



# TOWN OF Edinburgh

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## **BOARD OF ZONING APPEALS STAFF REPORT**

**To:** BOARD OF ZONING APPEALS MEMBERS  
**From:** Nick Valenzuela, Building Commissioner  
**Date:** January 25, 2017  
**Re:** Case BZA 2017-01 Special Exception petition

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### **GENERAL INFORMATION:**

Applicant:	Nic Porter 317 Galahad Circle Franklin, IN 46131
Owner	Christopher M. Link 6650 S 800 E Edinburgh, IN 46124
Property Address:	211 West County Line Road, Edinburgh, IN 46124
Parcel Numbers:	03-05-03-220-003.600-010  03-05-03-220-003.400-010
Legal Descriptions:	W 50' Lots 1 & 2 Block B - Green Acres Subdivision - Town of Edinburgh (C/131) – German Township  Part Lots 1 & 2 Block B - Green Acres Subdivision - Town of Edinburgh (C/131) – German Township
Acreage:	0.092 acres (4,000 square feet)  0.106 acres (4,640 square feet)
Lot Sizes:	50' x 80'  58' x 80'
Zoning:	LB Local Business

Land Use: Service Station

Vacant Land

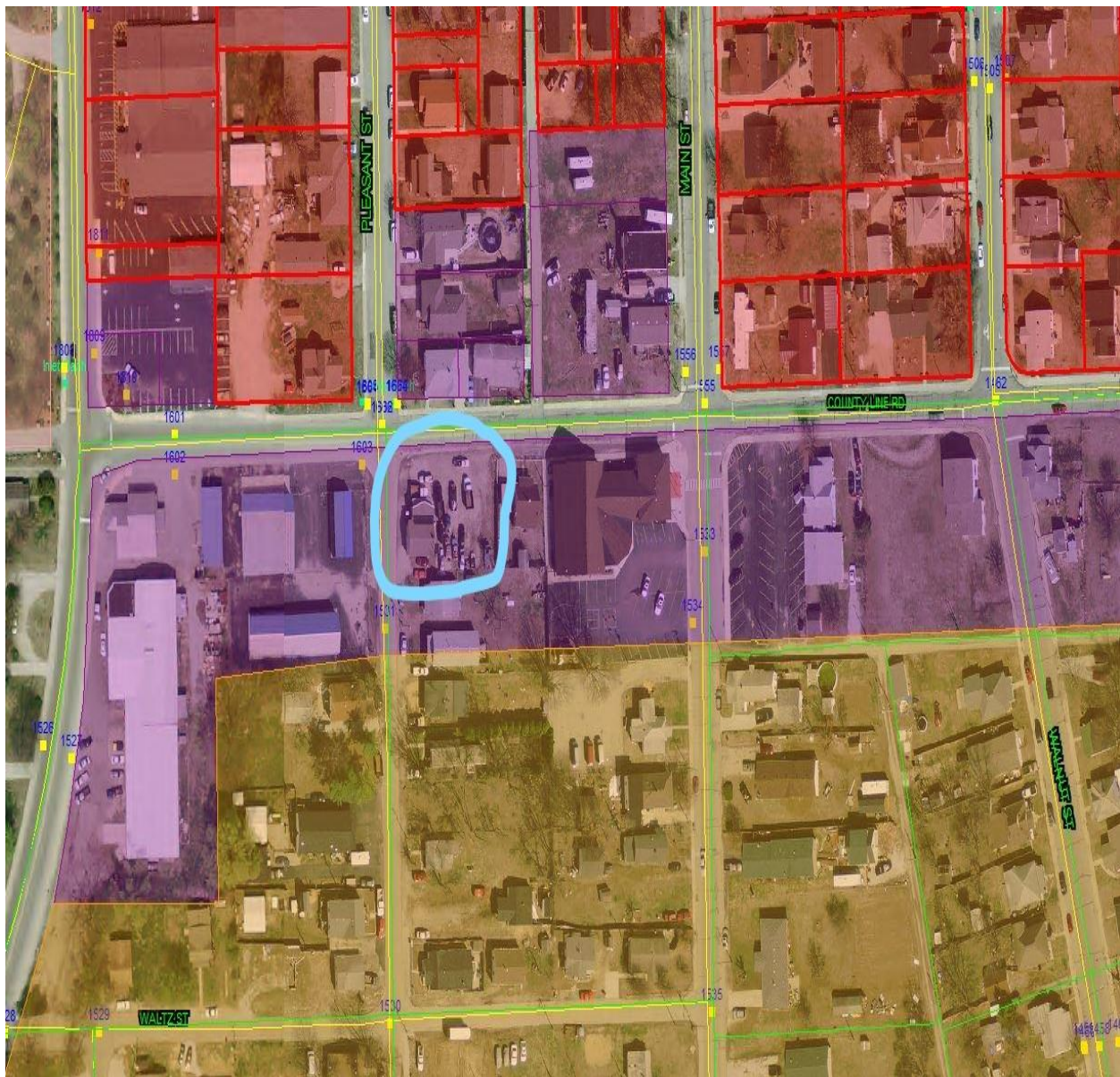
FEMA Flood Plain: Subject property does not exist in a designated flood area

SURROUNDING ZONING:

North: LB (purple)  
South: R-5 (yellow)  
East: LB (purple)  
West: LB (purple)

SURROUNDING LAND USE:

Medium Density Residential (non-conforming)  
Medium Density Residence  
Medium Density Residential (non-conforming)  
Local Business



## REQUEST:

**CASE BZA 2017-01 Nic Porter:** Petitioner is requesting a Special Exception for Developmental Standards under Division 2: *District Regulations*, §156.036: *Permitted Uses and Special Exceptions*, of the Town of Edinburgh Zoning Ordinance to allow a Special Exception use for the subject property premises to be operated as an Auto Sales business.

