



Petition Number: 2020-42-UV

Subject Site Address: 9100 East CR 100 North

Project Name: Peerman Basketball Barn

Petitioner: Vaughn & Patricia Peerman

Represented by: Jason Lueking
Stoll Keenon Odgen PLLC

Request: Petition for a Use Variance to permit an indoor recreation facility in the Rural Equestrian (RE) District.

Current Land Use: Residential with an accessory building which has been improved as a gymnasium.

Approximate Acreage: 7.64± acres

Zoning History: August 2019 Zoning Enforcement (operation of a use not permitted by Zoning). Outcome: activity ceased
May 2020 Zoning Enforcement (operation of a use not permitted by Zoning). Outcome: filing of a Use Variance petition

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Zoning Map
Exhibit 4 – Comprehensive Plan Land Use Map
Exhibit 5 – Indoor Photos of Gymnasium
Exhibit 6 – July 22, 2020 Cease and Desist Letter to Petitioner
Exhibit 7 – Petitioner’s Proposed Commitments
Exhibit 8 – Building Safety Assessment from Moehl Engineering
Exhibit 9 – Petitioner’s Proposed Findings of Fact

Staff Presenter: Wayne DeLong, AICP, CPM

PETITION HISTORY

This petition was to have received its initial public hearing at the January 6, 2021 Board of Zoning Appeals meeting, but was continued to the February 3, 2021 meeting as requested by the Petitioner. No other petitions for this property have been filed at this time. This petition is the result of a zoning enforcement action.

SITE LOCATION, ZONING, PROJECT DESCRIPTION AND ENFORCEMENT HISTORY

The 7.64± acre subject site is classified as Rural and is zoned Rural Equestrian (RE). The site is located on the southeast corner of the intersection of U.S. Highway 421 and CR 100 North (Exhibit 2). The subject site has been improved with a residence of approximately 5,400 square feet, an enclosed accessory structure of approximately 6,700 square feet which has been finished as an indoor recreation facility (gymnasium) (Exhibit 5), and related parking areas. Vehicular access onto the site is from the CR 100 North. The subject site, as well as the parcels immediately to the east and south, is zoned Rural Equestrian (RE) (Exhibit 3); and the parcels to the west and north are zoned Rural General Agricultural (AG). The surrounding properties have been developed as follows:

- on the north, agricultural uses and a residence;
- to the east, a residence;
- to the south, agricultural uses;
- and to the west, agricultural uses and a residence.

According to the Boone County Property Record Card the two (2) structures occurred while the subject site was under the zoning jurisdiction of Boone County and it is presumed that the accessory building was approved at that time as an agricultural building (as the accessory building was constructed prior to the construction of the dwelling). Since the initial construction of the vertical improvements, the property has been improved with a hard-surfaced parking lot marked to accommodate up to 22 vehicles.

As noted earlier in this Report, the Town received a complaint that the gymnasium was being utilized by the public for practices and lessons. This public activity was verified through Staff's conversations with the property owner as well as through various publicly available internet-based resources. Town Staff issued a letter to the Petitioner on July 22, 2020 (Exhibit 6), notifying them of the civil zoning violation and "to cease and desist the prohibited business operations at the location immediately." This letter prompted additional discussions with the Petitioner and has resulted in the filing of a Use Variance Petition for consideration by the Board of Zoning Appeals.

ANALYSIS

Based upon the description of uses from the Petitioner, Staff has determined that the use meets the definition of an "Indoor Recreation Facility" use from the Zionsville Zoning Ordinance ("ZO"). The use of an "Indoor Recreation Facility" is not a permitted use in the Rural Equestrian (RE) District as identified in the Table of Authorized Uses (Table 2). The use of "Indoor Recreation Facility" is permitted by right in the following Rural zoning districts: GB, PB, I-1, and I-2.

