



Board of Zoning Appeals Division I (December 5, 2023) Meeting Agenda

Meeting Details

Notice is hereby given that the Metropolitan Board of Zoning Appeals will hold public hearings on:

Date: Tuesday, December 05, 2023 **Time:** 1:00 PM

Location: Public Assembly Room, 2nd Floor, City-County Building, 200 E. Washington Street

Business:

Adoption of Meeting Minutes

Special Requests

PETITIONS REQUESTING TO BE CONTINUED:

- 1. 2023-AP1-002 | 1001 North Rural Street**
Center Township, Council District #17, Zoned C-3
Harshpreet Inc., by Miranda Steele

Modification of Commitments related to 2008-DV1-058, to terminate Commitment Number 10, which prohibited the sale of cigarette/tobacco rolling papers.

**** Automatic Continuance to be acknowledged.**

- 2. 2023-DV1-058 | 7215 East Thompson Road**
Franklin Township, Council District #25, Zoned C-7 / I-2
VB BTS II, LLC, by Joseph D. Calderon

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a monopole wireless communication facility with a height of 199 feet (maximum height of 70 feet permitted).

**** Continuance requested by staff.**

- 3. 2023-DV1-059 | 3835 East 96th Street**
Washington Township, Council District #3, Zoned C-S
96th Street Retail Partners LLC, by Mike Timko, P.E.

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a convenience market with 31 percent transparency on the eastern façade and 30 percent transparency on the western façade (minimum 40 percent transparency required on facades with a public entry).

**** Automatic Continuance to be acknowledged.**

- 4. 2023-UV1-021 | 7040 Rockville Road**
Wayne Township, Council District #15, Zoned D-3
Donald P. Quass, by David Gilman

Variance of use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a secondary dwelling unit, without an owner living on site (not permitted), with a zero-foot west side yard setback (six-foot side yard setback required).

**** Continuance requested.**

5. 2023-UV1-026 | 6524 Dover Road

Washington Township, Council District #3, Zoned D-S
Larry Rockafellow, by Melissa Iannucci

Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the temporary location of an accessory building without a primary building (not permitted) and the construction of a single-family dwelling on a .60-acre, 120-foot wide lot (minimum 150-foot lot width and area of one acre required), resulting in a 33.5-foot aggregate side yard setback (35-foot aggregate required).

**** Automatic Continuance to be acknowledged.**

Petitions for Public Hearing

PETITIONS TO BE EXPEDITED:

6. 2023-DV1-048 (Amended) | 1305 South Biltmore Avenue

Wayne Township, Council District #22, Zoned D-3
Virinia Morfin

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a masonry fence with a height of 3.5 feet encroaching within the clear sight triangle of Biltmore Avenue and Chelsea Road (encroachment of clear sight triangles not permitted).

7. 2023-DV1-055 | 5326 Riverview Drive

Washington Township, Council District #7, Zoned D-5 (FF) (FW)
Adam & Kelsey Murphy, by Mark and Kim Crouch

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a detached garage and secondary dwelling unit, within the front yard (accessory structures not permitted forward of primary building), with a 1.58-foot north side yard setback and 67-foot front yard setback (seven-foot side yard setback required, maximum 50-foot front yard setback permitted).

8. 2023-DV1-056 | 3777 West 69th Street

Pike Township, Council District #7, Zoned D-S
Silvia Sandoval & Glenda Buttrum, by Elizabeth Bentz Williams, AICP

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a detached garage with a seven-foot west side yard setback (15-foot side yard setbacks required) and a freestanding shed with a 4.5-foot east side yard setback, resulting in an 11.5-foot aggregate side yard setback (35-foot aggregate side yard setback required).

9. 2023-DV1-057 | 6230 and 6280 North College Avenue

Washington Township, Council District #2, Zoned MU-2 (TOD)
KGBR LLC and 6280 LLC, by Joseph D. Calderon

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a mixed-use building with a building height of up to 68-foot tall, with extensions up to 82.5-foot tall for an elevator shaft and stairwell.

PETITIONS FOR PUBLIC HEARING (Transferred Petitions):

PETITIONS FOR PUBLIC HEARING (Continued Petitions):

10. 2023-AP1-001 | 1511, 1531, 1539 and 1555 Deloss Street

Center Township, Council District #17, Zoned I-2
Cameron Perisutti

Appeal of the Administrator's Decision determining that the existing facility and associated accessory uses are legally established non-conforming uses.

11. 2023-UV1-018 | 5524 Georgetown Road

Pike Township, Council District #8, Zoned C-3
GAT LLC, by David Kingen & Emily Duncan

Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a liquor store (not permitted).

PETITIONS FOR PUBLIC HEARING (New Petitions):

Additional Business:

**The addresses of the proposals listed above are approximate and should be confirmed with the Division of Planning. Copies of the proposals are available for examination prior to the hearing by emailing planneroncall@indy.gov. Written objections to a proposal are encouraged to be filed via email at dmdpubliccomments@indy.gov, before the hearing and such objections will be considered. At the hearing, all interested persons will be given an opportunity to be heard in reference to the matters contained in said proposals. The hearing may be continued from time to time as may be found necessary. For accommodations needed by persons with disabilities planning to attend this public hearing, please call the Office of Disability Affairs at (317) 327-5654, at least 48 hours prior to the meeting. - Department of Metropolitan Development - Current Planning Division.

STAFF REPORT**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2023-AP1-002
Address: 1001 North Rural Street (approximate address)
Location: Center Township, Council District #17
Zoning: C-3
Petitioner: Harshpreet Inc., by Miranda Steele
Request: Modification of Commitments related to 2008-DV1-058, to terminate Commitment Number 10, which prohibited the sale of cigarette/tobacco rolling papers.

A registered neighborhood organization has filed an automatic continuance, continuing this petition to the January 2, 2024, hearing of Division I. A Staff Report will be published prior to this hearing in accordance with the Rules of Procedure.

EDH

STAFF REPORT

Department of Metropolitan Development
Division of Planning
Current Planning Section

Case Number: 2023-DV1-058
Address: 7215 East Thompson Road (approximate address)
Location: Franklin Township, Council District #25
Zoning: C-7 / I-2
Petitioner: VB BTS II, LLC, by Joseph D. Calderon
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a monopole wireless communication facility with a height of 199 feet (maximum height of 70 feet permitted).

Staff believes an additional variance is needed for the reduced separation from an existing wireless communication facility. Therefore, **Staff is requesting this petition be continued to the January 2, 2024, hearing**, with new notice.

RU

STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2023-DV1-059
Address: 3835 East 96th Street (approximate address)
Location: Washington Township, Council District #3
Zoning: C-S
Petitioner: 96th Street Retail Partners LLC, by Mike Timko, P.E.
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a convenience market with 31 percent transparency on the eastern façade and 30 percent transparency on the western façade (minimum 40 percent transparency required on facades with a public entry).

A registered neighborhood organization has filed an automatic continuance, continuing this petition from the December 5, 2023, hearing, to the January 2, 2024, hearing.

RU



BOARD OF ZONING APPEALS DIVISION I

December 5, 2023

Case Number:	2023-UV1-021
Property Address:	7040 Rockville Road (approximate address)
Location:	Wayne Township, Council District #15
Petitioner:	Donald P. Quass, by David Gilman
Current Zoning:	D-3
Request:	Variance of use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a secondary dwelling unit, without an owner living on site (not permitted), with a zero-foot west side yard setback (six-foot side yard setback required).
Current Land Use:	Residential
Staff Recommendations:	Staff recommends approval of the zero-foot west side yard setback; however, Staff recommends denial of the remainder of the petition
Recommended Motion:	Motion to approve petition 2023UV1021
Staff Reviewer:	Noah Stern, Associate Planner

PETITION HISTORY

ADDENDUM FOR DECEMBER 5, 2023 BZA I HEARING

- This petition was continued from the November 14, 2023 hearing to the December 5, 2023 hearing for additional variance requests. The petitioner did not meet the publishing deadline for this hearing and the petition will, therefore, need to be continued to the January 2, 2024 BZA I hearing.

STAFF RECOMMENDATION

Staff **recommends approval** of the zero-foot west side yard setback; however, Staff **recommends denial** of the remainder of the petition.

PETITION OVERVIEW

- This petition would provide for a secondary dwelling unit, without an owner living on the site (not permitted), with a zero-foot west side yard setback (six-foot side yard setback required).

STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2023-UV1-026
Address: 6524 Dover Road (approximate address)
Location: Washington Township, Council District #3
Zoning: D-S
Petitioner: Larry Rockafellow, by Melissa Iannucci
Request: Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the temporary location of an accessory building without a primary building (not permitted) and the construction of a single-family dwelling on a .60-acre, 120-foot-wide lot (minimum 150-foot lot width and area of one acre required), resulting in a 33.5-foot aggregate side yard setback (35-foot aggregate required).

A timely automatic continuance has been submitted by a remonstrator continuing this matter from the December 5, 2023 hearing to the January 2, 2023 hearing. This would require the Board's acknowledgement.

AR

STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2023-DV1-048 (Amended)
Address: 1305 South Biltmore Avenue (approximate address)
Location: Wayne Township, Council District #22
Zoning: D-3
Petitioner: Virinia Morfin
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a masonry fence with a height of 3.5 feet encroaching within the clear sight triangle of Biltmore Avenue and Chelsea Road (encroachment of clear sight triangles not permitted).

