



Petition Number: 1601-VS-01

Subject Site Address: 17925 Sun Park Drive

Petitioner: Practical Property Group by Christopher Woodard

Request: The Petitioner is requesting a Variance of Standard to allow temporary relief from the US Highway 31 Overlay District (Article 5.2).

Current Zoning: Enclosed Industrial (EI) District, subject to US31 Overlay District

Current Land Use: Commercial/Office

Approximate Acreage: 3 acres+/-

Exhibits:

1. Staff Report
2. Location Map
3. Site Plan Exhibit
4. Petitioner's Application

Staff Reviewer: Amanda Rubadue, Associate Planner

PROPERTY INFORMATION

The subject property is 3 acres +/- in size and is located at 17924 Sun Park Drive (the "Property") (see **Exhibit 2**). The Property is zoned Enclosed Industrial (EI) District and is located within the U.S. Highway 31 Overlay District (the "US31 Overlay").

PETITION HISTORY

This petition will receive a public hearing at the January 12, 2016, Board of Zoning Appeals meeting.

Variance of Development Standard: On April 29, 2013, the Board of Zoning Appeals approved a Variance of Development Standard (1304-VS-04) with conditions for the Property to temporarily allow relief from the US Highway 31 Overlay District for the landscaping business. The conditions for approval were as follows:

1. The approval of this variance shall expire on December 31, 2015.
2. Any request to extend the time limit for this variance shall be reviewed and approved by the Board of Zoning Appeals prior to December 31, 2015.
3. A new application shall be submitted by June 30, 2015 to the Community Development Department if an extension to the time limit for the variance is requested.



4. The Petitioner records an Acknowledgment of Variance with the Hamilton County Recorder's Office and returns a copy of the recorded instrument to the Economic and Community Development Department.

Variance of Use: On April 29, 2013, the Board of Zoning Appeals also approved a Variance of Use (1304-VU-02) with conditions for the Property to temporarily allow a landscaping business. The conditions of approval were as follows:

1. The approval shall expire on December 31, 2015.
2. Any request to extend the time limit for this variance shall be reviewed and approved by the Board of Zoning appeals prior to December 31, 2015.
3. A new application shall be submitted by June 30, 2015, to the Community Development Department if an extension to the time limit of the variance is requested.
4. The outdoor storage area for mulch be screened from view from U.S. 31 using opaque material.
5. The Petitioner shall record an Acknowledgement of Variance with the Hamilton County Recorder's Office and return a copy of the recorded instrument to the Economic and Community Development Department.

VARIANCE REQUEST

This Variance of Development Standard request (1601-VS-01) is for an extension of time to continue relief from the US Highway Overlay District for the Property (the "Variance of Development Standard"), which expired, in accordance with the conditions of approval, on December 31, 2015. The petitioner has requested an extension to October 31, 2018; however, the Department recommends a limit of one (1) year extension to December 31, 2016, to continue to temporarily allow the Variance of Development Standard on the Property.

ANALYSIS

As summarized by the Department Report for the original approval (1304-VS-02), applying the US31 Overlay standards to the Property would require the existing building to be brought into compliance with all the US31 Overlay's standards (Article 5.2 of the UDO), including, but not limited to: use requirements, lot size, setbacks, building height, minimum gross floor area, lot coverage, architectural requirements, and screening requirements.

Please note if the accompanying Variance of Use request (1601-VU-01) to allow the landscaping business with outdoor storage on the Property is not approved, then this Variance Development Standard request (1601-VS-01) is not necessary.



PROCEDURAL

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the January 12, 2016, 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 UDO¹ 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 UDO² 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 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.

Variances of Development Standard: The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 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; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

¹ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

² Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

DEPARTMENT COMMENTS:

If the Board is inclined to approve the time limit extension, then the Department recommends the following written findings of fact, and that the Variance of Development Standard (1601-VS-01) is approved with the condition that the approval of the Variance of Development Standard shall expire on December 31, 2016.

Recommended Findings for Approval:

If the Board is inclined to approve the variance, then the Department recommends the following findings:

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

Finding: It is unlikely that the continued reuse of the existing building and site for a temporary period of time would 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:*

Finding: It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The Property and the surrounding area were developed without the existing U.S. Highway 31 Overlay standards being in effect. None of the surrounding area complies with the Overlay standards. Approving the variance would result in the character of the area to remain unchanged.

- 3) *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:*

Finding: Strict adherence to the zoning ordinance would mean that the existing building and site conditions would be required to comply with the U.S. highway 31 Overlay standards. The required improvements would be significant and the petitioner has stated that making them would be burdensome to the operations of the business at this temporary location.