

BOARD OF ZONING APPEALS DIVISION II

May 13, 2025

**Case Number:** 2025UV2001 (Amended)

**Property Address:** 2454 North Illinois Street (*approximate address*)

**Location:** Center Township, Council District #12

**Petitioner:** Sheref Nessem, by Justin Kingen

**Current Zoning:** D-8 (TOD) (RC)

**Request:** Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of either an HVAC commercial contractor (not permitted) or C-1 uses (not permitted), with a zero-foot side yard setback (four-feet required), and being greater than 30-foot wide within the front yards of Fall Creek Parkway Drive S and Illinois Street (not permitted), and a 12 square foot wall sign to be located on the eastern elevation (maximum sign area of 3% of the front elevation required).

**Current Land Use:** Commercial

**Staff Recommendations:** Staff recommends **denial** of the variance requests.

**Staff Reviewer:** Michael Weigel, Senior Planner

PETITION HISTORY

**4/8/25:** The petitioner indicated their intention to make a for-cause continuance request to allow for them to meet with the Near North Development Corporation neighborhood group on April 10<sup>th</sup>. Staff does not oppose their request to have the petition continued to the May 13<sup>th</sup> hearing date to facilitate that meeting but would not support additional continuance requests. An updated site plan was provided on May 8th that made small changes to parking layout and revised the fence location to be solely placed within side and rear yards and outside of the clear-sight triangle. The request has been amended to remove reference to the fence variances requested, but staff's overall position remains a **denial** recommendation.

**3/11/25:** The petitioner indicated that they will make a for-cause continuance request to the April 8, 2025 hearing date to allow additional time for discussion of the petition with relevant neighborhood associations and with staff. An updated plan of operation was provided that gave additional context on the shipping and storage of HVAC parts. No changes were made either to staff's recommendation or to how the existing use at the site would be classified per the city's zoning ordinance.

**2/11/25:** The petitioner made a for-cause continuance request at the February 11, 2025 Division II hearing to allow sufficient time for legal notice to be sent. In the intervening period, the petitioner amended the request to (a) remove the unscreened dumpster request (b) replace the monument sign with a wall sign and (c) added a request for C-1 uses to function at the site (a separate and distinct category from

the requested contractor use). The petitioner also provided a set of proposed commitments and made minor changes to the site plan.

## STAFF RECOMMENDATION

Staff recommends **denial** of the variance requests.

## PETITION OVERVIEW

- 2454 Illinois is a corner lot currently improved with two (2) small commercial structures (one primary office and one garage) despite being zoned D-8 for residential uses. The site currently appears to be functioning as a commercial contractor despite no zoning petition allowing for the unpermitted use. The violation case VIO24-007484 cited this use as well as multiple other non-conformities. Surrounding land uses include residential uses to the west, east, and south as well as the Fall Creek (and Fall Creek Greenway) to the north. Kessler Park is located near the property to the northeast. The property is also located within the Regional Center and Transit-Oriented Development Secondary Zoning District given its proximity to the North Meridian Street corridor and IndyGo's BRT Red Line respectively.
- Prior to the unpermitted contractor use, the subject site had been granted a Use Variance in 1997 (97-UV1-62) to allow for the property to be used as a beauty parlor, after previously functioning as an ice cream shop per approval of 48-V-188 in 1948 and a fueling station before that point in time. This approval was subject to a landscape plan (see Exhibits) for which the approved landscaping appears to have never been installed. A lack of compliance with several elements of the 1997 variance was cited within VIO24-007484. If this variance were to be approved, the commitments associated with the older petition would no longer be applicable for the contractor use and new commitments would need to be imposed if desired by the Board.
- Application documents provided by the applicant indicate that the use proposed at their site would be a "C-1 office use" distinct from the HVAC contractor use mentioned within the text of this variance. The petitioner also later amended the notice to request permission for either (a) a HVAC contractor use or (b) all C-1 uses at the site, and suggested commitments indicating that no contractor work or outdoor operations would take place at the property. It is staff's determination that the HVAC contractor use would be most appropriately classified as a 'commercial and building contractor' use given the parking of commercial vehicles at the site (per the operation plan as well as site and aerial photos). The mention of outdoor operations within the violation and additional correspondence with the applicant indicated that both delivery and storage of some HVAC tools and equipment would take place at the subject site. Unless all service vehicles and storage of tools/parts related to the contractor use were housed at a separate facility, the scope at this site would exceed solely office functions (allowed in C-1) and would only be allowed within heavy commercial or industrial districts.
- Additionally, several variances of development standards would be required based on the provided site plan, site conditions and context provided from the notice of violation (see Exhibits