In evaluating the appropriateness of the proposed use at the subject location, the existing surrounding uses and the Town's Comprehensive Plan must be considered. The 2014 Comprehensive Plan Amendment Land Use Map for Union Township (Exhibit 4) identifies the

future land use for entirety of the subject site and surrounding properties to be general agricultural. Commercial and/or public facilities are not considered for this area, with the exception of commercial and/or public facility uses identified in the RE District supported by Table 2 of the Ordinance.

In summary, the act of providing instruction and/or training (indoor or outdoor) is permitted by ZO in a rural residential district in the form of a Home Occupation, and, as well, the noise associated with the act of practice is permissible by the Town's General Code. Specifically speaking, noise generated by the act of practice is subject to less regulation than noise generated in a different manner. As a part of the filing, the Petitioner has filed for consideration *Commitments Concerning the Use or Development of Real Estate Made in Connection With a Petition for Variance of Use* (Exhibit 7). Additionally, the Petitioner has provided a Building Safety Assessment from Moehl Engineering which details a number of improvements required to bring the facility up to current building code standards (Exhibit 8).

However, as written, the proposed Commitments do not achieve the standard of maximum operations intended to be not be exceeded if the use were to be operated as a Home Occupation. Further, the ZO limits such as no more than two (2) additional parking spaces being dedicated to a Home Occupation illustrate that the ZO does not support the proposed use as a Home Occupation.

In conclusion, as the ZO provides a remedy for the property to support such as occupancy and a hardship has, in the opinion of Staff, not been demonstrated to support the ongoing operation of the "Indoor Recreation Facility", Staff is not supportive of the Petition as filed. Further, Staff has not identified a manner in which the petition could be amended in order to secure Staff's support of a Use Variance.

PROCEDURAL – CONSIDERATION OF A USE VARIANCE PETITION SEEKING APPROVAL

The Board of Zoning Appeals shall hear, and approve or deny, all requests for Use Variance requests as provided for by the Zionsville Zoning Ordinance. A Use Variance may be approved only upon written determination that:

- (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;*
- (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;*
- (c) The need for the variance arises from some condition peculiar to the property involved; and strict application of the terms of the zoning ordinance would result in an unnecessary hardship in the use of the property;*
- (d) The strict application of the terms of the zoning ordinance would result in an unnecessary hardship in the use of the property;*
- (e) The approval does not interfere substantially with the Comprehensive Plan*

Proposed Findings of Fact from the Petitioner are attached for the Board of Zoning Appeal's consideration (Exhibit 9).

Time Line

Typically, the Board of Zoning Appeals weighs heavily the concept of establishing a “sunset date” (or “check in date” / “renewal date”) for any Use Variance it approves within its jurisdiction. As such, if the Board of Zoning Appeals is inclined to favorably consider the petition, the Board of Zoning Appeals should discuss this topic with the Petitioner during the course of the public hearing while noting the Petitioner’s timeline for investment and improvement to the site.

