

# CITY OF BLOOMINGTON



OCTOBER 22, 2015 @ 5:30 p.m.  
COUNCIL CHAMBERS #115  
CITY HALL

CITY OF BLOOMINGTON  
BOARD OF ZONING APPEALS  
October 22, 2015 at 5:30 p.m.

Council Chambers - Room #115

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**ROLL CALL**

**MINUTES TO BE APPROVED:**      September 24, 2015

**REPORTS, RESOLUTIONS, AND COMMUNICATIONS:**

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**PETITION:**

- UV/V-33-15    **Brett Oeding**  
                         4445 E. Moores Pike  
                         Request: Use variance to allow a bridge in the floodplain. Also requested  
                         is a variance from riparian buffer standards to allow fill in the riparian buffer  
                         for a new driveway.  
                         Case Manager: Eric Greulich

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 4445 E. Moores Pike**

**CASE #: UV/V-33-15**  
**DATE: October 22, 2015**

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**PETITIONER: Brett Oeding**  
**1503 W. Arlington Rd., Bloomington**

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**REQUEST:** The petitioner is requesting a use variance to allow a bridge and driveway in the floodway. Also requested is a variance from riparian buffer standards to allow fill within the riparian buffer.

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**STAFF REPORT:** This 1.66 acre property is located at 4445 E. Moores Pike and is zoned Residential Single-family (RS). The property is surrounded by single family residences. A tributary of the East Fork of Jackson Creek crosses through the front yard of this property. The Plan Commission approved a subdivision (DP-15-84) for this property in 1984 to create this lot and a determinate sidewalk variance (V-34-84) was also granted by the Board of Zoning Appeals. The floodplain was not delineated at this location at the time of the subdivision approval.

The petitioner is considering purchasing this lot to construct a new single family residence. The only street frontage for this property is along Moores Pike to the south. The tributary that runs across this property completely spans the frontage and it is not possible for this property to access Moores Pike without crossing the tributary. The floodway and floodway fringe have not been delineated at this location, so all portions of the floodplain are considered floodway. The Unified Development Ordinance (UDO) allows bridges and driveways only in the floodway fringe and a use variance is required for these structures in the floodway.

A variance to allow fill within the 25' riparian buffer is also requested. Fill is necessary to raise the elevation of the proposed driveway approximately 2' to match the elevation of Moores Pike and to accommodate the new bridge crossing. A 48" culvert will be used to allow water to flow through the site and to accommodate the crossing. The same size culvert is used for the Moores Pike bridge adjacent to this site and was recommended by the Monroe County Drainage Engineer and City of Bloomington Utilities Department. The petitioner has committed to establishing a new planted riparian buffer area along at last 50' of the upper portion of this tributary to mitigate impacts from this project. Additional plantings are also possible along the sides of the driveway adjacent to the culver to provide erosion control.

The drainage area at this location is less than one square mile and no approvals are therefore needed from Indiana Department of Natural Resources or FEMA. The petitioner has also contacted the Indiana Department of Environmental Management and the U.S. Army Corps of Engineers and no permits are needed from those agencies as well.

The Plan Commission heard this petition at their October 12, 2015 meeting and unanimously voted to send this to the Board of Zoning Appeals with a positive recommendation for the use variance.

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**20.09.140 CRITERIA AND FINDINGS FOR USE VARIANCE:**

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 to public health, safety, morals, and general welfare with the proposed bridge crossing. The bridge and fill will allow safe access to the property and keep the top of the driveway above flooding. The culvert has been sized to not restrict water flow and matches the size of the culvert under Moores Pike immediately downstream.

- (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 substantial adverse impacts to the adjacent area from this request. The use of the property will be a permitted single family residential use, which is consistent with other surrounding properties.

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

**Staff Finding:** Staff finds peculiar condition in that the lot was legally created and the only access to the lot requires crossing a stream that runs along the front. The petitioner is proposing a simple crossing with a minimal width to accommodate a driveway. There is no other portion of this property that has frontage on a public road that does not require crossing the stream to provide access.

