

CITY OF BLOOMINGTON



JUNE 25, 2015 @ 5:30 p.m.
COUNCIL CHAMBERS #115
CITY HALL

CITY OF BLOOMINGTON
BOARD OF ZONING APPEALS
June 25, 2015 at 5:30 p.m.

Council Chambers - Room #115

ROLL CALL

MINUTES TO BE APPROVED: February 19, 2015

REPORTS, RESOLUTIONS, AND COMMUNICATIONS:

PETITION WITHDRAWN:

- AA-8-15 **Richard E. Deckard Family LP #208**
604 S. Washington St.
Request: Administrative Appeal of Staff's decision to require a *Zoning Commitment*.

PETITIONS:

- UV/V-16-15 **Bret and Elisha Spier**
2110 E. Covenanter Dr.
Request: Use variance to allow construction in a floodway and variance from sidewalk requirements.
Case Manager: James Roach
- AA-15-15 **Derk Brewer**
201 E. SR 45/46 Bypass
Request: Administrative Appeal of Staff's decision to require a *Zoning Commitment*.
Case Manager: Tom Micuda

**BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
LOCATION: 201 E. State Road 45/46 Bypass**

**CASE #: AA-15-15
DATE: June 25, 2015**

APPELLANT: Derk Brewer
PO Box 5913, Bloomington, IN 47407

COUNSEL: Christine Zook, Ferguson & Ferguson
403 East 6th Street, Bloomington, IN 47008

REQUEST: The appellant is appealing Staff's decision to require a recordable zoning commitment in association with a Certificate of Zoning Compliance for a building permit.

REPORT SUMMARY: The appellant owns the property located at 201 E. State Road 45/46 Bypass. This property is zoned Residential Single-family (RS). The appellant requested a permit to remodel the single unit residential structure on the property in order to construct an addition. The home is listed on the permit as the appellant's personal residence.

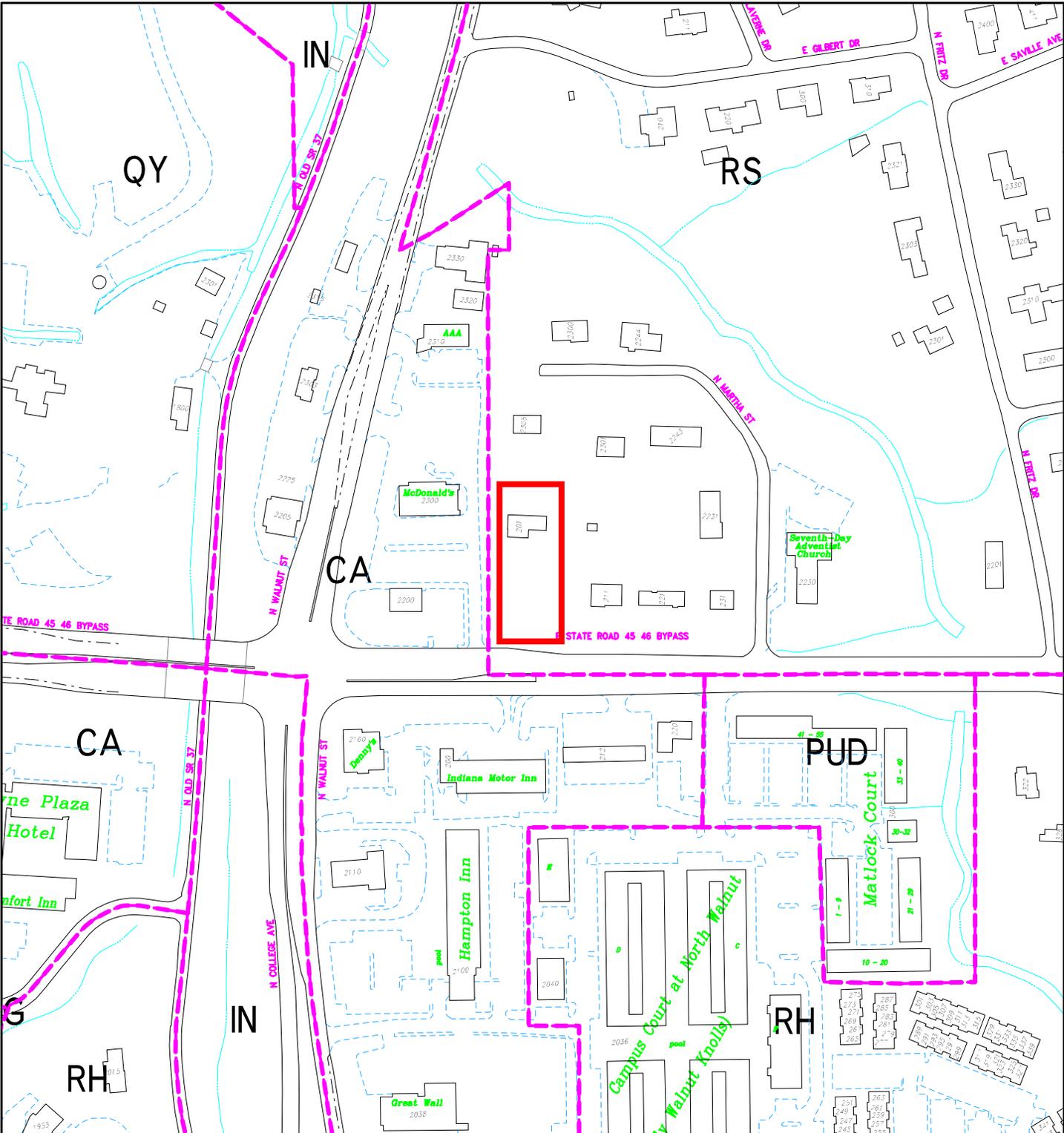
The permit was applied for and sent to the City for zoning review in February 2015. The total number of bedrooms listed on the permit is five. Although there is no City code restriction on the number of bedrooms allowed in a single family dwelling zoned single family, there is an occupancy restriction of no more than three unrelated adults. In such instances where staff identifies a discrepancy between the number of bedrooms and number of allowed unrelated adult occupants, or in instances involving a property owner or a property which has been the subject of a verified over-occupancy violation, Planning and Transportation staff have periodically required permit applicants to sign recordable commitments acknowledging the zoned occupancy limit of three unrelated adults. The appellant asserts that staff, in this instance, does not have the authority to require such a commitment. As a result, the permit has not been issued and the BZA must arbitrate on whether such a commitment can be required.

The appellant asserts that the potential commitment requiring the applicant to comply with occupancy restrictions places an unwarranted restriction on the appellant's use of property. The appellant further asserts that the recording of this commitment will also bind subsequent owners to the occupancy limit regardless of whether the occupancy requirement of the zoning district would change or whether the property was eventually rezoned. Finally, the appellant argues and cites why this zoning commitment is not supported by Indiana law (please see appellant's statement for further details). The City's Legal Department has determined that the cases cited by the Petitioner are not applicable to the situation before this Board and will be present for this hearing to answer any legal questions regarding the Petitioner's case or the Petitioner's legal arguments.

From the staff's perspective, this recordable commitment is being required for the following reasons:

- ❖ Under 20.09.100 of the Unified Development Ordinance (Commitments; Site Plan), the planning staff "may allow or require the owner of a parcel of real property to make a written commitment concerning use and/or development of that parcel in connection with approval of a Site Plan pursuant to *Section 20.09.120: Site Plan Review*. The ordinance derives its authority to require this commitment from Indiana Code Section 36-7-4-1015 which reads, in relevant part, as follows: "as a condition to the primary approval ... of a proposed subdivision plat or development plan ... the owner of a parcel of real property may be required or allowed to make a commitment concerning the use or development of that parcel." The Unified Development Ordinance refers to development plan approval as site plan review. Appellant's proposal clearly qualifies as a request for staff to approve a Site Plan.
- ❖ The property's location is proximate to the Indiana University campus and is attractively positioned as a future rental property. In the past, staff decisions to require recordable commitments governing occupancy have focused on properties zoned single family in proximity to campus (e.g. in core neighborhoods or single family neighborhoods such as Matlock Heights).
- ❖ As noted above, the bedroom count is higher than the allowed occupancy count. In situations where bedroom counts in single family dwellings proximate to campus are either four or five, while occupant load allowances are at three, staff has typically required recordable commitments governing occupancy to put current and future owners on notice.
- ❖ When bedroom counts in structures are higher than occupant load restrictions, staff from Planning and Transportation and HAND have dealt with a reasonable number of over-occupancy enforcement situations to recognize that such occupancy commitments are a necessary proactive step to protect the integrity of the City's occupancy rules.
- ❖ The specific property in question is identified in City records as being a registered rental from 2008 to 2013. Given this previous rental history, higher bedroom count, and proximate location to Indiana University, staff believes that a recordable zoning commitment is advisable and an appropriate use of the commitment authority designated in 20.09.100 of the Unified Development Ordinance.
- ❖ Between August of 2011 and December of 2011, the Petitioner allowed the following properties he owned to be occupied by more than the legally permitted number of unrelated adults: 2301 East Martha Street; 2305 East Martha Street; and 3946 East 10th Street. The City and the Petitioner entered into a Settlement Agreement regarding these violations. Given this previous history, staff believes that a recordable zoning commitment is advisable.

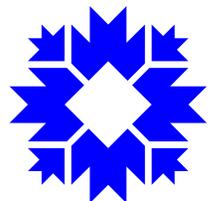
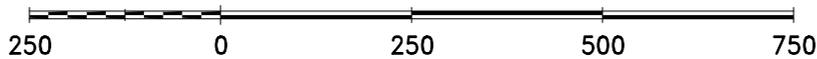
RECOMMENDATION: Staff recommends denial of the Administrative Appeal, which would require the permit applicant to sign and record a zoning commitment governing occupancy prior to issuance of a Certificate of Zoning Compliance.