December 5, 2023

The petitioner provided an amended site plan reducing the fence height to 3.5 feet in the front yard and six feet in the side and rear yards, and the fence will be relocated to meet the property line. The only remaining variance is encroaching within the clear sight triangle at the intersection. The relocation of the fence at the intersection results in an encroachment of approximately nine feet—the fence will be approximately 18 feet from the paved street.

The intent of the clear sight triangle requirement is to avoid visual obstructions that may impact traffic and pedestrian safety. Staff confirmed with the Department of Public Works that the slight encroachment as amended would not significantly impact safety standards; therefore, staff is recommending approval of the variance as amended.

November 14, 2023

The petitioner requested a continuance from the October 3, 2023 hearing to the November 14, 2023 hearing to amend the site plan. No new information has been received, so staff is requesting a continuance to the December 5, 2023 for an amended site plan.

October 3, 2023

RECOMMENDATIONS

Staff **recommends denial** of the request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

EXISTING ZONING AND LAND USE

D-3 Compact Single-Family residential

SURROUNDING ZONING AND LAND USE

North D-5 Single-Family residential
South D-3 Single-Family residential
East D-3 Single-Family residential
West D-3 Single-Family residential

(Continued)

STAFF REPORT 2023-DV1-048 (Continued)

COMPREHENSIVE PLAN The Comprehensive Plan recommends Traditional Neighborhood development

- ◇ The subject site is a corner lot containing approximately 14,600 square feet and developed with a single-family dwelling and an accessory structure. The site is within McConnell and Clark's Chelsea Heights Subdivision, located southeast of the interchange at Interstate-465 and Washington Street, just south of the Transit Oriented Development Overlay for the IndyGo Blue Line.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ This request would provide for a masonry fence in the front yards of Biltmore Avenue and Chelsea Road with a height varying between 32 inches and 6.2 feet tall where a maximum of 3.5 feet is permitted; with 6.5-foot-tall columns where fence posts may only be one-foot taller than maximum permitted height of the fence; and encroaching within the clear sight triangle and encroaching in the right-of-way of Biltmore Avenue and Chelsea Road where encroachment is not permitted.
- ◇ This site is a corner lot in the Compact Context Area, so the front yard would be Biltmore Avenue. The maximum height of a fence in a front yard is 3.5 feet. Posts in a front yard may be up to 4.5 feet per the provision in Section 744-510.C.3. Staff would recommend that the existing fence and posts could be modified to meet the maximum permitted heights and would not support the request for increased height.
- ◇ Chelsea Road is considered a side yard and may have six-foot fence. Staff would suggest that the fence can be lowered from 6.2 feet to meet this requirement and would not support this request.
- ◇ The fence is currently encroaching in the right-of-way of Biltmore Avenue and Chelsea Road. The property line on the northeast portion of the site is curved, but the fence meets in a corner that is outside the property line. Staff would not support any encroachment into the right-of-way. The fence should be moved to be entirely within the property lines.
- ◇ The fence is currently encroaching approximately 28 feet into the clear sight triangle of Biltmore Avenue and Chelsea Road. Fences over 2.5 feet tall are prohibited in the clear sight triangle. This provision is intended for the safety of motorists and pedestrians so that oncoming traffic can be seen when approaching an intersection. The existing fence could be shortened to 2.5 feet to be outside the clear sight triangle, or the fence could be moved outside the clear sight triangle and be permitted the maximum height for residential fences.
- ◇ All the requests in this variance could be resolved by modifying the height or location of the fence—therefore staff is recommending denial of the request.

GENERAL INFORMATION

THOROUGHFARE PLAN

Biltmore Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 50-foot existing and proposed right-of-way.
Chelsea Road is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 50-foot existing and proposed right-of-way.

(Continued)

STAFF REPORT 2023-DV1-048 (Continued)

SITE PLAN (AMENDED)	File-dated November 13, 2023
SITE PLAN	File-dated August 9, 2023
FINDINGS OF FACT	File-dated August 9, 2023

ZONING HISTORY—SITE

None

ZONING HISTORY – VICINITY

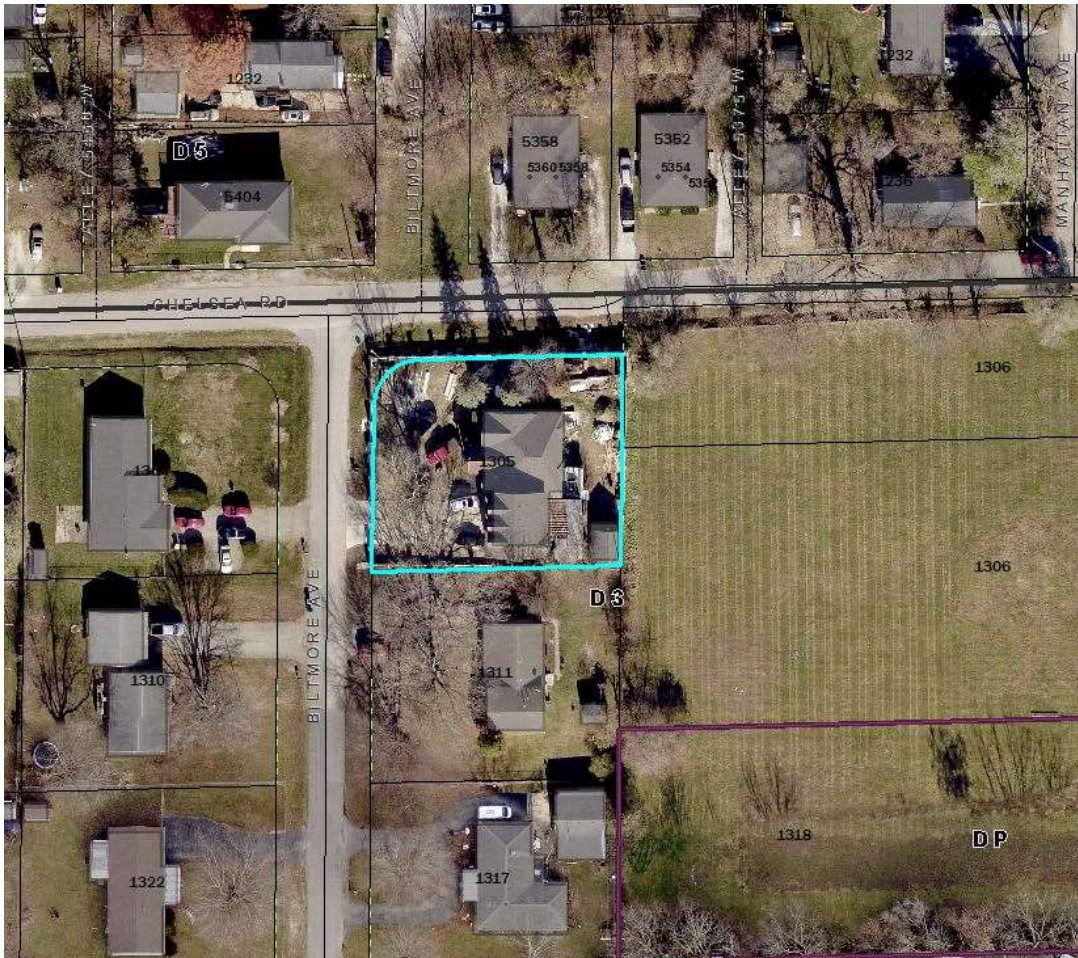
2020-ZON-083, 1318 South Lynhurst Drive, rezoning of 1.65 acres from the D-3 district to the D-P district to provide for 18, 312-square-foot single-family dwellings at a density of 11 units per acre, **approved**.

2009-UV1-033, 1318 South Lynhurst Drive, variance to provide for a homeless drop-in center for young adults, **approved**.

91-V3-98, 1229 South Biltmore Avenue, variance to permit construction of an attached garage with a zero-foot side yard setback and a six-foot aggregate setback, **approved**.