- (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 that the strict application of the UDO constitutes an unnecessary hardship in that not granting the variance would deprive the property of access to the only adjacent public road. This was a legally created lot that the Plan Commission approved prior to current standards that would not allow a bridge or driveway in the floodway.

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

**Staff Finding:** The Plan Commission found that this request does not substantially interfere with the Growth Policies Plan. GPP designates this property as "Urban Residential," and in regards to land use and development in new urban growth areas, the GPP recommends:

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. The petitioner has committed to establishing a planting area adjacent to portions of the creek that hold water to mitigate impacts from this project. Staff also believes that additional plantings could be installed along the bridge and driveway approaches to reduce erosion runoff.

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## CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE

**20.09.130 e) Standards for Granting Variances from Development Standards:** A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

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

**STAFF FINDING:** The granting of a variance from this standard will not be injurious to the public health, safety, morals or general welfare of the community. The installation of fill will allow a safe driveway entrance on Moores Pike that is the same elevation as Moores Pike. Additional plantings will be installed along the creek area to improve water quality and provide a riparian buffer.

- 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.*

**STAFF FINDING:** Staff finds no negative effects from this proposal on the use and value of the areas adjacent to the property as a result of the fill. The use of the property will be a single family residence which is consistent with surrounding properties.

- 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 the practical difficulties.*

**STAFF FINDING:** The strict application of the UDO would result in practical difficulties in the use of the property because it would not allow for an access drive to be installed for this property. The only buildable area on the property that is outside of the floodplain, requires a creek crossing to access. Peculiar condition is found in that this is a legally created lot that the Plan Commission approved prior to current standards that would not allow a bridge or driveway in

the floodway. A minimal amount of fill is proposed to provide a one-lane bridge across the creek and the location provides the required sight distances for visibility on Moores Pike.

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**ENVIRONMENTAL COMMISSION RECOMMENDATIONS:** The Bloomington Environmental Commission (EC) has made 4 recommendations concerning this development.

1. The Petitioner install an actual bridge that spans the creek and floodplain instead of using soil fill and a culvert to cross the floodplain.

**Staff response:** While this recommendation could be incorporated, staff does not believe that this should be required. The culvert will be placed so that the bottom of the culvert will be below the drainage channel and will not impede flows or any wildlife movements. The drainage channel and adjacent riparian area have been mowed over the years and staff does not believe that the current conditions warrant a higher level of design for a crossing for this site. The Moores Pike crossing is also a culvert crossing.

2. The Petitioner shall use an approved pervious surface for the driveway through the floodplain and what would be a riparian buffer, and contact the P&TD for installation inspection.

**Staff response:** The driveway will be elevated above the riparian area and this stream only has water in it during actual rain events, so the use of pavers would have only minimal benefit. In addition, the house will be located more than 250' from Moores Pike and would require a significant cost for a single family residential driveway of that length to be constructed of pavers.

3. The septic field shall be located as far upslope from the creek as possible.

**Staff response:** There is not a public sewer system that is accessible and septic system has been approved by the Health Department. The location has also been approved by the Health Department and staff encourages that the petitioner locate the septic field as far from the creek as possible.

4. The petitioner shall commit to restoring some intervals of the creek to native riparian vegetation.

**Staff response:** Staff has included a condition of approval that would require a minimum 50' area to be planted and vegetated. In addition, a recordable commitment shall be recorded to insure that the riparian buffer is maintained.

5. The Petitioner shall provide a recordable commitment to ensure that the permeable pavement remains maintained and functioning, and that intervals of the creek be restored to native riparian vegetation and maintained as such in perpetuity.

**Staff response:** As mentioned previously, staff does not believe that it should be

required to construct the driveway out of permeable pavers. However, if the Board feels that the driveway should be constructed of pavers, then this recommendation can be implemented.

