

**BOARD OF ZONING APPEALS DIVISION I**

**November 14, 2023**

**Case Number:** 2023-UV1-021

**Property Address:** 7040 Rockville Road (approximate address)

**Location:** Wayne Township, Council District #15

**Petitioner:** Donald P. Quass, by David Gilman

**Current Zoning:** D-3

**Request:** Variance of use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a secondary dwelling unit, without an owner living on site (not permitted), with a zero-foot west side yard setback (six-foot side yard setback required).

**Current Land Use:** Residential

**Staff Recommendations:** Staff **recommends approval** of the zero-foot west side yard setback; however, Staff **recommends denial** of the remainder of the petition

**Recommended Motion:** Motion to approve petition 2023UV1021

**Staff Reviewer:** Noah Stern, Associate Planner

**PETITION HISTORY**

This is the first public hearing for this petition.

**STAFF RECOMMENDATION**

Staff **recommends approval** of the zero-foot west side yard setback; however, Staff **recommends denial** of the remainder of the petition.

**PETITION OVERVIEW**

- This petition would provide for a secondary dwelling unit, without an owner living on the site (not permitted), with a zero-foot west side yard setback (six-foot side yard setback required).
- The secondary dwelling unit pertaining to this request is located along the west lot line of the site, with a zero-foot setback. This structure has been in existence since approximately 1946 and predates the setback standards currently in place for this site. Given the legally non-conforming nature of the location of the secondary dwelling unit, Staff is not opposed to the variance of development standards to allow for the zero-foot side yard setback for the secondary dwelling structure.

- The petition also requests a use variance to allow for the secondary dwelling unit to be used as such without the property owner living on site. While secondary dwelling units are legal in all dwelling districts, operating a secondary unit without the owner living on site is not a permitted use in the zoning ordinance and has never been permitted in any past zoning ordinances. Further, Staff does not see any practical difficulty or justifiable reason in which the owner is not able to comply with the regulations set forth by the Consolidated Zoning and Subdivision Ordinance. Finally, Staff finds that a recommendation of approval has the potential to set an undesired precedent of a use that is not permitted by the Ordinance. Therefore, Staff is opposed to and recommends denial of the use variance to allow for the secondary dwelling unit to be in operation without the property owner living on the site.

## GENERAL INFORMATION

Existing Zoning	D-3	
Existing Land Use	Residential	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	<b><u>Zoning</u></b>	<b>Surrounding Context</b>
	North: D-4	North: Single-Family Residential
	South: D-5	South: Single-Family Residential
	East: D-3	East: Single-Family Residential
	West: D-3	West: Single-Family Residential
Thoroughfare Plan		
Rockville Road	Primary Arterial Existing ROW: 140 feet Proposed ROW: 112 feet	
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	9/8/23	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	9/8/23	
Findings of Fact (Amended)	N/A	

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Infill Housing Guidelines

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

- The Marion County Land Use Plan Pattern Book recommends the Suburban Neighborhood living typology for this 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**

- Infill Housing Guidelines (IHG) document is used to promote good practice with regards to form, massing, aesthetics, landscaping, etc. of new infill housing projects of all scales and types.
- With regards to secondary dwelling units, the Infill Housing Guidelines document recommends:
  - Locate accessory structures behind primary building
  - Access accessory buildings from alleys, when possible
    - With the site not containing alley access, the secondary dwelling unit is accessible via the driveway on the east side of the primary structure
  - Don't overshadow primary building
- The proposal is in accordance with these recommendations.

#### **Indy Moves**

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

- Not Applicable to the Site

## ZONING HISTORY

### ZONING HISTORY - SITE

**99-V2-83**, Variance of Development Standards of the Dwelling Districts Zoning Ordinance to legally establish a six-foot tall fence in the front yard along Rockville Road (maximum 42 inches permitted), **denied**.

### ZONING HISTORY – VICINITY

**77-Z-123; 55 N Girls School Road (west of site)**, request rezoning of 3.28 acres, being in the C-3 & D-3 district, to C-4 classification to permit commercial development, **approved**.

**89-Z-114; 7040 Rockville Road (north of site)**, request rezoning of 5.7 acres, being in the D-3 district, to the D-4 classification to provide for residential development by platting, **approved**.

**91-V3-18; 35 Ponsonby Court (north of site)**, requests a Variance of Development Standards of the Dwelling District Zoning Ordinance to permit the construction of a single-family residence with a rear yard setback of 15 feet (20 feet required), **approved**

**91-Z-102; 7201 Rockville Road (west of site)**, Variance of Development Standards to permit a reduction of the number of off-street parking spaces required to one for each 284 square feet of gross floor space in the structures on the site (one space for each 200 square feet required) and to permit parking and driveways in the front transitional yards, **approved**.

