

The Board of zoning Appeals Hereby denies the request for the special exception under BZA 23-004-SE with the following findings of fact:

1. The establishment, maintenance, or operation of the special exception will be detrimental to or endanger public health, safety, morals, or general welfare.

The location of the proposed special exception is in close proximity to the Howard School. The Howard School hosts various field trips including visitation to the school by children. The proposed special exception is also in close proximity to certain residences. Applicant claimed that berming would be sufficient to decrease any damage to the public health, safety, morals or general welfare, but the board is unconvinced. Noise and dust from the yard and its associated uses will be a nuisance to adjacent residents. The proximity to the Howard School poses a danger to children in the area. The proposed use is detrimental to the safety and general welfare of children and residents in the area if they were to enter the heavy machinery yard or with the large truck traffic passing on nearby streets. In addition, testimony and evidence presented showed other outdoor storage areas maintained by the applicant including tires and other waste products; that testimony indicated could harbor pests and was otherwise not in accordance with good storage maintenance such that the Board is convinced that this particular yard will be detrimental to or endanger public health, safety, morals, and/or general welfare.

2. The special exception will not be designed, constructed, operated, and maintained to: (i) not injure the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area.

The essential character of the area will change and not be appropriate in appearance with the existing or intended area. A large contractor yard contains large equipment and materials which are not harmonious with other uses in the area as well as the used tires and other waste products identified above and in the record. The oversized berm and fence will look out of place with the immediate vicinity. The associated vehicle repair and non-paved yard is likely to cause a nuisance to adjacent property owners. The applicant failed to provide any proof that property values will not decrease in the adjacent areas due to the heavy contractor use. Instead the applicant merely referenced the berms. However, the berms will be out of place, oversized, and not consistent with the surrounding area.

3. The establishment of the special exception will impede the normal and orderly development and improvement of surrounding property for uses permitted in the zoning district.

The applicant has not given consideration to how the adjacent sites may develop, and did not present sufficient evidence to support this finding in its favor. A heavy contractor yard exacerbates noise and unsightly screening hindering future development potential. The intent of the original rezone was for small industrial sites. Although the applicant indicated it was a family –owned business, it is not consistent with the small industrial sites submitted as part of

the rezone for this property. In addition, the size of the proposed use limits the availability for other projects, and the oversized berming and fencing will impact the orderly development and improvement of the surrounding property.

4. Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided. The special exception will result in excessive additional requirements at public expense for these public facilities and services.

The proposed use will be detrimental to the intersecting street infrastructure. No traffic impact study has been conducted and no commitments have been made by the applicant to ensure adequate street maintenance. The applicant simply relied on future development steps to claim that the infrastructure will be provided in the future. The streets in the surrounding area have not been improved to withstand the heavy vehicle equipment traffic, and there is not sufficient evidence to indicate that they will be improved to proper standards at this time.

5. Adequate measures have not been or will not be taken to provide ingress and egress to minimize traffic congestion. Vehicular approaches are designed to minimize interference with traffic on surrounding rights-of-way.

The applicant has not proposed a traffic impact study to mitigate impacts of heavy truck vehicles and office employees who will be entering and exiting on a daily basis. No measure has been provided to substantiate the intersections and interchanges can handle the additional traffic congestion. Existing roadways have minimal shoulders and likely cause interference with passing and oncoming traffic. The applicant did not provide sufficient evidence to support how it will handle transporting large trucks and machinery to and from construction sites to this location over the existing infrastructure, nor how it would improve the infrastructure to ensure that the site can handle the load anticipated in the outdoor storage area. The evidence indicated that the outdoor storage will be for heavy equipment and materials, but the only infrastructure considered in the plan was for increased berming and fencing, not for traffic and ingress/egress.

6. The special exception will not be harmonious with the objectives of the Comprehensive Plan.

The Comprehensive Plan land use map recommends this area for light industrial. However, the applicant's proposal is more akin to a heavy industrial designation, which is not harmonious with the objectives of the Comprehensive Plan. There are a number of specific policies, objectives, and goals of the Comprehensive Plan the proposed use is not harmonious with including:

- (a) the community needs to grow and develop, but such activities need to be sensitive to how they relate to existing uses and agricultural areas;***
- (b) industrial/commercial growth is to be pursued if it supports the value, character and quality of place desired by the community; and,***
- (c) develop, enhance, and maintain an efficient roadway system in Whitestown.***

7. The special exception will be in a zoning district where such use is permitted. All other requirements of the zoning district and this Ordinance will be met.

The proposed use is only permitted if a special exception is approved by the Board of Zoning Appeals. This use is permitted with limitations, not requiring a special exception, in the heavier industrial zoning district I-2. Based on representations made to the Town at the time of the rezone, outdoor storage may have been needed, but not to the extent or of the character proposed in this special exception application. Although certain commitments were made at the time of rezone regarding potential outdoor storage, the heavy industrial nature of this particular project is not consistent with the zoning. Nonetheless, the special exception is permitted (but not guaranteed). Here the board has found under factors 1-6 above that the special exception (though permitted under the UDO) is inappropriate and rejected in this instance.

BZA23-005-VA – Storage Height

The BZA hereby denies the variance application under BZA23-005-VA with the following findings of fact:

1. The approval will be injurious to the public health, safety, morals, and general welfare of the community because:

Exceedingly tall outdoor storage is injurious to the public health safety, morals, and general welfare of the community because the height of the storage materials will be unsightly and negatively impact the general welfare of the community. Any proposed excessive fencing and berming gives the appearance of the materials being unsafe and hazardous to the public. In addition, the increased berming would screen potentially hazardous uses of the site including the storage of used tires and other waste which could harbor pests or otherwise be dangerous to the public.

2. The use or value of the area adjacent to the property included in the variances will be affected in a substantially adverse manner because:

Unsightly storage will drastically change the character of the area. Uses in the surrounding area are predominantly agriculture and low-density residential (or use by the Howard School), in keeping with the rural character of the area. An increase of height and storage of materials negatively affects the use by changing the views from a simple industrial building and parking to unsightly tires, storage, and concrete materials.

3. The strict application of the terms of the Ordinance will not result in practical difficulties as applied to the property for which the variance is sought because:

Additional commitments regarding outdoor storage were administered during the time of the site rezone. The applicant is not able to comply with those requirements and is seeking a Variance to exceed the allowable height of outdoor storage. The proposed storage yard is large enough that the applicant could disperse of the materials throughout the yard so as not to stack the materials higher than allowed. The practical difficulty is the result of the applicant wanting more storage height and the applicants own specific desires with respect to how to use the site within the large storage yard. Accordingly, it is not the

*ordinance which causes practical difficulties, but rather the applicants own specific desires.
The applicant has not demonstrated adequate need for the height increase.*