



BOARD OF ZONING APPEALS DIVISION III

April 16, 2024

Case Number: 2024-MO1-001 / 2024-DV1-007
Address: 7530 Allisonville Road (approximate address)
Location: Washington Township, Council District #3
Zoning: D-A (FW) (FF)
Petitioner: Phillip D. Rushton & Joanne Rushton Rev. Trust – Rebecca Patton Successor TTE, by Gregory J. Cagnassola
Request: Modification of Commitments related to 2009-UV2-036, to terminate Commitment Number Eight and Four, which requires compliance with required setbacks of the D-A District, and the use of slick mounted antenna and associated attachments, respectively.

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of structures related to the cell phone tower resulting in a seven-foot south side and 0.5-foot north side yard setback and a 2.5-foot rear yard setback, resulting in a 7.5-foot aggregate side yard setback (30-foot side yard, 75-foot aggregate side yard, 75-foot rear yard setbacks required) and a lot line adjustment resulting in a 0.606-acre lot and a 40-foot frontage (minimum three acres and frontage of 125 feet required).

Current Land Use: Single-family dwelling and Wireless Communication Facility

Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This petition was assigned to the March 5, 2024, Board I hearing, in order to comply with the township representation statute as it has a Washington Township representative. However, the commitments that are being requested to be modified were previously imposed by Board III. Therefore, Staff requested that this petition be continued from the March 5, 2024, Board I hearing, and transferred to the March 19, 2024, Board III hearing, so that any modification of the commitments can be done by Board III as statutorily required.

At the March 19, 2024 hearing, this petition was automatically continued due to indecisive votes.

STAFF RECOMMENDATION

Staff makes **no recommendation** for the modification of commitments.

Staff **recommends denial** of the Variance of Development Standards request.

PETITION OVERVIEW

ADDENDUM FOR APRIL 16, 2024

- ◇ The petitioner has indicated that in order to satisfy the setback requirements for each of the North side and South side setbacks, the adjoining property owners have agreed to quitclaim the appropriate amount of footage to the petitioner such that that land shall no longer require a setback variance from the City of Indianapolis for the North side and South side. They are working with surveyors from American Structurepoint to develop the correct legal descriptions for the above conveyance. They are also in contact with the Cell Tower lessee regarding the West side setback and, specifically, the lean-to shelter to assess the capability of relocating the lean-to shelter to adhere to setback requirements.
- ◇ If the variance requests for the North, South and possibly West side setbacks are no longer needed, then they should be withdrawn at the April 16, 2024, hearing.
- ◇ If the setback variances are withdrawn, Staff **continues to recommend denial** of the remaining variance of development standards requests, as they would continue to subvert the Subdivision Ordinance by creating an unbuildable lot.

March 19, 2024

- ◇ In 2000, petition 2009-UV2-036, requested a variance of use to provide for a 137-foot tall wireless communications facility (WCF), with accessory equipment cabinets. That variance was continued and transferred to Division III. On March 16, 2010, the Metropolitan Board of Zoning Appeals, Division III, granted the request. The request was subject to the amended site plan and elevations, file-dated September 20, 2010, and to the commitments, recorded as Instrument NO: 2010-00094718, in the office of the Recorder of Marion County, Indiana.

