



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

February 20, 2025

Case Number: 2024-CZN-856 / 2024-CVR-856

Property Address: 7200 Brookville Road

Location: Warren Township, Council District #20

Petitioner: Gerald Cowan

Current Zoning: D-2

Rezoning of 1.675 acres from the D-2 (FW) district to the C-7 (FW) classification to provide for truck parking.

Request:

Variance of development standards and a Special Exception of the Consolidated Zoning and Subdivision Ordinance to provide for a commercial parking lot, with zero-foot front and rear yard transitional yard setbacks, no landscaping along the front and rear transitional yards, and no interior landscaping (minimum 9% of lot covered with landscaping required, minimum 10-foot front and rear yard transitional yards required, minimum one tree per 35 feet of street frontage required, minimum three large shrubs per 35 feet of street frontage required).

Current Land Use: Floodway

**Staff
Recommendations:** Denial

Staff Reviewer: Kathleen Blackham, Senior Planner

PETITION HISTORY

This is the first public hearing on this petition.

STAFF RECOMMENDATION

Denial. If approved, staff would request that approval be 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 tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development; b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.

2. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptacles provided for the proper disposal of trash and other waste.

PETITION OVERVIEW

This 1.675-acre site, zoned D-2, is undeveloped floodway surrounded by floodway to the north, zoned D-2 (FW); floodway to the south, across Brookville Road, zoned I-1 (FW); commercial uses to the east, across Shortridge Road, zoned D-2 (FF); and commercial uses to the west, zoned D-2 (FW).

REZONING

The request would rezone the site from the D-2 district to the C-7 (High Intensity Commercial) district. “The C-7 District is designed to provide specific areas for 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 storage of trucks, materials or equipment essential to the operation of these uses. Many of these uses generally are not visited by customers, but rather involve service operations from headquarters with some on-site fabrication of parts. The nature of operation or appearance are more compatible with industrial than retail commercial activities. Because of the character and intensity of these uses, this district should be appropriately located on major commercial arterial thoroughfares and near interstate freeways, but not in close association with those commercial activities involving shopping goods, professional services, restaurants, food merchandising, and the like. Due to the intensity of uses, location of this district should never be adjacent to protected districts.”

The Comprehensive Plan recommends a non-typology land use, which is a standalone land use that is mapped outside of the typology system due to the scale or the nature of the use. The non-typology land use recommended for this site is floodway which is “a category that 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.”

As proposed, this request would not be consistent with the Plan recommendation of floodway and would, in fact, be under the jurisdiction of the State of Indiana, Department of Natural Resources.

Site Plan – Plan of Operation

The amended site plan, file dated January 2, 2025, would provide for asphalt on the entire site and providing 20 parking spaces for trucks. No structures are proposed.

Access would be from South Shortridge Road, with what appears to be limited to left turn into the site and a right turn out of the site.

The Plan of Operation, file-dated December 30, 2024, states that the site would be accessible 24 hours a day for 365 days a year.

Repairs would be made as needed from a mechanic that would visit the site and be equipped with tools to make the repairs.

Floodway / Floodway Fringe

This site has a secondary zoning classification of a Floodway (FW) and Floodway Fringe (FF). The Floodway (FW) is the channel of a river or stream and those portions of the floodplains adjoin the channels which are reasonably required to efficiently carry and discharge the peak flood flow of the base flood of any river or stream. The Floodway Fringe (FF) is the portion of the regulatory floodplain that is not required to convey the 100-year frequency flood peak discharge and lies outside of the floodway.

The purpose of the floodway district is to guide development in areas identified as a floodway. The Indiana Department of Natural Resources (IDNR) exercises primary jurisdiction in the floodway district under the authority of IC 14-28-1.

Stream Protection Corridor

A stream protection corridor consists of a strip of land, extending along both sides of all streams, with measurements taken from the top of the bank on either side. The width of the corridor is based upon whether the stream is designated as a Category One or Category Two. Category One streams have a corridor width of 60 feet in the compact context area and 100 feet in the metro context area. Category Two streams have a corridor width of 25 feet in the compact context area and 50 feet in the metro context area.