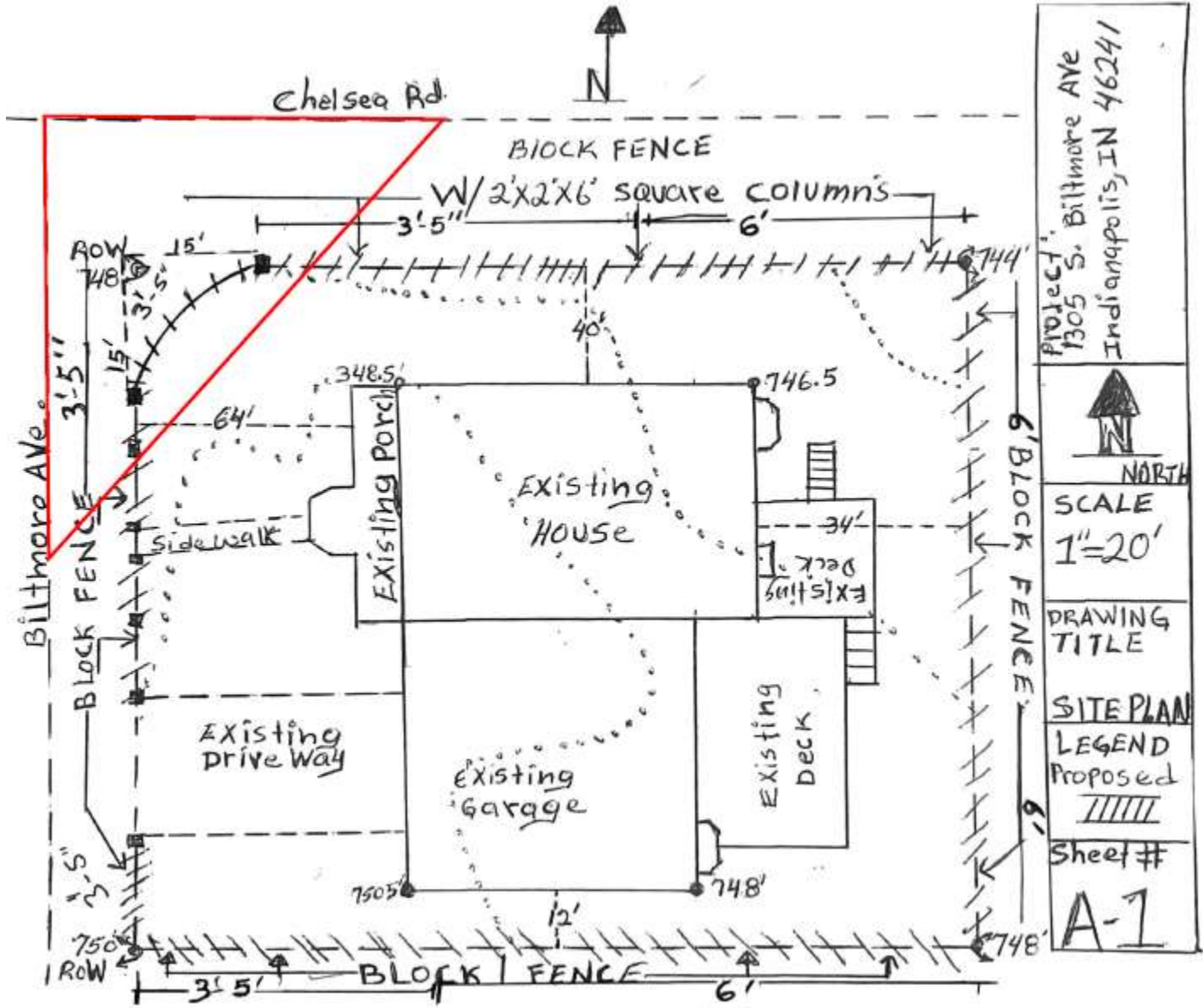
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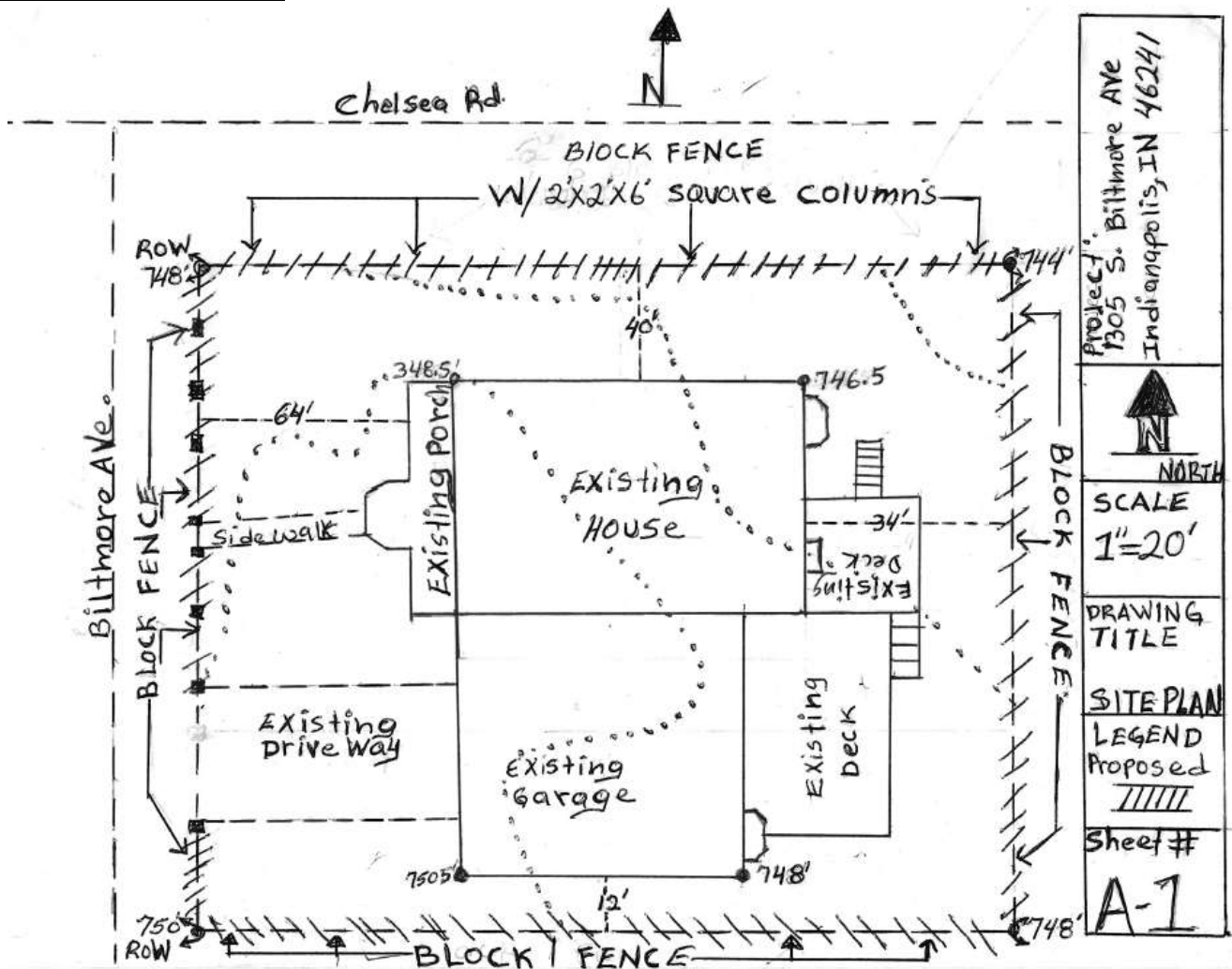
2023-DV1-048; Aerial Map



2023-DV1-048; Site Plan (Amended)

Clear sight triangle shown in red





2023-DV1-048; Staff Exhibit—Clear Site Triangle



2023-DV1-048; Findings of Fact

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

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

The view of the road is not obstructed due to the fence. Both sides of the road are still visible at the stop sign by the fence, oncoming traffic is still visible.

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

The fence is not interfering with the area adjacent to the property, it can still be used without any disturbance.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

It would cause monetary difficulties to to property owner due to expenses, if approval was not granted.



Subject site front and side yard fence viewed from Biltmore Avenue, looking north



View of fence in the front yard, looking east



View of fence in the front yard, looking east



View of fence in the right-of-way and clear sight triangle at the intersection of Biltmore Avenue and Chelsea Road, looking east



View of fence in the right-of-way and clear sight triangle at the intersection of Biltmore Avenue and Chelsea Road, looking south



View of fence along Chelsea Road, looking east



View of fence along Chelsea Road, looking south



View of fence along Chelsea Road, looking southwest



BOARD OF ZONING APPEALS DIVISION I

December 5, 2023

Case Number: 2023-DV1-055
Property Address: 5326 Riverview Drive (approximate address)
Location: Washington Township, Council District #7
Petitioner: Adam & Kelsey Murphy, by Mark and Kim Crouch
Current Zoning: D-5 (FF) (FW)

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a detached garage and secondary dwelling unit, within the front yard (accessory structures not permitted forward of primary building), with a 1.58-foot north side yard setback and 67-foot front yard setback (seven-foot side yard setback required, maximum 50-foot front yard setback permitted).

Current Land Use: Residential

Staff

Recommendations: Staff recommends approval of this request

Staff Reviewer: Noah Stern, Associate Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends approval of this petition.

PETITION OVERVIEW

- This petition would provide for the construction of a detached garage and secondary dwelling unit, within the front yard (accessory structures not permitted forward of primary building), with a 1.58-foot north side yard setback and 67-foot front yard setback (seven-foot side yard setback required, maximum 50-foot front yard setback permitted). The proposal calls for the accessory structure to be located approximately 12 feet from the eastern edge of the primary building.
- The entire rear yard of the subject site lies within the floodway of the White River and the remainder of the property lies within the floodplain. This represents a practical difficulty on that of the property owner, leaving them with nowhere to place an accessory structure except within the front yard. Additionally, with the existing front and side yard setbacks are legally non-conforming the primary structure, as well as many surrounding primary structures sit well beyond the current maximum front



**Department of Metropolitan Development
Division of Planning
Current Planning**

setback of 50 feet. Placing the accessory structure beyond the 50-foot setback will be consistent with the development pattern of the neighborhood. Likewise, the proposed structure is to match the existing north site yard setback of the primary structure at 5 feet. Further, the layout of the front yard consists of a wrap-around driveway that encircles a greenspace with several trees. This has been the layout of the front yard since the construction of the house in 1930. Placing the accessory structure within 50 feet of the front lot line and at least 7 feet away from the north side lot line would result in a significant loss of this greenspace. The location of these trees and greenspace represents a practical difficulty on the owner. With the petitioner seeking to preserve as much of the existing greenspace as possible, Staff finds placing the accessory structure at the proposed location beyond the maximum setback of 50 feet and slightly within the side yard setback to be a reasonable request. For those reasons, Staff is not opposed to this petition.