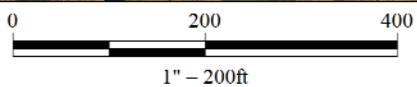
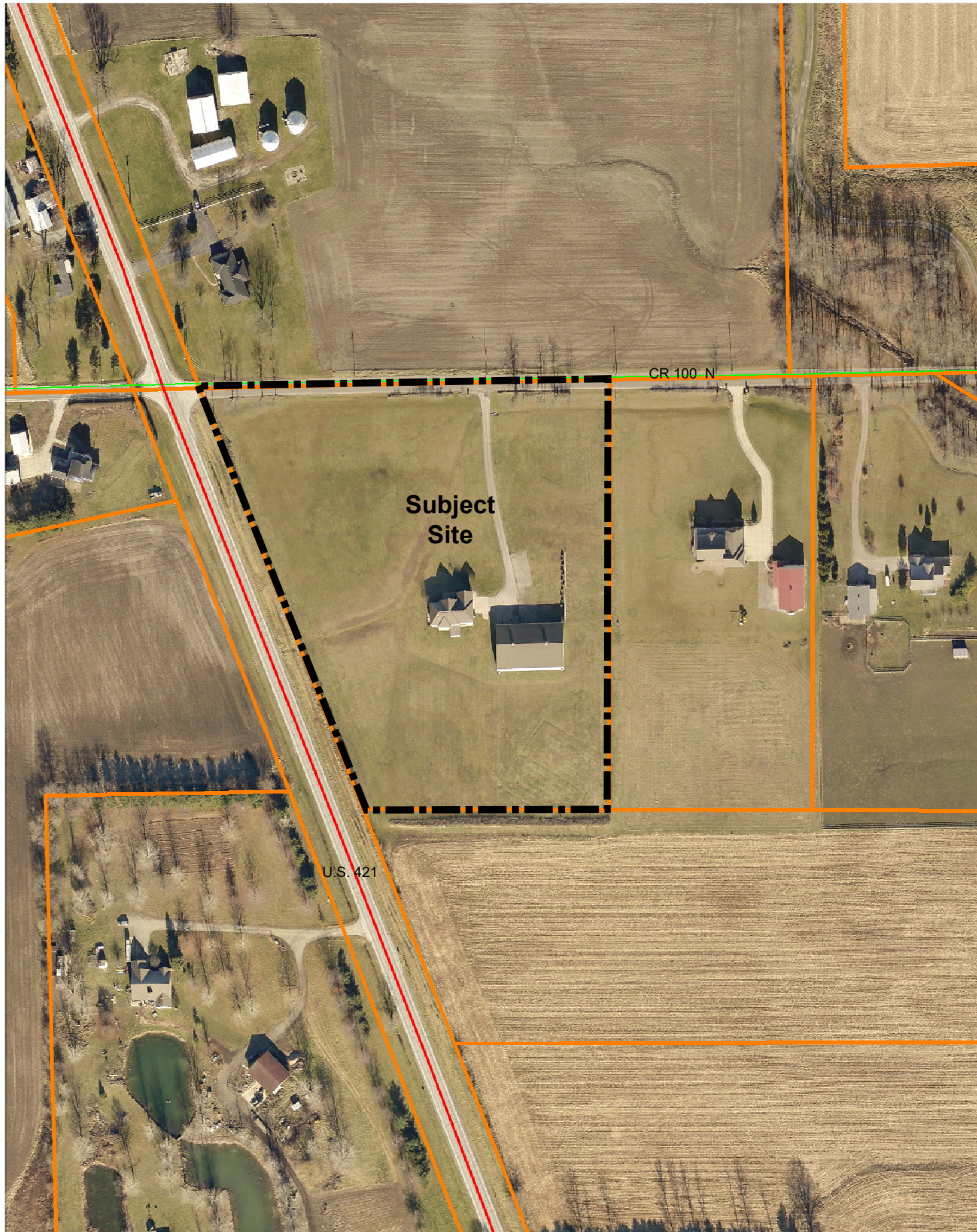
STAFF RECOMMENDATIONS

Staff recommends denial of the Use Variance to permit an indoor recreation facility in the Rural Equestrian (RE) District at 9100 East CR 100 North as described and depicted in Docket #2020-42-UV.