for full VIO text): (a) paved vehicle areas and parking stalls would be placed within both front yards and within 0 feet of side property lines respectively; and (b) a wall sign with an area of 12 square feet would be placed (limited to a maximum sign area of 3% of the front elevation's square footage given the residential zoning designation). The petitioner indicated via written confirmation and an updated site plan that all six-foot fencing would be removed from front-yard areas.

- If the existing structures and curb cuts at this site didn't currently exist, several additional variances would be likely required for setbacks and exclusive vehicle access from the western alley. However, since these improvements already exist at the site, required variances would be limited to the new use and development standards introduced by changes to the currently existing layout. Staff also notes that while TOD standards for frontage design and building placement/form would only be enforceable if this property had a commercial zoning, the site layout would not conform with design requirements for commercial areas near transit lines. Additionally, the Ordinance would require that the curb and sidewalk on the eastern property line be *restored* in addition to the entry and curb cut being removed should the petition be approved.
- Any non-conformities cited within VIO24-007484 that are *not* included within this variance request (i.e. full paving of the site, parking of commercial vehicles and trailers, any outdoor storage and operations, etc.) would need to be resolved outside of the variance process in order for the site to be brought into compliance, and approval of this variance over staff's recommendation should not be construed as allowance for those non-conformities to remain.
- The D-8 zoning district is intended for a variety of housing formats, with a mix of small-scale multi-unit buildings. Heavy commercial and industrial land uses are not contemplated for this zoning or recommended by relevant Comprehensive Plans (Pattern Book, Regional Center Guidelines) which indicate Residential Neighborhood uses of 6 to 15 dwelling units per acre would be most appropriate. Similarly, the TOD Red Line Strategic Plan indicates that surface parking should be consolidated and placed behind buildings to allow for a pedestrian orientation at the street.
- Given that it is unlikely that this property would revert to primarily residential uses in the future, staff does not feel that a Use Variance would be the most appropriate remedy to establish a new commercial enterprise at this site and would want to avoid the need for new petitions to be filed with each successive use change in the future. Independent of the specifics of this proposal for a commercial contractor requiring several variances of development standards, staff would recommend denial for process reasons and would instead recommend that the property be rezoned to a more appropriate commercial designation if low-intensity commercial use was desired. Rezoning of this parcel to the C-1 designation (without a commercial contractor use) could potentially be supportable by staff if reasonable commitments were also included.
- Staff does not feel that the previous placement of light commercial uses at this property should serve as justification for placement of a more intense heavy commercial use and would note the historically residential character of surrounding properties as well as the Comprehensive Plan recommendation for residential uses. Similarly, placement of a tall fence around parking areas and a portion of the northern façade, commercial signage, and the parking of commercial vehicles

within feet of nearby residences would each reduce the residential character of the surrounding area and could result in negative externalities of light, noise, damage to local streets, and the potential for continued outdoor storage or operations at the property. The proposed use of an HVAC contractor also does not comport with the City's vision for transit-oriented development or for areas so close to parks, greenways, and related amenities. For these reasons, staff recommends denial of the requested variances.

