Ordinance to legally establish three dwelling units in an existing dwelling (two) and garage (one), **granted**.

2002-DV3-047; 26 North Traub Avenue (south of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a 24 by 26-foot, two-story addition resulting in 2,592-square feet of building area, or 57% open space (minimum 65% open space required), **approved**.

97-NC-65; 39 North Belmont Avenue (southwest of site), requested a Certificate of Legal Non-Conforming Use for a conversion of a single-family dwelling into a three-unit dwelling, located in a D-5 (Dwelling District Five) zoning classification (only one single-family dwelling or one originally constructed two-family dwelling permitted by the current Dwelling Districts Zoning Ordinance of Marion County, Indiana 89-AO-2, as amended) and the following developments standards: a) side yards of 2 feet and 5 feet 9 inches, b) a front setback of 16 feet 4 inches from the right-of-way of North Belmont Avenue, c) four parking spaces provided, and d) dwelling units containing: 706 square feet (unit a); 591.8 square feet (unit b); and 727.5 square feet (unit c)(minimum side yard of 4 feet, with aggregate side yards of 10 feet, minimum front setback of 25 feet, 2 parking spaces required for each unit, for a total of 6 parking spaces required, and a minimum of 900-square feet required for each dwelling unit as required by the current Dwelling Districts Zoning Ordinance of Marion County, Indiana, 89-AO-2, as amended), **approved**.

95-UV1-123; 203 North Belmont Avenue (northwest of site), requested a variance of use of the Commercial Zoning Ordinance to legally establish a two-story multi-family building with 6 dwelling units (not permitted), **granted**.

82-V1-71; 27 North Belmont Avenue (southwest of site), requested a variance of development standards to permit the enclosure of the front porch, **granted**.

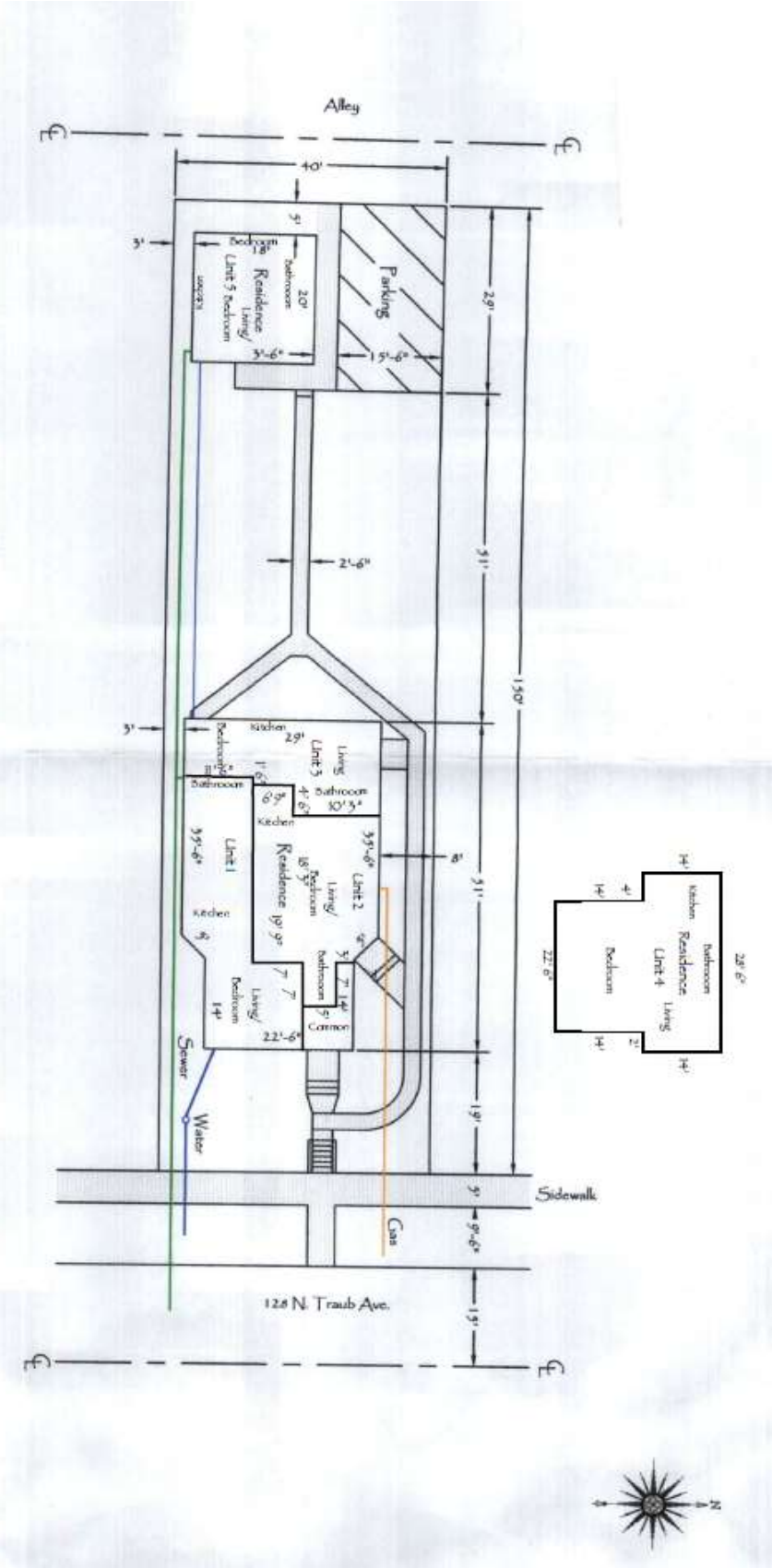
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2023-UV2-007; Location Map



2023-UV2-007; Site Plan



2023-UV2-007; Photographs



Photo of the Subject Property, looking southwest



Photo noting the five existing mailboxes.



Photo of the Subject Property with three foot existing south setback, looking west



Side view of the subject site, with entrances 2 and 3, looking south.



Rear view of the subject site with the fifth dwelling unit in the garage, looking south.



Photo of adjacent property to the south.



Photo of adjacent property to the north, looking west.



Photo of adjacent property to the east.