MODIFICATION REQUEST

- ◇ The 2009-UV2-036 variance grant was subject to nine total commitments (attached). The petitioner requests to modify the commitments to terminate the following two commitments. Commitment 2.4 indicates that all planned and future antenna attachments will be slick mounted to further blend with the established tree canopy. Commitment 2.8 indicates the site shall comply with the applicable setback requirements set forth in Chapter 731 of the Dwelling Districts Zoning Ordinance – City of Indianapolis.
- ◇ The commitments restricting site development and layout were the result of negotiation between the petitioner and interested parties during the 2009 variance process. Staff played no role in the negotiation of the subject commitments, and ordinarily provides no recommendation under such circumstances. Staff would note, however, that the neighborhood organization(s) negotiated in good faith with the petitioner during the petition process, and their agreement was contingent upon all commitments being included with the variance petition.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The petitioner is requesting to create a second parcel to provide for the location of structures related to the cell phone tower (WCF) resulting in a seven-foot south side and 0.5-foot north side yard setback and a 2.5-foot rear yard setback, resulting in a 7.5-foot aggregate side yard setback and a lot line adjustment resulting in a 0.606-acre lot and a 40-foot frontage.
- ◇ The need for the reduced setbacks is self-imposed by mistakes made by the cell provider and property owner, and not a result of the zoning ordinance.
- ◇ According to the petitioner, it was discovered that when the cell tower was constructed, the cell provider did not correctly follow the plans, and the lean-to-shelter was constructed to the south of the existing one-story building instead of in line with it or to the north of it. This resulted in a reduced ten-foot side setback.
- ◇ Additionally, it was determined that sometime after the original 2009 use variance was granted, subject to the zoning setbacks, the property owners sold off (conveyed) a portion of the rear property to neighbors, thereby reducing the required rear setback to five feet and the northside setback to three feet, causing the current non-compliance that exists today.
- ◇ The proposed request is self-imposed by the desire of the property owner to create a deficient lot and legally establish deficient setbacks, by separating it from the primary use single-family dwelling with a majority of the acreage that originally made the WCF zoning compatible, only to maintain ownership of the WCF.
- ◇ The WCF can continue to be provided without the variances requested through either the relocation of the current WCF to a zoning complaint parcel, or by relocating the misplaced lean-to shelter, buying back the required setbacks that were previously sold off, and not splitting the parcel to be ordinance complaint.
- ◇ 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 accommodate appropriate uses as permitted, by right, in the D-A zoning classification. Any practical difficulty is self-imposed by the desire to create a smaller deficient sized parcel in order to maintain ownership of the income-producing portion of the site.
- ◇ The subject site is similar in size to other nearby properties, that are able to follow the zoning ordinance without the need for variances. Therefore, staff does recommend denial of the variance of development standards request.



GENERAL INFORMATION

Existing Zoning	D-A		
Existing Land Use	Single-family dwelling and Wireless Communication Facility		
Comprehensive Plan	Suburban Neighborhood / Floodway		
Overlay	100-year floodplain		
Surrounding Context	Zoning	Surrounding Context	
	North:	D-A, D-2	North: Single-family dwellings
	South:	D-A	South: Single-family dwellings
	East:	D-A, D-2	East: Single-family dwellings
	West:	D-A	West: Single-family dwellings
Thoroughfare Plan			
Allisonville Road	Secondary Arterial	90-foot existing and proposed right-of-way.	
Context Area	Metro		
Floodway / Floodway Fringe	Yes / Yes		
Wellfield Protection Area	No		
Site Plan	January 19, 2024		
Elevations	N/A		
Commitments	January 31, 2024		
Landscape Plan	N/A		
Findings of Fact	January 17, 2024.		

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends suburban neighborhood and floodway uses for the site.

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Suburban Neighborhood typology for this site. This typology is predominantly made up of single-family housing but is interspersed with attached and multifamily housing where appropriate. This typology should be supported by a variety of neighborhood-serving businesses, institutions, and amenities. Natural Corridors and natural features such as stream corridors, wetlands, and woodlands should be treated as focal points or organizing systems for development. Streets should be well-connected, and amenities should be treated as landmarks that enhance navigability of the development. This typology generally has a residential density of 1 to 5 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park.
- The Floodway category delineates areas that exhibit a great potential for property loss and damage from severe flooding, or for water quality degradation. No development should occur within the floodway. Nonconforming uses currently within a floodway should not be expanded or altered.



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

76-V2-60; 7530 Allisonville Road (subject site), requested a variance of development standards to erect an addition to a detached garage, **granted**.

2004-HOV-041; 4720 East 75th Street (west of site), requested a variance of development standards to provide for a 368-square foot enclosed non-habitable attached accessory structure with one-square inch of open venting per two square feet of enclosed area subject to flooding, **granted**