AA-15-15
Location Map

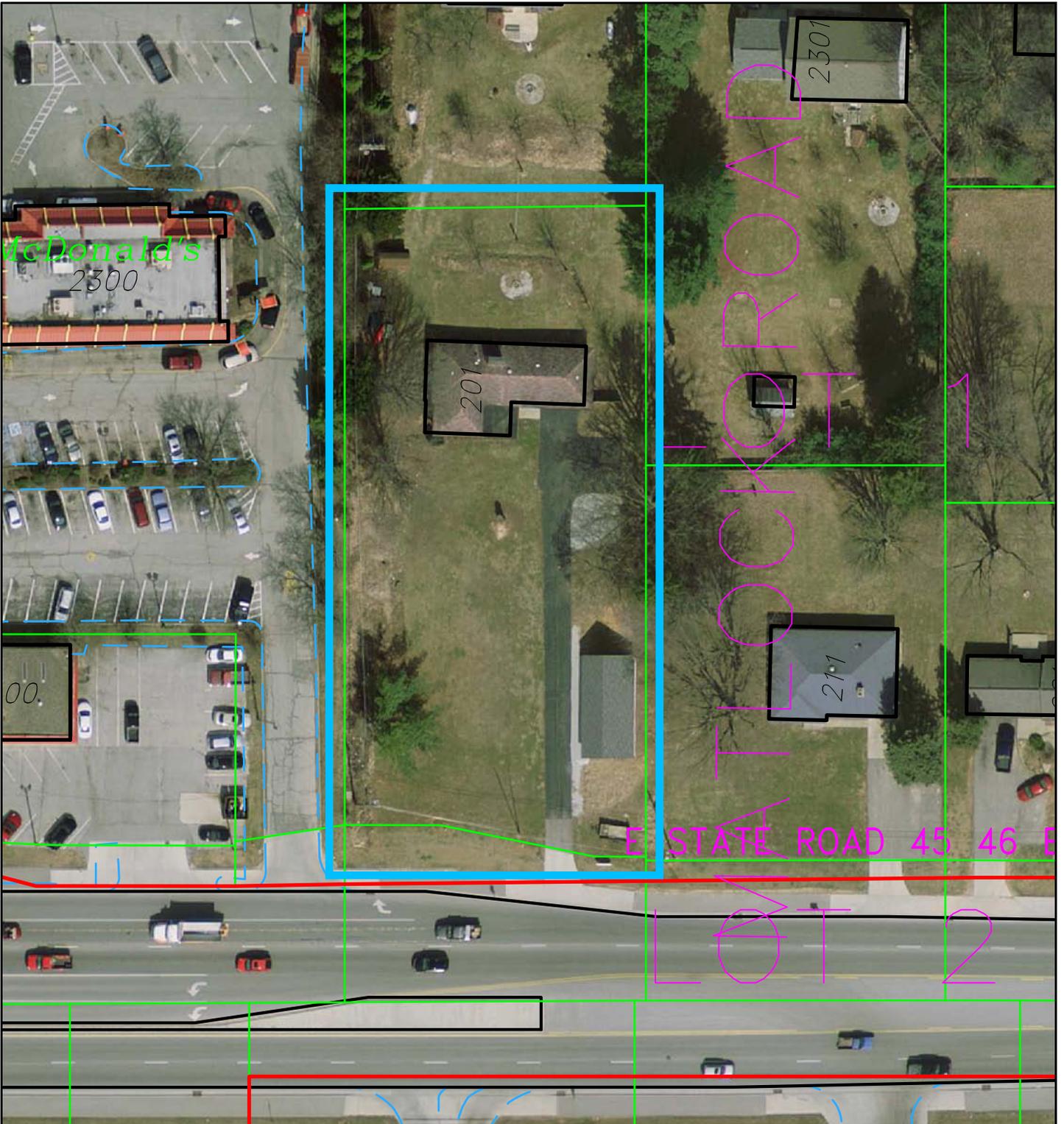
City of Bloomington
Planning & Transportation

By: roachja
19 Jun 15



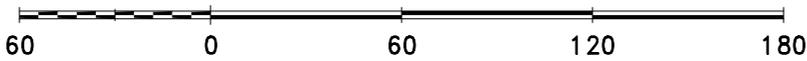
Scale: 1" = 250'

For reference only; map information NOT warranted.



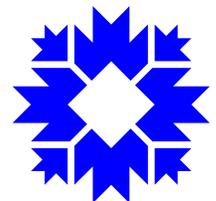
AA-15-15
2014 Aerial Photo

By: roachja
19 Jun 15



For reference only; map information NOT warranted.

City of Bloomington
Planning & Transportation



Scale: 1" = 60'



FERGUSON & FERGUSON
ATTORNEYS AT LAW

403 East Sixth Street ■ Bloomington, Indiana 47408-4098 ■ Telephone (812) 332-2113 ■ Fax (812) 334-3892

Christine L. Zook

Tel. (812) 332-2113, ext. 205, email: CLZ@ferglaw.com

May 13, 2015

Patricia Mulvihill
City of Bloomington, Legal Department
City Hall – Suite 220
401 N Morton St.
Bloomington, IN 47402
Sent electronically to mulvihip@bloomington.in.gov

Re: Residential Permit Application for 201 East State Road 45/46 Bypass,
Bloomington – Petitioner's Statement

Dear Ms. Mulvihill:

I am submitting this letter and attached documents as Petitioner's Statement for the appeal of the administrative decision of the City of Bloomington Planning and Transportation Department's requesting that Derk Brewer sign a Zoning Commitment in exchange for issuance of a Certificate of Zoning Compliance ("CZC") for the remodel at 201 East State Road 45/46 Bypass. I am requesting that this Statement, along with the attached documents, be presented for consideration by the City's Board of Zoning Appeals.

Petitioner, Derk Brewer, requested a remodeling permit for 201 East State Road 45/46 Bypass to construct an addition onto the existing house. The property is a single story, stone home sitting on a .70 acre lot. The property is located in the Matlock Heights neighborhood, and zoned Residential Single-Family. The home will be Petitioner's personal residence once the construction is completed.

Petitioner applied for a building permit in February and, to date, has not received a building permit for his remodel. Petitioner has not been informed that the remodel will cause the property to be in violation of the Unified Development Ordinance. Pat Shay sent Petitioner a Zoning Commitment on March 13, 2015. The Zoning Commitment places unwarranted restrictions on Petitioner's use of its property, which would bind Petitioner and any subsequent owner to a permanent bedroom and occupancy limit, regardless of whether the occupancy requirements of the zoning district changed or the property was rezoned.

Respectfully, requiring a Zoning Commitment in exchange for issuing a Certificate of Zoning Compliance, and subsequent building permit, for a home remodel is not supported by Indiana law. The proposed remodel complies with all applicable zoning

Petitioner's Statement

Page 2

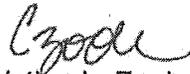
requirements. As a matter of law, if an applicant for a building or remodel permit "meets all of the requirements of the [zoning] ordinance, he is entitled to issuance of a permit as a matter of right and it may not lawfully be withheld." Metro. Bd. of Zoning Appeals of Marion Cnty. v. Shell Oil Co., 395 N.E.2d 1283 (Ind. Ct. App. 1979). Moreover, because the proposed remodel complies, there is nothing in the UDO which gives the Planning Department authority to require a Commitment. Due process dictates that zoning ordinances must provide fair warning to applicants "as to what the governing body will consider in making a decision." Hendricks Cnty. Bd. of Comm'r v. Reith-Riley Constr. Co., 868 N.E.2d 844, 852 (Ind. Ct. App. 2007). The Planning Department cannot consider unknown or subjective factors when deciding whether or not to issue a Certificate of Zoning Compliance.

Under 20.09.220, the Planning Department's review of structure alterations is limited to ensuring that the proposal complies with zoning. The Planning Department, having reviewed the proposed remodel and having determined that it conforms with the UDO, should issue a Certificate of Zoning Compliance.

The addition and remodel to the home will improve the value of the property, and will likely ensure that the property is owner-occupied for years to come. The addition will have a positive impact on the neighborhood, by keeping the property owner-occupied.

Thank you for your time and consideration.

Respectfully submitted,



Christine L. Zook

Enclosure: Residential Permit Application and Floor plan
Zoning Commitment
April 16, 2015 Email from Pat Shay

Hello Derk,

Rick had originally stated that his permit was 3 bedrooms, but he submitted a second permit that stated 4 bedrooms. The only change to the proposed commitment was we changed the wording from 3 bedrooms to 4 bedrooms to describe the work being done.

Regarding your questions:

Question 1.- Are you saying that if I apply for a permit to build anything on this house(my personal home) larger than a bathroom or a closet, that I will need to sign and record your letter of commitment in order for you to release my permit?

Not exactly. There is certainly other work that could be approved without a commitment. However, I cannot anticipate every scenario. I can say that if there is any work or addition that includes new bedrooms, new rooms that could be easily converted to bedrooms (dens, dining rooms, study rooms, etc...) by you or future owners, we do anticipate requiring a zoning commitment.

Question #2.- Will this now be the standard for any permit application from anyone, anywhere in the city that asks for an addition onto a 3 bedroom single family residence? If not, please tell me **why my home in particular**, requires this additional restriction?

As zoning issues are inherently site specific a blanket policy cannot apply to every situation. I would say that we have required several commitments in similar situations and your home in particular has not been singled out. I believe that once we have completed the research that you requested, that you will see that you are not being treated differently. In areas of neighborhoods near the university that are restricted by zoning to occupancy by no more than 3 unrelated adults, applicants seeking approvals for more than 3 bedrooms or include rooms that could be easily used or converted to bedrooms by current or future owners are often being required to provide the same type of recordable zoning commitment.

I hope this helps to clarify the issue and we will continue to complete the research that you requested.

Have a nice weekend Derk,
Patrick

APPLICATION MUST BE FILLED OUT COMPLETELY; PLEASE PRINT

Parcel No. 013-23350-00 Subdivision BREWER SUBDIVISION Lot No. 1
Project Address 201 E ST RD 45/46 PHASES City Bloomington Zip Code 47404
Township BLGTN Section No. 2

Property Owners Name DEAN BREWER Phone No. 812-360-4195
Property Owners Address 20301 5913 City Blgtn Zip Code 4740

Applicants Name SAME Phone No.
Applicants Address City Zip Code

General Contractor SAME Phone No.