## GENERAL INFORMATION

<b>Existing Zoning</b>	D-8 (TOD) (RC)	
<b>Existing Land Use</b>	Commercial	
<b>Comprehensive Plan</b>	Residential 6-15 Dwelling Units per Acre	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Surrounding Context</b>
	North: PK-1	North: Greenway/Fall Creek
	South: D-8	South: Residential
	East: D-8	East: Residential
	West: D-8	West: Residential
<b>Thoroughfare Plan</b>		
Illinois Street	Primary Arterial	66-foot existing right-of-way and 78-foot proposed right-of-way
Fall Creek Parkway SDR	Local Street	75-foot existing right-of-way and 48-foot proposed right-of-way
<b>Context Area</b>	Compact	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	No	
<b>Wellfield Protection Area</b>	No	
<b>Site Plan</b>	01/22/2025	
<b>Site Plan (Amended)</b>	05/08/2025	
<b>Elevations</b>	N/A	
<b>Elevations (Amended)</b>	N/A	
<b>Landscape Plan</b>	01/22/2025	
<b>Findings of Fact</b>	01/22/2025	
<b>Findings of Fact (Amended)</b>	N/A	

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Red Line TOD Strategic Plan

- Regional Center Design Guidelines

#### **Pattern Book / Land Use Plan**

- The Marion County Land Use Plan Pattern Book recommends this site to be developed for Traditional Neighborhood uses with a density between 6 and 15 dwelling units per acre. Although some commercial uses could be recommendable at corner nodes, industrial or heavy commercial uses are not a contemplated land use category for this typology.

#### **Red Line / Blue Line / Purple Line TOD Strategic Plan**

- Given this property's proximity to the Meridian & Fall Creek Red Line Stop, the TOD Strategic Plan recommends this site to the Community Center typology to allow for walkable commercial centers with a range of retail, entertainment, office, and residential uses. Surface parking should be consolidated and placed behind buildings to allow for a pedestrian orientation at the street while still supporting drive-to businesses. The scope of commercial activity at this site appears to exceed the intensity of office uses contemplated by the TOD Plan.

#### **Neighborhood / Area Specific Plan**

- The Regional Center Design Guidelines recommend this site to the Neighborhood Residential typology to allow for homes in single-family, townhome or apartment configurations. Parcels are typically deep with narrow street frontages, homes have small setbacks and front yards, and the environment is pedestrian in nature.

#### **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

### ZONING HISTORY – SITE

**97-UV1-62**, variance of use of the Dwelling Districts Zoning Ordinance to provide for the continued operation and expansions of a beauty salon (not permitted), **approved**.

**94-UV2-38**, variance of use of the Dwelling Districts Zoning Ordinance to provide for a carry-out restaurant business (not permitted), **withdrawn**.

### ZONING HISTORY – VICINITY

**2019DV2016 ; 2434 N Illinois Street (south of site)**, variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a single-family dwelling with an attached garage with eight-foot (2438) and nine-foot (2434) separations between dwellings (10-foot separation required), **withdrawn**.

**2017LNU007 ; 2442 N Illinois Street (south of site)**, legally establish an eight-unit apartment building with zero parking spaces, on parcel #1073915, associated with 2442 North Illinois Street, in a Dwelling District, **approved**.

**90-HOV-91 ; 2332 N Illinois Street (south of site)**, variance of development standards of the Dwelling District Zoning Ordinance to permit the construction of a three-story multi-family structure 40 feet in height (35 feet permitted), **approved**.

**85-UV3-62 ; 126 W 24<sup>th</sup> Street (south of site)**, variance of use of the Dwelling Districts Zoning Ordinance to provide for an existing building as a variety store, **withdrawn**.