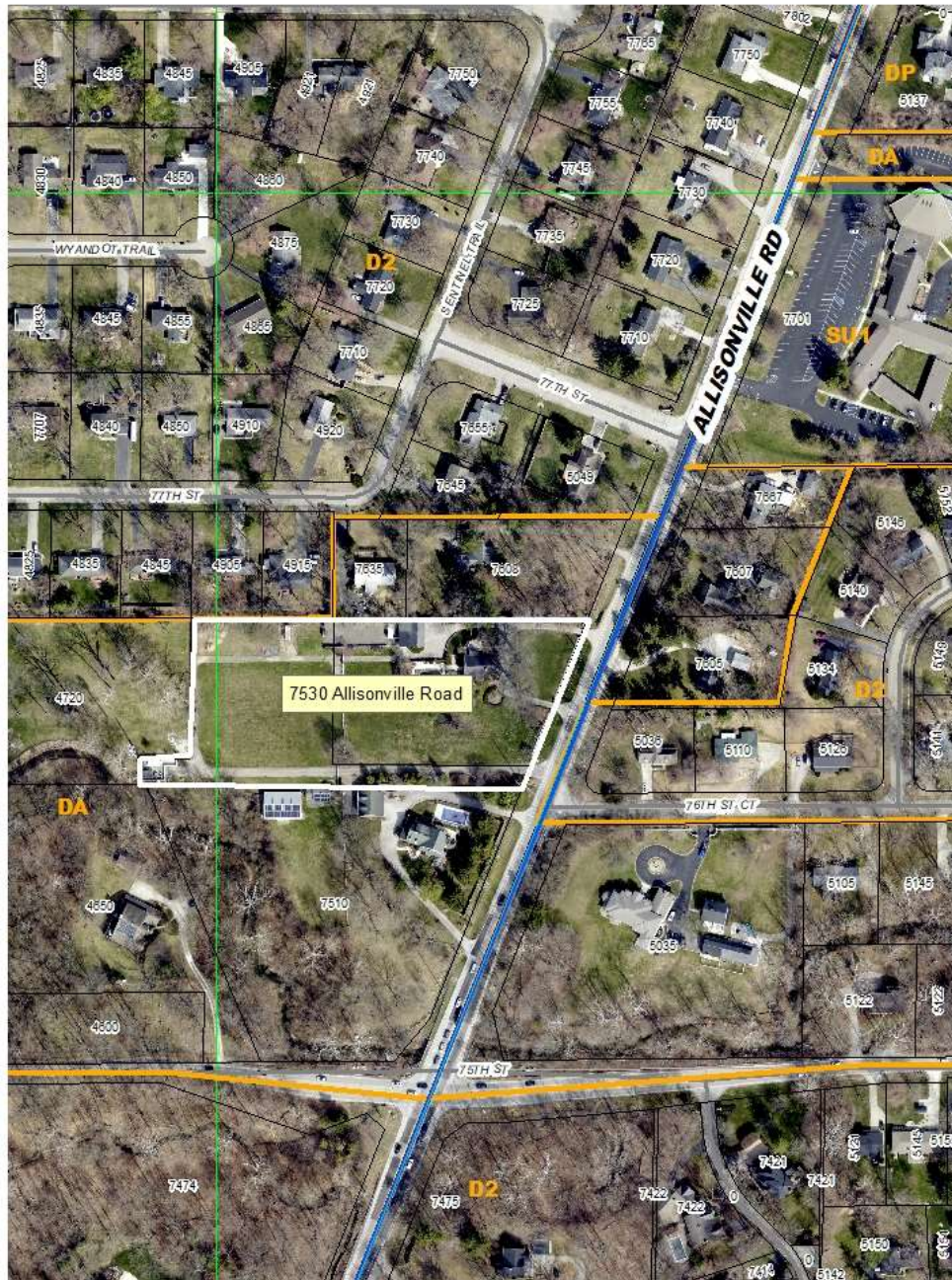
2007-DV2-027; 5035 East 76th Street (southeast of site), requested a variance of development standards to provide for the construction of an 830-square foot cabana and in-ground swimming pool in front of the established front building lines along East 75th Street and Allisonville Road, **granted**.

2009-UV2-036; 7530 Allisonville Road (subject site), requested a variance of sue to provide for a 137-foot tall wireless communications facility, with accessory equipment cabinets, **granted subject to commitments**.

