### Staff Report – Board of Zoning Appeals

**USE VARIANCE**

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<th>Docket #:</th>
<th>V2019-022</th>
<th>Hearing Date:</th>
<th>October 28, 2019</th>
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<tr>
<td>Applicant:</td>
<td>Speedway LLC, 500 Speedway Drive, Enon, Ohio 45323</td>
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<tr>
<td>Owner:</td>
<td>Ohio Properties LLC, C/O Allen or Nick Kirkendall, 2537 E. Main Street, Greenwood, IN 46143</td>
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**Petition Request:**

Petitioner requests a use variance to allow for three (3) commercial fueling lanes (diesel fuel for semi tractor trailer rigs) that will serve trucks in excess of 16,000 lbs. Service to trucks in excess of 16,000 lbs. are prohibited by the I-65 Corridor Overlay Zone, Section 10-101, subsection 6.17.07 B.

Section 10-101 I-65 Overlay Zone district, subsection 6.17.07.B excludes fueling stations that serve trucks in excess of 16,000 lbs. (Ord. 07-31, ss2, 9-17-07). Requesting a Use Variance to allow for 3 commercial fueling lanes that will serve trucks in excess of 16,000 lbs.

Outside the Overlay Zone, line 111 of the Use Table shows that gas stations such as the one proposed by the Petitioner would be permitted in the C-2 District.

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**Location/Description:**

The subject property is located on the southwest corner of the intersection of East Main Street & Graham Road. The undeveloped property has not yet been assigned a postal address. The subject property is part of the Precedent South Business Center, a platted commercial subdivision. It is currently described as Block 1 of Section 1, which includes a total of 6.67 acres. The proposed legal description will be Lot 1 of Block 1 of Section 1 of the Precedent South Business Center if this project comes to fruition. The legal description for the entire Block 1 was used for the public notices for this petition.

The subject property is zoned C-2 Commercial and lies within the I-65 Corridor Overlay Zone.
See attached Exhibits A-1, A-2, A-3 – Site Plans

See attached Exhibit B – Vicinity Map

See attached Exhibit C – Area Aerial Map

Existing & Surrounding Land Use:

North – C-2 Commercial & I-1 Industrial – distribution center under construction
East – C-2 Commercial – Precedent South Business Center – undeveloped blocks
South – I-1 Industrial – Precedent South Business Center – mixture of industrial uses
West – I-1 Industrial – Precedent South Business Center – mixture of industrial uses

See attached Exhibit C – Area Aerial Map

Ordinance References:

Zoning Ordinance No. 82-1, as amended, Section 10-101 I-65 Corridor Overlay Zone, subsection 6.17.07 B. excludes fuel stations that serve trucks in excess of 16,000 lbs.

Statutory Criteria:

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

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

3. The need for the variance arises from some condition peculiar to the property involved

4. The strict application of the terms of the Zoning Ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought
5. The approval does not interfere substantially with the Comprehensive Plan

Comments and Findings:

PETITIONER’S STATEMENTS OF REASONS FOR USE VARIANCE:

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

Over the past twelve (12) years, development of industrial and commercial operations using trucks, including but not limited to Dayton Freight, Amazon, FedEx, Drive, Celladon Logistics, Nestle, Ulta, and Poynter Sheet Metal, contributed to a significant increase in the amount of truck traffic in the area bounded by Worthsville Road to the south, Graham Road to the east, Main Street to the north, and I-65 to the west. In fact, some of the truck traffic lands on Main Street to the of I-65 at the Red Roof Inn and Fanta Suites, but most of the trucks operating in this area use the Road Ranger Truck Stop at the intersection of Main Street and I-65 for refueling purposes. Currently, the Road Ranger offers the only refueling options for trucks in this area. Such circumstances create significant traffic congestion in and around the intersection of Main Street and I-65 when those trucks leave Road Ranger and attempt to travel west on Main Street towards I-65, particularly during the morning and evening rush hours. The absence of a traffic signal to manage the flow of traffic on Main Street snarls traffic during rush hour and gives rise to safety concerns.