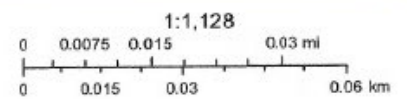
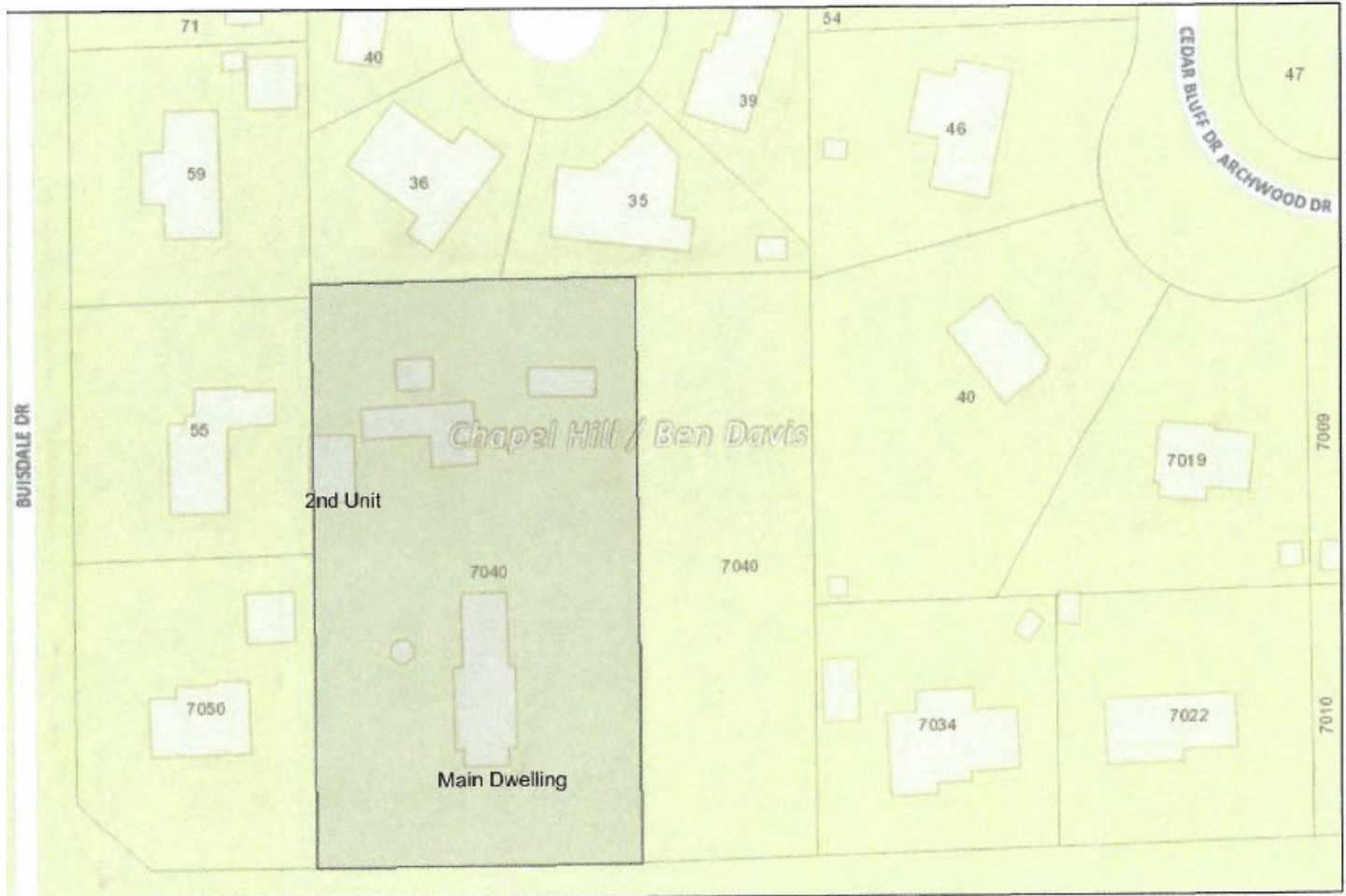
**2002SE1001; 7035-7045 Rockville Road (south of site)**, Special exception of the Dwelling Districts Zoning Ordinance to provide for the construction of a church, **approved**.

**2010DV1037; 7222 Rockville Road (west of site)**, Variance of development standards of the Commercial Zoning Ordinance to provide for 3360-square feet of outdoor play area (200 square feet or one percent (1%) of the floor area, whichever is greater, permitted) for a doggie-daycare/boarding facility, **approved**.

**2014DV3019; 36 Ponsonby Court (north of site)**, Variance of development standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a 12 by 16-foot sunroom, with a 15-foot rear setback (20-foot rear setback required), **approved**.