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**CONCLUSIONS:** Staff finds minimal impacts as a result of this request. The presence of the driveway will not result in any negative impacts on floodwater elevations or increase downstream flooding. The petitioner has committed to establishing a streamside planting plan to install new landscaping adjacent to this intermittent stream to mitigate impacts from the new bridge.

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**RECOMMENDATION:** Based upon the written report, staff recommends approval of the petition with the following condition:

1. A minimum of 50' of the creek must be planted with a riparian buffer plantings at least 5' along either side. A recordable commitment shall be recorded that requires the riparian buffer plantings to be maintained.
2. An erosion control plan is required with the building permit.
3. The disturbed areas along both sides of the driveway along the culvert must be stabilized with grass or other plantings to minimize erosion runoff.

## MEMORANDUM

**Date:** October 15, 2015

**To:** Bloomington Plan Commission

**From:** City of Bloomington Environmental Commission

**Through:** Linda Thompson, Senior Environmental Planner

**Subject:** UV/V-33-15: Brett Oeding  
4445 E. Moores Pike

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This memorandum contains the Environmental Commission's (EC) partial input and recommendations regarding a request for a number of variances within a floodplain and riparian buffer.

The variances to the Bloomington Municipal Code, Unified Development Ordinance (UDO) regulations that the Petitioner is requesting include grading, construction, and fill within a floodplain (also called a Special Flood Hazard Area (SFHA) by Federal Emergency Management Agency (FEMA)); and no obligation for a riparian buffer or its required easement.

The purpose of this package of environmental variances is to install a culvert in the creek and construct an elevated driveway across the floodplain, creek, and riparian buffer, enabling access for a house to be built. The EC recognizes that some time in the past this lot was developed with no access from Moores Pike to the building site, except to cross the water features. However, the proposed solution is not the only choice for crossing the creek.

The creek on this site is shallow at its upper reaches. It gets larger and more deeply incised as it flows downhill toward Moores Pike. During staff inspection this summer, it held ponded water that supported frogs and wetland plants, at least. The creek also has a headwater region of roughly 8 acres in this watershed. A regional drainage swale is evident from the creek upslope all the way to E. Gentry Boulevard. This swale also is home to four retention ponds that permanently hold water. It is unknown if the dams for these ponds are of a size to require DNR inspections. **Because of the risk of flash flooding, the EC believes that this case should be scrutinized closely.**

