Petition Number:	1501-VU-01
Subject Site Address:	180 South Cherry Street (the "Property")
Petitioner:	David Koone (the "Petitioner")
Request:	The petitioner is requesting a Variance of Use to allow a Construction Trade Office (lawn care business) in the LB-H: Local Business / Historical District (Chapter 13: Use Table).
Current Zoning:	LB-H (Local Business / Historical) District
Current Land Use:	Residential
Approximate Acreage:	0.30 acres +/-
Exhibits:	1. Staff Report 2. Aerial Location Map 3. Existing Conditions Exhibit 4. Petitioner's Application
Staff Reviewer:	Jesse M. Pohlman, Senior Planner

Petition History

This petition will receive a public hearing at the January 13, 2015, Board of Zoning Appeals meeting.

Analysis

Location: The subject property is 0.30 acres +/- in size and located at 180 South Cherry Street, on the east side of Cherry Street; approximately three hundred and sixty feet (360) feet south of Main Street (State Highway 32) (see **Exhibit 2**). The Property is zoned LB-H: Local Business / Historical District ("LB-H") and is located within the Floodplain District [1]. The Property currently contains a vacant 5,000-square foot +/- commercial structure (see **Exhibit 3**). The surrounding properties are primarily zoned LB-H, with the undeveloped parcel to the southeast zoned the SF3: Single-Family Medium Density District and located within the Floodplain District. The surrounding properties primarily include a mix of office and light industrial uses.

[1] The Petitioner is not proposing to construct any new structures, to structurally alter the existing building, nor to alter the land. As a result, the provisions of the Floodplain District are not triggered and would not currently apply.

Variance Request: The Petitioner has filed this variance request to allow the use of the property for a lawn care business for their recently purchased "Lawn Doctor" franchise, which they desire to locate in Westfield. The business would include the use of the property as an office/warehouse that will utilize the existing improvements and be conducted entirely indoors. The Department has determined the proposed use is a Construction Trade Office[2], as defined by the UDO.

A Construction Trade Office is permitted in the EI: Enclosed Industrial District and OI: Open Industrial District, and is a Special Exception in the GB: General Business District. As a result, this variance of use request has been filed in order to allow this business in the LB-H District. The UDO states the LB-H District is intended "to provide for the needs of local business in the central business district of the City and also to provide for the preservation, restoration, adaptive use and/or reconstruction of properties and historic buildings in the district[3]."

Zoning History: The Property has previously been granted two variances of use by the Board of Zoning Appeals as follows:

1. 0405-VU-004 (May 2004): Variance of Use approved to allow a "carpet cleaning business" (ChemDry franchise) which was characterized as: (i) a consumer service provider that typically performed carpet cleaning services at the consumers' residence; (ii) sale to the public of retail cleaning products (e.g., Spot Removal) from the business location; and (iii) drop-off and pick-up carpet cleaning of area rugs and carpets at the business location. This use ceased operating on the Property in the spring of 2006. Under the recently adopted UDO, this use would likely be qualified as a Light Industry[4] use.
2. 0608-VU-004 (September 2006): Variance of Use approved to allow a "plumbing showroom" (Hallam Plumbing Co.) with the condition that "[a]ny new construction on site will mandate the

[2] The UDO defines "Office, Construction Trade" as "[e]lectrical contractors, general contractors or construction offices, home remodeling companies, septic system contractors, heating and cooling contractors, painting contractors, landscaping contractors, and plumbing contractor offices, and the like, where such use is typically characterized to include some or all of the following aspects: storage of product for sale or for installation, storage of materials related to the business, storage of equipment or other implements, office space, parking of company vehicles, service areas for equipment and vehicles, warehouse space, showroom space, and/or retail sales."

[3] Article 4.15(A) LB: Local Business / Historical District; Purpose and Intent of the UDO.

[4] The Department Report for Petition 0405-VU-004 noted carpet cleaning was not an identified use in the zoning ordinance in effect at the time, but that carpet cleaning was similar in use and impact to a exterminators, which under the UDO would qualify as "Industry, Light", defined as "[r]esearch and development activities, manufacturing, compounding, processing, packaging, storage, assembly, fabrication, processing, and/or treatment of finished or semi-finished products from previously prepared materials, which activities are conducted wholly within an enclosed building using processes that ordinarily do not create noise, smoke, fume, odors, glare or health or safety hazards outside of the building or Lot and shall not include any use that is otherwise listed specifically in this Ordinance. Example uses include, but are not limited to: leather products manufactured from finished leather; casket and casket supplies; crating and packaging service; exterminators; glass fabrication and installation; newspaper publishing;

entire site be brought up to code." The use was characterized as a fully functioning plumbing showroom and repair facility that operated a sales area, a distribution area for service calls, storage (inside) and a general office operation. This use ceased operating on the Property in the spring of 2012 when the current property owner sold the plumbing company but retained ownership of the Property. Under the recently adopted UDO, this use would be qualified as a Construction Trade Office, as defined by the UDO.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan identifies this Property within the "Downtown"[5] land use classification. The Downtown area was further studied in 2008 after the formation of the Grand Junction Task Group (the "GJTG"). The study resulted in an amendment to the Comprehensive Plan know as the Grand Junction Master Plan and Addendum, adopted in 2009, and then subsequently the adoption of the Grand Junction Implementation Plan (the "Implementation Plan"), an amendment to the Comprehensive Plan adopted in 2013 (collectively, the "Grand Junction Plan").