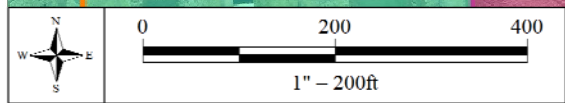
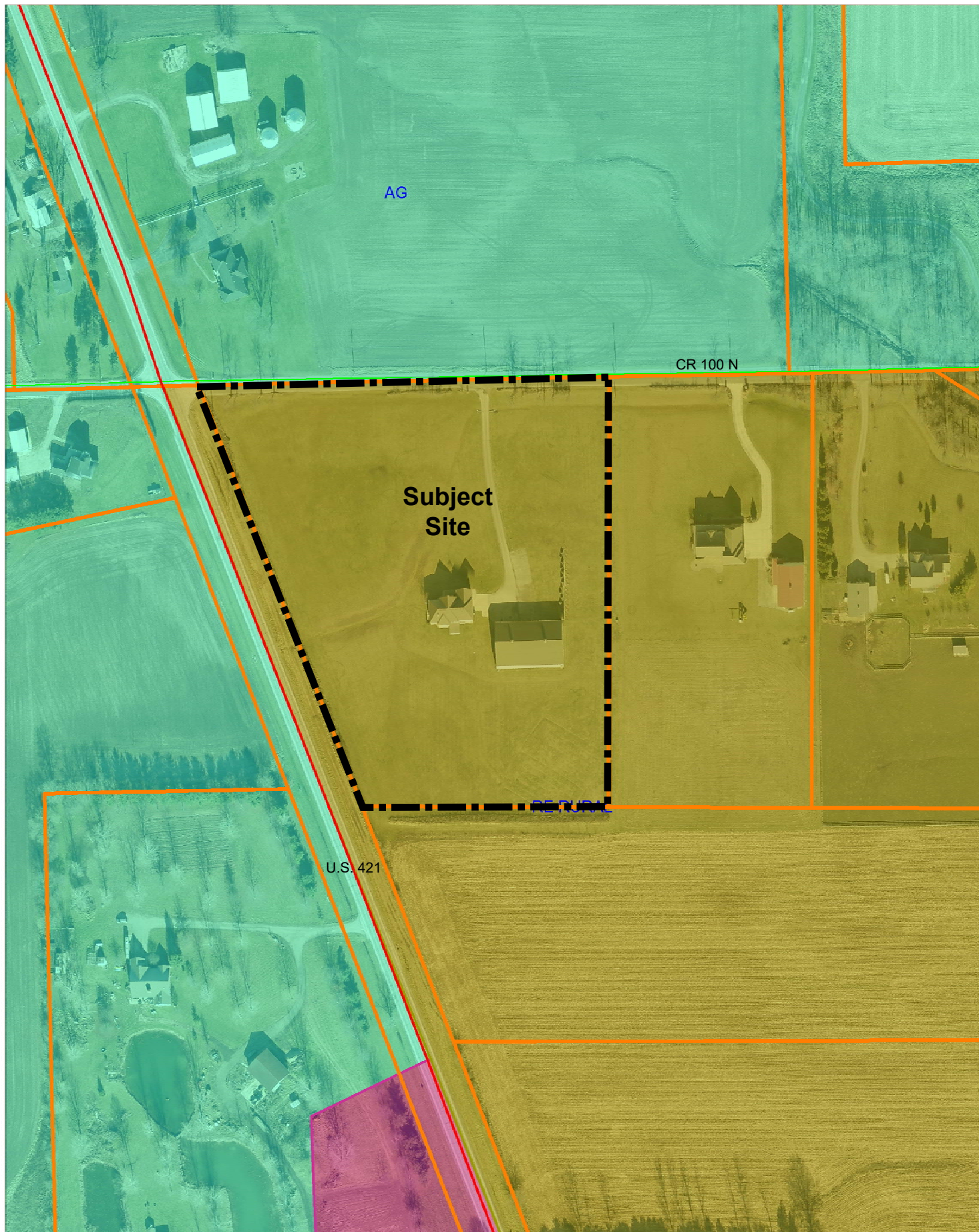
RECOMMENDATION MOTION

I move that Docket #2020-42-UV, a Use Variance to permit an indoor recreation facility in the Rural Equestrian (RE) District at 9100 East CR 100 North, be:

- Approved as filed, based upon the findings of fact as presented and subject to:
 - 1) The Petitioner’s Commitments being recorded with the Boone County Recorder’s Office; and
 - 2) All items noted with the Building Safety Assessment performed by Moehl Engineering, identified as Exhibit 8, be addressed and completed within 30 days of this approval.
- Denied.
- Continued to the February 3, 2021 Board of Zoning Appeals Hearing.