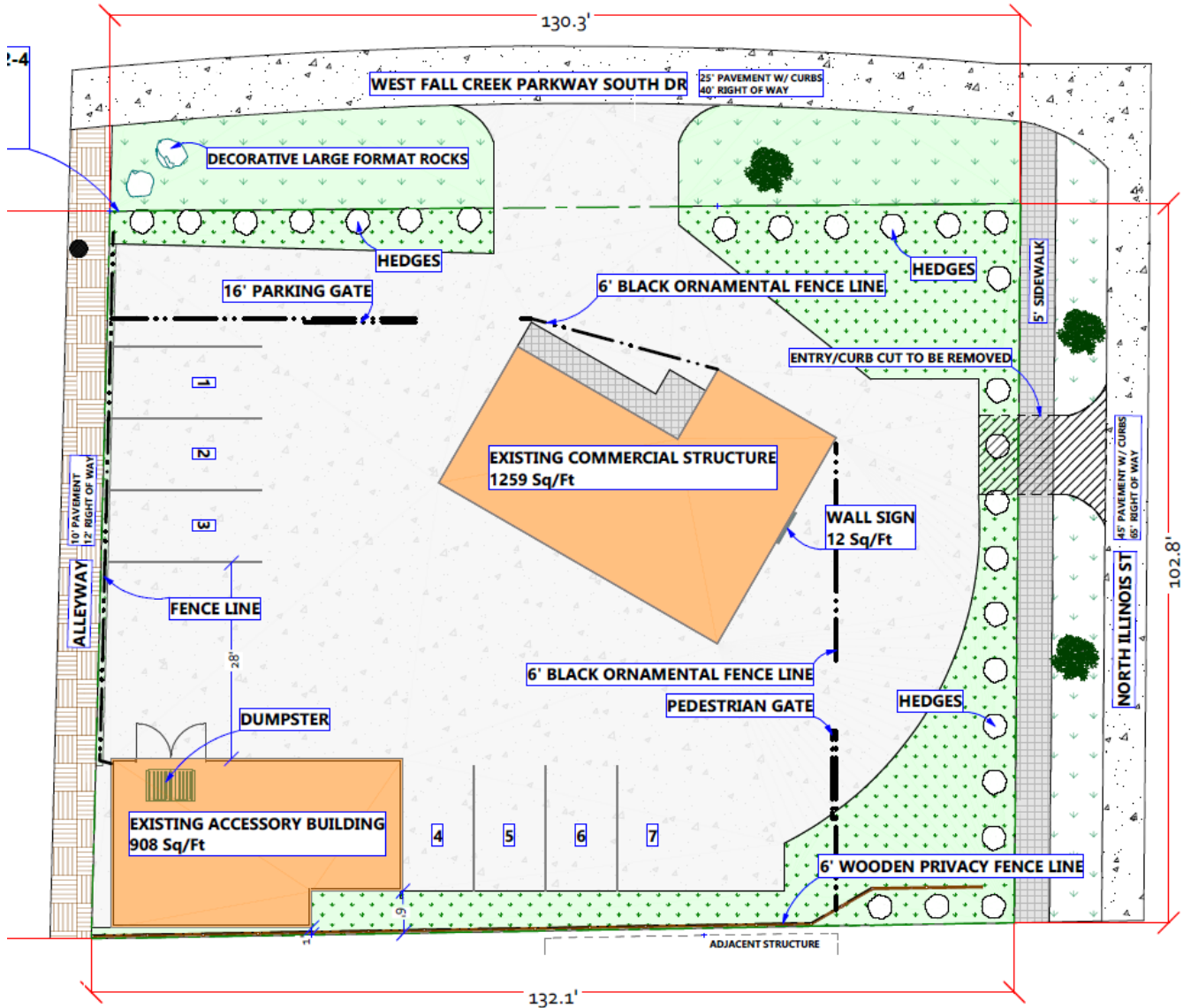


EXHIBITS

2025UV2001 ; Aerial Map (approximate clear-sight triangle added in yellow)



