

BOARD OF ZONING APPEALS DIVISION III

October 15, 2024

Case Number: 2024-DV3-028
Address: 3810 & 3814 East Southport Road (approximate address)
Location: Perry Township, Council District #24
Zoning: C-3 (FW) (FF)
Petitioner: Indiana Group Investment Inc., by David E. Dearing
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a building addition, encroaching within the stream protection corridor of Little Buck Creek (not permitted, 100-foot separation from top of bank required).

Current Land Use: Vacant Trade School / Office building

Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

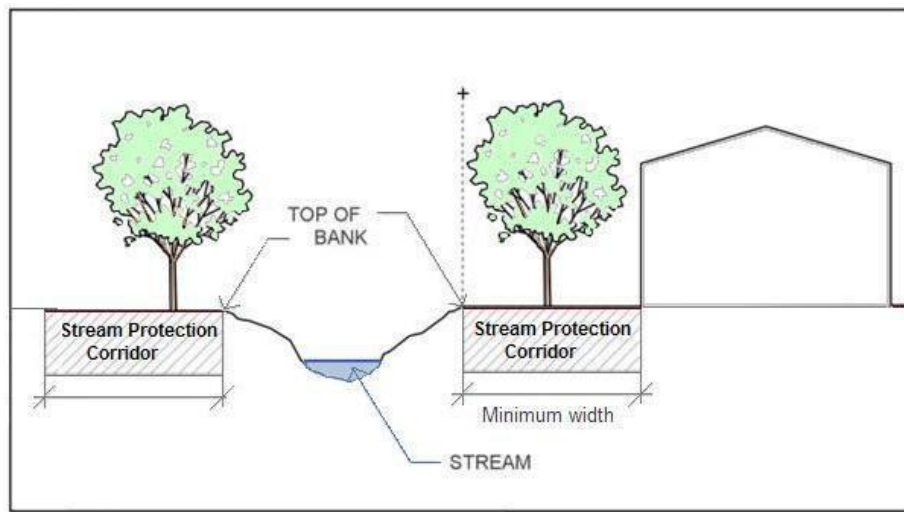
The petitioner has indicated in the findings of fact that the use would be for a banquet hall. The subject site is zoned C-3 which does not allow for a banquet hall, event center, or similar indoor entertainment uses which are permitted in the C-4 District. If a banquet hall or indoor entertainment is the proposed use, then this petition should be continued with new notice, so that the petition can be amended to allow for a variance of use to provide for the banquet hall. As it is improper to introduce a petition for a variance of development standards before the proposed use is approved. This is particularly egregious because of the wide variety of C-3 uses that would be allowed and would not require a large building addition that would encroach on a natural resource.

PETITION OVERVIEW

STREAM PROTECTION CORRIDOR

- ◇ This request would provide for new development or a building expansion within the stream protection corridor, where encroachment within the stream protection corridor is not permitted.
- ◇ 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. Little Buck Creek is present on the subject site and is considered a Category One Stream. Category One streams have a corridor width of 100 feet in the Metro context area.

- ◇ 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.”
- ◇ A 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 organisms 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.
- ◇ 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.
- ◇ As a Category One Stream within the Metro Context Area, Little Buck Creek is required to have a 100-foot 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