Please check applicable boxes and fill in blanks as required:

Proposed Work: [X] New Construction [X] Addition [] Remodel (area) Other (explain)
Rental: [] Yes [X] No Flood Plain: [] Yes [X] No Sink Holes: [] Yes [X] No Watershed: [] Yes [] No
Building use (i.e. personal residence, duplex, storage bldg., barn, garage, etc., (explain)

PERSONAL RESIDENCE

Total number of bedrooms 5 Number of residential units 1 Estimated construction cost (census) 200K
Total Square Footage of proposed structure 1644 + 1700 = 2344
First floor square footage 1644 Garage/Carport square footage 440 [X] Attached [] Detached
Second floor square footage 700 Covered Deck(s)/Porch(s) square footage 224
Third floor square footage - Other Floor square footage (explain) -
Basement square footage - Grading area (area of soil disruption) 900
Elevated deck (>30") square footage -

Driveway Permit No. [] State of Indiana [] Monroe County [] City of Bloomington
Wastewater system to be connected to: [X] City of Bloomington Sewer [] Other sanitary system
Septic System: Permit no. Number of bedrooms on permit

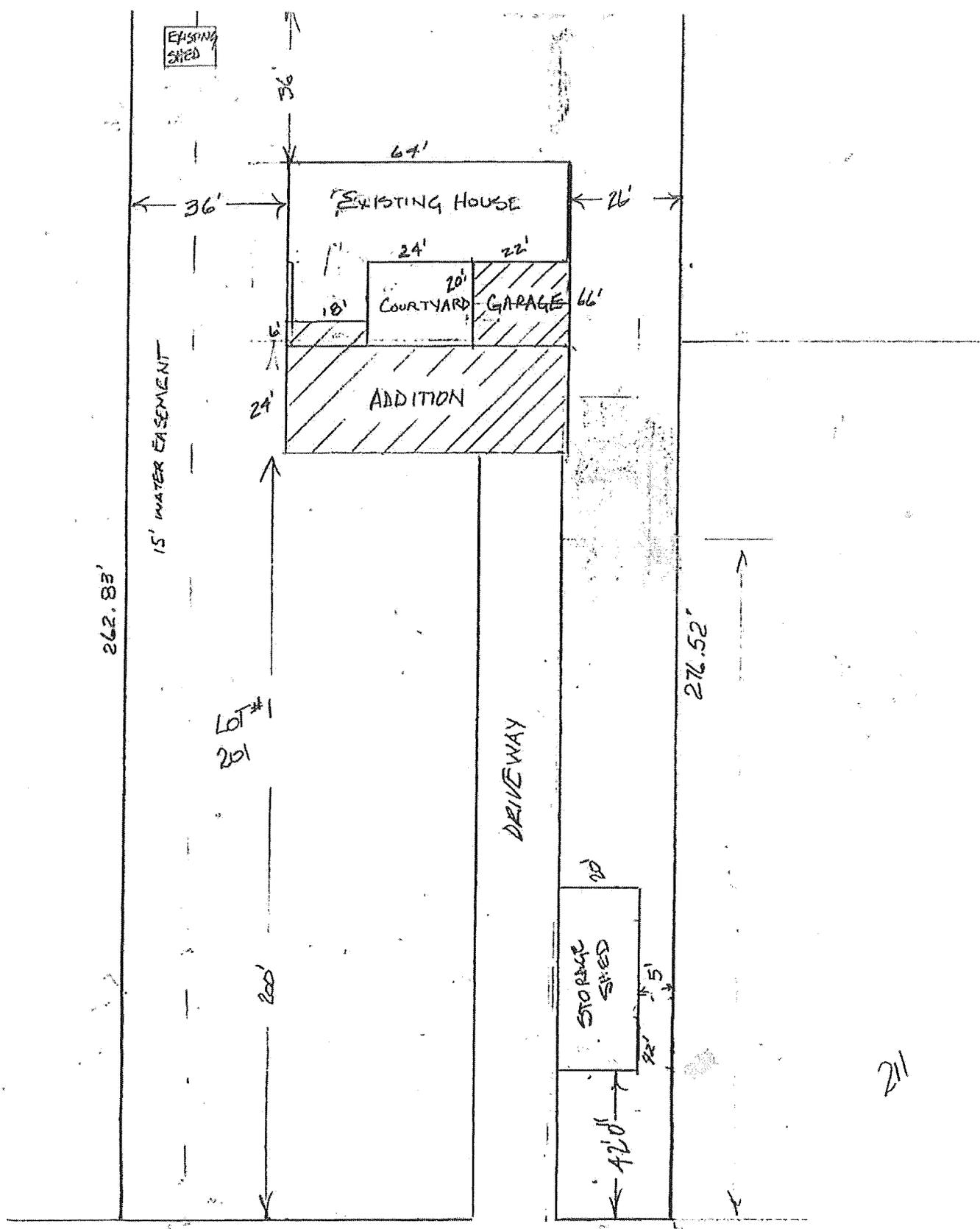
The applicant hereby certifies and agrees as follows: (1) I am authorized to make application. (2) I have read this application and attest that the information furnished is correct, including that contained in plans. (3) If there is any misrepresentation in this application, or associated documents, Monroe County may revoke any permit or Certificate of Occupancy issued based upon this misinformation. (4) I agree to comply with all Monroe County Ordinances, permit conditions and State statutes which regulate building construction, use, occupancy and site development. (5) I grant and will request Monroe County Officials to enter onto the property listed on this application for the purpose of inspecting the work permitted by this application and posting notices. (6) I will retain the Certificate of Occupancy in my records upon completion of the project. NOTE: Plans shall mean all site and construction plans and specifications, whether furnished prior to or subsequent to the application date. All plans furnished subsequent to application date constitute an amendment to the original application and must be specifically approved by the County with an appropriate endorsement and the signature of the approving official prior to plan implementation. The Permit is not valid, and work is not permitted until signed and issued by the agent of the Monroe County Building Department.

Signature of Applicant: [Signature] Date: 2/1/15

01/04/2011/Bldg/Reviews/Foms

17
TOWARDS

CAR LOT



45/46 BYPASS

211
E. PLATY
214 ADDITION
45/46
55

ZONING COMMITMENT

This Commitment is being made in connection with an approval for a building permit and the issuance of Certificate of Zoning Compliance C15-120 on real estate located at 201 E. State Road 45/46, Bloomington, Monroe County, Indiana (hereinafter known as the "real estate"). This real estate is described as Lot Number One (1) in Brewer Subdivision, the City of Bloomington, Indiana, shown by the plat thereof, recorded in Plat Cabinet D, Envelope 59, in the office of the Recorder of Monroe County, Indiana, which real estate has a parcel number of 015-05-28-200-013.000-005. Derk Brewer ("Owner"), hereby commits to the City of Bloomington for itself, its successors and assigns, that:

At no time shall this property of five bedrooms and three common rooms (as identified on the above referenced building permit) be occupied by more than one family as defined within the City of Bloomington's Unified Development Ordinance, more specifically:

"an individual or group of people all of whom are related to each other by blood, marriage, or legal adoption, and any other dependent children of the household" and also "...a group of no more than three (3) adults, and their dependent children, living together as a single housekeeping unit in a dwelling unit."

Also,

This Commitment shall be recorded in the office of the Recorder of Monroe County and shall be binding on the undersigned and upon any subsequent owner or other person acquiring an interest in the real estate.

Prior to the issuance of any permits, a copy of the recorded commitment shall be transmitted to the Planning and Transportation Department.

This Commitment may be modified or terminated only by action of the City of Bloomington Plan Commission.

This Commitment shall be enforceable by the City of Bloomington or by any adjacent property owner or other interested party as defined by the Plan Commission Rules and Procedures.

Failure to honor this Commitment shall subject the person then obligated hereby to revocation of occupancy permits and other legal action including but not limited to the power of the City of Bloomington to have the work done at the expense of the property owner.

Failure to honor this commitment shall also constitute a violation of the City of Bloomington Unified Development Ordinance and shall be subject to all penalties and remedies provided thereunder.

DATED this _____ day of _____, 2015.

By: "Owner's Signature Here" _____

Printed Name _____

AA-15-15
Petitioner's Statement
Draft Zoning
Commitment

ATTEST:

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Personally appeared before me, a Notary Public in and for said County and State,
_____, Derk Brewer, owner, who acknowledged execution of the above and
foregoing instrument to be his or her voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2015.

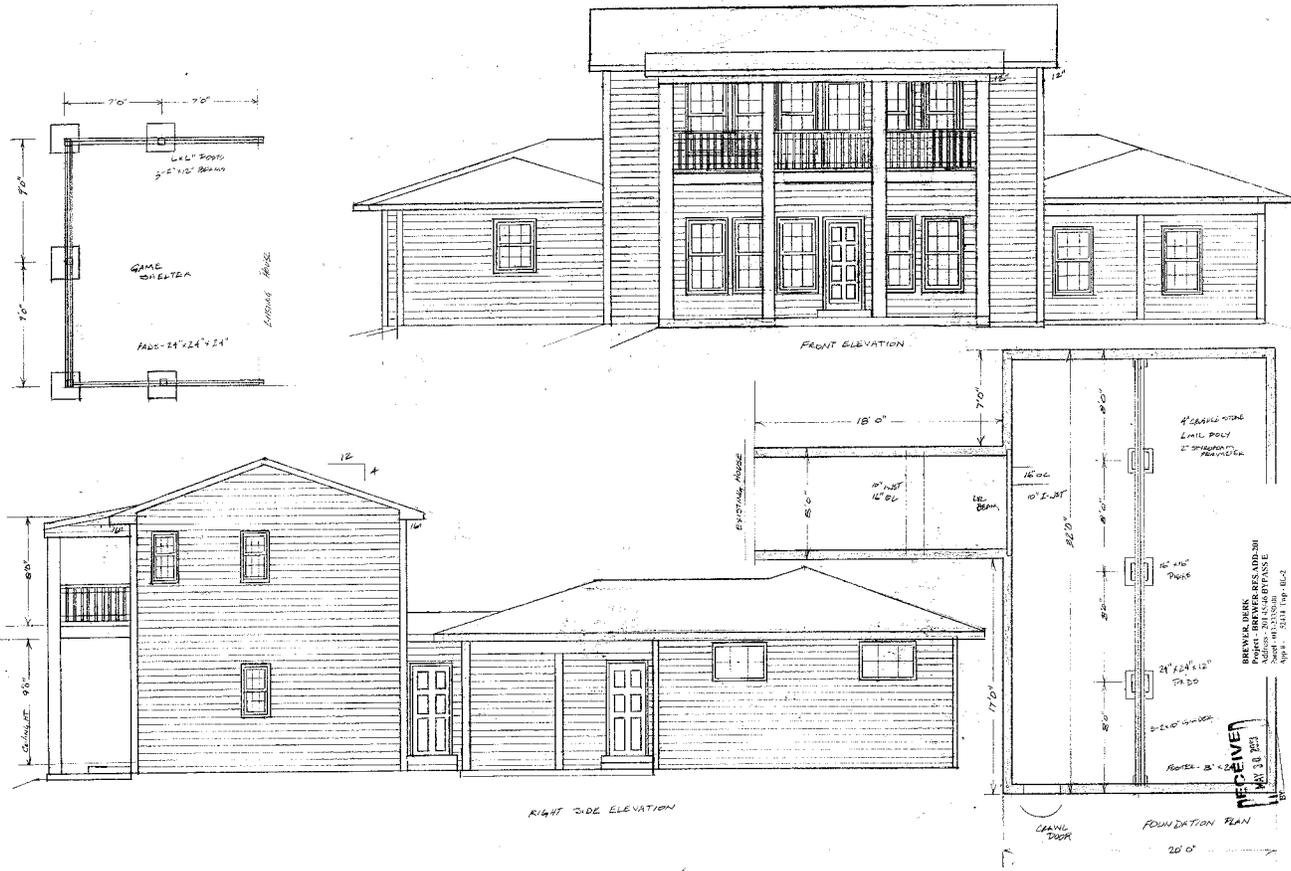
Printed Name of Notary Public
My Commission Expires:

Signature of Notary Public

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required
by law. Patricia Mulvihill

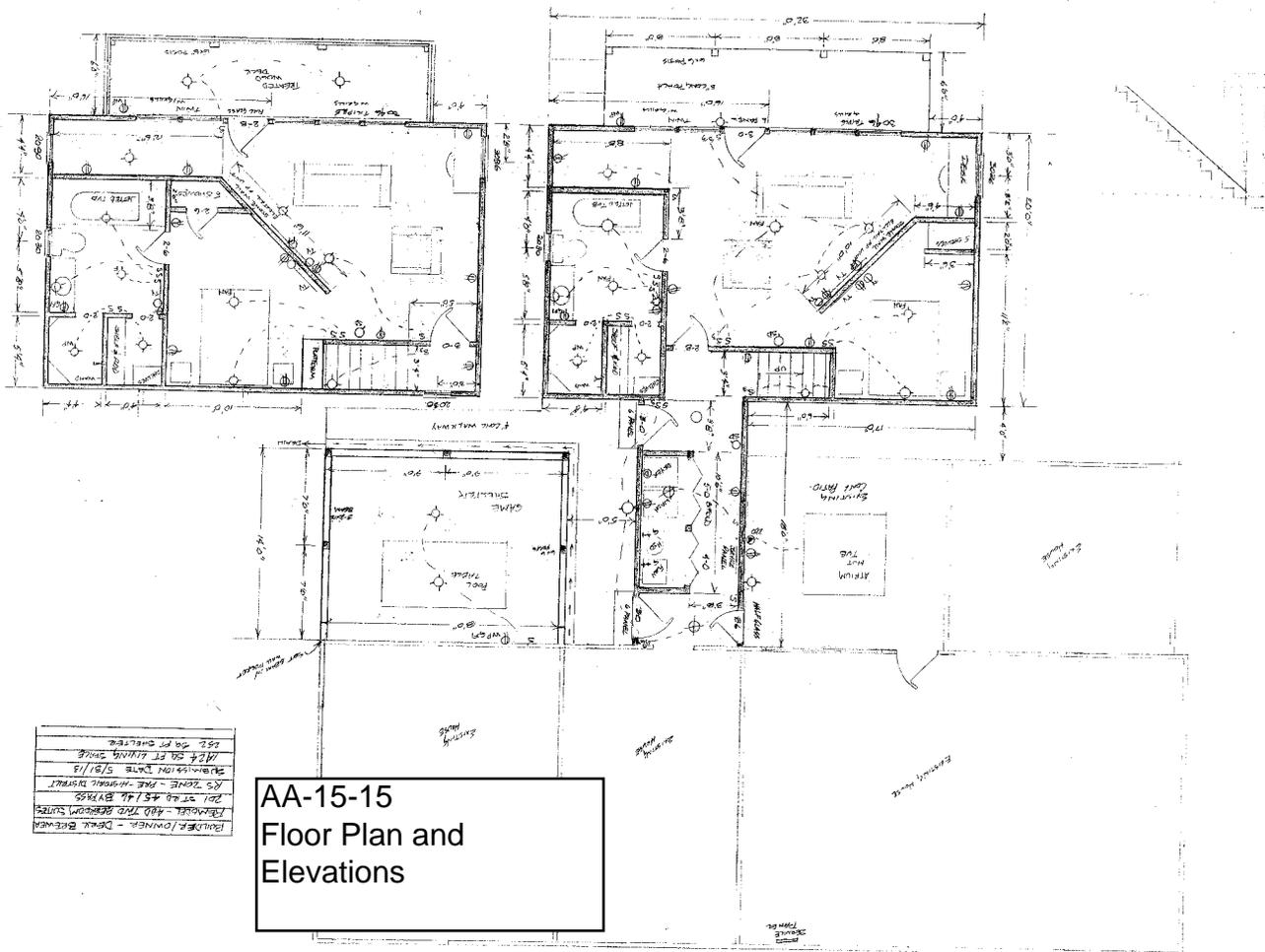
This instrument approved by Patricia Mulvihill, Attorney at Law, City of Bloomington, P.O. Box 100, Bloomington, Indiana 47402.

AA-15-15
Petitioner's Statement
Draft Zoning
Commitment



BREWSTER BROS. ARCH. INC.
 Address: 201 N. BYPASS E.
 Phone: 334-1111 Fax: 334-1122

RECEIVED
 MAY 30 2005



DOUBLE OWNER - DENNY BREWSTER
 REMODEL - ADD TWO BEDROOM SUITES
 PER STATE #45141 BYPASS
 R/S ZONE - PRE-HIGHWAY TRAVEL
 EXPIRATION DATE 5/31/13
 MET SET FT. LIVING SPACE
 SEE 20 FT. CHUTE

AA-15-15
 Floor Plan and
 Elevations

BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
Location: 2110 E. Covenant Dr.

CASE #: UV/V-16-15
DATE: June 25, 2015

PETITIONER: Bret and Elisha Spier
2517 Sandberg Ct., Bloomington

CONSULTANT: Loren Wood
807 S Mitchell St, Bloomington

REQUEST: The petitioners are requesting a use variance to allow a 10 foot wide permeable paver driveway within the floodplain and a variance from sidewalk requirements.

SITE DESCRIPTION: The property is located at the southwest corner of E. Covenant Drive and S. Brooks Drive and is zoned Residential Single-family (RS). The petitioners are currently constructing a single family house on the property, which is surrounded on all sides by single family homes. Approximately the western 1/3 of the property is within the floodplain along the western branch of Jackson Creek. The floodway and floodway fringe have not been delineated on this section of floodplain, so all portions of the floodplain are considered floodway. The Unified Development Ordinance (UDO) does not allow any development in the floodway.

As stated, the petitioners are constructing a new single family house on this lot. The previous home on the lot utilized a driveway and driveway cut that is within the floodway by about 20 feet. The petitioners wish to utilize this existing cut and construct a new "circle drive" on the north side of the house along Covenant. Approximately 65 feet, or 650 square feet, of the drive is within the floodway. Of the 650 square feet, approximately 400 square feet is in the same location as the previous driveway.

The petitioners are requesting a use variance to allow for construction of this driveway in the floodway. The drive location was not within the mapped floodway prior to 2012. No fill material would be placed in the floodway. The portions of the drive within the floodway would be constructed of permeable pavers to reduce the potential impact of leaking oil and gasoline. The driveway is more than 100 feet from the actual creek. The Indiana Department of Natural Resources has already approved a "construction in a floodway" permit for this project. Despite the lack of a delineated floodway fringe for this section of the west branch of Jackson Creek, staff believes that if it were to be delineated it is highly likely that the proposed drive location would be located within the floodway fringe. The UDO permits drive and parking areas constructed of permeable materials in the floodway fringe. In addition, reuse of the existing drive cut would allow for the preservation of two existing trees.

The Plan Commission reviewed this petition at their June 15, 2015 meeting and voted unanimously to forward a positive recommendation to the Board of Zoning Appeals.

The petitioners are also requesting a variance from sidewalk requirements. Construction of a new house requires the construction of sidewalks on all adjacent street frontages.

This property is a corner lot and has frontage on both Covenanter Dr. and Brooks Dr. A combined curb and sidewalk is already in place along Covenanter Dr. The petitioners are required to construct either a 5 foot wide concrete sidewalk or a 6 foot wide combined curb and sidewalk along Brooks Dr. Brooks Dr. is a single block neighborhood street ending in a private driveway just south of the petition site. The petitioners' house is the only house on the west side of the street, and there are only 5 homes that gain access from Brooks Dr. The petitioners are requesting a variance so as to not be required to construct this sidewalk.

The required sidewalk would be 430 feet long. This is an unusually long distance for a single home. The 1.6 acre lot is more than 8 times the size of a typical single family lot in this zoning district. Construction of the sidewalk could also harm the 25 mature trees located very near the right-of-way along Brooks Dr. This street is a very low traffic neighborhood street providing access to only 5 homes. In addition, the sidewalk would be located on the opposite side of the street from most of the homes and has no potential for extension to the south in the future.

ENVIRONMENTAL COMMISSION: The EC has reviewed this petition and has the following recommendations:

- 1.) The Petitioner should commit to the P&TD approval of the brand and style of pavers, contact the department prior to installation, and allow staff to inspect installation, prior to a use variance that allows construction in a floodway.

STAFF RESPONSE: This is included as condition of approval #1.

- 2.) The Petitioner should create their own conservation area within the floodway and riparian buffer whereby they preserve the trees and plant additional native plants.

STAFF RESPONSE: This is included as condition of approval #2.

20.09.140 CRITERIA AND FINDINGS FOR USE VARIANCE:

Findings of Fact: Pursuant to IC 36-7-4-918.4. the Board of Zoning Appeals or the Hearing Officer may grant a variance from use if, after a public hearing, it makes findings of fact in writing, that:

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

Staff Finding: Staff finds no injury with the use variance request. A permit from the Department of Natural Resources has already been obtained. There will be no increase in the base flood elevation.

- (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*

Staff Finding: Staff finds no adverse impacts to the use and value of the surrounding area associated with the proposed use variance. There will be no increase in the base flood elevation.

- (3) *The need for the variance arises from some condition peculiar to the property involved; and*

Staff Finding: Staff finds there to be peculiar condition in that the majority of the driveway within the floodway is already in place in an impervious state. The UDO does not provide for small, at-grade driveways that have no impact on flood elevations. The driveway will be constructed and reconstructed using permeable pavers to decrease any negative impacts to the floodway.

- (4) *The strict application of the terms of the Unified Development Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and*

Staff Finding: Staff finds the strict application of the Unified Development Ordinance will place an unnecessary hardship in that it would not allow any development in the this portion of the floodway, even if it there is no increase in the base flood elevation.