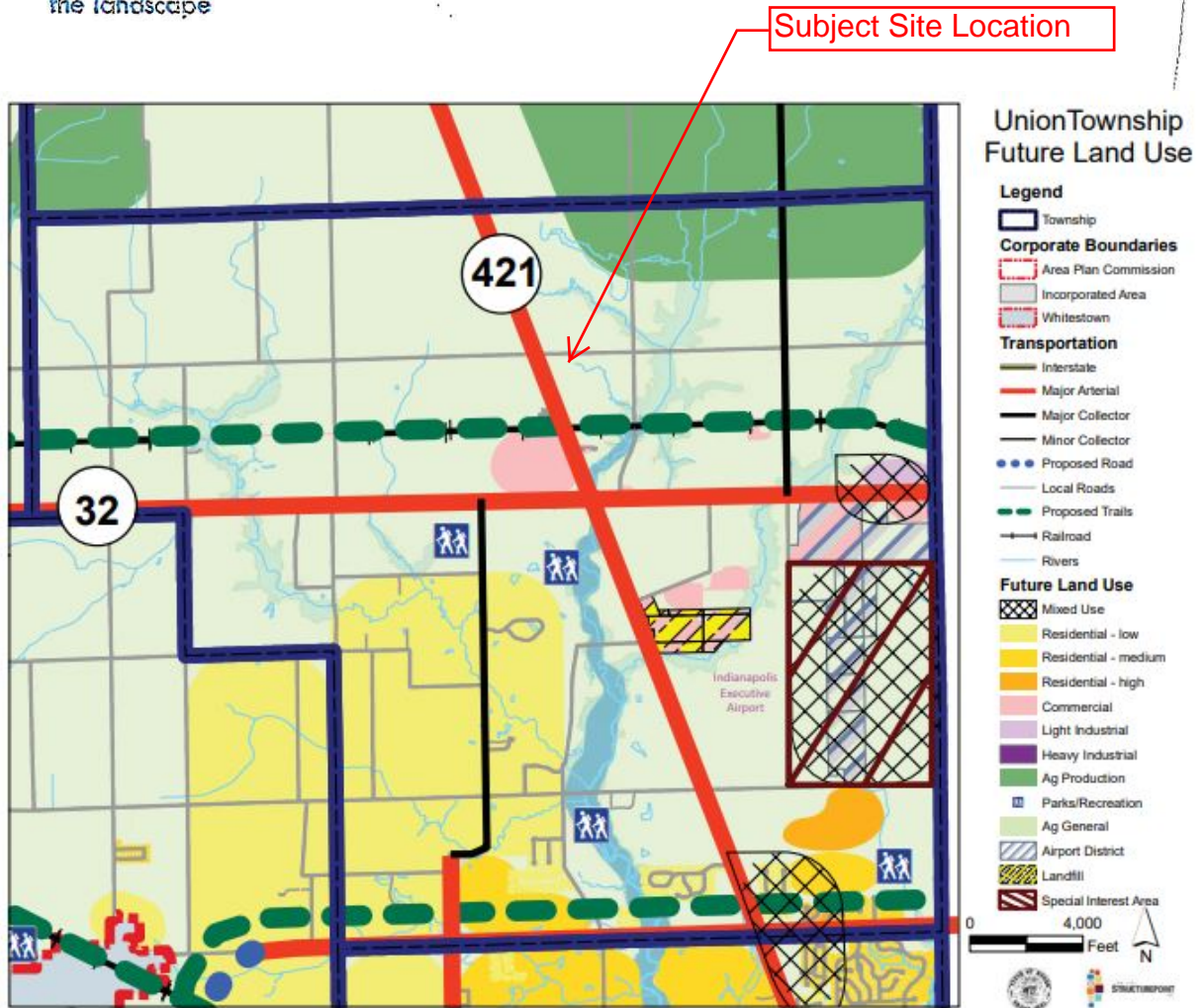
2020-42-UV: Location Map - Exhibit 2



Land Use Plan Union Township

The desirability of the rural, small town character and quality of life of the area combined with ease of access to two townships has created a brisk real estate market for new residential development. Many new homes in the area surrounding Zionsville tend to be high priced compared to other areas of the county. Strip residential development had occurred along a number of the rural roads creating safety and traffic concerns. Sanitary sewer availability from Zionsville and especially Whitestown has contributed to more residential development.