- ◇ The existing building is considered legally non-conforming and can be redeveloped within the existing footprint only as it had been previously for the previous trade school. The proposed new building addition would increase the size of the existing building and expand it further into the Stream Protection Corridor.
- ◇ The request for the building addition to allow for additional planned seating for a banquet hall, and additional space to comply with ADA requirements, and risers for the sprinkler system, is a result of bad design and planning by the petitioner. There is no requirement for a minimum size of banquet hall, so the size can be compliant within the existing structure, if granted a variance of use. The ADA requirements and sprinkler systems can be designed to operate within the existing structure, as the previous use had done. The desire to not accommodate the Ordinance by compliant design is the choice of the petitioner and not imposed by the Ordinance.
- ◇ Because the site was never developed with a structure in this area, staff believes any practical difficulties would be self-imposed. Consequently, staff does not support this request to provide for the construction of a building addition, encroaching within the stream protection corridor.
- ◇ Staff feels the proposed building encroachment into the Stream Protection Corridor would be determinantal to the protection of the stream and its adjoining area, even if the area is already paved, as the building expansion, would prohibit space next to the existing underdeveloped vegetative target, and would allow for stream overflow when flood waters are present.
- ◇ The strict application of the terms of the zoning ordinance does not constitute a practical difficulty for the property, since the site is zoned C-3 and can be used by any number of uses permitted, by right, in the C-3 zoning classification. Including re-building the previous structure with the same footprint. Any practical difficulty is self-imposed by the desire to expand the structure on site into the Stream Protection Corridor for the operation of a banquet hall, and the petitioner not doing their due diligence on feasibility before buying this property.
- ◇ The subject site is similar to other nearby commercial properties, that are able to follow the zoning ordinance without the need for variances. Therefore, staff recommends this request be denied.

GENERAL INFORMATION

Existing Zoning	C-3	
Existing Land Use	Former Trade School / Office building	
Comprehensive Plan	Office Commercial / Floodway	
Overlay	No	
Surrounding Context	Zoning	Surrounding Context
North:	C-3 / D-3	Undeveloped / Single-family dwellings
South:	PK-1 / D-P	Park / Vacant Commercial Building
East:	C-3	Commercial retail / office
West:	D-A	Single-family dwelling / Floodway
Thoroughfare Plan		
East Southport Road	Primary Arterial	92-foot existing right-of-way and a 102-foot proposed right-of-way.

Context Area	Metro
Floodway / Floodway Fringe	Floodway / 100-year Floodplain
Wellfield Protection Area	No
Site Plan	September 24, 2024
Elevations	N/A
Plan of Operation	N/A
Commitments	N/A
Landscape Plan	N/A
Findings of Fact	September 15, 2024

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends Office Commercial uses.

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends Office Commercial typology that provides for single and multi-tenant office buildings. It is often a buffer between higher intensity land uses and lower intensity land uses. Office commercial development can range from a small freestanding office to a major employment center. This typology is intended to facilitate establishments such as medical and dental facilities, education services, insurance, real estate, financial institutions, design firms, legal services, and hair and body care salons.

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

98-2-129/98-DP-18; 3901 East Southport Road (south of site), requested the rezoning of 16.39 acres, being in the D-611, C-2 and C-6(FF)(FW) Districts, to the DP(FF)(FW) classification to provide for commercial uses and park uses, **approved**.

98-Z-65/ 98-DP-11; 7210 South Sherman Drive (south of site), requested the rezoning of 28.41 acres, being in the D-A(FF)(FW) District, to the DP(FF)(FW) classification to provide for a mixed residential community of condominiums, **approved**.

90-UV1-82; 6920 Gray Road (east of site), requested a variance of use to permit the construction of an entry vestibule for an existing building, **granted**.

84-UV3-114; 3830 East Southport Road (east of site), requested a variance of use to provide for a children's day care center in an existing building, **granted**.