The vegetative target for the Stream Protection Corridor is a variety of mature, native riparian tree and shrub species that can provide shade, leaf litter, woody debris, and erosion protection to the stream, along with appropriate plantings necessary for effective stream bank stabilization.

The Stream Protection Corridor is defined as:

“A vegetated area, including trees, shrubs, and herbaceous vegetation, that exists or is established to protect a stream system, lake, or reservoir, and where alteration is strictly limited. Functionally, stream protection corridors provide erosion control, improve water quality (lower sedimentation and contaminant removal) offer flood water storage, provide habitat, and improve aesthetic value.”

Stream is defined as “a surface watercourse with a well-defined bed and bank, either natural or artificial that confines and conducts continuous or periodic flowing water.”

Stream Bank is defined as “the sloping land that contains the stream channel and the normal flows of the stream.”

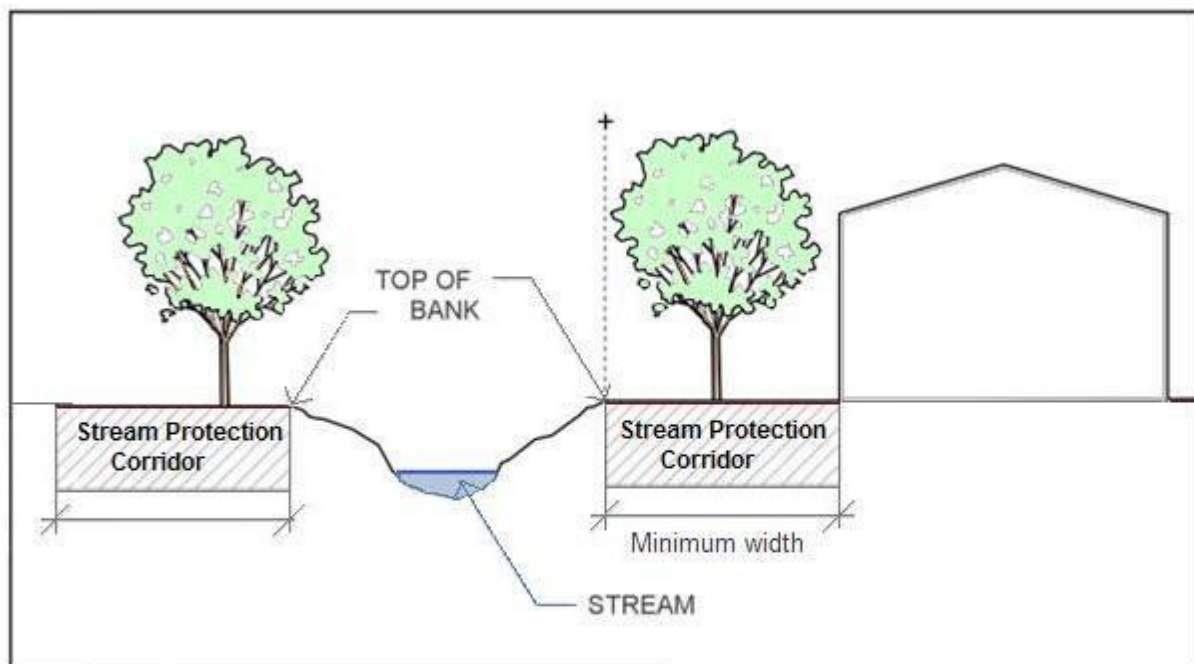
Stream Channel is defined as “part of a watercourse that contains an intermittent or perennial base flow of groundwater origin.”

There are two types of categories of Streams: Category One Streams and Category Two Streams. Category One Stream is defined as: “A perennial stream that flows in a well-defined channel throughout most of the year under normal climatic conditions. Some may dry up during drought periods or due to excessive upstream uses. Aquatic organism such as some fish are normally present and easily found in these streams. The Category One Streams are listed in Table 744-205-2: Category One Streams.”