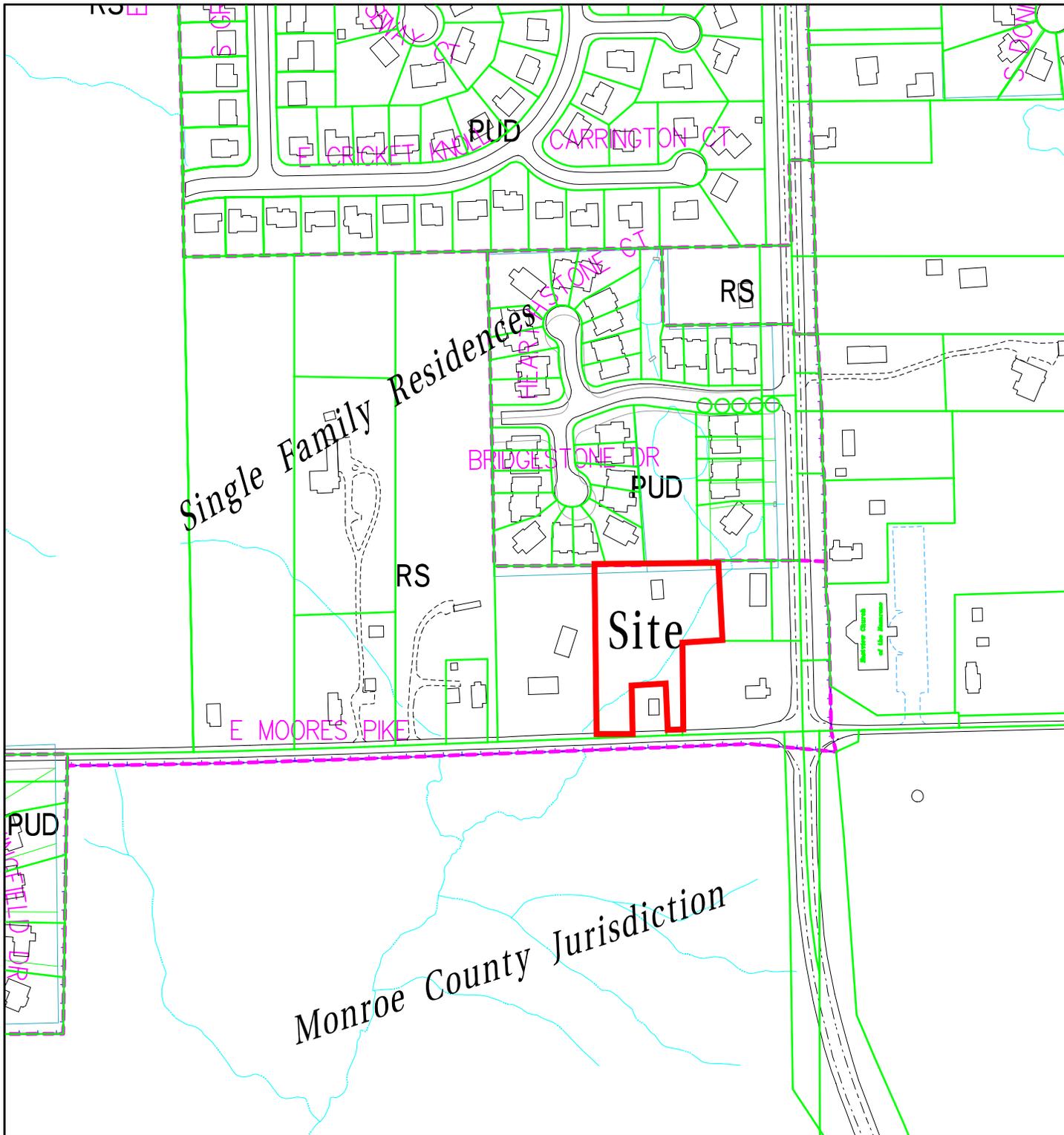
The EC rarely recommends anything except the strictest environmental protections for floodplains and riparian buffers. However, knowing that for this site the Petitioner has a reason to request these variances, the EC is making some recommendations in the case a variance granted. The EC believes that the only way this variance should be granted is if the Petitioner changes their plan for installing fill in the floodplain and used a bridge to cross the creek and the floodway.

**ISSUES OF SOUND ENVIRONMENTAL DESIGN:**

- 1.) The EC recommends that the Petitioner install an actual bridge that spans the creek and floodplain instead of using soil fill and a culvert to cross the floodplain.
- 2.) The EC recommends that a pervious surface be used for the driveway within the floodplain and riparian buffer. The EC also recommends that the Petitioner decide on a brand and style of material and submit it to the Planning and Transportation Department (P&TD) for approval, and contact the P&TD in advance of the installation so staff can observe installation.
- 3.) According to the Site Plan, there will be a septic field instead of municipal sewage disposal on this site. The septic field is located on the hill between the proposed house and the creek, upslope from the creek. The EC recommends that the septic field be located as far uphill as possible.
- 4.) If the requested variances get approved, the EC believes that at the very least the Petitioner should commit to restoring some intervals along the creek with native plants. Currently the creek is simply a straight, eroding sluiceway that transports lawn, street, and roof runoff from the upslope housing development, down through the watershed. The EC believes that the Petitioner should work with the P&TD to develop a plan to slow the water and provide the opportunity for infiltration.
- 5.) The EC believes that a recordable commitment should be made to ensure that an approved pervious pavement be installed correctly and will remain functioning in perpetuity by any owners, and that certain intervals of the creek be restored to native riparian buffer vegetation and maintained in perpetuity.

