



**Petition Number:** 1601-VU-01

**Subject Site Address:** 17925 Sun Park Drive

**Petitioner:** Practical Property Group by Christopher Woodard

**Request:** The Petitioner is requesting a Variance of Use to allow a landscaping business within the US Highway 31 Overlay Zone (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

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### **PROPERTY INFORMATION**

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

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### **PETITION HISTORY**

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

**Variance of Use:** On April 29, 2013, the Board of Zoning Appeals 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 of Development Standard: On April 29, 2013, the Board of Zoning Appeals also 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.

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### **VARIANCE REQUEST**

This Variance of Use request (1601-VU-01) is for an extension of time to continue to temporarily allow the landscaping business with outdoor storage on the Property (the "Variance of Use"), 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 Use on the Property.

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### **ANALYSIS**

As summarized by the Department report for the original approval (1304-VU-02), the Property abuts U.S. Highway 31 and is directly impacted by the U.S. 31 Majors Moves project, so although the Variance of Use does not meet the community's long-term vision for the U.S. 31 corridor, the Department believes the short term use of the Property for the Variance of Use provides and economic benefit and viable short term use of the Property.



Since the approval of the original Variance of Use (1304-VU-02), the City has adopted the Unified Development Ordinance (the “UDO”). The UDO now defines and further qualifies the proposed landscaping business as a “Construction Trade Office<sup>1</sup>”.

Chapter 13 Use Table of the UDO permits a Construction Trade Office in the EI District (as cross referenced by Article 4.24(B)); however, is specifically excludes a Construction Trade Office in the US31 Overlay (as cross referenced by Article 5.2(C)). As a result, this Variance of Use request is still required in order to continue to allow the proposed use.

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## **PROCEDURAL**

**Public Notice:** The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Use. 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 UDO<sup>2</sup> 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 benefitted by 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.

**Acknowledgment of the Variance:** If the Board of Zoning Appeals approves this petition, then the UDO<sup>3</sup> requires the approval of the variance shall be memorialized in an acknowledgment of variance instrument prepared by Department. The acknowledgment 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 the 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 acknowledgment shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

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<sup>1</sup>Chapter 12 of the UDO defines “Construction Trade Office” as “Electrical 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, warehouse space, showroom space, and/or retail sales.”

<sup>2</sup>Article 10.14(I) Process and Permits; Variances; Conditions of the UDO

<sup>3</sup>Article 10.14(K) Process and Permits; Variances; Acknowledgment of Variance of the UDO



Variances of Use: The Board of Zoning Appeals shall approve or deny variances from the terms of the UDO. A variance 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 result in practical difficulties in the use of the subject property; and
5. The approval does not interfere substantially with the Comprehensive Plan.

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**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 Use (1601-VU-01) is approved with the condition that approval of the Variance of Use 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 allowing a landscaping business to continue to locate on the Property for a temporary period of time will 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 need for the variance of use arises from some condition peculiar to the property involved.*



**Finding:** While the use of a landscaping business is permitted within the Enclosed Industrial (EI) zoning, it is an excluded use under the U.S. Highway 31 overlay.

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

**Finding:** While the use of a landscaping business is permitted within the Enclosed Industrial (EI) zoning, it is an excluded use under the U.S. Highway 31 overlay.

- 5) *The approval does not interfere substantially with the comprehensive plan:*

**Finding:** The Westfield-Washington Comprehensive Plan (the "Comprehensive Plan") includes this area in the Downtown area. The Grand Junction Plan, the Comprehensive Plan addendum for Downtown Westfield, recommends this quadrant of U.S. 31 and State Road 32 develop as hospitality uses. The continued use of the Property as a landscaping business does not accomplish the vision; however, placing a reasonable time limit on any approval would help ensure the overall vision of the Grand Junction Plan is achieved in the future.