A Category Two Stream is defined as: “An intermittent stream that flows in a well-defined channel during wet seasons of the year but not necessarily for the entire year. These streams generally exhibit signs of water velocity sufficient to move soil, material, litter, and fine debris. Aquatic organisms, such as fish, are often difficult to find or not present at all in these streams. These streams are identified on the United States Geological Survey (USGS) topographic maps and on the Department of Natural Resources Conservation Service (NRCS) soils maps.”

There are 34 Category One streams listed in the Ordinance. The stream protection corridor is a strip of land on both sides of the stream whose width varies according to whether it is within the Compact or Metro Context Area and whether it is a Category One or Category Two Stream.

Fisher Branch lies within the Metro Context Area and is located along the western boundary of the site. It is designated as a Category Two stream requiring a 50-foot-wide stream protection corridor on both sides of the stream, as measured parallel from the top of the bank. Top of the bank is not defined by the Ordinance, other than by Diagram UU, Stream Protection Corridor Cross-section, as shown below.



Stream Protection Corridor

Tree Preservation / Heritage Tree Conservation

The entire site has significant amounts of natural vegetation and trees. Due to their inherent ecological, aesthetic, and buffering qualities, the maximum number of these existing trees should be preserved on the site.

All development shall be in a manner that causes the least amount of disruption to the trees.

A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development, b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.

If any of the trees are heritage trees that would be impacted, then the Ordinance requires that the Administrator, Urban Forester or Director of Public Works determine whether the tree(s) would be preserved or removed and replaced.

The Ordinance defines "heritage tree" as a tree over 18 inches Diameter at Breast Height (DBH) and one of the Heritage tree species. Heritage tree species include: Sugar Maple (*Acer saccharum*), Shagbark Hickory (*Carya ovata*), Hackberry (*Celtis occidentalis*), Yellowwood (*Cladrastus kentukea*), American Beech (*Fagus grandifolia*), Kentucky Coffeetree (*Gymnocladus dioica*), Walnut or Butternut (*Juglans*), Tulip Poplar (*Liriodendron tulipifera*), Sweet Gum (*Liquidambar styraciflua*), Black Gum (*Nyssa sylvatica*), American Sycamore (*Platanus occidentalis*), Eastern Cottonwood (*Populus deltoides*), American Elm (*Ulmus americana*), Red Elm (*Ulmus rubra*) and any oak species (*Quercus*, all spp.)

The Ordinance also provides for replacement of heritage trees if a heritage tree is removed or dies within three years of the Improvement Location Permit (ILP) issuance date. See Exhibit A, Table 744-503-3: Replacement Trees.

Environmental Public Nuisances

The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.

All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.

Environmental public nuisance means:

1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.

Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

Variance of Development Standards / Special Exception

As proposed this request would provide for zero-foot front and rear transitional yards when the Ordinance requires 10 feet. Allowing the zero-foot setback also eliminates required landscaping in the transitional yards. Both the setbacks and landscaping provide an appropriate buffer between intense commercial uses and surrounding land uses. Consequently, lack of the required buffer would negatively impact surrounding land uses.

Grant of the special exception would be detrimental to the surrounding land uses and disrupt the function of the floodway that could cause damage to surrounding properties and existing development on those properties.

Planning Analysis

As proposed this request would be wholly inappropriate for this site that lies within the floodway of Fisher Branch. Based upon the site plan, the wooded site would be clear-cut, paved, and all the trees removed, with no land available to mitigate the removal of the trees or provide the appropriate buffers.

The site plan file-dated January 2, 2025, does not provide contours or identify the top of the bank of Fisher Branch so it is not possible to determine the amount of encroachment into the stream protection corridor that would occur when this site would be developed. Preserving the stream protection corridor would be critical to maintaining stabilization of the stream bank within this floodway.