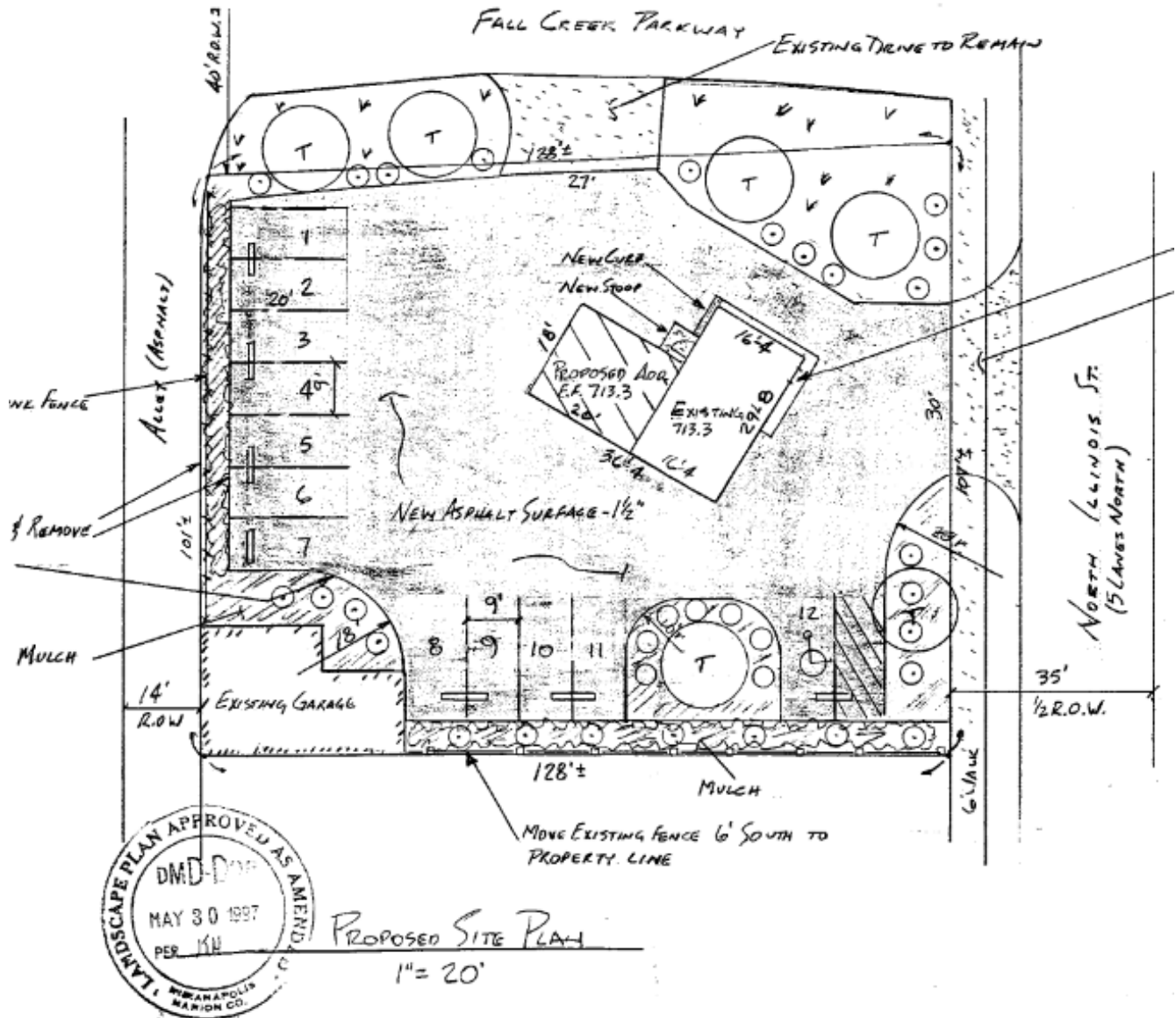
**2025UV2001 ; Site Plan (proposed for 2025)**



Notes: (1) Ordinance would require that the eastern entry/curb cut area have curb and sidewalk *restored* in addition to the removal marked on this site plan. (2) The petitioner has indicated that the portion of wooden privacy fence to the east of the establishing front building line will be removed.