GENERAL INFORMATION

Existing Zoning	D-5 (FF) (FW)	
Existing Land Use	Residential	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	Zoning	Surrounding Context
North:	D5	North: Single-Family Residential
South:	D5	South: Single-Family Residential
East:	D5	East: Single-Family Residential
West:	SU-34	West: Country Club
Thoroughfare Plan	Riverview Drive Local Street Existing ROW: 50 feet Proposed ROW: 48 feet	
Context Area	Compact	
Floodway / Floodway Fringe	Yes	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	9/12/23	
Site Plan (Amended)	N/A	
Elevations	11/27/23	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	9/12/23	
Findings of Fact (Amended)	9/12/23	

COMPREHENSIVE PLAN ANALYSIS



Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Infill Housing Guidelines

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Suburban Neighborhood living typology for this site.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site

Neighborhood / Area Specific Plan

- Not Applicable to the Site

Infill Housing Guidelines

- With regards to secondary dwelling units, the Infill Housing Guidelines document recommends:
 - Don't overshadow buildings
 - Locate accessory structures behind primary building
 - Coordinate primary and accessory structures
- With the site containing the practical difficulty of the backyard being entirely in the floodway, the secondary structure is to go in the front of the building. The proposal is in accordance with the remainder of these recommendations.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site



ZONING HISTORY

ZONING HISTORY – SITE

N/A

ZONING HISTORY – VICINITY

2015ZON048; 1050 W 52nd Street (west of site), Rezoning of 20.09 acres from the SU-34 (FW) (FF) District to the D-P (FW) (FF) classification to provide for 14 single-family dwellings on private gated streets and drives, 14 single-family dwellings on private streets, surrounding a central green, and a maximum of 20 fee simple “coach homes” within a maximum of 10 buildings, with one to four “coach home” in each building, on private streets, for a density of 2.39 units per acre, **withdrawn**.

2009ZON076; 5315 Patterson Street (east of site), Rezoning of 0.45 acre, from the D-5 (FF) District, to the PK-1 (FF) classification to provide for park uses, **approved**.

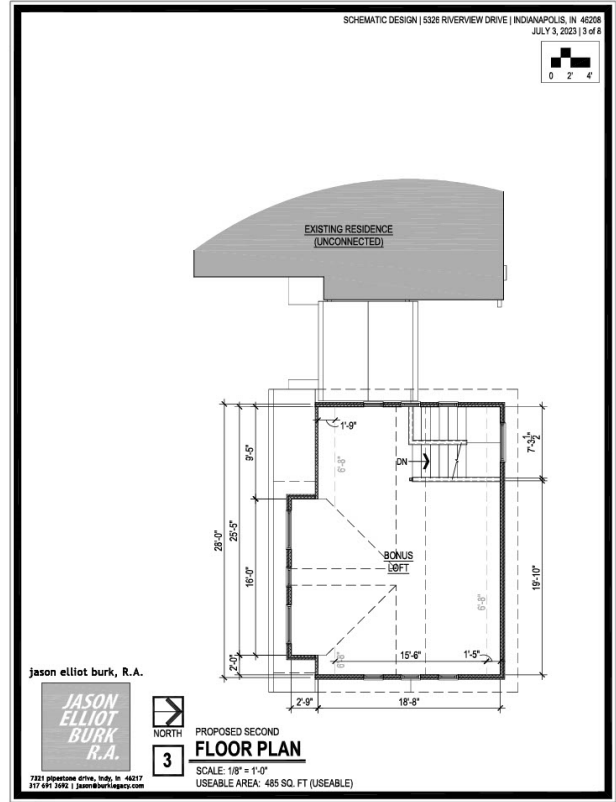
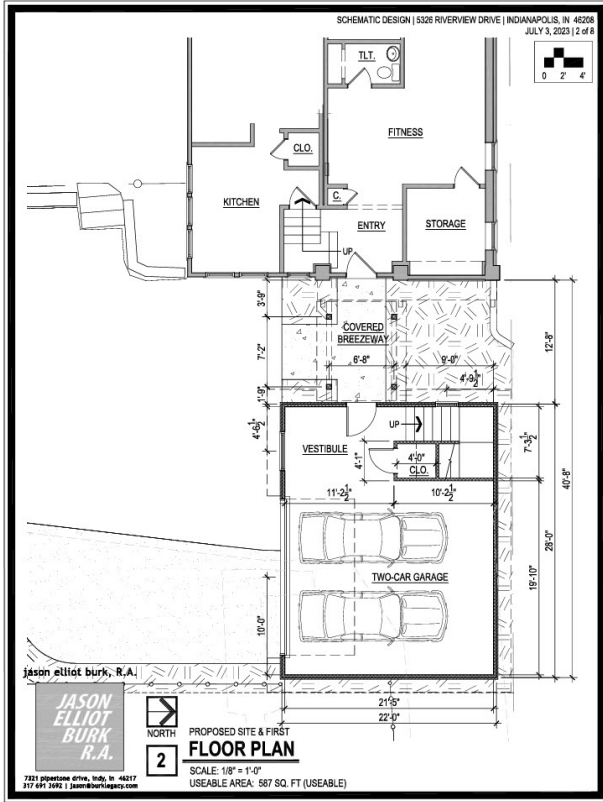
2009ZON077; 5231 Patterson Street (east of site), Rezoning of 0.57 acre, from the D-5 (FF) District, to the PK-1 (FF) classification to provide for park uses, **approved**.

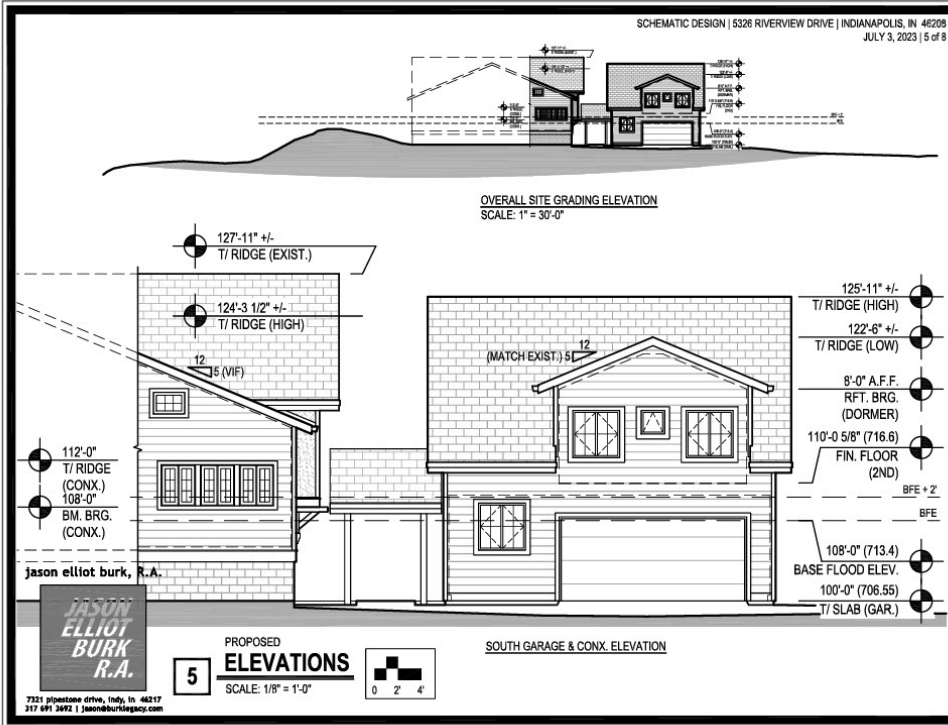
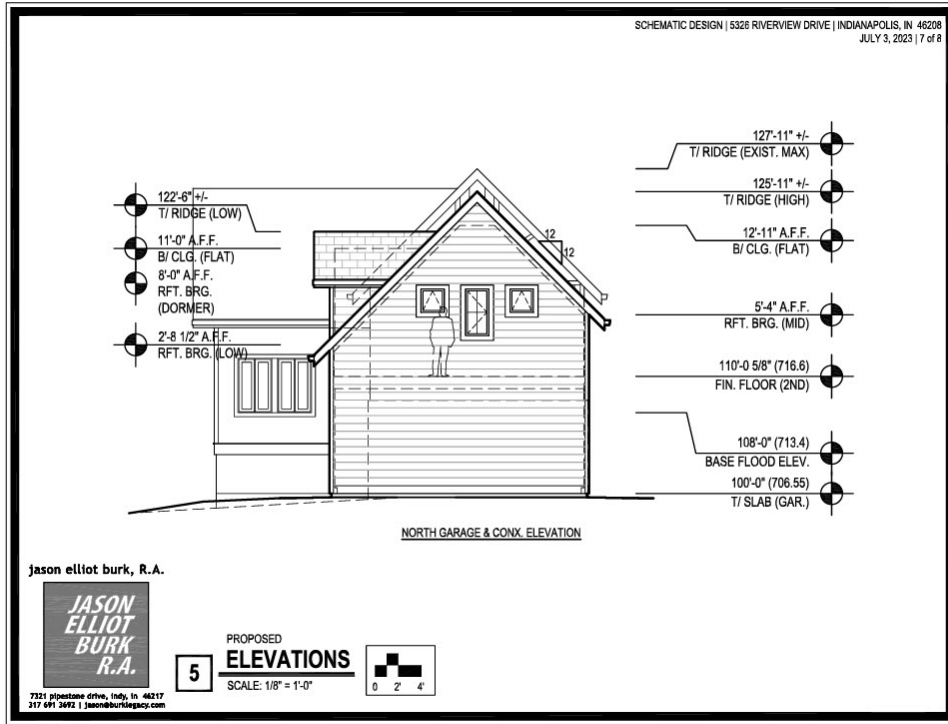
2000DV1053; 5312 Riverview Drive (south of site), variance of development standards of the Flood Control Districts Zoning Ordinance to provide for the construction of a single-family dwelling in the floodway fringe, with a 1,050-square foot first floor, with thirteen, 0.56 square foot wall openings totaling 7.3 square feet (minimum one square foot wall opening for every two square feet of enclosed area or a total of 525 square feet required for attached non-habitable structures), **approved**.