EXHIBITS

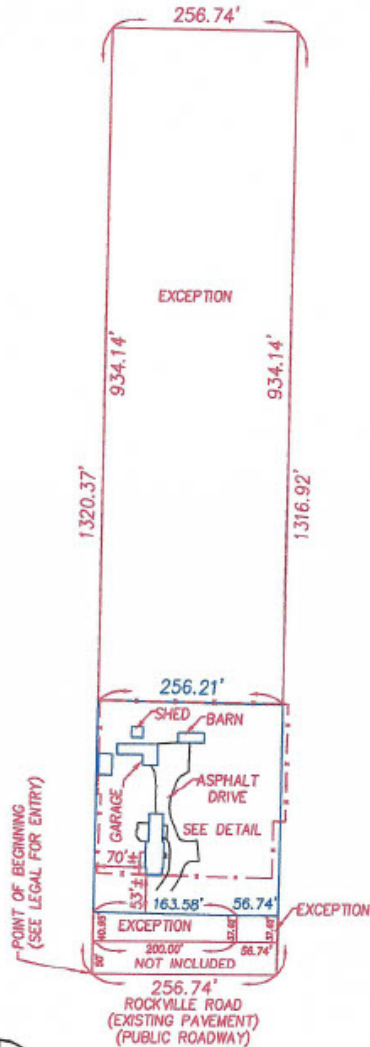
7040 Location Map



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

## SURVEYOR LOCATION REPORT

I hereby certify to the parties named above that the real estate described herein was inspected under my supervision on the date indicated and that to the best of my knowledge, this report conforms with the requirements contained in Sections 27 through 29 of 865 IAC 1-1-12 for a SURVEYOR LOCATION REPORT. Unless otherwise noted there is no visible evidence of possession lines found.



### LEGEND

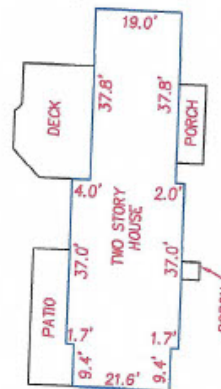
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NOTE: OBTAINING ACCURATE AND COMPLETE DATA ON OR NEAR THE PERIMETER OF LARGER TRACTS IS BEYOND THE SCOPE OF THE REPORT. THE LOCATION OF ANY IMPROVEMENTS AND FENCES SHOWN HAVE BEEN ESTIMATED. DUE TO THE SIZE OF THE TRACT AND INADEQUATE REFERENCE MONUMENTATION, THE ACCURACY OF THIS REPORT IS LIMITED TO ±5 FEET. A STAKED BOUNDARY RETRACEMENT SURVEY IS RECOMMENDED IF PRECISE LOCATIONS ARE DESIRED.

NOTE: EASEMENTS CONTAINED WITHIN SCHEDULE B, SECTION II WERE NOT PROVIDED FOR THIS REPORT.

### HOUSE DETAIL

(NOT TO SCALE)



**HAHN SURVEYING GROUP, INC.**  
 Land Surveyors  
 8925 N. Meridian Street, Suite 120  
 Indianapolis, IN 46260  
 PHONE: (317) 846-0840 / (317) 846-4119  
 EMAIL: orders@hahnsurveying.com  
 www.hahnsurveying.com



CERTIFIED: 08/15/2023

*Chad L. Brown*  
 Chad L. Brown  
 Registered Land Surveyor,  
 Indiana #21100002  
 Drawn By: JEC  
 Job No.: S23-19232  
 Sheet 2 of 3



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 2nd dwelling unit was established in 1946 and has been consistently used for human occupancy. The site has direct  
access to a public street with adequate open space for proper drainage. The dwellings have all utilities available to them.

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 second dwelling has been established per the Assessor's records since 1946. The subject dwelling was established before the adjacent residence.

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

The second dwelling was established per the Assessor's Property Report approximately 1946, prior to the adoption of the Dwelling District Zoning  
Ordinance.

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

To legally establish the use for the 2nd dwelling for the past 77 years without interruption would be difficult due to the limited availability  
of historic public records and aerial photography.

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

The site is zoned D-3 which allows 2.6 units per acre and falls within the topology of the land use recommendation of  
Suburban Residential.

DECISION

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

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 subject site has direct access to a public street, adequate open space for proper drainage and all utilities to the subject dwellings.

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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:

The subject dwelling was established in 1946 according to the Assessor's Property Report. The rear yard setback and square footage of the dwelling were established prior to the development of the adjacent residences.

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

To move the residence or to add to its footprint would be difficult and create an unnecessary hardship for the owners.

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**DECISION**

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

_____	_____
_____	_____
_____	_____



