Furthermore, a commercial parking lot on this site without any buffers provided by landscaping and setbacks and located within a floodway would result in a substantial negative impact on surrounding properties, including contaminated water and property damage.

GENERAL INFORMATION

Existing Zoning	D-2 (FW)	
Existing Land Use	Floodway / undeveloped land	
Comprehensive Plan	Floodway	
Surrounding Context	Zoning	Land Use
North:	D-2 (FW)	Floodway
South:	I-1 (FW)	Floodway
East:	D-2 (FF)	Commercial uses
West:	D-2 (FF)	Commercial uses
Thoroughfare Plan		
Brookville Road	Primary arterial	Existing 237-foot right-of-way and proposed 112-foot right-of-way.
South Shortridge Road	Local Street	Existing 90-168-foot right-of-way and proposed 50-foot right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	Yes	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	December 30, 2024	
Site Plan (Amended)	January 2, 2025	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	December 30, 2024	
Findings of Fact (Amended)	January 2, 2025	
C-S/D-P Statement	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends Floodway, a non-typology land use.

Pattern Book / Land Use Plan

- *Not Applicable to the Site.*

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)

- The Marion County Thoroughfare Plan (2019) “is a long-range plan that identifies the locations classifications and different infrastructure elements of roadways within a defined area.”
- The following listed items describe the purpose, policies and tools:
 - Classify roadways based on their location, purpose in the overall network and what land use they serve.
 - Provide design guidelines for accommodating all modes (automobile, transit, pedestrians, bicycles) within the roadway.
 - Set requirements for preserving the right-of-way (ROW)
 - Identify roadways for planned expansions or new terrain roadways
 - Coordinate modal plans into a single linear network through its GIS database

ZONING HISTORY

87-Z-87; 1112 South Shortridge Road, requested rezoning of 3.03 acres from the D-2 district to the C-ID classification to provide for a contractor and a warehouse, **withdrawn**.

81-Z-104; 1120 South Shortridge Road, requested rezoning of 3.03 acres being in the D-2 district, to the C-7 classification to provide for a car and truck radiator and body shop, **denied**.

VICINITY

77-Z-100; 7540 Brookville Road (east of site), requested rezoning of 2.0 acres from the D-2 district to the C-5 classification, **approved**.

