



BOARD OF ZONING APPEALS DIVISION III

March 19, 2024

Case Number: 2023-UV3-024
Address: 2745 and 2815 Curry Road (approximate address)
Location: Warren Township, Council District #14
Zoning: D-A
Petitioner: David Palacios, by Joseph D. Calderon
Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a landscaping contractor, including the indoor and outdoor storage of commercial vehicles, equipment, and materials (not permitted).

Current Land Use: Single Family Dwelling

Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This petition was previously automatically continued at the request of a registered neighborhood organization, from the January 16, 2024, hearing, to the February 20, 2024, hearing, and for cause at the request of the petitioner, from the February 20, 2024, hearing, to the March 19, 2024, hearing.

This petition was continued by the petitioner from the March 19, 2024, hearing to the April 16, 2024, hearing due to the lack of a full Board.

STAFF RECOMMENDATION

Staff recommends **approval** of this petition.

PETITION OVERVIEW

ADDENDUM FOR APRIL 16, 2024

- ◇ The petitioner has submitted an update plan of operation and commitments to the file. The commitments limit the amount of equipment and use to what is proposed in the plan of operation.
- ◇ In addition, an updated site plan was submitted indicating areas of parking and storage, however Staff has concerns for the proximity of some parking and store in relation to the Stream Protection Corridor. Therefore, Staff has requested a commitment to Administratively Approve the site plan, to ensure that the parking and storage areas are outside of the Stream Protection Area Corridor. The petitioner has agreed to this additional commitment.
- ◇ The proposed use, with the number of vehicles and equipment limited by the plan of operation, would be similar to agricultural operations that are permitted in the D-A District. Therefore, the impact would not be an increase in intensity as Staff had previously commented.
- ◇ Therefore, Staff **does now recommend approval of the request**, subject to the attached commitments.

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- ◇ The request would provide for a commercial contractor, a C-7 use, in a D-A district.
- ◇ The purpose of the D-A district is to provide for a variety of agricultural enterprises, with a secondary intent for the development of large estate or rural single-family dwellings. Because no agricultural enterprise exists on the subject site, development of the site would be considered a large estate or rural single-family dwelling
- ◇ The Comprehensive Plan recommends rural, or estate neighborhood uses for the subject site. The proposed use would be permitted in the C-7, High Intensity Commercial Zoning District. The C-7 district is designed to provide for specific areas for retail commercial uses which have unusually incompatible features relative to other commercial uses such as major outdoor storage or display of sizeable merchandise and the outdoor parking and maintenance of trucks or equipment essential to the operation of these uses. Because of the character and intensity of these uses, this district should be appropriately located on major commercial arterial thoroughfares where the gradual and reasonable transition from lesser commercial uses exist. Due to the intensity of the uses, the location of this district adjacent to protected districts should be avoided.
- ◇ Given the increase in intensity between the existing zoning and the proposed use, including the number of commercial vehicles and trailers as outdoor storage, approval of this request would facilitate the intrusion of heavy commercial uses into an established residential rural neighborhood. The request would encourage additional encroachment, in a manner violating the development norms and residential aesthetics of the street, and squarely deviating from the recommendations of the Comprehensive Plan.
- ◇ The petitioner has proposed commitments and a plan of operation that approval shall be subject to. However, they provide no limit on the number of days of operation, allowing for the commercial contractor business to operate seven days a week. In addition, there are references to vehicles and equipment, but there is no limit on these amounts to protect adjacent properties from an intensification of the already high intensity use, either from this user, or future owners.
- ◇ The strict application of the terms of the zoning ordinance does not constitute a practical difficulty for the property, since the site is zoned D-A and could be used by any number of uses permitted, by right, in the D-A zoning classification. Any practical difficulty is self-imposed by the desire to use the site for operation of a construction contractor, including the on-site storage of commercial vehicles and trailers associated with the use.
- ◇ The subject site is similar in size to other nearby properties, that are able to follow the comprehensive plan and zoning ordinance without the need for use variances. Therefore, the Comprehensive Plan recommendation should not be disregarded, nor of the clearly residential nature of the surrounding area. For these reasons, staff recommends its denial.