- (5) *The approval does not interfere substantially with the Growth Policies Plan.*

Staff Finding: The Plan Commission found that this proposal does not substantially interfere with the Growth Policies Plan. The GPP designates this property as “Urban Residential,” which states:

The fundamental goal for these areas is to encourage the maintenance of residential desirability and stability. Where new infill development is proposed, it should be consistent and compatible with preexisting developments. (page 31)

In addition, the GPP’s “Nurture Environmental Integrity” Goal states that “protecting and enhancing existing water resources, including intermittent and ephemeral streams, is a high priority for the City of Bloomington” (Policy 3, page 10). The goal encourages use of best management features including “bio-filtration and streamside graduated buffer zones.” Staff finds that this petition will not substantially interfere with these goals.

20.09.135 (c) Findings of Fact for Sidewalk Variance.

Pursuant to IC 36-7-4-918.5, the board of zoning appeals or hearing officer may grant a variance from Section 20.05.010(b)(3) of the Unified Development Ordinance if, after a public hearing, it makes findings of fact in writing, that:

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

Staff's Finding: Staff finds no injury to the public. This street has existed for many decades without a sidewalk with no know accidents or injuries.

- (2) *The use and value of the area adjacent to the property included in the Development Standards variance will not be affected in a substantially adverse manner; and*

Staff's Finding: Staff finds no substantially adverse impacts. Although the construction of sidewalks on all streets is desirable, this sidewalk will have negligible positive benefits to adjacent property owners who have stated that sidewalks are not desired.

- (3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards variance will relieve practical difficulties; and*

Staff's Finding: Staff finds practical difficulty in requiring the construction of a sidewalk. Peculiar conditions are found in the limited number of homes on the block, the length of the frontage and the presence of many mature trees that could be damaged with sidewalk construction.

- (4) *That the topography of the lot or tract together with the topography of adjacent lots or tract and the nature of the street right-of-way make it impractical for the construction of a sidewalk as required by Section 20.05.010(b)(3); and*

Staff's Finding: Staff finds that the topography of the lot includes grade changes at the far southern end of the property making construction difficult. Furthermore, the presence of many large mature trees near the street edge makes construction of the sidewalk impractical.

- (5) That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which the new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians.

Staff's Finding: Staff finds that the 5 existing houses on this block will not necessitate a sidewalk in order to provide for the safety of pedestrians.

CONCLUSIONS: Staff finds minimal impacts as a result of the use variance request. The presence of the driveway will not result in any negative impacts on floodwater elevations or increase downstream flooding. Staff finds that not requiring a sidewalk on this property will not endanger public or pedestrian safety and will allow for the preservation of many large mature trees.

RECOMMENDATION: Based upon the written report, staff recommends approval of both the use variance and the sidewalk variance with the following conditions:

1. Prior to construction of the driveway, the petitioners shall commit to a specific paver product and have it approved by staff. Petitioners shall also conduct an on-site pre-construction conference with staff prior to construction of the driveway.
2. Prior to construction of the driveway, the petitioners shall record a riparian buffer easement for the portions of the property within 75 feet of the creek bank along the west branch of Jackson Creek.
3. The circle driveway is limited to a maximum width of 10 feet and second cut must be at least 50 feet from the intersection of Brooks Dr. and Covenant Dr.
4. In conjunction with construction of the driveway, the petitioner shall alter the sidewalk ramps to meet current ADA guidelines.

MEMORANDUM

Date: June 5, 2015

To: Bloomington Plan Commission

From: City of Bloomington Environmental Commission

Through: Linda Thompson, Senior Environmental Planner

Subject: UV-12-15: Bret & Elisha Spier
2110 E. Covenanter St.

This memorandum contains the Environmental Commission's (EC) input and recommendations regarding a request for a Use Variance for constructing a driveway in a floodplain, also called a Special Flood Hazard Area (SFHA).

ISSUES OF SOUND ENVIRONMENTAL DESIGN:

1.) The proposed driveway in question is proposed to stretch between about 50 to 70 feet through the edge of the floodplain. The variation in distance is due to the arched shape of the drive. The EC believes that because this drive is proposed to be at the outside edge of the floodplain, and that the petitioner is proposing to use permeable pavers, there is no significant safety risk to downstream flooding or contamination to the watershed if cautionary best management practices are used.

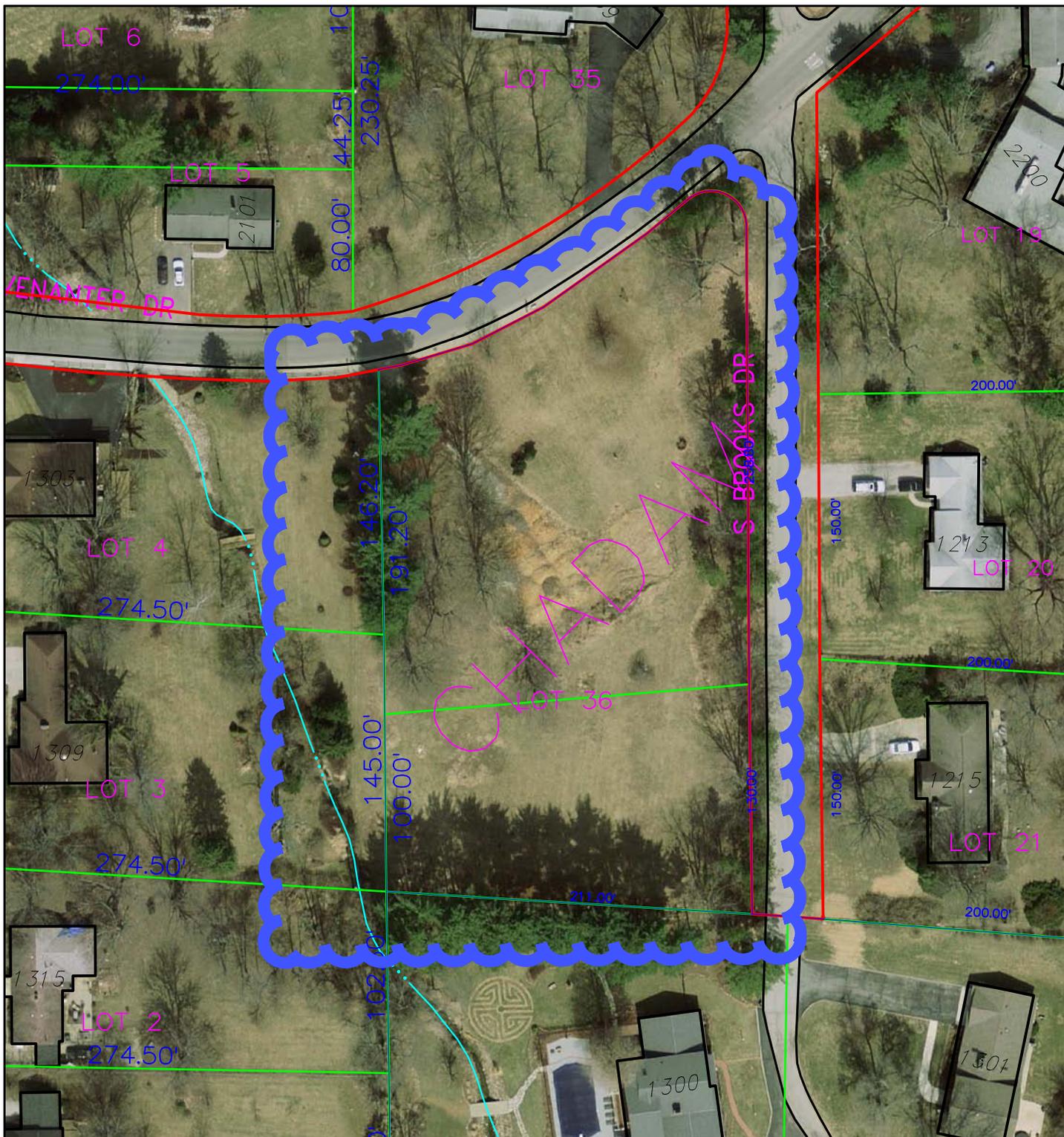
The EC further believes that a recordable commitment should be made to ensure approved pavers are installed correctly and will remain permeable in perpetuity by all owners. The EC recommends that the Petitioner decide on a brand and style of paver for approval by the Planning and Transportation Department (P&TD), and contact the P&TD in advance of the installation so staff can observe installation.

If the commitment to a permeable surface can be made, the EC recommends that the variance be granted.

2.) On this specific site, city regulations do not require that the floodplain be part of a protected easement. However, parts of both the floodplain and a small area of the creek's riparian buffer are currently tree covered, and the EC would like the owners to protect those trees and plant additional native vegetation. Although there are strict restrictions regarding what can and cannot be done in those areas, the EC recommends that the Petitioner use a portion of their lot to preserve trees and native plants.

EC RECOMMENDATIONS:

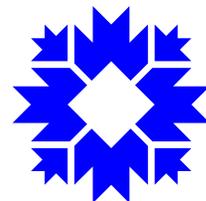
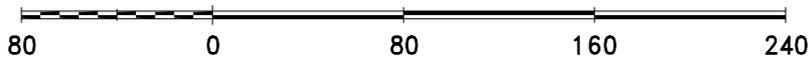
- 1.) The Petitioner should commit to the P&TD approval of the brand and style of pavers, contact the department prior to installation, and allow staff to inspect installation, prior to a use variance that allows construction in a floodway.
- 2.) The Petitioner should use a portion of their lot to preserve trees and plant native vegetation within the floodway and riparian buffer.



UV/V-16-15
2014 Aerial Photo

City of Bloomington
Planning & Transportation

By: roachja
10 Jun 15



Scale: 1" = 80'

For reference only; map information NOT warranted.

Bret and Elisha Spier
2110 E. Covenanter Dr.
Bloomington, IN 47401

To the Board of Zoning Appeals:

In the matter concerning the installation of a new street cut at the new residence of Bret and Elisha Spier at 2110 East Covenanter Drive, this letter requests a variance to retain the existing street cut on the north side of the property which adjoins Covenanter Drive. This would necessitate that about 50 feet of driveway remain and be situated within the floodway that the DNR delineated in the 2010 mapping of the area. The property at 2110 East Covenanter Drive is located east of High Street and is a corner lot, adjoining Covenanter Drive on the north and Brooks Drive on the east.

We have included letters from long-standing neighbors (Exhibit A) in the area who have not witnessed any flooding of the existing driveway during their residence. Prior to the DNR redrawing the floodway in 2010, the current driveway was not included in the floodway zone. Since 2012 when we began the development of our architectural plans for the site, we have diligently visited the property during the heaviest of rainfalls and not once has the driveway flooded. Thus, we question the practical significance of moving the driveway out of the newly designated floodway.