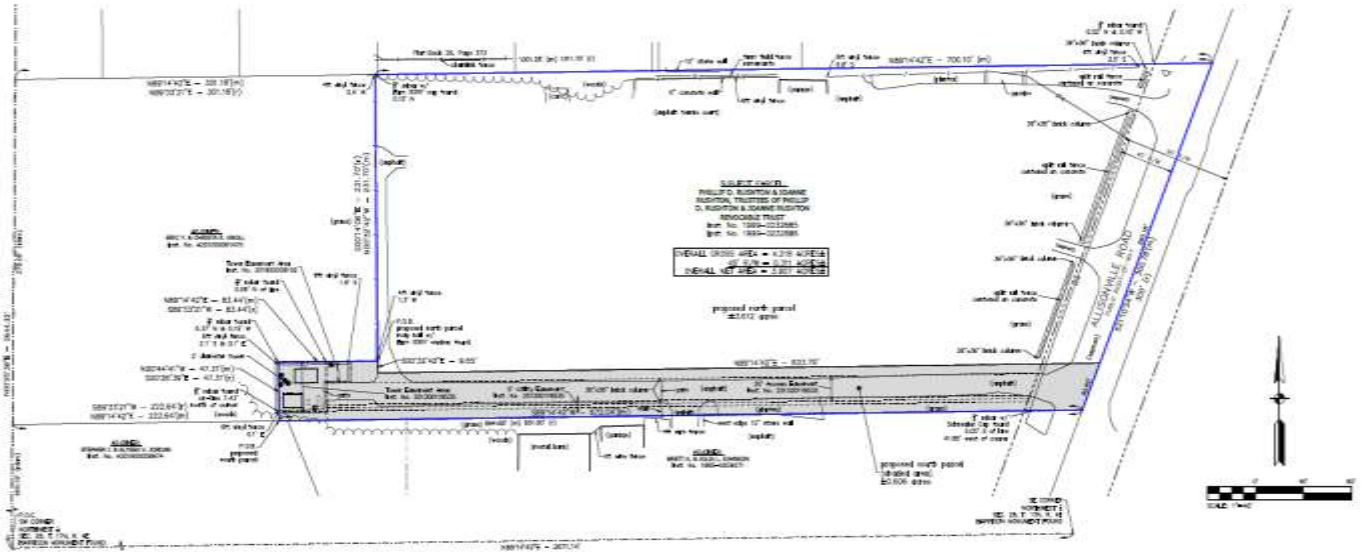
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EXHIBITS

Location Map



Site Plan



Commitments - Current

A201000094718

September 27, 2010 1:50 PM
Julie L. Voorhies
Marion County Recorder



Pages: 5
Fee: \$25.50
By: MJM

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH VARIANCE, SPECIAL EXCEPTION, OR APPROVAL 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 the use and development of the parcel of real estate:

Legal Description: See attached, "Exhibit A".

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by the Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. See attached, "Exhibit B".

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein. These COMMITMENTS may be modified or terminated or extended 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 # 2009-UV2-036 by the Metropolitan Board of Zoning Appeals or the Hearing Officer.

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. 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, special exception, or approval under the rules of the Board in force at the time the COMMITMENT was made); and
3. _____
4. _____

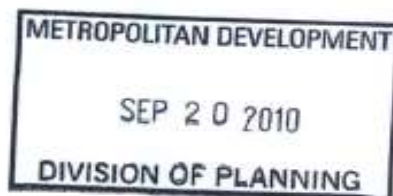
Commitments – Current continued

"Exhibit B"

Commitments
7530 Allisonville Road
Petition 2009-UV2-036 (Amended)

1. The equipment compound area illustrated on the site plan dated October 22, 2009 will be enclosed with 1) a white privacy fence at a minimum height of six (6) feet to match existing fence lines, and 2) a shed or other enclosure.
2. The perimeter of the equipment compound area illustrated on the site plan dated October 22, 2009, with the exception of the gate area, will be landscaped with shrubs planted 10-feet on-center with a minimum spread of 18 inches at time of planting. Final placement location, size, spacing, and species will be subject to administrator's approval prior to the issuance of an Improvement Location Permit.
3. The lower section of the proposed 130-foot tall cellular tower (not including a 7-foot tall lightening rod atop the tower) will be painted brown in color to blend with the established tree canopy (as depicted in the simulation).
4. That all planned and future antenna attachments will be slick mounted to further blend with the established tree canopy (as depicted in the simulation).
5. In the event that the cellular tower becomes obsolete, the Petitioner will remove the tower from the site within 90 days of the tower ceasing to function as a part of the Petitioner's communications network.
6. The petitioner will provide enhanced landscaping where adjoining the rear yards of certain properties within the Arrowhead Estates subdivision, as per the landscape plan presented at the March 9, 2010 Greater Allisonville Community Council meeting, which plan shall require the final approval of the Arrowhead Estates Homeowner's Association Board of Directors prior to the issuance of an Improvement Location Permit.
7. All antenna attachments will be mounted to be compatible with the established tree canopy to the extent reasonably possible.
8. The site shall comply with the applicable setback requirements set forth in Chapter 731 Dwelling Districts Zoning Ordinance – City of Indianapolis.