Petitioner has satisfied all documentation requirements, and legal and public notifications specified in the Town of Edinburgh Zoning Board of Appeals *Application Packet for Variance/Special Exception*.

## PURPOSE OF STANDARDS:

Town of Edinburgh Zoning Ordinance Division 2: *District Regulations*, §156.030 Business Districts. The districts designated for business, "LB," "GB," "RB," and "CBD" are limited to business, public, and certain residential uses. By establishing compact districts for such uses, more efficient traffic movement, parking facilities, fire protection, and police protection may be provided. Industrial uses are excluded in order to reduce the hazards caused by extensive truck and rail movement normally associated with such uses. The purpose of these districts is to provide unified shopping districts conveniently located in areas appropriate for business uses.

## CASE HISTORY:

The current owner of the subject property, Christopher M. Link, acquired subject parcel 03-05-03-220-003.600-010 on January 13, 2006; Mr. Link acquired subject parcel 03-05-03-220-003.400-010 as a co-owner also on said date, subsequently obtaining sole ownership of the parcel on January 30, 2006.

According to Town of Edinburgh staff, and Town and Bartholomew County property records, the subject property was used as a residential dwelling from approximately 2001 – 2006 prior to Mr. Link's purchase. Prior to 2001, the subject property was used for a gas station and general automobile service & maintenance business, known locally as John Henry's and a Sunoco, for an estimated 25 – 30 years.

The current petitioner, Nic Porter, states that he intends to lease the subject property premises in order to operate a used Auto Sales business at the subject location. Mr. Porter stated that he intends to offer no other commercial services at the subject location, such as Auto Service & Repair.

## CASE CONSIDERATIONS FOR LB ("LOCAL BUSINESS") ZONING:

1. Town of Edinburgh Zoning Ordinance §156.027: *Zoning Districts*, states the following:

*"The entire Town and area of extended jurisdiction is divided into the districts stated in this Article as shown by the district boundaries on the Zoning Maps. The districts are: . . . 'LB' Business . . ."*

2. Town of Edinburgh Zoning Ordinance Division 2: *District Regulations*: §156.036: *Permitted Uses and Special Exceptions* states the following:

*"The Permitted Uses for each district are shown on Table I. The uses that are listed for the various districts shall be according to the common meaning of the term or according to definitions given in Division 7. Uses not specifically listed or defined to be included in the categories under this article shall not be permitted. The Special Exceptions for each district that may be permitted by the Board of Zoning Appeals are also shown on Table I. The Board of Zoning Appeals shall follow the provisions of §156.253 and any other applicable sections when considering any application for a Special Exception."*

3. Town of Edinburgh Zoning Ordinance Division 2: *District Regulations, Table 1: Permitted Uses and Special Exceptions* states that, under LB zoning, Use Category "Auto Sales" is designated an "S" for "Special Exception."
4. Town of Edinburgh Zoning Ordinance Division 9. Board of Zoning Appeals, §156.253: Special Exceptions, states the following:

*"The Board of Zoning Appeals shall have the power to authorize special exceptions if the following requirements are met:*

- (1) The special exception shall be listed as such in Table 1 of this Article for the district requested.*
- (2) The special exception can be served with adequate utilities, access roads, drainage, and other necessary facilities.*
- (3) The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with all of the performance standards of this ordinance.*
- (4) The special exception shall be sited, oriented and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.*
- (5) The special exception shall produce a total visual impression and environment which is consistent with the environment of the neighborhood.*
- (6) The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.*
- (7) The special exception shall preserve the purpose of this Ordinance."*

Town of Edinburgh staff has made a review of similar variance requests that have been considered by the Town Board of Zoning Appeals within the past several years. Two (2) cases were found over the past seven (7) years involving a Special Exception for a petitioner seeking to operate a commercial business within one of the four (4) Business Districts; all other petitioners who sought to operate a business under Special Exception or other variances did so with regards to Residential Districts, which would be a dissimilar Special Exception/variance request to the instant case.

- **Case ZB 2010-1 (UV): Michael Fisher.** A petitioner requested a Use Variance from Town of Edinburgh Zoning Ordinance Division 2: *District Regulations: §156.036: Permitted Uses and Special Exceptions* standards to operate an Auto Service & Repair commercial business in a district zoned Local Business at 500/502 West Center Cross Street, Edinburgh, IN. The request was for a variance from the Ordinance since Auto Service & Repair was a permitted commercial business under the Ordinance via Special Exception only, and the property was located in a Corridor Overlay District near State Road 252.