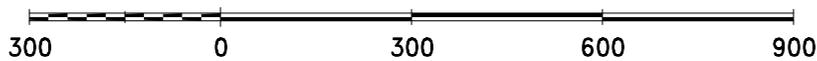
**EC RECOMMENDATIONS:**

- 1.) The Petitioner install an actual bridge that spans the creek and floodplain instead of using soil fill and a culvert to cross the floodplain.
- 2.) The Petitioner shall use an approved pervious surface for the driveway through the floodplain and what would be a riparian buffer, and contact the P&TD for installation inspection.
- 3.) The septic field shall be located as far upslope from the creek as possible.
- 4.) The petitioner shall commit to restoring some intervals of the creek to native riparian vegetation.
- 5.) The Petitioner shall provide a recordable commitment to ensure that the permeable pavement remains maintained and functioning, and that intervals of the creek be restored to native riparian vegetation and maintained as such in perpetuity.

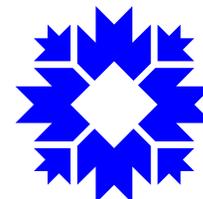


UV/V-33-15 Brett Oeding  
 4445 E Moores Pike  
 Board of Zoning Appeals  
 Site Location, Zoning, Land Use, Parcels

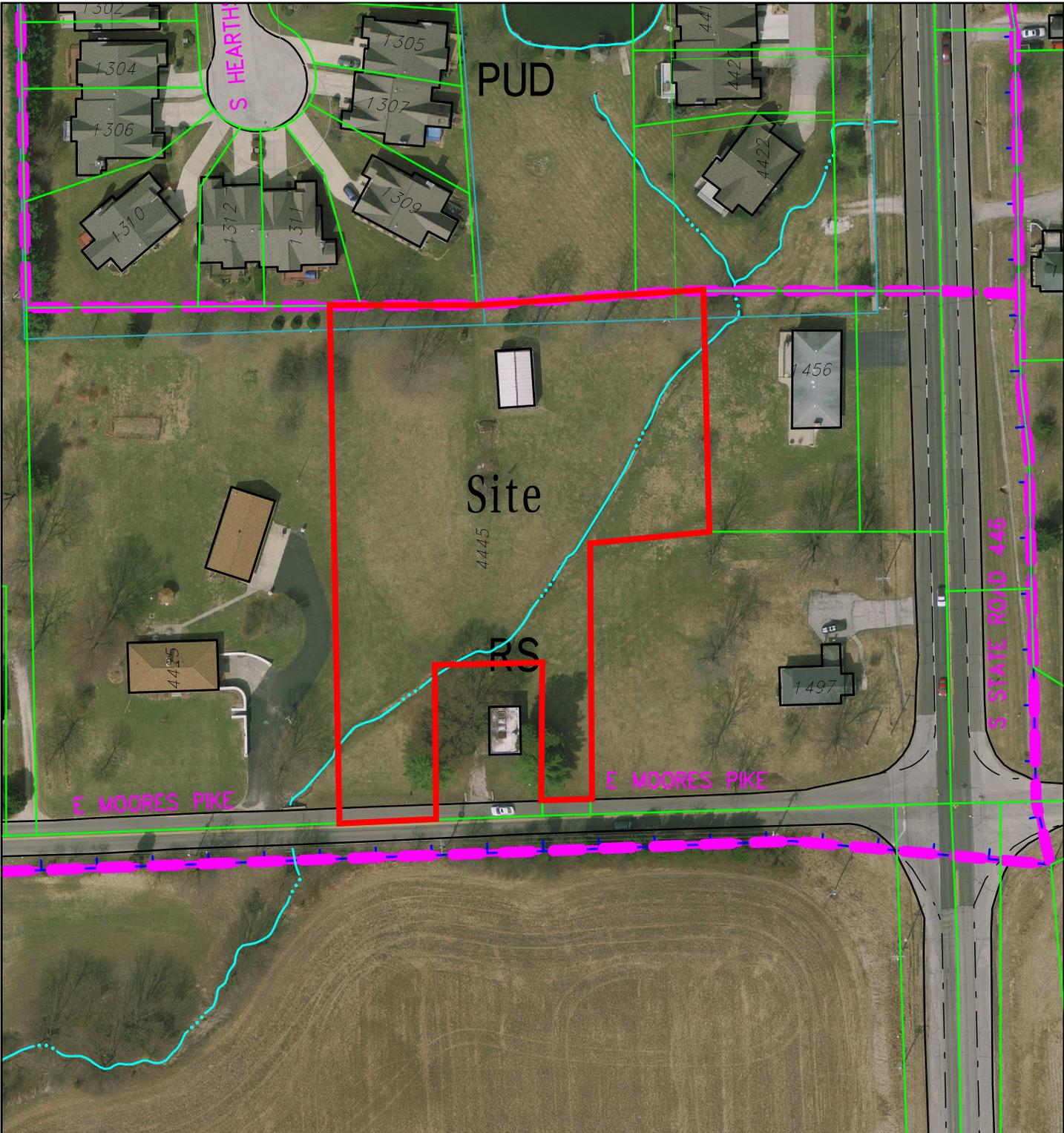
By: greulice  
 16 Oct 15



City of Bloomington  
 Planning & Transportation



Scale: 1" = 300'