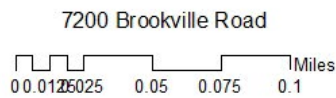
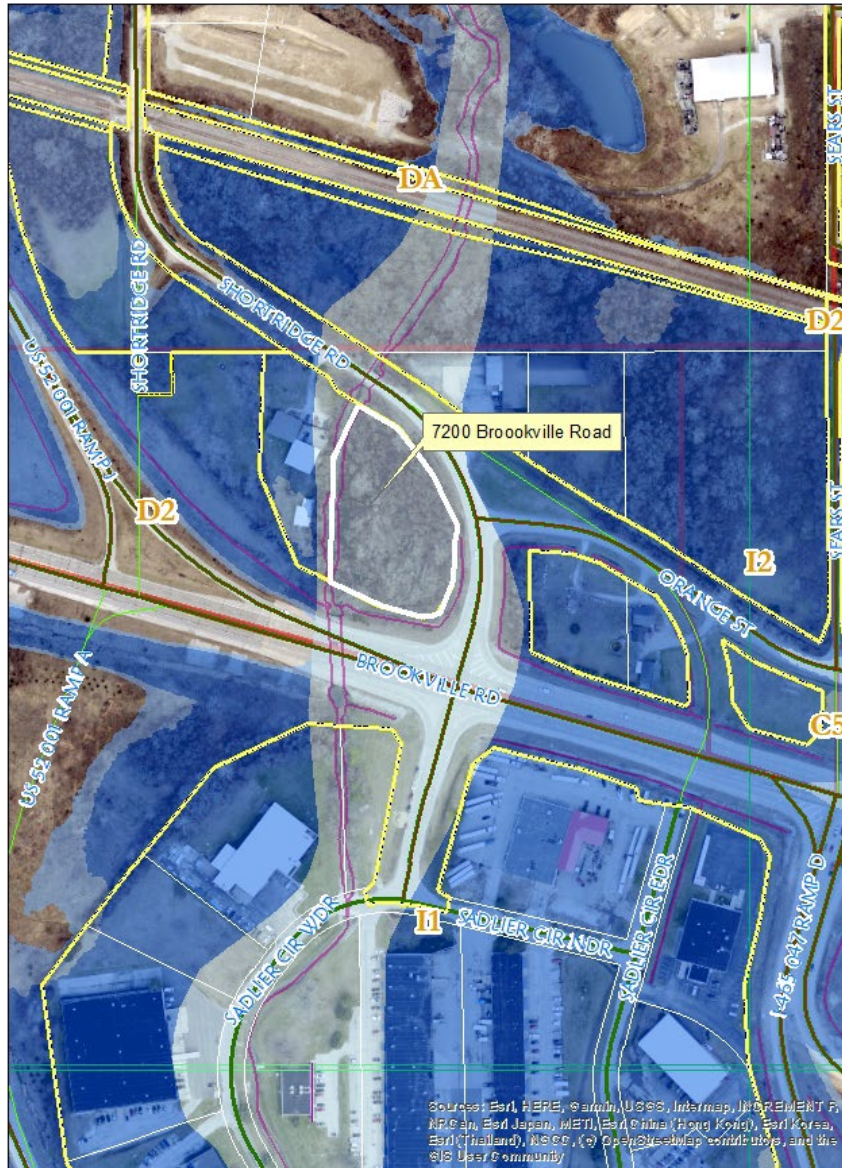
76-Z-83; 11435 Sears Road (east of site), requested rezoning of 4.48 acres, being in the D-2 district to the I-2-S classification to provide for office warehouse, **approved**.

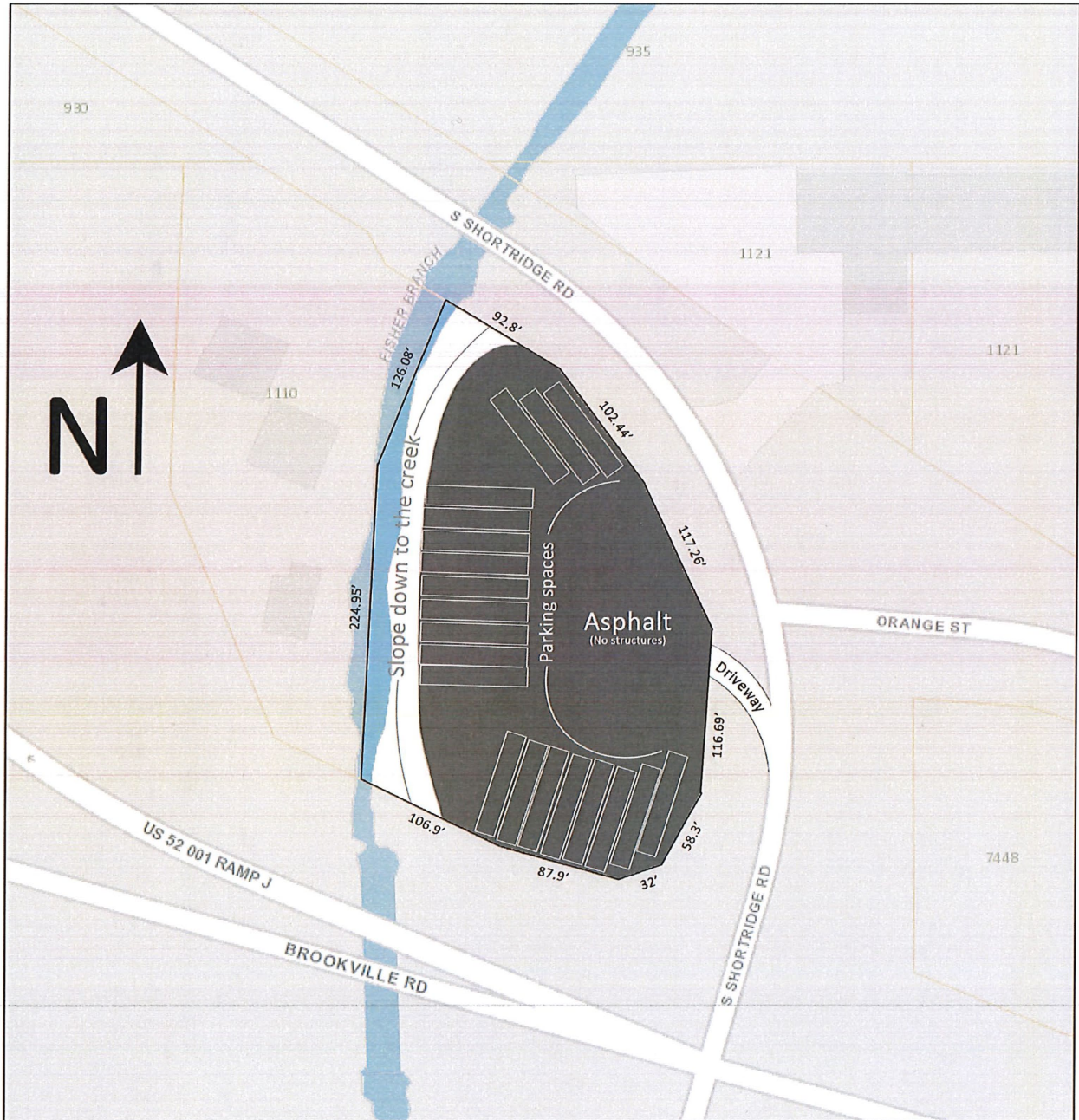
76-Z-32; 7540 Brookville Road (west of site), requested rezoning of 1.12 acres from the D-2 district to the C-43 classification to provide for retail sales and service of lawn care equipment, **approved**.