To the extent that it is in the floodway, the Indiana Department of Natural Resources and the State of Indiana approves keeping the original street cut and leaving the portion of drive in the floodway (see Exhibit B). We proposed to the DNR the use of permeable pavers placed at grade as an environmentally friendly substrate to be used on the section of the drive in the floodway to minimize additional runoff into the floodway and the storm-water system (see Exhibit C). This will help to filter water and contaminants on the driveway that might otherwise run off with storm water.

An added benefit to keeping the existing driveway cut is that there is a bald cypress and a red cedar tree that we have preserved in the front yard. Keeping the driveway cut as is would allow us to continue to protect both of these trees,

UVV-16-15 Petitioner's Statement Floodway

whereas moving the driveway cut up out of the floodway has potential to disturb the root systems of these trees or necessitate removing the trees completely.

Please consider the anecdotal evidence and the support of the State when determining whether or not we may keep the original cut.

Thank you for reviewing our appeal,

Bret and Elisha Spier

May 19, 2015

 Elisha Spier

Exhibit A

From: **Donovan, Matt** mtdonovan@gpstrategies.com
Subject: RE: Driveway variance
Date: May 13, 2015 at 12:45 PM
To: Spier Family spierfamily@ms.com
Cc: Donovan, Eunice C donovan@indiana.edu

Ellee,

Let me know if you need more than this.

Regards,
Matt

To the members of the Board of Zoning Appeals,

My name is Matt Donovan and my family and I reside at 1303 S. High St. (corner of Covenanter St. and High St.) We have lived here for 14 yrs. (since July 2001) and during that time, we have seen several significant storms which have led to rising water through the creek on my property. As you know, the easterly portion of my property lies in a 100 yr. flood plain. During the past 14 yrs., the water levels have never reached the row of telephone poles, much less the driveway beyond that.

Kind regards,
Matt

Matthew Donovan
Vice President, Learning Solutions Group
Office: 812.778.9792
Mobile: 812.327.7737
GP Strategies Corporation
www.gpstrategies.com
Follow us on LinkedIn | Follow our Blog | Follow us on Twitter

From: Penny Austin paustin92@comcast.net
Subject: Fwd: 2110 E. Covenant Drive
Date: May 9, 2015 at 7:03 PM
To: Elisha Spier spierfamily@me.com



Sent from my iPhone

Begin forwarded message:

From: Debbi Conkle <debbiconkle@gmail.com>
Date: May 9, 2015 at 3:06:04 PM EDT
To: paustin92@comcast.net
Subject: 2110 E. Covenant Drive

May 9, 2015

To whom it may concern:

My husband and I have lived at 2109 E. Covenant Drive since 1983. In that time, we have never seen water from the creek even come close to the property directly across the street, 2110 E. Covenant Drive.

Daniel & Deborah Conkle

812-333-1712

From: Penny Austin paustin92@comcast.net
Subject: Fwd: Sidewalk
Date: May 9, 2015 at 7:08 PM
To: Elisha Spier spierfamily@me.com



Sent from my iPhone

Begin forwarded message:

From: "Garnier, Maurice A." <garnier@indiana.edu>
Date: May 9, 2015 at 4:28:36 PM EDT
To: "'Penny Austin'" <paustin92@comcast.net>
Subject: RE: Sidewalk

Hello Penny;

In the course of our conversation this morning, you mentioned that some City officials believe that the creek overflows when it rains unusually hard. I cannot recall ever witnessing such a circumstance. I regularly use Covenanter, on foot and by car, and I surely would have noticed flooding. I have not. If the City wants to see flooding, it should visit S. Mitchell, where our son lives, or even E. First Street where traffic becomes very difficult when it rains hard.

Good luck with your garden. It will be a grand addition to the neighborhood.

Maurice Garnier
820 S. Park Avenue
Bloomington, IN

-----Original Message-----

From: Penny Austin [mailto:paustin92@comcast.net]
Sent: Saturday, May 9, 2015 1:33 PM
To: Lauer, Joan; Garnier, Maurice A.
Subject: Sidewalk

Reply about sidewalks and creek

Sent from my iPhone

DNR Indiana Department of Natural Resources

Michael R. Pence, Governor
Cameron F. Clark, Director
Division of Water
402 W. Washington Street
Room W264
Indianapolis, IN 46204
Phone (317) 232-4160
Toll-free (877) 928-3755
Fax (317) 233-4579
www.in.gov/dnr/water/

May 1, 2015
Basin #21

MAILED MAY 01 2015

Loren Wood Builders
Loren M. Wood
2750 North Brummetts Creek
Bloomington, IN 47408

Re: CTS-CT-3953
West Branch Jackson Creek, Monroe County

Dear Mr. Wood:

This is in response to a request received on March 30, 2015 for a Department review of a proposed construction project in the floodway. According to the information submitted, a portion of a new residential access drive will be constructed using permeable pavers placed at grade in the floodway. Based on your description, the project site is located in Section 3, Township 8N, Range 1W, at 2110 East Covenanter Drive in Bloomington, Perry Township, Monroe County.

The Department staff has determined that if the project is followed as described in the submitted information, it is approved if the following conditions are met:

1. do not leave felled trees, brush, or other debris in the floodway
2. upon completion of the project, remove all excavated material and construction debris from the floodway
3. obtain prior written approval from the Department for any additional construction, excavation, or filling in or on the floodway beyond the scope of this project

* NOTE: for regulatory purposes, the floodway is defined as that shown on PANEL #144 of the Monroe County Flood Insurance Rate Map dated December 17, 2010

This letter should be displayed at the project site. The Division of Water will place a copy of this letter in the file to be retained as a permanent record.

You should not construe this letter as a local building permit, nor is it a waiver of the provisions of any local building or zoning ordinances. Additionally, this letter does not relieve you of the responsibility of obtaining permits, approvals, easements, etc. as required by other federal, state and local agencies.

Thank you for this opportunity to be of assistance; your interest in providing safe floodplain development is appreciated. If you have any questions regarding this letter, please contact me, at (317) 234-1073 or 877-928-3755 (toll free).

Sincerely,



Becky S. Davis, CFM
Sr Environmental Manager
Division of Water

pc: Monroe County Plan Commission
Corps of Engineers, Louisville District
IDNR, Division of Law Enforcement District 6

UV/V16-15
Petitioner's Statement
Floodway

BELGARD

Permeable Pavers

More than just a paver.

With Belgard, you never have to choose between pretty and practical. Innovative products like our Permeable Pavers offer the designed outdoor space you want, with the added benefit of water management.

Permeable interlocking concrete pavers (PICP) are installed with layers of varying-sized stone or aggregate underneath, that filter and direct stormwater to underground aquifers. Permeable paving mimics the way natural land absorbs water. Which means any rain

that falls on your patio, walkway or driveway seeps back into the ground or the nearest storm drain.

The surface of Permeable pavers can be made perfectly flat, with the stone reservoir being contoured to direct water wherever it needs to go. In fact, with a few added design features, the system can be used for water harvesting, with water being usable for irrigation or washing your car.

Benefits to homeowners

- Reduce water demand by paving over grassed areas
- Aid landscaping by reducing erosion that occurs when grass is dry or dead
- Eliminate standing water where mosquitoes can breed
- Lasts much longer than conventional paved surfaces

Benefits to communities

- Filter water back underground to recharge local groundwater supplies

- Maintain base flows in rivers to keep ecosystems self sustaining
- Minimize heat island effect when using highly reflective, light-colored pavers
- Reduce water use for landscaping

Our fully permeable pavers include:



Turfstone: Eco-friendly design allows greenery to grow right through it for a look that truly harmonizes with nature.



Subterra Stone: Featuring a false joint structure, Subterra offers the elegant look of chiseled stone for

homeowners who desire environmental stewardship—without compromising their style.

Some installation methods will allow water to flow through these pavers:



Eco Dublin: The latest addition to our Environmental Collection, Eco Dublin combines the classic look of cut stone with contemporary materials.



Mega-Arbel: With a scale similar to flagstone, Mega-Arbel creates outdoor spaces that flow naturally into the surrounding landscapes.



Old World: Recalling the narrow, cobbled streets of Europe, Old World is crafted with a natural stone cleft finish for the look and feel of time-worn cut stone.



Urbana: Chiseled textures and contours combine its random shapes and patterns to recall the look and feel of vintage cut stone. Offered in a versatile, three-piece modular system.

PREVIOUS

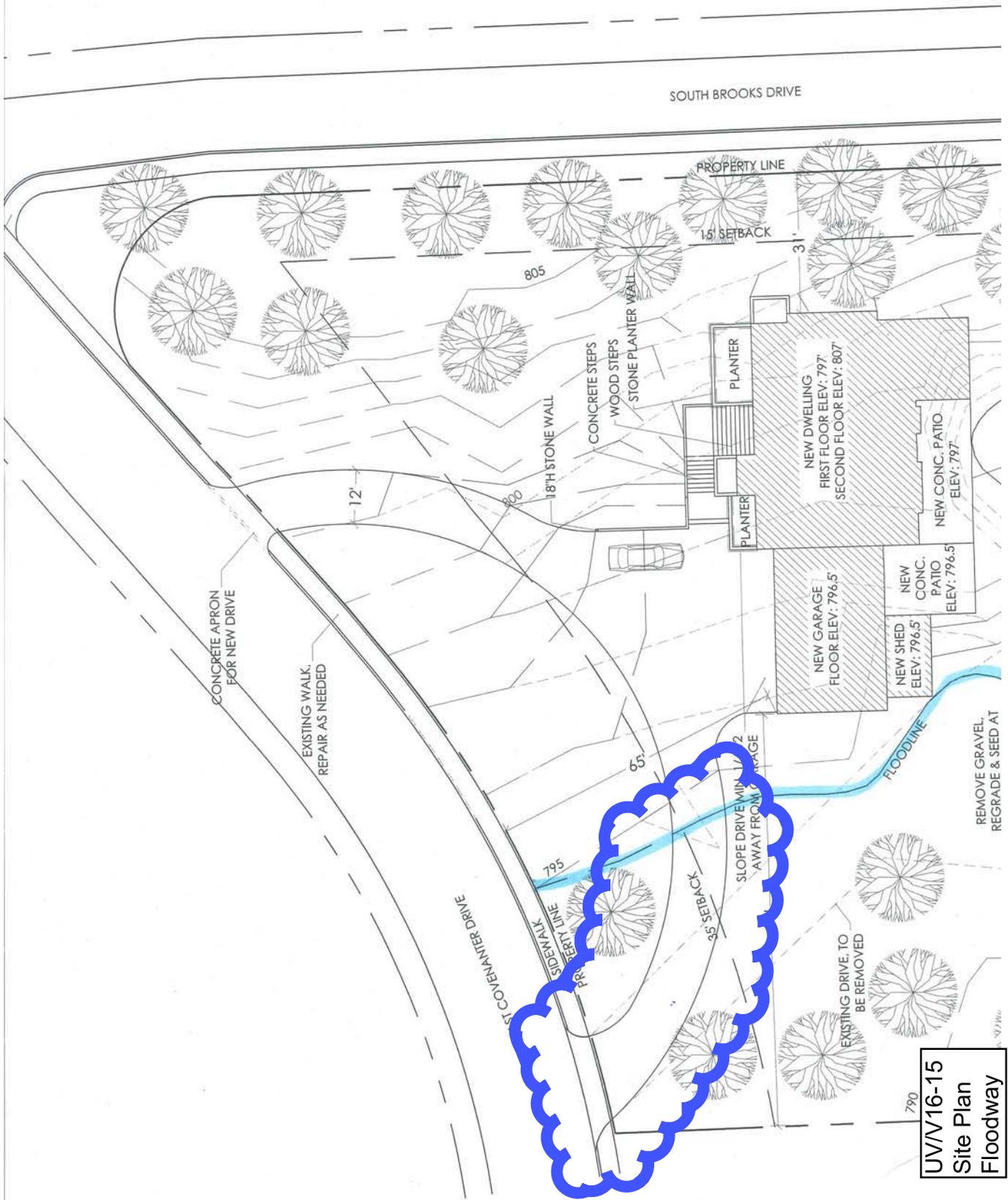
Comparing Pavers
Cobblestone? Concrete?
Wood?