Surrounding zoning for the property was identified as the Blue River to the north, and Local Business to the south, east, and west.

In a Board of Zoning Appeals hearing on November 3, 2010, the petitioner told the Board that the petitioner had worked on vehicles in the Town of Edinburgh for approximately twelve (12) years. The petitioner said that all cars would be inside a building at the property, and that the petitioner had signatures from adjoining owners indicating that they were all okay with the shop proposed for the premises.

The property owner told the Board of Zoning Appeals hearing that the property was used previously for core shop when the owner purchased the property, with the owner subsequently using the property's building for storage. He has signed petitions from everyone in the area that they are not in opposition. He also stated that they have a very strict lease with Mr. Fisher that does not allow for anything to be left outside in front of the property, no engines or core parts, as this would result in immediate eviction. Everything will be done on the back of the property. Customers may come and go in the front and no cars will be left out overnight.

Town of Edinburgh staff recommended that the use variance not be granted, citing that the adjacent properties would be affected in an adverse manner. However, the Board of Zoning Appeals unanimously approved the variance on the condition that the Town conduct a six-month review of the use of the property, and that only two (2) vehicles be stored outside in the back of the premises at any one time.

The approved use variance was revoked by the Board of Zoning Appeals in 2012 when the subject business vacated the property premises.

- **Case ZB 2012 (V3): Brown's Auto and Equipment Repair.** A petitioner requested a Use Variance from Town of Edinburgh Zoning Ordinance Division 2: *District Regulations*: §156.036: *Permitted Uses and Special Exceptions* standards to operate an Auto Service & Repair commercial business in a district zoned General Business at Lot 5A, Charlotte Drive, Edinburgh, IN. The request was for a variance from the Ordinance since Auto Service & Repair was not a permitted commercial business, or a Special Exception, in the language of the Ordinance.

After an investigation conducted for the case, Town of Edinburgh staff found the following should a variance be approved by the Board of Zoning Appeals:

- That approval would not be injurious to the public health, safety, morals, and general welfare of the community;
- That the use and value of the areas adjacent to the property would not be affected in a substantially adverse manner;
- That a strict application of the terms of the Ordinance would not result in a practical difficulty in the use of the property;
- That a strict application of the terms of the Ordinance would not constitute an unnecessary hardship if applied to the property; and,
- That approval would not interfere substantially with the Town's Comprehensive Plan since the Plan encouraged expansion of "retail and service commercial

activities” along U.S. Highway 31, as well as development of “aesthetically pleasing and functionally well-designed retail and commercial shopping areas.”

The variance request was approved by the Board of Zoning Appeals, but with the following conditions:

- All vehicles on the subject property premises scheduled for maintenance and/or repair were required to be confined within an enclosed and secure area, out of visual scope of Eisenhower Drive and U.S. Highway 31
- Strict compliance of all developmental Standards, including Building Design, Signage, and Landscape Standards, specified in Town of Edinburgh Zoning Ordinance Division 3: *Highway Corridor Overlay Districts*, in order to protect the aesthetic gateway to the Town.

### CRITERIA FOR DECISIONS:

**(\*\*The petitioner will need to address the Criteria for Decisions in their presentation\*\*)**

In taking action on all variance requests, the Board of Zoning Appeals shall use the following decision criteria, consistent with the requirements of the Indiana Code. The Board may grant a variance from development standards and limitations of this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.5) that:

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

#### STAFF FINDINGS:

The approval of this variance will not be injurious to the public health, safety or general welfare.

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

#### STAFF FINDINGS:

Adjoining properties to the subject property will not be affected in a substantially adverse manner. Any prospective or alleged adverse effect to adjoining residential dwellings should likely be scrutinized against the north and east dwellings currently existing in non-conformity with the Zoning; currently, there is no evidence that the residential dwelling to the south would suffer adverse impact should the Special Exception go in favor of the petitioner.

3. **Practical Difficulty: The strict application of the terms of the ordinance will not result in a practical difficulty in the use of the property. (This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.)**

#### STAFF FINDINGS:

The strict application of the ordinance will not result in a practical difficulty in the use of this property. (The petitioner should explain how the strict application of these ordinances results in a practical difficulty in the use of the property.)

## STAFF RECOMMENDATION

Based on these investigation findings, staff recommends **APPROVAL** of the petition subject to the following conditions:

1. That this decision is null and void should there be a change of ownership or a change of business at this location, requiring the property owner to repetition the Town of Edinburgh Board of Zoning Appeals for a Use Variance before operating a different business on this parcel.
2. That at no time will any automobile and/or vehicle service and/or repair be conducted at the subject location without having first petitioned and secured approval from the Board of Zoning Appeals under the separate Special Exception for Auto Service & Repair required by Town of Edinburgh Zoning Ordinance. Any routine/industry standard work to prepare automobile sales inventory for sale shall be an exception from this designation.

Respectively Submitted,

Nick Valenzuela  
Building Commissioner  
The Town of Edinburgh