GENERAL INFORMATION

Existing Zoning	D-A	
Existing Land Use	Single Family Dwellings	
Comprehensive Plan	Rural or Estate Neighborhood	
Overlay	No	
Surrounding Context	Zoning	Surrounding Context
	North: D-A	North: Single-family dwelling
	South: SU-2	South: School
	East: SU-2	East: Undeveloped
	West: D-A	West: Single-family dwelling
Thoroughfare Plan		
Curry Road	Local Street	30-foot existing and proposed right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	500-year flood plain	
Wellfield Protection Area	No	
Site Plan - Updated	April 10, 2024	
Elevations	N/A	
Commitments - Updated	April 10, 2024	
Landscape Plan	N/A	
Findings of Fact	November 15, 2023	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends rural or estate neighborhood development.

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Rural or Estate Neighborhood typology for this site. This typology provides for rural or agricultural areas and historic, urban areas with estate-style homes on large lots. In both forms, this typology prioritizes the exceptional natural features – such as rolling hills, high quality woodlands, and wetlands – that make these areas unique. Development in this typology should work with the existing topography as much as possible. Typically, this typology has a residential density of less than one dwelling unit per acre unless housing is clustered to preserve open space.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.



Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves
(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.

ZONING HISTORY

2019-SE3-002; 11149 Stoneybrook Drive (south of site), requested a special exception of the Consolidated Zoning and Subdivision Ordinance to provide for a wireless communications facility with a 120-foot monopole tower, with a 10-foot antenna, **granted**.

2001-DV3-031; 11300-11149 East Stonybrook Drive (south of site), requested a variance of development standards of the Sign Regulations to provide for the installation of a 122.96 square foot, two-sided, brick, limestone, and modular aluminum double pylon sign being 7.33 feet tall, with a 61.92 square foot electronic variable message sign component, being 50.35-percent of the total sign area, and located 80 feet from a protected district, **granted**.

2000-DV2-015; 2910 Curry Road (north of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for a single-family dwelling and detached garage on a 1.1-acre lot, **granted**.

95-DV2-60; 11205 East 30th Street (north of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a single-family residence with a lot area of 1.1 acres, **granted**.

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EXHIBITS

Location Map



Site Plan - Updated





Plan Of Operation - Updated

DAVID PALACIOS | THE RANCHES LANDSCAPING LLC | 2023-UV3-024

AMENDED PLAN OF OPERATION 2745 and 2815 Curry Road

THE BUSINESS

David Palacios d/b/a The Ranches Landscaping LLC, performs certain activities associated with his landscaping business on property commonly known as 2745 and 2815 Curry Road (the "Subject Property"). The Subject Property has three (3) existing residential structures and multiple accessory structures, including garages, barns and sheds. The residential structures either are occupied by renters or are not used presently. The Petitioner would like to use the northern-most residential structure (2815 N. Curry) as an office for the business in the future. Petitioner proposes to continue to use the Subject Property in conjunction with his landscaping business, by using certain of the existing accessory structures for storing and maintaining landscaping equipment, including mowers, trimmers, weed whackers, shovels, rakes, wheel barrels and ladders, a skid steer and mini track loader, in the existing accessory structures as shown on the site plan attached to this Plan of Operation as Exhibit "A" ("Site Plan"). The existing equipment and vehicles may be replaced from time to time without jeopardizing the variance, and additional vehicles and equipment may be permitted so long as they are stored in the areas designated on the site plan. A complete list of existing equipment and vehicles is attached as Exhibit "B". Company trucks and trailers, which are deployed to job sites during the day, are stored overnight at the rear of 2745 Curry are shown on the site plan. Landscaping materials are intended to be used at the job site, but occasionally there will be landscaping materials on-site for temporary periods of time. The materials shall be limited to those areas shown on the Site Plan. No materials shall be shipped to the Subject Property directly.