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Commitments - Proposed

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

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of commitment(s) concerning the use and development of the parcel of real estate:

Legal Description:

Legal Description:

Commencing at the southwest corner of the Northwest Quarter of said Section 28; thence along the west line of said quarter section, North 00 degrees 25 minutes 38 seconds East 465.10 feet (basis of bearing - Indiana Geospatial Coordinate System, Marion Zone) to the southwest corner of a parcel of land conveyed to Phillip D. Rushton & Joanne Ruston, Trustees of Phillip D. Rushton & Joanne Rushton Revocable Trust in Instrument Number 1999-0232886, on file in the Office of the Recorder of Marion County, Indiana, and also being the southwest corner of an original survey parcel conveyed to Eric Y. & Christa R. Knoll in Instrument Number A201000061475, on file in said Recorder's Office; thence parallel with the south line of the Northwest Quarter of said Section 28 and along the boundary of said Rushton parcel and said Knoll parcel, North 89 degrees 14 minutes 42 seconds East 222.64 feet to the southeast corner of said Knoll parcel and being the point of beginning; thence continue along the boundary of said Knoll parcel the following two (2) courses: 1) North 00 degrees 44 minutes 41 seconds West 47.31 feet; 2) North 89 degrees 14 minutes 42 seconds East 83.44 feet; thence South 00 degrees 32 minutes 42 seconds East 9.65 feet; thence parallel with the south line of the Northwest Quarter of said Section 28, North 89 degrees 14 minutes 42 seconds East 603.79 feet to the centerline of Allisonville Road and also being a point on the east line of said Rushton parcel; thence along said centerline and said east line, South 21 degrees 10 minutes 54 seconds West 40.60 feet to the southeast corner of said Rushton parcel; thence parallel with the south line of the Northwest Quarter of said Section 28 and along the south line of said Rushton parcel, South 89 degrees 14 minutes 42 seconds West 672.04 feet to the point of beginning and containing 0.606 acres, more or less.

Statement of Modification or Termination of COMMITMENTS:

1. Commitments #4 and #8 related to 2009-UV2-036, as Recorded in Instrument #A2010000094718 shall be terminated.
- 2.



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 cellular tower has been onsite for about 13 years. In that time, the cellular tower has not been injurious to the public health, safety, morals, and general welfare of the surrounding property owners or the community as a whole. In fact, the cell tower serves to provide a necessary utility to the community, one that could cause harm to the general welfare of the community if it were not able to be continued or if it was disrupted.

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:

In seeking the variance, Petitioner does not propose a change to the property as it stands, rather they seek only to bring the existing landscape of the property into compliance with local ordinance by way of a variance. The adjacent property owners will not be substantially affected because the surrounding land will stay the same, and they will continue to receive the same utility if the variance is granted. In fact, denial of the variance is likely to affect adjacent property owners more if the cell had to be removed or modified.

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

Applying the setback requirements as is would present a substantial difficulty. The cell tower is a structure which is difficult to move or modify, and in taking either of those actions there would be a large expense. The practical result of applying the setback requirements is that the cell tower would have to be moved or removed. If it is moved, this could cause a nuisance on the property and to the adjacent properties. If it is removed, this could cause a dead zone in cellular coverage and deprive the community of a utility that has been traditionally enjoyed. Additionally, requiring a 3 acre parcel is impractical because both parcels total 4.2 acres, making it not possible to achieve 3 acre parcels. It benefits the Rushtons and the neighborhood most to keep the home parcel larger.

DECISION

Photographs



Subject property, existing single-family dwelling looking west



Subject property, existing wireless communications facility looking west



Existing wireless communication facility with seven-foot south side setback, looking west



Existing wireless communication facility with 0.5-foot north side setback, looking west



Existing wireless communication facility with 2.5-foot west rear setback, looking east



Adjacent single-family dwelling to the south, looking west.