New residential areas are proposed throughout rural Zionsville adjacent to existing residential development. With respect to undeveloped property that is currently adjacent to land developed at 1.75 dwelling units per acre or less, the new development should be consistent with that existing density. Public input strongly supports new residential development and should respect the unique rural and natural character of the area. A variety of open space preservation techniques should be employed to insure new development respects the existing scenic features of the landscape









July 22, 2020

VAUGHN R & PATRICIA J PEERMAN
9100 E. 100 N
ZIONSVILLE, IN 46077

RE: INV-2020-28; VIO-2020-21

Dear Mr. and Ms. Peerman:

This letter serves as Official Notice to correct a civil zoning violation for the property located at 9100 E. 100 N. ZIONSVILLE, IN 46077. An inspection was conducted of the as the result of a complaint filed with our office which indicates the conduct of basketball instruction in a detached accessory building. After research into the activities of the business operated from the premises it has been determined that the property is being utilized in a manner which is not permitted by right in § 194.044 RURAL RE: RURAL EQUESTRIAN DISTRICT. Please be advised that the use is in violation of the Zoning Code of the Town of Zionsville. Please be aware that the presence of more than one (1) primary use on a property (commercial use and residential) is as well a violation of the ZO and/or may be in violation of the 2014 Indiana Building Code and 2014 Indiana Fire Code [dependent on varying factors].

§ 194.010 SCOPE AND APPLICATION. of the Town of Zionsville Zoning Ordinance states that "No person may use or occupy any land, building, structure or improvement or authorize or permit the use or occupancy of any land, building, structure or improvement under his or her control, except in accordance with the applicable provisions of this chapter; and no land, building, structure or improvement shall be used and no building shall be erected, reconstructed or structurally altered, which is not in accordance with the applicable provisions of this chapter or is arranged, intended or designed to be used for any purpose other than a use which is permitted in the zoning district in which such land, building, structure or improvement is located". The subject property is currently zoned RURAL RE, a barn is being used as a commercial use.

§ 194.082 AUTHORIZED USES AND REQUIREMENTS *Table 2, Authorized Uses* outlines approved uses for the RURAL RE District. Uses such as the one you are operating on the property are not permitted within the RURAL RE District unless a Variance of Use and/or Special Exception is granted through the Board of Zoning Appeals (BZA). As of the date of this letter, no known Variances and/or Special Exceptions are on file for this address.

§ 194.099 RURAL HOME OCCUPATIONS. Outlines approved home occupation uses allowed by code. Instructional studios for more than one student at a time are prohibited (The Barn Z'ville, May 9th – June 13, 2019; "Get your 3-on-3 On" \$120-200); however, if it is one student at a time the home occupation would be allowed with registration and

adherence to guidelines/standards. As of the date of this letter, no known Home Occupation registration are on file for this address.

The Town of Zionsville requests that you cease and desist the prohibited business operations at this location immediately. Should you choose not to cease and desist these operations, the following procedural options are available to you:

1. File and seek to change the zoning from the Plan Commission (PC) of the subject property from an RURAL RE District to a business district in which the business combination use is permitted;
2. File for and seek an approval from the Board of Zoning Appeals (BZA) of a variance of use and/or special exception to permit the combination of business activity and residential use on the subject property; or

Failure to attain complete compliance or begin the process to appeal/seek approvals within ten (10) days from the date of this directive will result in additional enforcement and legal action. You will be liable for all fines imposed upon you and legal fees incurred by the Town of Zionsville in this matter. Citations for violations include fines up to \$2,500 per citation per the zoning ordinance.