99-V3-88; 5312 Riverview Drive (south of site), variance of development standards of the Flood Control Districts Zoning Ordinance to provide for the construction of a 682 square foot detached garage (maximum 400 square feet permitted in a floodway fringe), **approved**.

EXHIBITS



















STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2023-DV1-056
Address: 3777 West 69th Street (approximate address)
Location: Pike Township, Council District #7
Zoning: D-S
Petitioner: Silvia Sandoval & Glenda Buttrum, by Elizabeth Bentz Williams, AICP
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a detached garage with a seven-foot west side yard setback (15-foot side yard setbacks required) and a freestanding shed with a 4.5-foot east side yard setback, resulting in an 11.5-foot aggregate side yard setback (35-foot aggregate side yard setback required).

RECOMMENDATIONS

Staff **recommends approval** of the request subject to the submitted commitments outlined in Exhibit A.

SUMMARY OF ISSUES

LAND USE ISSUES

EXISTING ZONING AND LAND USE

D-S Single-family dwelling

SURROUNDING ZONING AND LAND USE

North - D-S Single-family dwelling
South - SU-2 Public middle school
East - D-S Single-family dwelling
West - D-S Single-family dwelling

COMPREHENSIVE LAND USE PLAN The Comprehensive Plan recommends rural, or estate neighborhood uses for the site.

- ◇ This 1.55-acre site, zoned D-S, is developed with a single-family dwelling, detached garage, and accessory storage shed. Single-family dwellings are located to the west, north, and east in the D-S zone. The surrounding houses are similar in size to the existing dwelling. A public middle school is located in an SU-2 zone to the south of the property.

(Continued)

STAFF REPORT 2023-DV1-056 (Continued)

- ◇ A previous petition (2015-DV1-062), requested a variance of development standards to legally establish a 23-foot tall, 1,152-square foot detached garage, with an approximate seven-foot west side setback, and to legally establish a 658-square foot freestanding shed, with a 4.5-foot east side setback, creating an accessory building area (ABA) of 1,810 square feet or 156% of the main floor area of the primary dwelling and an accessory use area (AUA) of 2,496 square feet or 215% of the total floor area of the primary dwelling. That request was denied.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ This petition request would legally establish the detached garage, with a seven-foot west side yard setback. The request would also legally establish a freestanding shed with a 4.5-foot east side yard setback, resulting in an 11.5-foot aggregate side yard setback.
- ◇ The previous request for the 23-foot tall height variance has been eliminated by the petitioner’s agreement to reduce the height of the existing garage. This change would diminish the noticeable existing height differential between the garage and the one-story ranch single-family dwelling. The petitioner has submitted a commitment that this height reduction would be done within six months of the variance approval.
- ◇ With the height reduction, the visual impact of the garage would be lessened. This would provide for the garage not to dominate the streetscape and for the subject site dwelling to remain as the primary structure on the site. The garage would also be similar in height as other surrounding dwellings.
- ◇ The request to legally establish a freestanding shed with a 4.5-foot east side yard setback, resulting in an 11.5-foot aggregate side yard setback, would have minimal impact on adjoining properties, because, despite its length, its lack of bulk sufficiently diminishes its impact along the east lot line.
- ◇ Staff believes that the site is overly large and that the reduced setbacks as requested would not create a nuisance to surrounding neighbors.

GENERAL INFORMATION

THOROUGHFARE PLAN	This portion of West 69th Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 40-foot existing right-of-way, and a 50-foot proposed right-of-way.
SITE PLAN	File-dated October 11, 2023.
FINDINGS OF FACT	File-dated October 11, 2023.

(Continued)

STAFF REPORT 2023-DV1-056 (Continued)**ZONING HISTORY - SITE**

74-Z-198; rezoning of various tracts of land, being in A-2 and C-4 districts, to D-1, D-2, D-3, and D-4 classifications to permit single and two-family residences, as designated on maps on file, **granted**.

2015-DV1-062; requested a variance of development standards of the Dwelling Districts Zoning Ordinance to legally establish a 23-foot tall, 1,152-square foot detached garage, with an approximate seven-foot west side setback, and to legally establish a 658-square foot freestanding shed, with a 4.5-foot east side setback, creating an accessory building area (ABA) of 1,810 square feet or 156% of the main floor area of the primary dwelling and an accessory use area (AUA) of 2,496 square feet or 215% of the total floor area of the primary dwelling, **denied**.

ZONING HISTORY - VICINITY

83-HOV-30; 3781 West 69th Street (west of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for the placement of a detached garage being 5-feet from the side property line, **granted**.

84-HOV-125; 3722 West 69th Street (north of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for a detached garage to be built at 6-feet from the side property line, **granted**.

89-UV1-127; 3640 West 69th Street (northeast of site), requested a variance of use of the Dwelling Districts Zoning Ordinance to permit the construction of a 1,440-square foot building for vehicle and incidental storage, **granted**.

91-UV2-5; 3721 West 71st Street (north of site), requested a variance of use of the Dwelling Districts Zoning Ordinance to permit outdoor storage of the following: one pick-up, one forestry truck, one stump grinder, and one woodchipper, **granted for a temporary period of two years**.

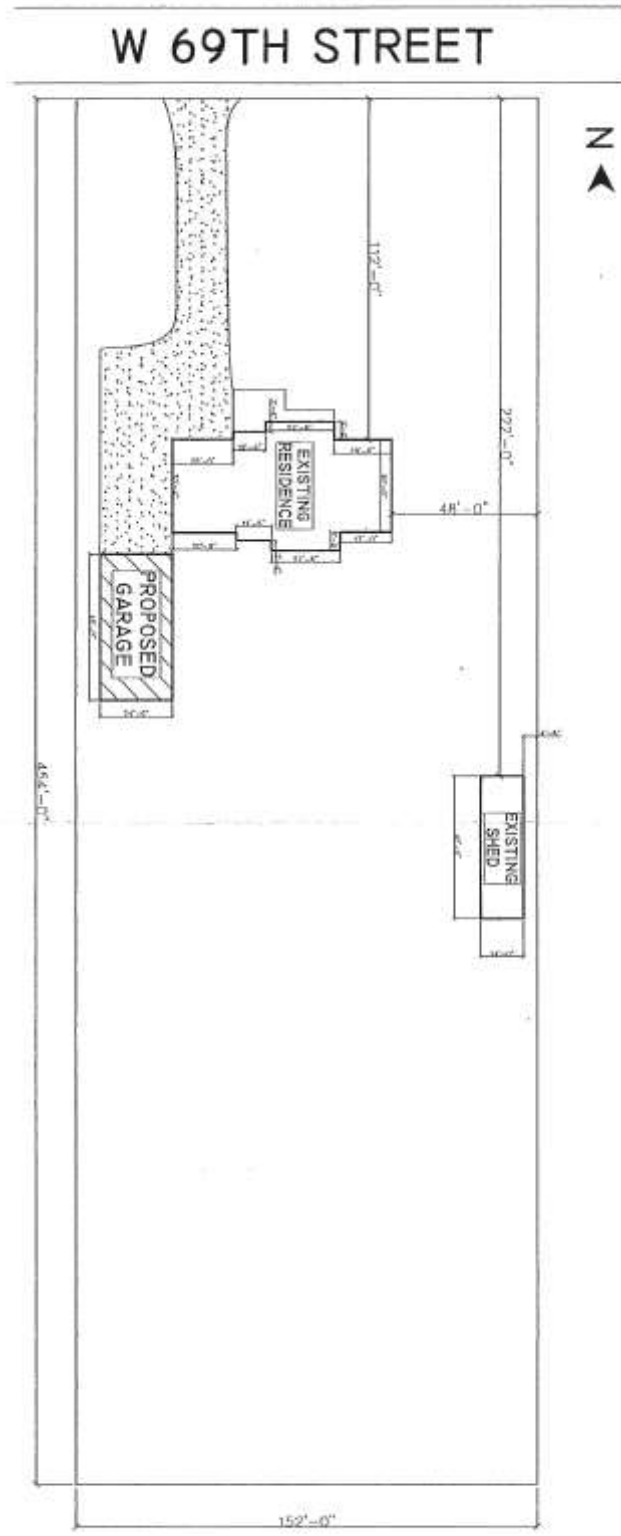
93-UV2-36; 3721 West 71st Street (north of site), requested a variance of use of the Dwelling Districts Zoning Ordinance to provide for a tree service office within an existing residence with two employees parking on-site and outdoor storage of one pick-up truck, one woodchipper, one forestry truck, and one stump grinder, **granted**.