UV/V-33-15 Brett Oeding

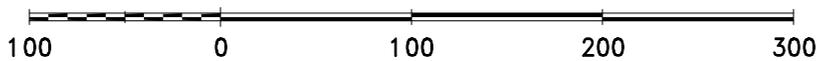
4445 E Moores Pike

Board of Zoning Appeals

2014 Aerial Photograph

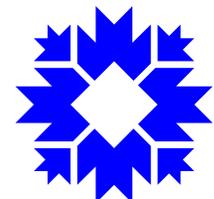
By: greulice

16 Oct 15

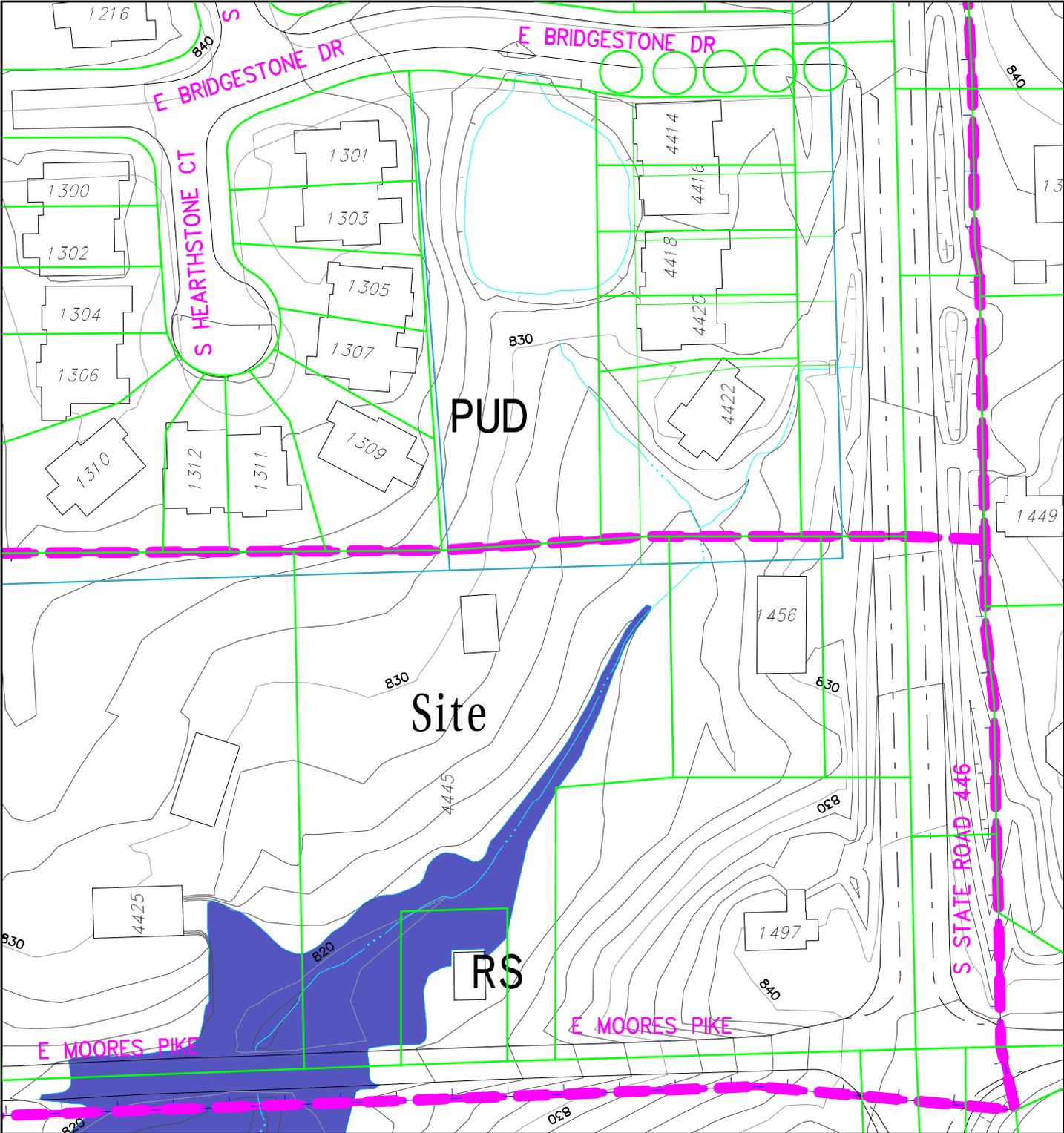


For reference only; map information NOT warranted.

City of Bloomington  
Planning & Transportation



Scale: 1" = 100'



UV/V-33-15 Brett Oeding

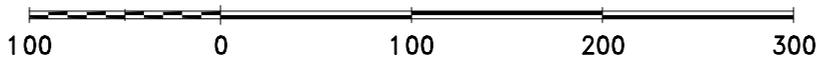
4445 E Moores Pike

Board of Zoning Appeals

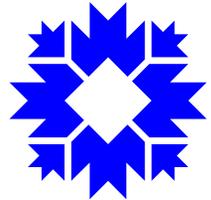
Contours and floodplain

By: greulice

16 Oct 15



City of Bloomington  
Planning & Transportation



Scale: 1" = 100'

Petitioner's Statement City of Bloomington Planning Department

RE: 4445 E. Moores Pike  
Bloomington IN 47403

This petitioner's statement is for the request of a variance from the city of Bloomington plan commission so we construct our future single-family residence at 4445 E. Moores Pike, Bloomington. The variance specifically requests to construct a driveway across a small drainage waterway to access the only buildable area of this property. This drive and culvert installation has been designed and approved by a professional engineer and follows the recommendation of Todd Stevenson, drainage engineer for the Monroe County Highway Department. This waterway is approximately 60 feet from the road and without the drive access to the north portion of the property, the ability to locate our new home would not be feasible. We greatly appreciate the consideration and hope you can help us finalize the purchase of this property for our future home.

Thank You,

Brett and Allison Oeding  
3318 S Cedarwood Cir  
Bloomington IN 47401  
812-325-7938

UV/V-33-15  
Petitioner Statement