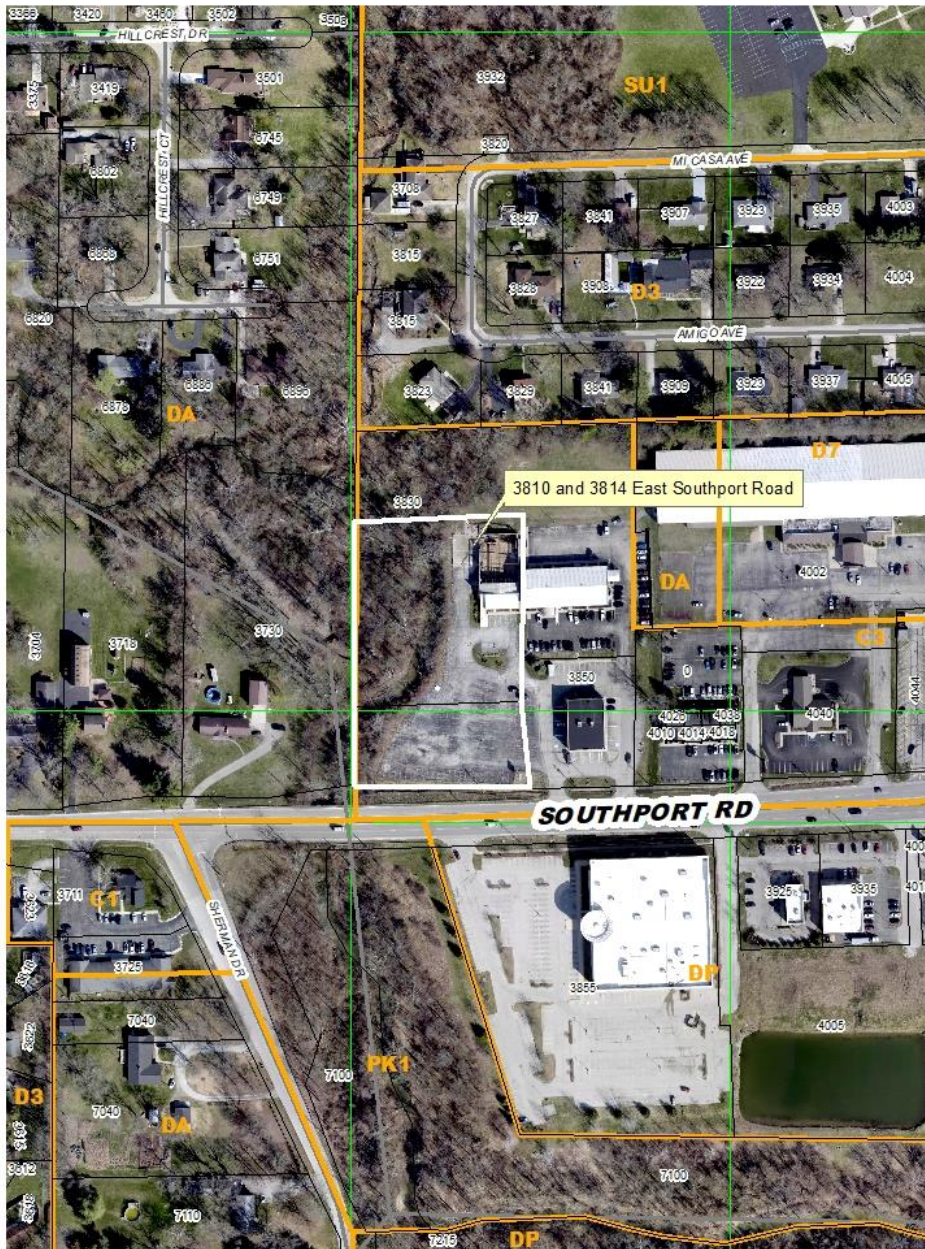
84-Z-110; 4001 East Southport Road (south of site), requested the rezoning of 2.97 acres, being in the C-2 and C-4 Districts, to the C-6 classification to provide for a motel, **approved**.

83-Z-125; 3830 East Southport Road (east of site), requested the rezoning of 7.0 acres, being in the SU-2 District, to the C-3 classification, to provide for offices, a pharmacy, and retail sales, **approved**.