ZONING

Existing zoning is D-A, which permits residential use and agri-business uses.

HOURS OF OPERATION

Petitioner is planning to operate the facility between 8:00 a.m. to 6:00 p.m., Monday through Friday, although in season, the hours might shift to 7:00 a.m. to 8:00 p.m., and include weekends.

NUMBER OF EMPLOYEES

Currently four (4) employees work for the Company. Employees meet at the Subject Property in the morning, go to the job site and return thereafter.

EXISTING STRUCTURES

Petitioner intends to use the existing accessory structures located on the Subject Property, generally as shown on the site plan submitted with this plan of operation. There are no new structures planned for the Subject Property. The existing structures may be replaced, with similarly sized structures not to exceed 125% of the current size of the structures.

SALES | CUSTOMERS

There will be no sales activity occurring on the Subject Property, and no customers shall be directed to the Subject Property.

COMMITMENTS

The Petitioner is offering commitments as a part of the variance request, which are attached hereto as Exhibit "C".

Proposed Commitments - Updated

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

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 the parcel of real estate:

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

Statement of COMMITMENTS:

1. The Subject Property shall be used as set forth in the Amended Plan of Operation attached hereto as Exhibit "B".
2. All storage and disposal of fluids associated with the maintenance and repair of landscaping equipment shall be in compliance with all applicable environmental laws and regulations.
3. No materials for off-site landscaping jobs shall be drop-shipped to the Subject Property.
4. An amended site plan showing that vehicle parking and material storage areas are located outside of the stream protection corridor (at least 50 feet from top of bank) located on the Subject Property, shall be submitted for Administrator's Approval.

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, special exception or approval petition #2023-UV3-024 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 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 the Marion County, which 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, special exception or approval petition under the rules of the Board in force at the time the COMMITMENT was made); and
3. Warren Township Development Association.



Findings of Fact

Petition Number _____

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF USE

FINDINGS OF FACT

1. THE GRANT WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE COMMUNITY BECAUSE

the operation of the business still allows for residential use of the properties and is wholly contained behind the residential structures, thus preserving the residential character of the property. The proposed use is similar in intensity to permitted agricultural uses.

2. THE USE AND VALUE OF THE AREA ADJACENT TO THE PROPERTY INCLUDED IN THE VARIANCE WILL NOT BE AFFECTED IN A SUBSTANTIALLY ADVERSE MANNER BECAUSE

the properties are large and the operation of the business is no more intense than permitted agricultural uses, and there is adequate separation of the business activities and uses on the adjacent properties.

3. THE NEED FOR THE VARIANCE ARISES FROM SOME CONDITION PECULIAR TO THE PROPERTY INVOLVED BECAUSE

the parcels are unusually deep and, while large, have been parceled out such that agricultural use is not realistic.

4. THE STRICT APPLICATION OF THE TERMS OF THE ZONING ORDINANCE CONSTITUTES AN UNUSUAL AND UNNECESSARY HARDSHIP IF APPLIED TO THE PROPERTY FOR WHICH THE VARIANCE IS SOUGHT BECAUSE

the proposed business uses many of the same types of equipment and materials as agricultural uses which are permitted, yet the business is categorized along with other general contractors.

5. THE GRANT DOES NOT INTERFERE SUBSTANTIALLY WITH THE COMPREHENSIVE PLAN BECAUSE

the proposed business operates well with the 6.5 acres which comprises the subject property as an accessory use of the property, which is consistent with the rural or estate category of the comprehensive plan.

Photographs



Subject site 2745 Curry Road single family dwelling, looking east



Subject site 2815 Curry Road single family dwelling, looking east



Subject site, storage of multiple commercial trucks and trailers



Subject site, storage of commercial landscaping materials



Adjacent single family dwelling to the west



Adjacent single family dwelling to the north, looking east.