



**Petition Number:** 1603-VU-03  
**Subject Site Address:** 16708 Dean Road  
**Petitioner:** Esler Properties, LLC by Robert Esler  
**Request:** The Petitioner is requesting a Variance of Use to allow an automobile repair 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  
**Approximate Acreage:** 4.9 acres+/-  
**Exhibits:**  
1. Staff Report  
2. Location Map  
3. Site Plan  
4. Existing Conditions  
5. Petitioner's Application  
**Staff Reviewer:** Amanda Rubadue, Associate Planner

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### **PROPERTY INFORMATION**

The subject property is 4.9 acres +/- in size and located at 16708 Dean Road (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 March 8, 2016, Board of Zoning Appeals meeting.

Variance of Use: On November 9, 2010, the Board of Zoning Appeals approved a Variance of Use (1011-VU-05) with conditions for the Property to temporarily allow an automobile repair 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.



## **VARIANCE REQUEST**

This Variance of Use request (1603-VU-03) is for an extension of time to continue to temporarily allow the automobile repair business 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, 2020; however, the Department recommends a limit of a three (3) year extension to December 31, 2018, 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 (1011-VU-05), 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 an economic benefit and viable short term use of the Property.

Since the approval of the original Variance of Use (1011-VU-05), the City has adopted the Unified Development Ordinance (the "UDO"). The UDO now defines and further qualifies the proposed automobile repair business as "Retail, High Intensity<sup>1</sup>" which is not a permitted use within the Enclosed Industrial (EI) District.

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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 March 8, 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.

Variations 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 (1603-VU-03) is approved with the condition that approval of the Variance of Use shall expire on December 31, 2018.**

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 an automobile repair 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.

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<sup>1</sup>Chapter 12 of the UDO defines "Retail, High Intensity" as "building finishes store (large), building supply store (large), department store (large), discount store (large), furniture store (large), grocery/supermarket (large), home electronics/appliance store (large), office supplies (large), sporting goods (large), superstore, variety store (large), auto and motorcycle service uses (e.g., parts sales, tire sales and/or repair, **service garage**, rust proofing, storage, car wash), pet-oriented businesses (e.g., pet shop, obedience schools, grooming) toy store (large)."

<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

- 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:** The use of an automobile repair business is not permitted within the Enclosed Industrial (EI) zoning and 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:** The use of an automobile repair business is not permitted within the Enclosed Industrial (EI) zoning and 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 Employment Corridor. The Comprehensive Plan recommends this Highway Corridor be reserved for employment-generating uses and related supporting service uses. The continued use of the Property as an automobile repair business would not interfere substantially with the Comprehensive Plan.