96-V1-111; 3788 West 69th Street (northwest of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a 24 by 30-foot detached garage with an 8-foot side yard setback, **granted**.

2017-SE1-005; 3838 West 69th Street (northwest of site), requested a special exception to provide for primary and accessory religious uses, including but not limited to, a dwelling for the Abbot of the Temple, with a variance of development standards to legally establish a residential lot with a street frontage of 20 feet, **granted subject to commitments**.

RU





**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE
IN CONNECTION WITH A VARIANCE, SPECIAL EXCEPTION OR APPROVAL GRANT.**

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of the parcel of real estate:

Legal Description:

PART OF THE EAST ONE-HALF (1/2) OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 17 NORTH, RANGE 3 EAST, IN MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SAID POINT BEING 1555.88 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST QUARTER SECTION AND 833.2 FEET WEST OF THE EAST LINE OF THE SAID NORTHEAST QUARTER SECTION; RUNNING THENCE WEST A DISTANCE OF 150 FEET TO A POINT; SAID POINT BEING 1556.55 FEET SOUTH OF THE NORTH LINE OF THE SAID NORTHEAST QUARTER SECTION, RUNNING THENCE SOUTH A DISTANCE OF 467.55 FEET TO A POINT SAID POINT BEING 979.9 FEET WEST OF THE EAST LINE AND 2024.10 FEET SOUTH OF THE NORTH LINE OF THE SAID NORTHEAST QUARTER SECTION; THENCE EAST A DISTANCE OF 150 FEET TO A POINT, SAID POINT BEING 829.9 FEET WEST OF THE EAST LINE AND 2022.76 FEET SOUTH OF THE NORTH LINE OF THE SAID NORTHEAST QUARTER SECTION, THENCE NORTH A DISTANCE OF 466.88 FEET TO THE PLACE OF POINT OF BEGINNING, CONTAINING 1.62 ACRES, MORE OR LESS.

Statement of COMMITMENTS:

1.	<i>The reduction in height shall occur within 6 months of the variance approval.</i>
2.	<i>There shall be no commercial vehicles or uses on site, and /or storage of commercial material and equipment on site.</i>

These COMMITMENTS shall be binding on the owner, subsequent owners, and other persons acquiring an interest in the real estate. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Board of Zoning Appeals made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the grant of variance, special exception or approval petition # 2023-DV1-___ by the Metropolitan Board of Zoning Appeals or the Hearing Officer.

These COMMITMENTS may be enforced jointly and severally by:

1. The Metropolitan Development Commission; and,



The residence, looking south, from 69th Street.



The detached garage, to the west of the primary dwelling, looking south.



The west side property line, and garage setback, looking south.



The backyard, showing the side of the freestanding shed, looking east.



The east side property line, and shed setback, looking south.



The backyard, looking south.



Adjacent property to the west, looking south.



Adjacent property to the east, looking south.



BOARD OF ZONING APPEALS DIVISION I

December 5, 2023

Case Number: 2023-DV1-057

Property Address: 6230 and 6280 North College Avenue (approximate address)

Location: Washington Township, Council District #2

Petitioner: KGBR LLC, by Joseph D. Calderon

Current Zoning: MU-2 (TOD)

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a mixed-use building with a building height of up to 68-foot tall, with extensions up to 82.5-foot tall for an elevator shaft and stairwell.

Current Land Use: Mixed-Use

Staff Recommendations: Staff recommends approval of this request.

Staff Reviewer: Noah Stern, Associate Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends approval of this request.

PETITION OVERVIEW

- This request would provide for the construction of a mixed-use building with a building height of up to 68-foot tall, with extensions up to 82.5-foot tall for an elevator shaft and stairwell.
- The site is comprised of three parcels. The northern parcel is developed with a parking garage and commercial space on the ground floor. The two southern parcels are currently vacant, with no structure on site. The proposed building is to sit atop the existing parking garage as well as on the two vacant parcels.
- In 2021 this site was rezoned to MU-2 and subsequently received a variance for the proposed building to sit at a height of 65 feet and a 10-foot extension for the elevator shaft. It was discovered that the building needs to be slightly taller than initially planned to be able to accommodate parking on one of the upper floors. The petitioner is now requesting the increase from the initial variance, for the proposed building to sit at 68 feet tall, and the elevator shaft to sit at 82.5 feet tall.



Department of Metropolitan Development
 Division of Planning
 Current Planning

- The subject site is situated in the TOD overlay and is located directly adjacent to the Broad Ripple Avenue and College Avenue TOD station. The TOD Red Line Strategic Plan has identified this area as a district center, which is to be characterized by
 - Walkable areas of multiple city blocks, serving as cultural and commercial hubs for multiple neighborhoods
 - Mix of office, retail, entertainment, and residential with higher densities at the center desired
 - Off-street parking is discouraged and should be limited to garages
 - Aspire to a minimum of 15 dwelling units per acre at the core of the station area
 - Aspire to a minimum of 3-story buildings at the core of the station area

- While the proposed height would exceed the height standard, it would be an acceptable deviation given that this site lies at the core intersection of the TOD service area immediately proximate to the TOD station, and the proposal’s initial purpose of supporting the TOD Strategic Plan. Therefore, Staff is not opposed to the variance request for additional height of the proposed building.

GENERAL INFORMATION

Existing Zoning	MU-2 (TOD)	
Existing Land Use	Mixed-Use	
Comprehensive Plan	Urban Mixed-Use	
Surrounding Context	Zoning	Surrounding Context
North:	D7	North: Community Commercial
South:	C1	South: Community Commercial
East:	C4	East: Community Commercial
West:	C3	West: Community Commercial
Thoroughfare Plan		
	North College Avenue Primary Arterial Existing ROW: 83 feet Proposed ROW: 78 feet	Westfield Boulevard Secondary Arterial Existing ROW: 40 feet Proposed ROW: 56 feet
Context Area	Compact	
Floodway / Floodway Fringe	Yes	
Overlay	Yes	
Wellfield Protection Area	No	
Site Plan	10/30/23	
Site Plan (Amended)	N/A	
Elevations	10/30/23	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	10/30/23	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- 2020 Red Line TOD Strategic Plan
- Bicycle Master Plan

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Urban Mixed Use living typology for this site.
- In this typology, the Pattern Book recommends:
 - Residential density of 25-75 units per acre
 - Buildings be four to eight stories in height with entrances and windows facing the street
 - Sidewalks and other pedestrian spaces be activated
 - Off-street parking be located behind or interior to the development
- The proposal is in accordance with these recommendations

Red Line / Blue Line / Purple Line TOD Strategic Plan

- 2020 Red Line TOD Strategic Plan
 - The subject site is located directly adjacent to the College Avenue and Broad Ripple Avenue TOD station. This station and the surrounding area were characterized as a “district center” typology and rated as one of the stations with the highest TOD potential on the Red Line route. The plan describes “district center” as a dense mixed-use hub for multiple neighborhoods with tall buildings, with buildings at the core containing a minimum of 3 stories with no front of side setbacks. The plan notes that this area needs projects to catalyze future private development and increase activity through density and/or urban amenities.
 - The proposal will add significant density and provide additional uses/amenities that will be in close proximity to the Red Line station and at the core intersection of the neighborhood.

Neighborhood / Area Specific Plan

- Not Applicable to the Site

Infill Housing Guidelines



Department of Metropolitan Development
Division of Planning
Current Planning

- Not Applicable to the Site

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Bicycle Master Plan
 - The subject site is adjacent to the Central Canal Towpath and is approximately $\frac{1}{4}$ mile from the Monon Trail. The plan calls for a new protected multi-use path along Broad Ripple Avenue east of the subject site, which is to be completed in 2023.



ZONING HISTORY

ZONING HISTORY – SITE

2021-CZN-804 / CVR804A / CVR804B, Rezoning of 1.62 acres from the C-1 (FF) and C-4 (FF) district to the MU-2 (FF) district to provide for redevelopment of a mixed-use commercial building and parking garage. Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a commercial building with a zero-foot front yard setback (five-foot front setback required) and proposed 65-foot building height with a 10-foot extension for elevator/stairwell shafts (maximum 35-foot building height required). Special Exception of the Consolidated Zoning and Subdivision Ordinance to legally establish an existing parking garage in the MU-2 district, **approved**.

2016-UV1-025; 6280 North College Avenue, requested a variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for an automobile rental facility, including an office and car wash facility on the roof of the existing garage, **granted**.

2014-DV1-024; 6280 North College Avenue, requested a variance of development standards of the Commercial Zoning Ordinance to provide for a 22-seat, restaurant sidewalk café in the right-of-way of College Avenue, with a wrought iron fence, umbrellas and portable propane heaters, **granted**.

2012-DV2-006; 6280 North College Avenue, requested a variance of development standards of the Flood Control Districts Zoning Ordinance to provide for a retail and garage building, with its lowest floor elevation at 719.2 feet, without structural flood-proofing, **denied**.

2011-DV2-021; 6280 North College Avenue, requested a variance of development standards of the Commercial Zoning Ordinance to provide for sign canopies, measuring eight by 25 feet and eight by 39 feet, extending eight feet into the right-of-way of North College Avenue to cover two outdoor cafes, measuring eight by 19 feet and eight by 13 feet, including 12 seats and eight seats, respectively, and both with 32-inch tall rails, **granted**.