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EXHIBITS

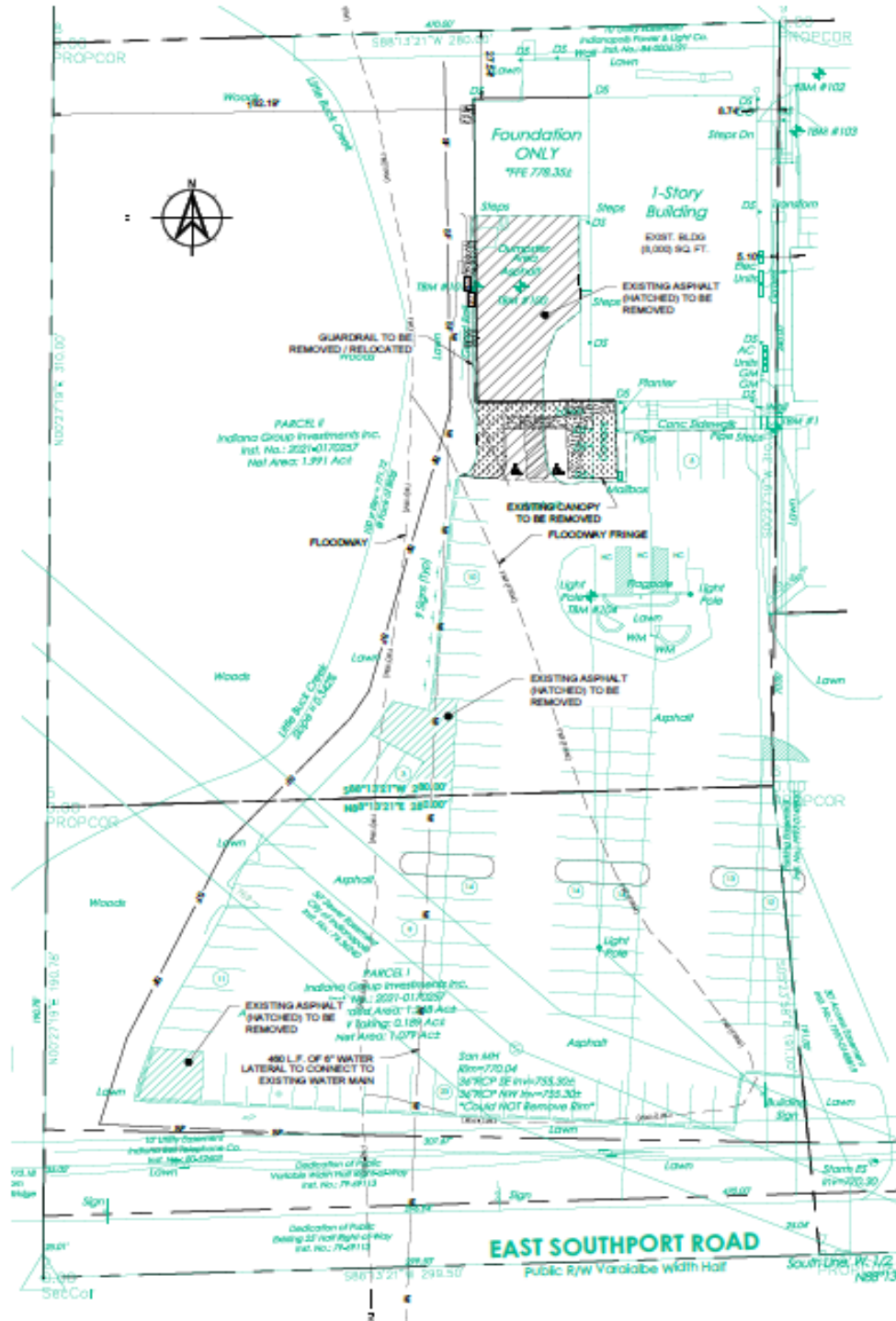
Location Map



Location Map close up



Site Plan





Findings of Fact – Stream Protection Corridor

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 grant will enable the property owner to repair, remodel and expand an existing, vacant, partially burned building on the site. No additional part of the Stream Protection Corridor will be developed because the building expansion will occur in an area that is already covered in concrete. The work will put the property to a productive use and increase the tax base, thus promoting the general welfare of 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:
the repair, renovation and expansion of the vacant, partially burned building will enhance the property, which will increase the value of the adjacent property without affecting the use of the adjacent property.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:
inability to square off the building will create significant financial difficulties for the owner by eliminating approximately one-half of the planned seating for a banquet hall. In addition, the additional space is needed in order to comply with ADA requirements for restrooms and accessible entrances, and to house the risers for the sprinkler system.

Photographs



Subject site, looking north.



Subject site proposed expansion area, looking north



Subject site proposed new building expansion area, looking south



Subject site expansion area onto legally non-conforming foundation, looking north



Adjacent office building to the east, looking north



Adjacent vacant fitness center / proposed event center