Your cooperation in resolving this matter expediently is greatly appreciated.

If you have any questions regarding this matter, please contact me at (317) 726-6376.

Respectfully,

Bill Peebles, AICP
Planner I / Code Enforcement

**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE
IN CONNECTION WITH A PETITION FOR VARIANCE OF USE**

In accordance with Indiana Code Section 36-7-4-1015, Vaughn R. Peerman and Patricia J. Peerman ("Owner") as owner of the real estate located in Boone County, Indiana, which is described below, makes the commitments set forth in Exhibit A ("COMMITMENTS") concerning the Owner's use and development of the following real estate ("Real Estate"):

Legal Description:

LOT 1 IN KINDRED SPIRITS FARM, SECONDARY PLAT, A SUBDIVISION IN
UNION TOWNSHIP OF BOONE COUNTY, INDIANA AS PER PLAT THEREOF
RECORDED FEBRUARY 16, 2001 AS INSTRUMENT NO. 0101496 IN THE OFFICE
OF THE RECORDER OF BOONE COUNTY, INDIANA.

1. **Owner's Statement of COMMITMENTS:** Please see attached Exhibit A.
2. **Variance of Use; Termination:** The Owner's Petition for Variance of Use was GRANTED by the Board of Zoning Appeals of the Town of Zionsville, Indiana on _____ under Case No. _____. Such Petition requested a variance of use for the Owner to operate a private recreational facility on the Real Estate in the RE zoning classification applicable to the site ("Variance"). Upon the termination of the Variance, all other COMMITMENTS set forth in Exhibit A shall also be deemed terminated.
3. **Binding Effect; Modifications:** These COMMITMENTS shall be binding on the Owner and other persons acquiring an interest in the Real Estate. These COMMITMENTS may also be modified or terminated by a decision of the Board of Zoning Appeals made at a public hearing after proper notice has been given.
4. **Enforcement:** These COMMITMENTS may be enforced jointly and severally by:
 - A. The Town of Zionsville Plan Commission; and,
 - B. Owners of all parcels of ground adjoining the Real Estate to a depth of one (1) ownership surrounding the perimeter of the Real Estate. The identity of owners shall be determined from the records in the offices of the various township assessors of Boone County, Indiana. (This paragraph defines the category of persons entitled to receive personal notice of the variance, special exception or approval petition under the rules of the Board in force at the time the COMMITMENT was made);

Exhibit A
COMMITMENTS

1. Private training and practices shall be limited to no more than 20 participants at a time. It is anticipated that the average training session at the facility will not include more than 5 participants.
2. At least one adult trainer or coach shall supervise all activity within the facility (the "Facility"). All State and local health department guidelines shall be followed in the Facility.
3. No training or practices shall begin before 8 a.m. or continue beyond 9 p.m. each day.
4. The Facility will not be open to the public. No open gym times shall be offered. Training is by appointment only or pursuant to a written contract with the owner.
5. No tournaments or league play shall be conducted in the Facility.
6. No public outdoor activity or events shall be conducted. Activities are limited to a private indoor recreational facility.
7. Parking shall be in designated spots on the parking lot located adjacent to and immediately North of the Facility.
8. Solid privacy fencing six (6) feet in height shall be maintained along the east boundary of the parking lot for the Facility.
9. The property that is subject to the use variance includes the Facility and a private residence located on approximately 7.84 acres (the "Property"). The private residence for the Property is currently owner-occupied and shall remain owner-occupied while the use variance is in effect. The residence will not be leased to any third parties while the use variance is in effect.



Moehl Engineering, Inc.