2000-ZON-028; 6280 North College Avenue, requested rezoning of 0.187 acre from the D-4 district to the C-4 classification to provide for expansion of a convenience store / gasoline station, with an associated carwash, **granted**.

95-Z-160, 6202 and 6230 North College Avenue, requested rezoning of 0.93 acre from the D-4 (FF) District to the C-1 (FF) classification to provide for office, childcare and single-family residential, **approved**.

96-V1-29; 6230 and 6232 North College Avenue, requested a variance of development standards to provide for a three-foot north side setback and a drive-through without a by-pass lane, **granted**.

86-Z-274, rezoning of 0.19 acres, being in the D-4/FP districts, to the C-1/FP classification, to provide for commercial uses, **approved**.



Department of Metropolitan Development
Division of Planning
Current Planning

ZONING HISTORY – VICINITY

2019-CZN/CVR-852; 6201-6215 North College Avenue (east of site), rezoning of 0.66 acre from the D-5 (FF) district to the MU-2 (FF) district. Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a 77-foot-tall five-story and four story mixed-use building, with a zero-foot south front setback from 62nd Street, a zero-foot north side transitional yard, within the clear sight triangle of the abutting streets and alley and 49 parking spaces (35-foot height, five-foot front setback, 12-foot front transitional setback, 15-foot side transitional setback, structures not permitted within the clear sight triangle, 153 parking spaces required), **approved**.

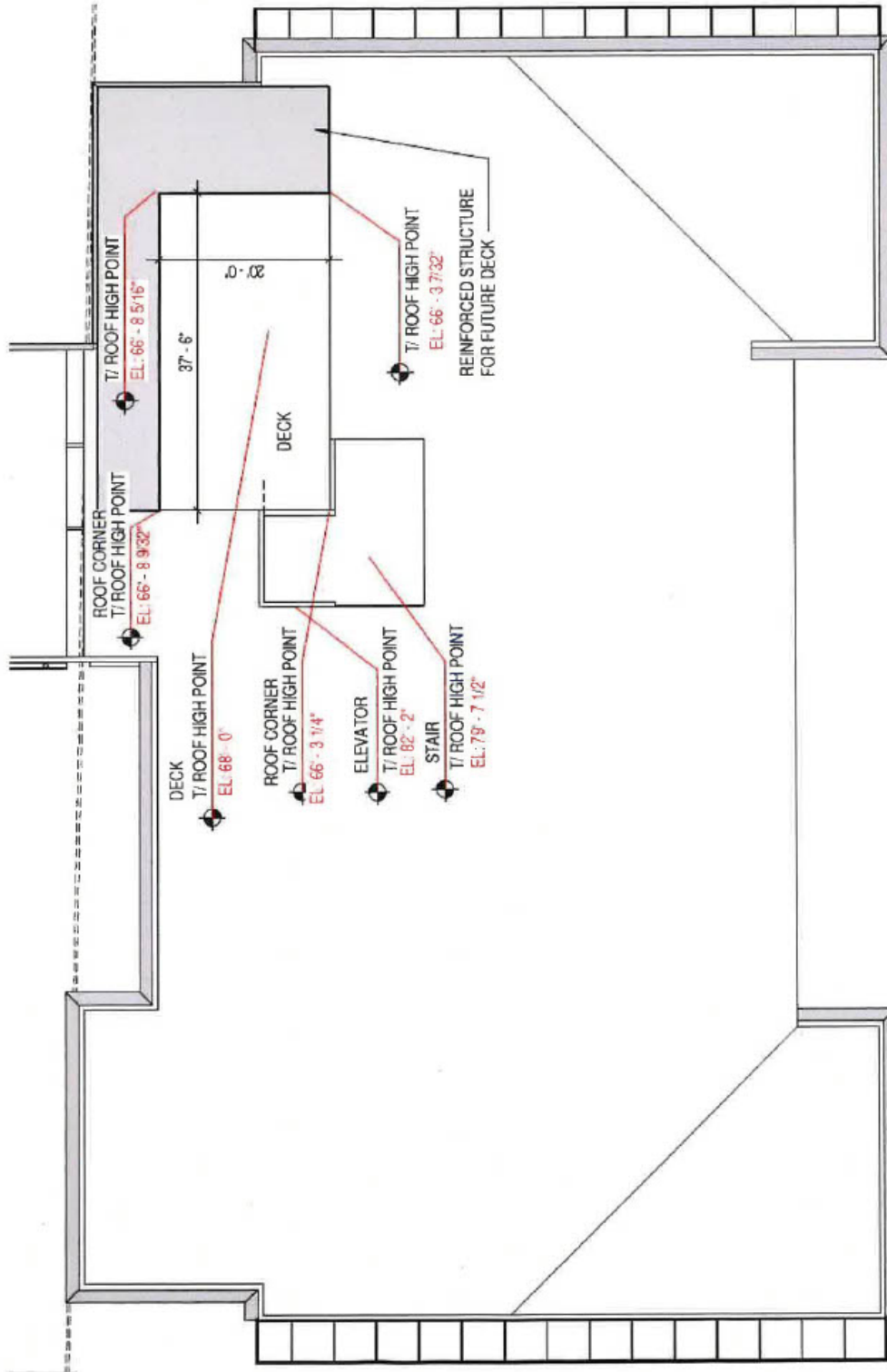
2003-HOV-042; 701 Broad Ripple Avenue (east of site), requested a variance of development standards of the Commercial Zoning Ordinance to provide for a delicatessen and bakery without on premise parking, **granted**.

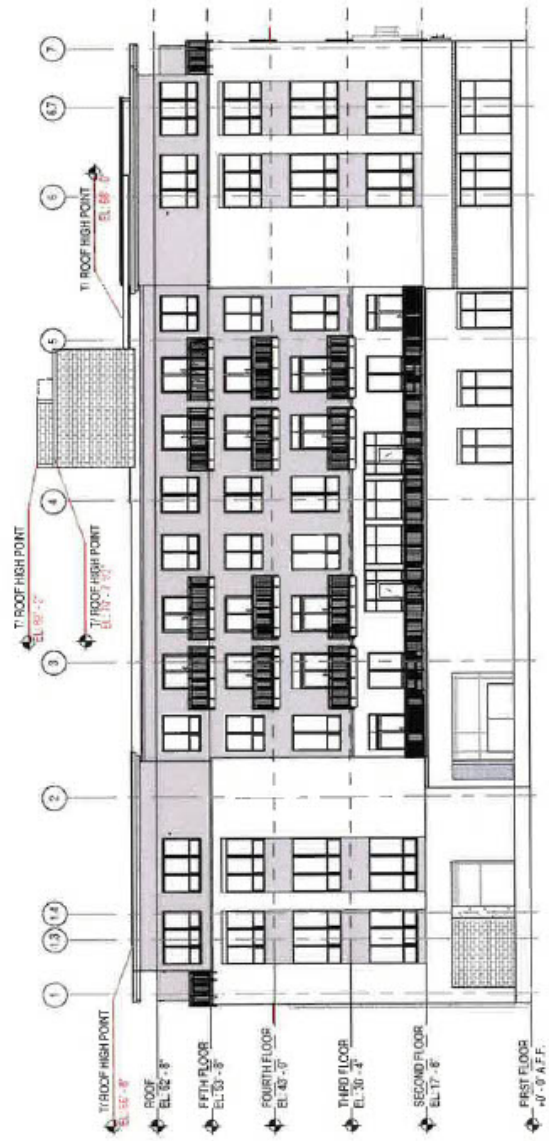
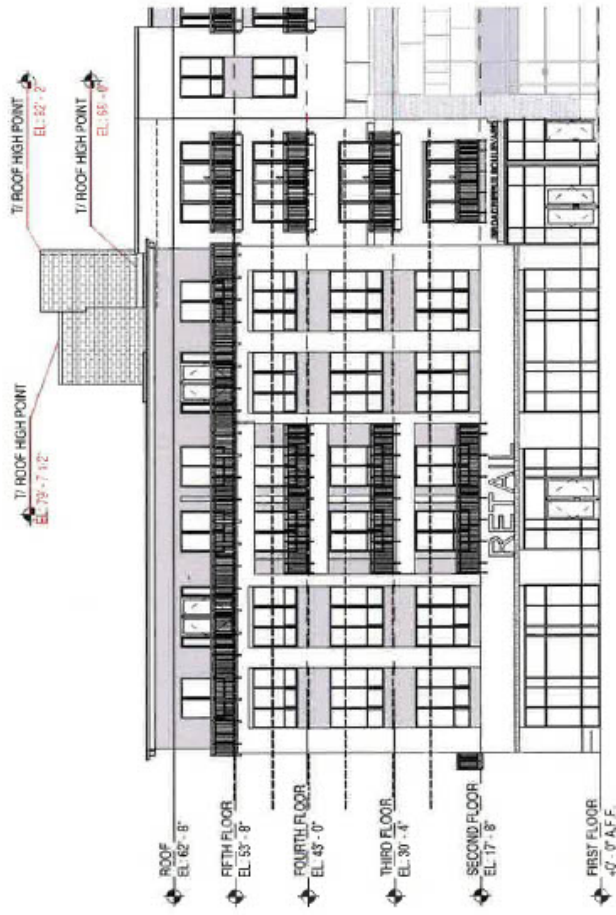
2004-DV1-031; 6290 North College Avenue (north of site), requested a variance of development standards of the Sign Regulations to provide for a 24-foot tall, 101.89-square foot pylon sign with a 37.73-square foot electronic variable message component, **denied**.