SEE WHY BELGARD PAVERS TOP THEM

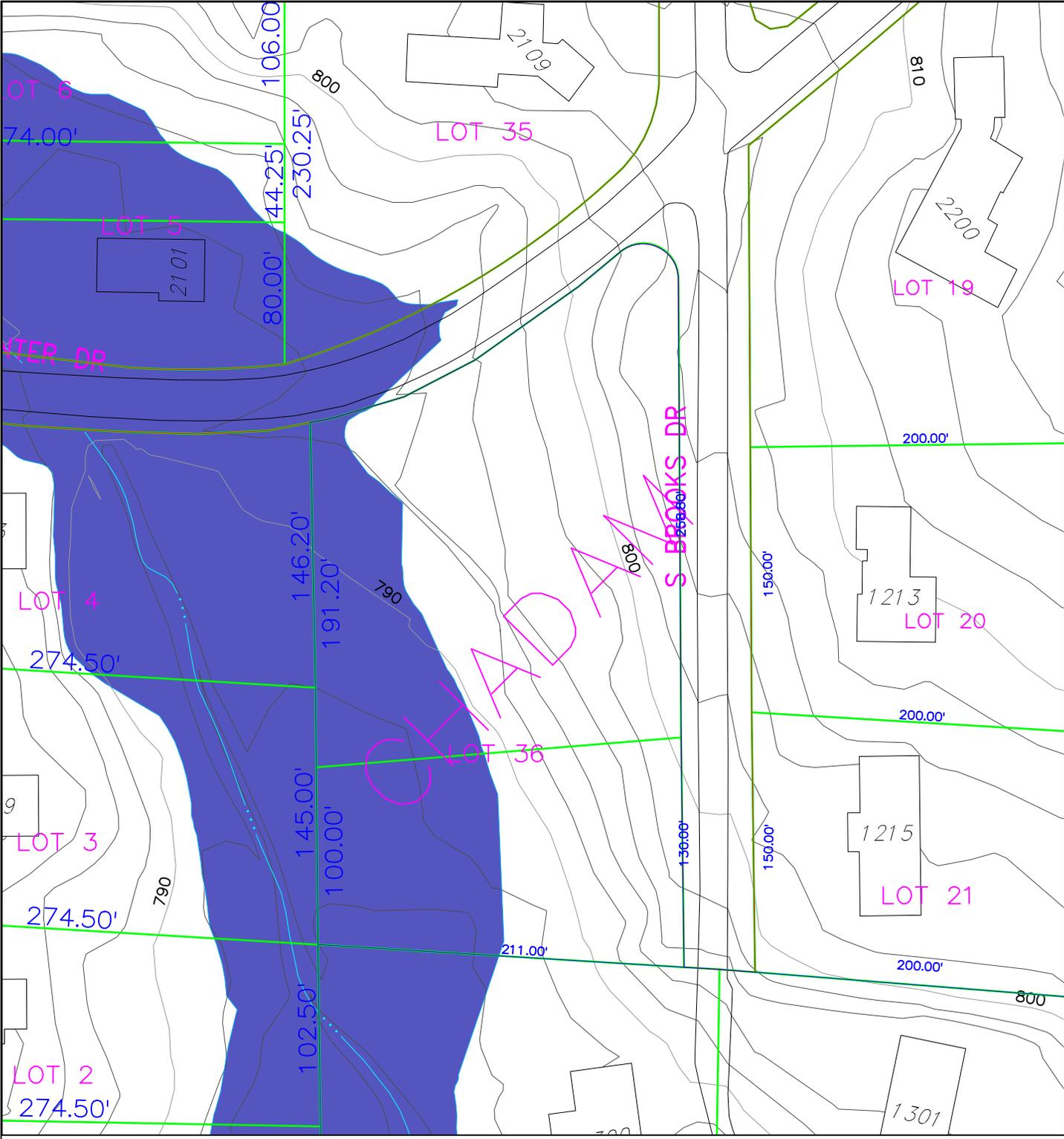
NEXT

Installation
Everything you need in one
handy guide.

LEARN HOW TO INSTALL PAVERS →



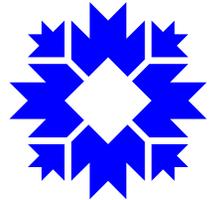
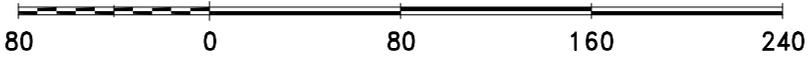
UVV16-15
Site Plan
Floodway



UVV-16-15
Floodway Map

City of Bloomington
Planning & Transportation

By: roachja
10 Jun 15



Scale: 1" = 80'

For reference only; map information NOT warranted.

Elisha and Bret Spier
2110 East Covenanter Dr.
Bloomington, IN 47401

To the Board of Zoning Appeals:

In the matter concerning the installation of a sidewalk at the new residence of Bret and Elisha Spier at 2110 East Covenanter Drive, this letter requests a variance to the installation of the sidewalk on the east side of the property which adjoins Brooks Drive. The property at 2110 East Covenanter Drive is located east of High Street and is a corner lot, adjoining Covenanter Drive on the north and Brooks Drive on the east.

Brooks Drive is a quiet, dead end street, with very limited, local traffic. Its unique appeal is that of a tranquil, wooded, shaded place to walk and play. Installation of the sidewalk would change that, requiring the removal of 25 trees plus vegetation (see aerial map). This would create a sidewalk to nowhere, since there are no other portions of sidewalk along Brooks Drive to which the new sidewalk would connect. The Brooks Drive neighbors listed on the accompanying petition are not in favor of the sidewalk. These neighbors have commented that annually they only get one or two guests during Halloween. Both residents and neighbors from surrounding streets have also mentioned that they and their animals enjoy the openness of Brooks, preferring it to the streets that have sidewalks where they have to walk two-by-two (see attached letters).

The money we would have to devote to the building of a sidewalk would be spent instead on improving the natural beauty of Brooks. We would like to remove the invasive species of honeysuckle, poison ivy, and other noxious plants and replant the strip with native species of vegetation including a monarch butterfly garden among the already existing trees.

In addition, the installation of a sidewalk would require ice-melt of some variety in the wintertime and we fear the repercussions of all that additional salt washing downhill into the storm-water system.

UV/V16-15
Petitioner's Statement
Sidewalk

With regard to the actual construction of the sidewalk, the steep drop-off of the land from Brooks Drive will make the construction of a sidewalk difficult and will necessitate a substantial amount of fill to be brought in. This will necessitate the removal of even more trees and vegetation than just the sidewalk width would dictate.

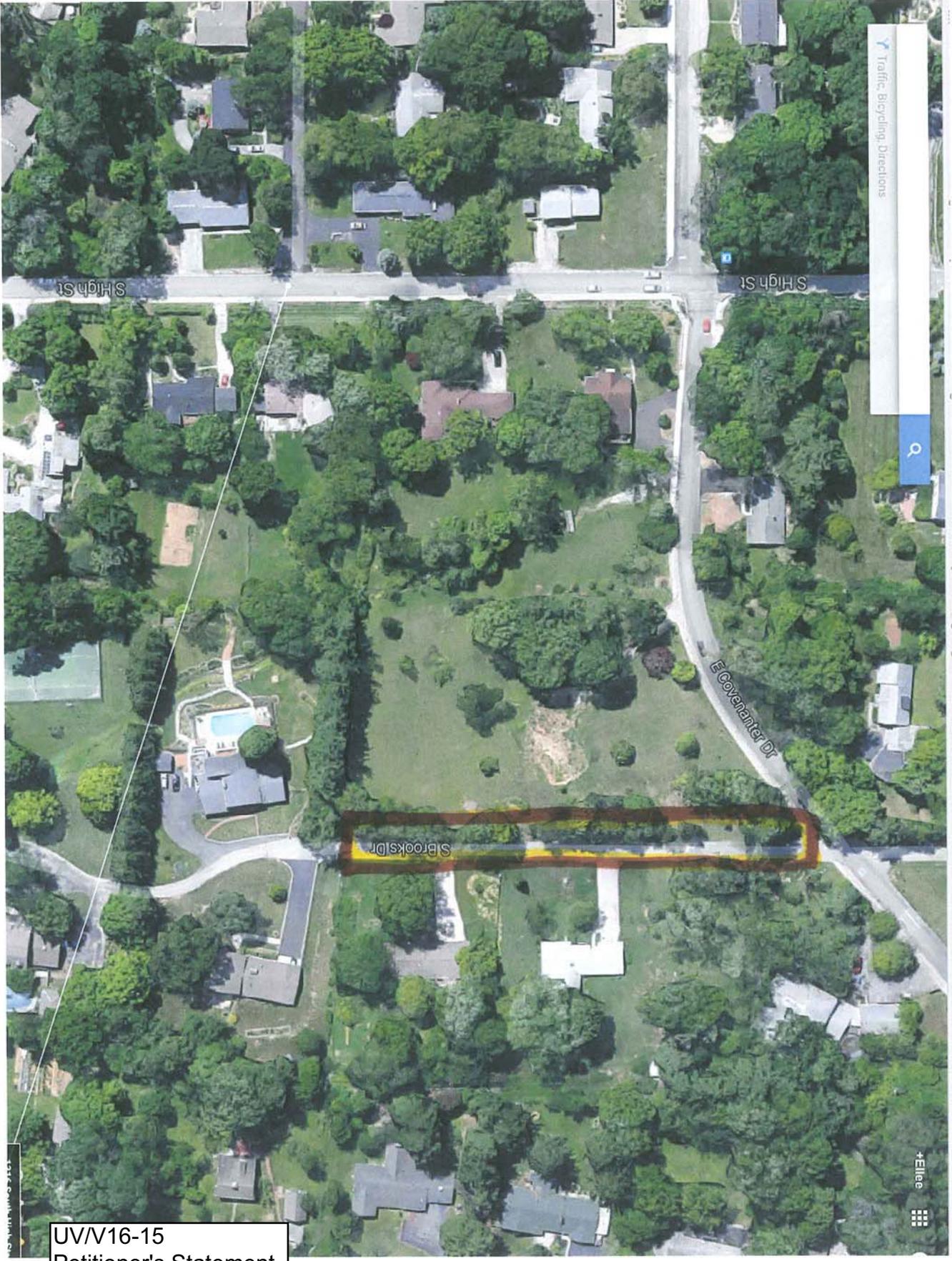
In keeping in line with our own environmental tenants for the property (i.e. solar panels, geothermal, roof rainwater collection system, green building supplies) and the city's promotion of green space, we hope that you will grant us a sidewalk variance.