70-V2-41; 1121 Shortridge Road (east of site), requested a variance of use and rear yard requirements to permit erection of an addition to the west side of the existing commercial building, **granted**.

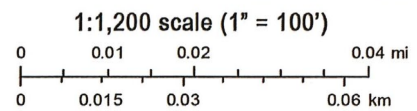
65-V-145; 1121 Shortridge Road (east of site), requested a variance of use and development standards to permit construction of a commercial building to be used as an office and for storage, **granted**.

EXHIBITS





7200 Brookville Road



Owner: Gerald L. Cowan
 216 Carrigan Point
 Noblesville, IN 46062

N.B. No structures will be built on the property at any time.

Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

SPECIAL EXCEPTION

PLAN OF OPERATION

In short, the Plan of Operation will be 24-7-365 access for parking of trucks with no employees, except drivers and a mechanic, and no facilities.

Workforce: Drivers and a mechanic. The mechanic will work on-site and only when needed.

Clients and Customers: None on this property.

Processes Conducted on Site: Parking of trucks and repairs as needed.

Materials Used: Trucks and tools needed for repairs. There will be no structures on-site, so the mechanic will bring any necessary tools on-site and those tools will be removed when the work is completed.

Shipping and Receiving: None.

Waste: Oil from changes will be disposed of in compliance with sound environmental requirements and required recycling regulations.



Petition Number 2024-CMP-856

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

PETITION FOR SPECIAL EXCEPTION
FINDINGS OF FACT

1. The proposed use meets the definition of that use in Chapter 740, Article II because it is intended to be a location for the "temporary storage of automotive vehicles." This meets the definition of "Parking area" and/or "Parking lot" and/or "Parking lot, commercial" and/or "Automobile and vehicle storage" as defined in Chapter 740, Article II. Additionally, no structures will be built on the property, so it complies with all applicable Floodway restrictions.