2025UV2001 ; Site/Landscape Plan (approved in 1997)



## **2025UV2001 ; Notice of Violation (VIO24-007484)**

### **Section 740 -1005.A.1. Civil Zoning Violation**

**Specific Violation:** The location, erection, or maintenance of any sign not specifically permitted by the Zoning Ordinance; (744-903.B. - Failure to obtain a sign permit for the display of wall sign).

### **Section 740 -1005.A.3. Civil Zoning Violation**

**Specific Violation:** The outdoor storage of junk, trash, or debris in any zoning district, the provisions of which do not specifically permit such a use; (Wood scrap, appliances, scrap metal, and other miscellaneous items throughout the property).

### **Section 740 -1005.A.5. Civil Zoning Violation**

**Specific Violation:** The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Trailer, open or enclosed, with a cargo holder exceeding 12ft. in length...15 ft. trailer).

### **Section 740 -1005.A.5. Civil Zoning Violation**

**Specific Violation:** The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Vehicle, regardless of weight, used or designed to be used as a box truck).

### **Section 740 -1005.A.7. Civil Zoning Violation**

**Specific Violation:** The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - An HVAC company is not a permitted use in a D-8 zoning district... SMART HVAC,LLC).

### **Section 740 -1005.A.7. Civil Zoning Violation**

**Specific Violation:** The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - Outdoor storage and operations is not a permitted accessory use in a D-8 zoning district...air conditioner units, ducts and other HVAC equipment/parts).

### **Section 740 -1005.A.7. Civil Zoning Violation**

**Specific Violation:** The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - Storage of a commercial dumpster is not a permitted accessory use in a D-8 zoning district).

### **Section 740 -1005.A.8. Civil Zoning Violation**

**Specific Violation:** Failure to comply with use-specific standards and zoning district development standards for the D-8 district; (744-404.D.6.a. - Parking areas in front yards shall be paved with bricks, concrete, asphalt, permeable pavers or pavement, or a gravel surface with a distinct edge boundary to retain the gravel; the parking of vehicles on grass in the front yard is prohibited).

### **Section 740 -1005.A.9. Civil Zoning Violation**

**Specific Violation:** The failure to comply with the terms, provisions, conditions or commitments of a variance grant, special exception, ordinance, or other approval grant; (Failure to comply with petition #97-UV1-62; specifically, commitment #2..."landscaping (combination of trees and shrubs at a minimum) shall be planted along Fall Creek Parkway South Drive, North Illinois Street, and the western (along the north-south alley) frontages of the site. A landscaping plan, indicating spacing, species, and the size of the landscape elements, shall be submitted for and subject to Administrator's Approval...Landscaping shall be completed in accordance with said approved plan by December 3, 1997, and maintained at all times thereafter). Contact Current Planning, 18th Floor of the City/County Building, 200 E Washington St...317-327-5155.

### **Section 740 -1005.A.9. Civil Zoning Violation**

**Specific Violation:** The failure to comply with the terms, provisions, conditions or commitments of a variance grant, special exception, ordinance, or other approval grant; (Failure to comply with petition #97-UV1-62; specifically, commitment #3... "The parking and maneuverability areas shall be hard-surfaced by June 3, 1998, and shall be striped at all times"). Contact Current Planning, 18th Floor of the City/County Building, 200 E Washington St...317-327-5155.

### **Section 740 -1005.A.9. Civil Zoning Violation**

**Specific Violation:** The failure to comply with the terms, provisions, conditions or commitments of a variance grant, special exception, ordinance, or other approval grant; The failure to comply with the terms, provisions, conditions or commitments of a variance grant, special exception, ordinance, or other approval grant; (Failure to comply with petition #97-UV1-62; specifically, failure to comply with the approved site plan).