Thanks for your time and consideration,

Bret and Elisha Spier
May 19th, 2015

 Elisha Spier

Sidewalk Variance - Tree Removal



UVV16-15
Petitioner's Statement
Sidewalk

We, the undersigned residents of Brooks Drive, do not want a sidewalk built along the Brooks Drive property line of 2110 East Covenanter, as required by the city. If the sidewalk were to be built, the Spiers would have to cut down approximately 25 trees along their Brooks Drive property line. Building the sidewalk and removing the trees would have a negative impact on our neighborhood.

We hope that our street remains a tranquil, wooded, shaded place to walk and play. Please grant the owners, Bret and Ellee Spier, a sidewalk variance.

Karen Raster	2200 E. Covenanter Dr.	4/13/15
Name	Address	Date

Maurie E. Biggs	1213 S. Brooks Dr.	4/13/15
Name	Address	Date

Virginia Card Hanna	1301 S. Brooks	4/13/15
Name	Address	Date

Daniel Ferantoni	1300 S. Brooks Dr.	4/13/15
Name	Address	Date

Judy P. Feranton	1300 S. Brooks Dr.	4-13-15
Name	Address	Date

Judy P. Feranton	1305 S. Brooks Dr.	5-11-2015
Name	Address	Date

Fifty years ago when we moved into 1215 S. Brooks, one slightly more than a block, dead-end street south of Covenant was called Brooks Drive. The dead-end block north of Covenant was called Brooks Lane. We should have gone with them! "Lane" is a much better description of our street. There is no way to extend either end.

Cars drive slowly on our block because it is barely two cars wide and visibility is good, so we get a different kind of traffic. We get mothers pushing strollers. They can let their toddlers out to walk right down the middle of the street. Dog walkers to lengthen their leashes to allow their dogs to wander from side to side.

The Spiers, builders of the new house, have quite a long sidewalk on Covenant to maintain. That necessary sidewalk has a heavy pedestrian traffic on a fairly busy car route between High St. and College Mall Road. But forcing them to install and maintain a sidewalk on Brooks Drive would be an unneeded task and would destroy the secluded atmosphere of our Brooks neighborhood. It obviously works fine this way. The five owners on the street have lived here 62, 50, and the other three between 11 and 25 years! It is the kind of little unexpected neighborhood that makes Bloomington so attractive. Please keep it that way for us.

Sincerely,
Diamond Ketter

From: Penny Austin paustin92@comcast.net
Subject: Fwd: Sidewalk
Date: May 9, 2015 at 7:01 PM
To: Elisha Spier spierfamily@me.com



Sent from my iPhone

Begin forwarded message:

From: "Lauer, Joan" <jlauer@iupui.edu>
Date: May 9, 2015 at 2:58:44 PM EDT
To: Penny Austin <paustin92@comcast.net>
Cc: "Garnier, Maurice A." <garnier@indiana.edu>
Subject: RE: Sidewalk

To whom it may concern:

I am a resident of the Elm Heights neighborhood and very much enjoy walking around the area, including east of High Street. Brooks street is on my route; I find it quiet and secluded and feel that adding a sidewalk would open it up and change the character in an undesirable way. There is no need for a sidewalk. And removing trees to create one would have a very negative impact. Please preserve its character by keeping it as it is.

Joan B. Lauer
910 E. University St.
Bloomington, IN 47401.

-----Original Message-----

From: Penny Austin [mailto:paustin92@comcast.net]
Sent: Saturday, May 09, 2015 1:33 PM
To: Lauer, Joan; Garnier, Maurice A.
Subject: Sidewalk

Reply about sidewalks and creek

Sent from my iPhone

From: Penny Austin paustin92@comcast.net
Subject: Fwd: Sidewalk
Date: May 9, 2015 at 7:05 PM
To: Elisha Spier spierfamily@me.com



Sent from my iPhone

Begin forwarded message:

From: "Garnier, Maurice A." <garnier@indiana.edu>
Date: May 9, 2015 at 4:23:41 PM EDT
To: "'Penny Austin'" <paustin92@comcast.net>
Subject: RE: Sidewalk

One of my great pleasures in Bloomington is to take long walks in different neighborhoods. I live in the Elm Heights district, but I often go east of High Street, following Covenanter and then into other neighborhoods. I know Brooks Street and learned that a sidewalk was being planned for that quiet street. That would not only alter the character of the neighborhood negatively, but it would also require the cutting of a large number of trees. Such an expense is not only unnecessary, but it would be counterproductive.

I hope you will leave this attractive neighborhood untouched.

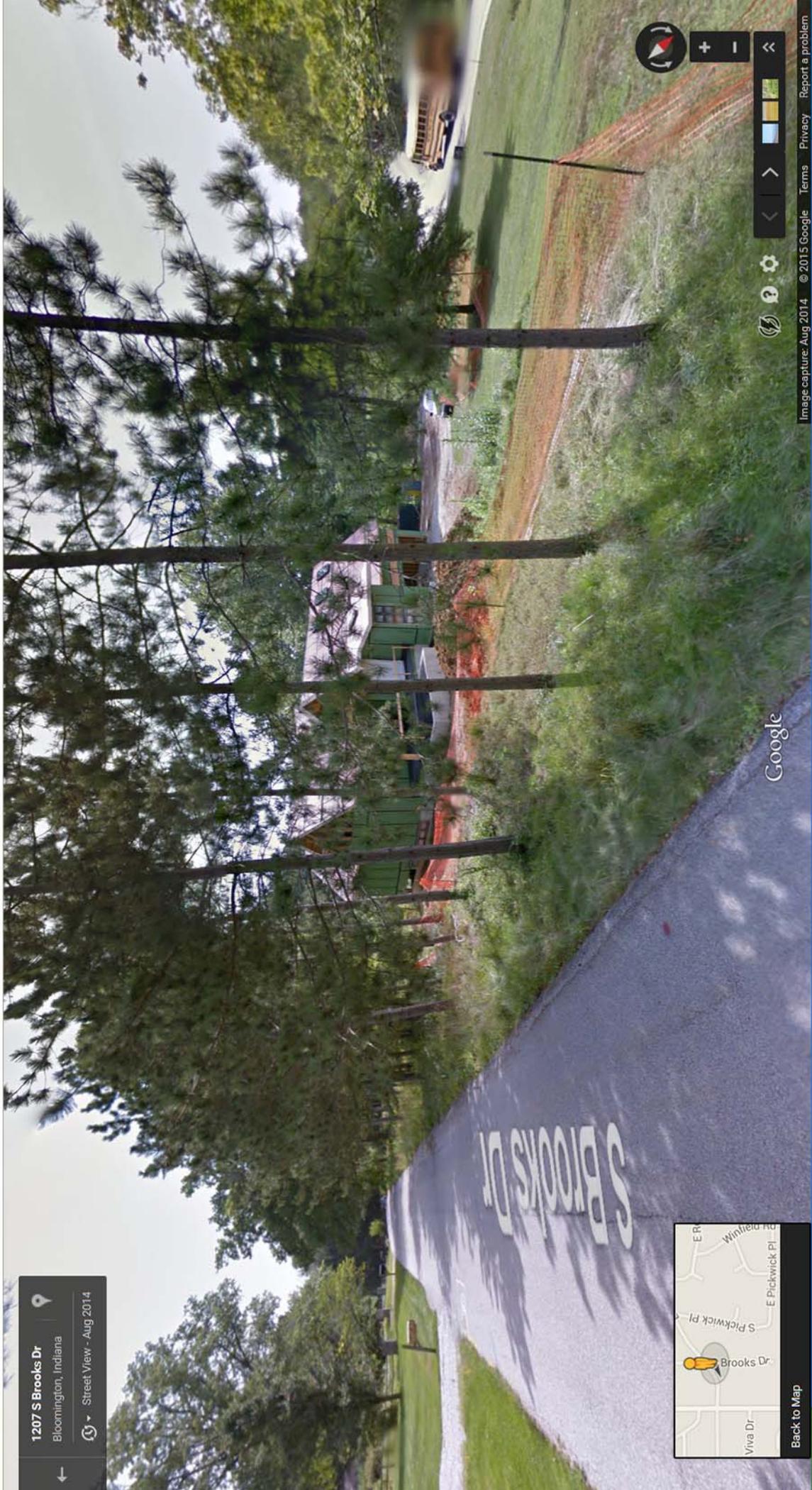
Maurice Garnier
820 S. Park Avenue
Bloomington, IN

-----Original Message-----

From: Penny Austin [mailto:paustin92@comcast.net]
Sent: Saturday, May 9, 2015 1:33 PM
To: Lauer, Joan; Garnier, Maurice A.
Subject: Sidewalk

Reply about sidewalks and creek

Sent from my iPhone



1207 S Brooks Dr
Bloomington, Indiana
Street View - Aug 2014



Back to Map

Image capture: Aug 2014 © 2015 Google Terms Privacy Report a problem

UVN-16-15
Trees along
Brooks