The Grand Junction Plan identifies a long term vision as well as land use and financial investment goals for the intermediate and short terms. The centerpiece of the Grand Junction Plan includes creating public gathering spaces with key public investments opportunities to include: Grand Junction Plaza (currently being designed), new civic facilities, extended trail system and street network, enhanced stormwater management, and signature gateway developments.

The studied land use component of the Grand Junction Plan identified several sub-districts. The Property falls within the area identified as the "Junction Sub-District". The specific objectives for the Junction Sub-District, as prioritized in the Implementation Plan, include: (i) develop architectural and development standards; (ii) formalize a position with INDOT regarding the SR32 expansion through downtown; (iii) develop standards to address modifications to existing structures; (iv) develop Downtown Westfield Association review process; and (v) develop strategy for attracting/encouraging the following land uses: trail-oriented businesses (i.e. bike shop, coffee shop); dry cleaner; market; specialty shops; night-time gathering places; restaurants; offices[6].

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storage and transfer (household goods); manufacturing and/or assembly of storm doors, windows, awnings, siding, cabinets, can or containers, communication equipment, household appliances, marine equipment, office equipment and machinery, cloth products from finished cloth, furniture, glass and glass products, jewelry without retail, musical instruments, optical goods, paper boxes and paper products from finished paper, portable household appliances, electric hand tools, railroad equipment (including repair and service), recording instruments, tools, implements, machinery, mattress and upholstering, pharmaceutical, advertising and business signs, medicine and cosmetics; assembly operations of pre-manufactured parts, components; assembly, repair and manufacture of light component parts; taxidermist; machine, welding, tool and die shops; stamping and fabricating metal shops; tire recapping; malt products, brewery, distiller of liquor and spirits; bottling of alcoholic and non-alcoholic beverages; secondary food processing and packaging of products not produced on site."

[5] Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 24).

[6] Grand Junction Implementation Plan, Chapter 6: Implementation Plan Objectives and Action Items (pg. 26).

The Department, in coordination with the GJTG, is currently working on the prioritized objectives of the Implementation Plan; however, the specific objectives noted above for the Junction Sub-District are still in progress. As a result, the Department encouraged the Petitioner to meet with the GJTG. The GJTG has provided a letter as a result of their meeting with the Petitioner on December 30, 2014, which will be presented at the public hearing.

Floodplain District: The Property is located with the Floodplain District. The Petitioner does not currently plan to construct any new improvements nor alter the land. As a result, the provisions of the Floodplain District are not triggered and would not currently apply.

If any new improvements are proposed in the future for this Property, regardless of the use, then the Property and related improvements will be further reviewed by the City at that time for compliance with the applicable development standards of the LB-H District, as well as the applicable review process and standards of the Floodplain District (including any appropriate review and permits necessary by the Indiana Department of Natural Resources).

Procedural

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a variance of land use. This petition is scheduled to receive its public hearing at the January 13, 2015, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

Conditions: The UDO[7] and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO[8] requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be

[7] Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.
[8] Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variance of Use: The Board of Zoning Appeals shall approve or deny variances of land use from the terms of the UDO. A variance of land use may be approved under Indiana Code § 36-7-4-918.4 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
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;
3. The need for the variance arises from some condition peculiar to the property involved;
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
5. The approval does not interfere substantially with the Comprehensive Plan.

Recommendation

If the Board is inclined to approve the variance of use, then the Department recommends approving the petition with the following conditions and findings:

Recommended Conditions:

1. There shall be no outdoor storage on the Real Estate.
2. There shall be no outdoor overnight parking of vehicles and/or equipment on the Real Estate.
3. The Construction Trade Office use shall be limited in scope to a lawn care business. Any expansion or substantial alteration to the scope and operation of the use, as determined by the Director, shall require approval by the Board of Zoning Appeals.

Recommended Findings for Approval:

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

   Finding: It is unlikely that approving the requested variance of use would be injurious to the public health, safety, morals, and general welfare of the community because the use is consistent with previously permitted uses and is a use otherwise permitted in the community by the Unified Development Ordinance. The operation of the use will otherwise be required to comply with or exceed the applicable standards of the Unified Development Ordinance.

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*:

   Finding: It is unlikely the use and value of adjacent properties will be affected in a substantially adverse manner. The proposed variance of use should not have a negative impact on surrounding properties because the use will be conducted entirely within an otherwise vacant building and utilize existing improvements which are consistent with and compatible with the current character of the surrounding area.

3. *The need for the variance arises from some condition particular to the property involved:*

   Finding: The existing conditions of the property and surrounding area generally do not lend itself to uses permitted in the LB-H District. The existing conditions do, however, lend itself to the proposed use, which is less intense than other uses the property may otherwise support in its current condition.

4. *The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought:*

   Finding: The existing conditions of the property and surrounding area generally do not lend itself to uses permitted in the LB-H District. The property is currently vacant and located within the Floodplain District. As a result, the use of the property in its current condition for uses otherwise permitted in the LB-H District is likely restricted and constitutes an unnecessary hardship.

5. *Does not interfere substantially with the comprehensive plan:*

   Finding: The Comprehensive Plan identifies this property within the Junction Sub-District of the Grand Junction District. Although the Comprehensive Plan generally recommends land uses within the Junction Sub-District that are trail-oriented, specialty retail, and night-time gathering destinations; the proposed use offers an opportunity for the viable use of the property in its current condition. The success of short-term or interim uses of existing structures in downtown will contribute to the long-term success and stability of the Grand Junction District, thus the proposed use does not substantially interfere with the Comprehensive Plan.