## 2025UV2001 ; Plan of Operation (updated 3/14/25)

- Use:
  - Office use for Smart HVAC home office
- Staff:
  - Three (3) full-time employees (off-site)
- Hours of Operation:
  - 7:30am – 6:00pm (Monday – Friday)
  - Staff is able to access the building outside of those hours to utilize resources
- Building:
  - 1,100 square foot office building
  - Detached garage for storage of office equipment and commercial dumpster
- Clients & Customers:
  - Off-site (e.g., in their homes)
    - All of Smart HVAC work will be done at the homes of their customers. None of the operations will take place at the subject site.
- Safety & Security Measures:
  - The office building has security cameras, and an alarm installed. A six-foot chain-link fence, which is locked outside of office hours, surrounds the entire property, per the site plan on file.
- Materials Used:
  - No hazardous waste is used on site.
- Shipping, Receiving & Storage:
  - Equipment (HVAC systems) are delivered directly to the job site, not Smart HVAC office, for commercial jobs. Equipment for residential jobs is picked up at a local supply house and taken directly to the client's residence for work.
  - The accessory garage is used to house tools and the odd, small part (i.e. a HVAC relay switch). The delivery of these small parts are made by USPS, UPS, or Amazon and occur 2-3 times per month.
- Waste:
  - Commercial Dumpster will be located in the accessory structure and will be set out in the parking lot on the weekly pick-up day. Disposal of trash will occur between the hours of 8am and 6pm, Monday through Friday.
- Parking
  - There are currently six (6) parking spaces, all of which are paved, as indicated on the site plan on file.
  - There are three (3) commercial vehicles\* that visit the site, typically 1-2 times a week and during office hours only, in order to obtain daily assignments, customer paperwork, and the odd tool and/or spare part. The commercial vehicles are parked off-site overnight.
  - Customers do not visit/park at the site.

**2025UV2001 ; Findings of Fact (Use)**

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

The site has been used and developed commercially over the past several decades. It was approved to be used as a beauty salon back in 1997. The proposed use is that of a C-1 office use for a HVAC business. There will be no outdoor storage on the site.

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 use and value of the area adjacent to the property will not be adversely affected due to the fact that the subject site has been developed and used commercially, historically. Thus, granting the proposed use will not adversely affect the area.

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

The strict application of the Ordinance would constitute a hardship, as it would disallow the historic commercial use of the site.

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

According to historical maps, a number of commercial uses have existed on the site dating back as far as the 1990s.

The strict application of the Ordinance would constitute a hardship, as it would disallow the historic commercial use of the site.

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

Granting the variance of use allows for the historical commercial uses as well as the proposed commercial use to be compliant, and therefore does not interfere substantially with the comprehensive plan.

**2025UV2001 ; Findings of Fact (Development Standards)**

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

This property has been developed and used historically for commercial uses and the granting of the reduced setbacks would bring the site into compliance and would not be injurious to the community.

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:

This property has been developed and used historically for commercial uses and the granting of the reduced setbacks would not affect the area adjacent to the subject site in an adverse manner.

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

This property has been developed and used historically for commercial uses and the granting of the reduced setbacks would bring the site into compliance.



**2025UV2001 ; Photographs**



Photo 1: Subject Site Viewed from East



Photo 2: Subject Site Viewed from North



**2025UV2001 ; Photographs (continued)**



Photo 3: Existing Rear Garage and Dumpster



Photo 4: Fall Creek Frontage/Possible Sign Location



**2025UV2001 ; Photographs (continued)**



Photo 5: Adjacent Property to the North



Photo 6: Adjacent Property to the West



**2025UV2001 ; Photographs (continued)**



Photo 7: Adjacent Property to the South



Photo 8: Adjacent Property to the East

**2025UV2001 ; Photographs (continued)**



Photo 9: Primary Building Interior (provided by applicant)



Photo 10: Primary Building Interior (provided by applicant)