2. The proposed use will not injure or adversely affect the adjacent area or property values in that area because it will have limited impact on the surrounding properties. The parking area will be maintained as a private property and only authorized vehicles will be allowed to park on the property. There will be no public traffic flow on or off the property. There will be no structures built and any noise and/or odors produced will be no greater than those produced on the adjacent, heavily traveled Brookville Road. The property will not create a nuisance in any form.

3. The grant will not materially and substantially interfere with the lawful use and enjoyment of adjoining property because it will have limited (if any) impact on the adjoining property. There is a creek that separates the two properties and this creek will remain unchanged. Additionally, there is a tree-line that will obscure the view of any vehicles parked on this property. The adjoining property will notice no significant change in the ability to enjoy the property. No structures will be built on the property, so the impact to the Floodway will not be affected.

4. The proposed use will be compatible with the character of the district, land use authorized therein and the Comprehensive Plan for Marion County because it is located in close proximity to Interstate 465, which is used for the necessary transportation of goods throughout Indianapolis and to and from Indianapolis. The use of this property as a parking area for delivery vehicles will increase the patronage of the food and other retail establishments in the area.

5. The proposed use conforms to the development standards in Chapter 744 applicable to the zoning district in which it is located because Chapter 744, Article IV, Section 744-401 (E) explicitly states, "Nothing in this chapter shall prevent the establishment of, or expansion of the amount of, parking areas to serve any existing land." Furthermore, Section 744-404 (A)(1)(a) indicates, "accessory off-street parking areas shall be provided on the same lot as the building or use served unless an exception is specifically provided in the Zoning Ordinance and shall not be located within the public right-of-way." The parking area would not be in the public right-of-way and the proximity to I-465 makes it an ideal location for the "use served" as outlined above.

6. The proposed use conforms to all provisions of the Zoning Ordinance, including the performance standards in Chapter 740 and the development standards in Chapter 744 applicable to the zoning district in which it is located because

it meets all applicable standard as outlined above.

7. The proposed use conforms to all of the use-specific standards in Chapter 743 for that use, including any Special Exception standards for that use because

the proposed use adheres to all the requirements of Section 743-305 (CC) "Parking lot, commercial." Specifically, the parking facility will not inhibit traffic or hinder pedestrian traffic. Additionally, the entrance/exit is from a side street (Shortridge Rd), which has very little motor vehicle or pedestrian traffic. As such, the entrance/exit will not inhibit traffic and will not hinder or compromise the pedestrian traffic or walkability. The size of the entire property is under 2 acres, so naturally the parking lot will be under 2 acres.

DECISION

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

Adopted this _____ day of _____, 20 ____

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EXHIBIT A

Heritage Tree Conservation

Removal of any Heritage Tree is prohibited unless any of the following determinations are made before removal:

1. The Administrator or the city’s Urban Forester determines that the tree is dead, significantly and terminally diseased, a threat to public health or safety, or is of an undesirable or nuisance species.
2. The Director of the Department of Public Works determines that the tree interferes with the provision of public services or is a hazard to traffic.
3. The Administrator determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree.
4. The site from which the tree is removed is zoned D-A and the tree is harvested as timber or similar forestry product.

Table 744-503-3: Replacement Trees		
Size of tree removed or dead (inches)	Number of Trees to be planted to replace a Heritage Tree	Number of Trees to be planted to replace an existing tree
Over 36 DBH	15	10
25.5 to 36 DBH	11	8
13 to 25 DBH	8	6
10.5 to 12.5 DBH	6	4
8.5 to 10 DBH	5	4
6.5 to 8	3	2
4 to 6	2	2
2.5 to 3.5	1	1



View looking west across intersection of Brookville Road and South Shortridge Road



View looking south along South Shortridge Road



View looking north along South Shortridge Road



View looking south along South Shortridge Road



View of site looking west across South Shortridge Road



View of site looking west across South Shortridge Road



View of site looking west across South Shortridge Road



View of site looking west across South Shortridge Road



View looking west across South Shortridge Road along Fisher Branch



View looking east across South Shortridge Road along Fisher Branch