Approval of the requested variance will provide another refueling option for trucks at a much safer location on the west side of Graham Road and south of the light at Main Street while serving two purposes. First, in all likelihood, it will reduce congestion caused by trucks refueling at the Road Ranger, who then attempt to turn west to get back to I-65, and sometimes block the east bound lanes on main Street altogether. Main Street is used by the general public, including but not limited to the single-family and multi-family residential developments further east on Main Street, as well as trucks operating from the commercial and industrial operations in the area. On the other hand, trucks operating from the commercial and industrial operations in the area use Graham Road much more than the general public. Graham Road offers a much safer location for a refueling option for the commercial and industrial operations using Graham Road.

Second, trucks refueling at the proposed Speedway station can safely travel north or south after a refueling stop via Graham Road. The traffic signal at the intersection of Main Street and Graham Road creates a situation where north bound trucks may safely enter Graham Road while the north/south traffic signal is red. This traffic signal will also provide for a much safer westerly turn back toward I-65. Moreover, no portion of Greenwood’s trail system runs down Graham Road and there is little to no pedestrian activities in this area.

Thus, approval of the requested use variance will improve the public health, safety, morals and general welfare by offering a safer option for trucks refueling in Greenwood. It will more efficiently and safely serve and coordinate truck refueling options than those that currently exist in Greenwood.

See attached Exhibit A-2 – Site Plans

See attached Exhibit B – Vicinity Map

See attached Exhibit C – Area Aerial Map
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 because

The surrounding properties are commercial and industrial in nature. The requested use variance will increase the value and use of the surrounding properties because it will efficiently serve and coordinate well with the commercial and industrial trucking businesses in the area, including but not limited to Dayton Freight, Amazon, FedEx, Drive, Nestle, Ulta, Celladon Logistics, and Poynter Sheet Metal.

See attached Exhibit A-2 – Site Plans

See attached Exhibit C – Area Aerial Map

3. The need for the variance arises from some condition peculiar to the property involved, because

The location of the property itself creates a peculiar condition requiring the need for a variance. Considerable development has occurred since Greenwood excluded truck refueling stations from the C-2 zoning district in the Overlay Zone in 2007. For example, Dayton Freight, Amazon, FedEx, Drive, Celladon Logistics, Poynter Sheet Metal, and many other industrial and commercial businesses that utilize trucks now operate in this area, with more to come in the near future. For example, the Greenwood Common council approved a petition to rezone the northeast corner of Main Street & Graham Road from C-2 to I-1 to permit the development of two manufacturing, light industrial warehouse or distribution centers, approximately 157,825 square feet and 170,500 square feet. Since the Overlay Zone has failed to keep up with the development in the area, it actually prohibits a specific use of a particular parcel which would efficiently serve and coordinate well with the existing and future uses in the area. As discussed in more detail below, such prohibition frustrates the intent of the Overlay Zone.

See attached Exhibit A-1, A-2, A-3 – Site Plans

See attached Exhibit B – Vicinity Map

See attached Exhibit C – Area Aerial Map
PETITIONER’S STATEMENTS OF REASONS FOR USE VARIANCE:

4. The strict application of the terms of the Zoning Ordinance will constitute and unusual and unnecessary hardship if applied to the property for which the variance is sought, because

The strict application of the Overlay Zone to the parcel constitutes and unusual and unnecessary hardship because the parcel, though of a common shape, is unique in that it sits near the eastern edge of the Overlay Zone close to one of the busiest intersections in Greenwood (Main Street & I-65) and it prevents a use that is perfectly suitable for a parcel in such a location. More to the point, but for the exclusion of fueling stations in excess of 16,000 lbs. in the Overlay Zone for a parcel carrying a C-2 zoning classification, such use would be permitted on the parcel.

Moreover, the location and size of the parcel gives the owner the unique ability to coordinate the use and development of this lot in such a manner that an innovative site design will result in three (3) lots having access points from three different roads that also coordinates seamlessly with the predominant use along Graham Road – commercial and industrial business who rely heavily on trucks, including but not limited to Dayton Freight, Amazon, FedEx, Drive, Nestle, Ulta, Celladon Logistics, and Poynter Sheet Metal. The subdivision of the lot comports with the original intent of the Overlay Zone as discussed in detail below.