Forensic Engineering Services

317-818-1820

Fax: 317-818-1821

99 East 106th Street
Indianapolis, IN 46280

January 5, 2021

Mr. and Mrs. Rodney Peerman

THE ZBARN

9100 East 100 North
Zionsville, IN 46077

RE: Building Safety Assessment
The Peerman Basketball Barn
220 North East Street
Zionsville, Indiana
MEI File No.:

1220-003

Dear Mr. and Mrs. Peerman;

At your request we have inspected the above referenced private basketball gymnasium and find the overall safety of the building can be brought up to current building code standards by modifying the following:

- Egress from the building will be improved with an addition of an additional egress door at the east end of the north elevation. This door is not required by the building code but will serve to minimize any confusion at the time of an emergency. The door will be installed to swing outward. The door will be installed with new "Panic" or bump hardware. The door will be installed with an exit sign and emergency lighting to match the other doors.
- The existing main entrance door, located at the west end of the north elevation, will be re-configured to swing outward. The door will be operated with new "Panic" or bump hardware.
- The existing door at the east end of the south elevation, will be re-configured to swing outward. The door will be operated with new "Panic" or bump hardware.
- An ADA compliant grab bar will be installed on the wall, above the toilet, in the bathroom.

The Zionsville Fire Marshal, Deputy Chief Joshua Frost, was contacted for issues the fire department may suggest. On January 4, 2021, Deputy Chief Frost inspected the building. You and I were present at the time of the inspection. Mr. Frost, first-off, stated that he was impressed with the quality of the construction of the building. He did comment that the fire department will not oppose the variance request. Deputy Chief Frost made the following suggestions to promote the safety of the building:

- The existing sloped ceiling of the storage closet under the stair will be finished with a single layer of $\frac{5}{8}$ -inch, Type X sheetrock. This will provide an extension to the fire resistance of the stair structure itself.
- The sloped ceiling of the mezzanine area should be blocked off to provide a minimum habitable ceiling height of 7-feet.
- The existing smoke detector, in the mezzanine area, should be adjusted to fit within the smoke detector bracket.

Based upon our review of the above collected data coupled with observations made at the time of our investigation, the conclusion of our investigation indicates that our, as well as the fire department's, safety opinion with the building indicate only minor building repairs. As the building owner we have personally discussed the above mentioned items and feel that these building repairs are not unreasonable and should be completed within the next 90 days.

he above stated opinions are based on the physical evidence present at the time of our inspection. Unless further technical assistance is required, the writer considers the above as complete and sufficient per the scope of engineering work requested, and will provide no further technical assistance.

MOEHL ENGINEERING, INC.



Tim Moehl, P.E.
Registered Engineer
State of Indiana
Registration No: 870090



**TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA**

PETITION FOR VARIANCE OF USE

FINDINGS OF FACT

1. The grant (**will / will not**) be injurious to the public health, safety, morals, and general welfare of the community because:
All public health guidelines will be followed at the facility. The site will promote public health and goals of youth sports. Strict hours of operation will be observed in accordance with use commitments of the owner.
2. The use or value of the area adjacent to the property included in the variance (**will / will not**) be affected in a substantially adverse manner because:
The quality of the facility is first class and adds value to the property and adjacent lands. It is a gymnasium acceptable for use by players from the Indianapolis Pacers, Butler University and travel sporting groups.
3. The need for the variance arises from some condition peculiar to the property involved and the condition (**is / is not**) due to the general conditions of the neighborhood because:
The property is located at the intersection of U.S. Highway 421 and County Road 100 North. Prior owners constructed an extended driveway, parking areas, privacy fencing and a facility that benefits the property and adjacent lands.
4. The strict application of the terms of the zoning ordinance (**does / does not**) constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought because:
A strict application prevents productive use of a quality facility and reduces opportunities for local athletes especially harmed by the Coronavirus pandemic.
5. The grant (**does / does not**) interfere substantially with the Comprehensive Plan because:
Development continues to grow along U.S. Highway 421, a vital roadway for Zionsville and Boone County. The use is consistent with other productive and healthy uses of property adjoining U.S Highway 421.

DECISION

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this _____ day of _____, 20____.