Greenwood first adopted the I-65 Overlay Zone in 1987 because, in part, “visibility and accessibility of the land within this corridor is unique, and the land is in relatively large ownership tracts, and therefore commands the highest standards of development which stimulate substantial capital investments, encourage efficient land use, promote coordinated development, permit innovative designs, establish development standards, and preserve the integrity of the roadways within this corridor.” (Emphasis added) Greenwood amended the I-65 Overlay Zone in 2007 by adding truck fueling stations as an excluded use in the C-2 zoning district. Since then, Dayton Freight, Amazon, FedEx, Drive, Nestle, Ulta, Celladon Logistics, Poynter Sheet Metal, and many other commercial and industrial businesses that utilize trucks are now operating within the Overlay Zone, particularly along Graham Road and Main Street. Without a variance, the Overlay Zone prohibits a use for a particular parcel that lends itself to an innovative site design that efficiently uses the parcel to coordinate well with the existing uses in the area, which comports with the original purpose of the Overlay Zone.

Additionally, the property is currently subdivided as “Block 1” and consists of approximately 6.67 acres. Block 1 has street frontage on three sides and is situated just a mile or so from I-65. Currently, there are no other parcels of comparable size east of I-65 having access from three sides inside the Overlay Zone with frontage on Main Street. It is the only parcel inside the Overlay Zone that can be designed in such a manner that allows for the development of a convenience store with three ingress/egress points and a refueling station to serve commercial and industrial businesses utilizing trucks in the area that use Graham Road more than anyone else, including but not limited to Dayton Freight, Amazon, FedEx, Drive, Nestle, Ulta, Celladon Logistics and Poynter Sheet Metal.

More specifically, if the Greenwood Board of Zoning Appeals approves the requested use variance and the dimensional variances, Speedway intends to subdivide Block 1 into three lots because the parcel is too large for Speedway’s intended use. Speedway intends to design the 6.67 acres in a manner that gives the convenience store ingress/egress points from three sides – Main Street, Graham Road, and Commerce Parkway West Drive, while also providing a truck refueling station with a single ingress/egress point from Graham Road to serve the commercial and industrial trucking businesses in the area, including but not limited to Dayton Freight, Amazon, FedEx, Drive, Ulta, Nestle, Celladon Logistics and
Poynter Sheet Metal. Speedway’s proposed use furthers the original intent of the Overlay Zone insofar as it stimulates substantial capital investments, encourages efficient land use, promotes coordinated development, permits innovative site designs, and preserves the integrity of the roadways within this corridor.

See attached Exhibit A-1, A-2, A-3 – Site Plans

See attached Exhibit B – Vicinity Map

See attached Exhibit C – Area Aerial Map

PETITIONER’S STATEMENTS OF REASONS FOR USE VARIANCE;

5. The approval does not interfere substantially with the Comprehensive Plan, because

The Comprehensive Plan contains no prohibition against the use proposed by the Petitioner in the Overlay Zone. Instead, except in the overlay zone, such use is a permitted use in a C-2 zoning district. It therefore comports with the Comprehensive Plan.

STAFF COMMENTS AND FINDINGS:

Staff has no objections to the Petitioner’s detailed statements of reasons.

PROPOSED CONDITIONS:

Staff proposes the following to be recorded zoning commitments:

1. If approved, the use variance for three (3) commercial fueling stations shall not apply to the entire 6.67 acres contained in Section 1, Block 1, Precedent South Business Center. But instead shall only apply to the proposed Lot 1 as depicted on the site plans and drawings submitted with this petition.
2. Parking and/or storage of semi-tractors, trailers, or semi-tractor trailer rigs, shall be prohibited on the subject property.

3. A maximum of three (3) commercial fueling stations may be installed on the subject property.

4. Showers, lounges, and sleeping facilities for truck drivers or other members of the traveling public shall be prohibited on the property.

Summary:

Staff has no additional comments.

Attachments:

Exhibits A-1, A-2, A-3 -- Site Plans

Exhibit B -- Vicinity Map

Exhibit C -- Area Aerial Map

Exhibit D -- Proposed Legal Description
Lot Number 1 in the Replat of Block One of Precedent South Office Park, Section One as recorded in Plat Book "__", pages "________" as Instrument No. "__________" in the office of the Recorder of Johnson County, Indiana.