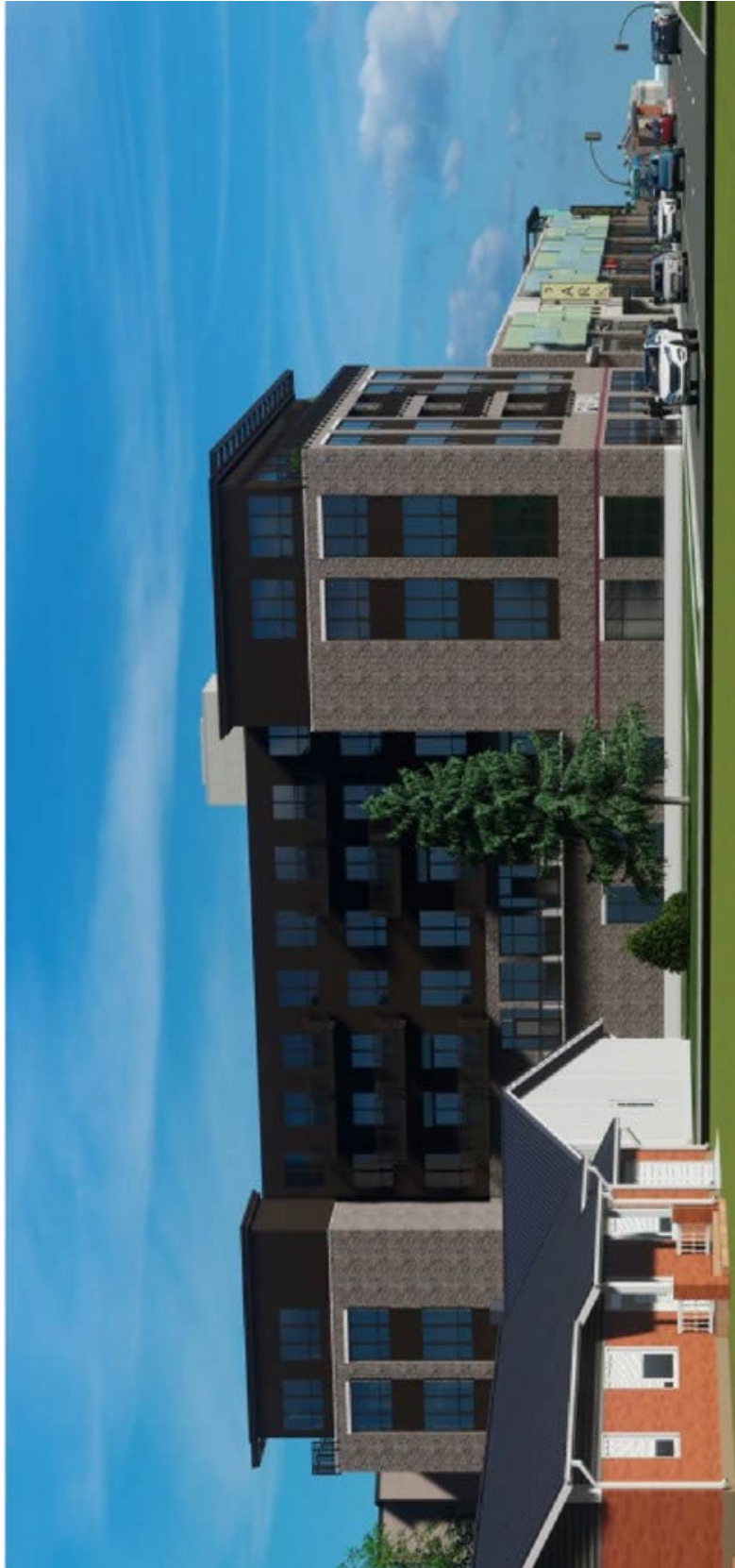
2007-DV2-059; 6290 North College Avenue (north of site), requested a variance of development standards of the Sign Regulations to provide for three wall signs on the east elevation of the building totaling 385.03 square feet of sign area, and for two wall signs on the north elevation of the building totaling 201.23 square feet of sign area, **granted**.

EXHIBITS























STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2023-AP1-001
Address: 1511, 1531, 1539 and 1555 Deloss Street (approximate address)
Location: Center Township, Council District #17
Zoning: I-2
Petitioner: Cameron Perisutti
Request: Appeal of the Administrator’s Decision determining that the existing facility and associated accessory uses are legally established non-conforming uses.

RECOMMENDATIONS

Staff recommends denial of the request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

EXISTING ZONING AND LAND USE

I-2 Compact Waste Disposal

SURROUNDING ZONING AND LAND USE

North I-2 Commercial Structures
South D-5 Single Family Dwellings
East I-2 Commercial Structures
West I-2 Commercial Structures

COMPREHENSIVE PLAN

The Comprehensive Plan recommends Traditional Neighborhood development.

- ◇ This .74-acre lot, zoned I-2, is currently improved with a commercial structure and an attached partially enclosed vehicular storage structure. North, west and east of the subject site are various commercial structures within the I-2 District. South of the subject site is a residential neighborhood, predominantly single-family dwellings, within the D-5 District.
- ◇ The Land Use Pattern Book recommends Traditional Neighborhood development.
- ◇ In 1922, upon the adoption of zoning in the City of Indianapolis, this property was initially zoned U-4 First Industrial. This district permitted a wide array of uses, including, but not limited to manufacture or industrial operation of any kind, with limited exception; job printing/newspaper printing; steam laundry; central distributing station; black smithing, horseshoeing and stables; and streetcar repair; scrap iron or junk storage.

(Continued)

STAFF REPORT 2023-AP1-001 (Continued)

- ◇ In 1963 a new Industrial Zoning Ordinance an enacted that created the I-2-U District which has carried forward under such names as “light industrial” and “I-2” in subsequent amendments to the Consolidated Zoning Ordinance of Indianapolis-Marion County. The first comprehensive revision to the Consolidated Zoning Ordinance came in 1969, which we use as a basis for modern zoning. From 1963 to 1969, the Industrial Zoning Districts were iterative: with each set of uses that were allowed in the less restrictive districts to be permitted in the more intense districts.
- ◇ The passage of 96-AO-03 further refined the development standards for the I-2-U District. Under this amendment, the Ordinance changed from strictly iterative to allowing more intense operations as a Special Exception in more restrictive districts. If uses were already legally established, it can be proven that they were in operation prior to 1996, they would not have been required to seek a Special Exception as they were legally established.
- ◇ In regard to the subject addresses, Staff finds that prior to 1969, the use as described would have been comparable to other uses that were allowed by-right (without a variance) in I-2-U as part of the permitted uses or the iterative uses from I-1-U. Staff concludes that the nature of the business was similar to other types of manufacturing and/or processing in the I-U-1/2 districts and was consistent with the enclosed and unenclosed storage regulations as well.
- ◇ Subsequently, in 1992, when the current business began and permits were granted, the uses were still within the parameters of the I-2U- uses. In 1996, when the Ordinance was updated, the uses were legally established and would not require a variance. Subsequently, this would apply when the Ordinance was updated again in 2015 and 2021.
- ◇ In addition, Staff would note that a history of permit issuance may be factored into legally establishing a non-conforming use, as upheld in cases such as:
 - Metropolitan Development Com’N of Marion County v. Schroeder (2000)
 - Atwell v. City of Indianapolis (2019)
 - City of Rushville Board of Zoning Appeals v. McCormick (2020)
 - Town of Avon v. Harville (1999)
 - BBL, Inc. v. City of Angola (2014)
 - Jacobs v. Mishawaka Bd. Of Zoning Appeals (1979)
 - Ashley v. City of Bedford (1974)
 - Wesner v. Metropolitan Development Com’n of Marion County (1993)
 - Dandy Co., Inc. v. Civil City of South Bend, County-City Complex (1980)
 - Metropolitan Development Com’n of Marion County v. Goodman (1992)
 - Hannon v. Metropolitan Development Com’n of Marion County (1997)
 - Kraimer v. City of Schofield (2004)
 - Board of Zoning Appeals, Bloomington, Ind. V. Leisz (1997)
 - Ragucci v. Metropolitan Development Com’n of Marion County (1997)
 - Hieb v. Metropolitan Development Commission of Marion County (1980)

(Continued)

STAFF REPORT 2023-AP1-001 (Continued)**ADMINISTRATOR'S DETERMINATION**

- ◇ It is the Administrator's opinion that the legally established uses continued without interruption from **1996-2016** when Indy Rezone (the next comprehensive update to the Consolidated Zoning and Subdivision Ordinance) was adopted. The property transitioned to an I-2 zoning designation; again, the uses were legally established when the City adopted a new Ordinance, so the owner would not have been required to seek a variance. The use has been **established since 1992** establishing itself as a Legally Established Nonconforming Use.
- ◇ A Legally Established Nonconforming Use is defined as: "Any continuous, lawful land use having commenced prior to the time of adoption, revision or amendment of the Zoning Ordinance, or granted a variance of the Zoning Ordinance, but that fails, by reason of such adoption, revision, amendment or variance to conform to the present requirements of the Zoning Ordinance.:"
- ◇ Legally established uses cannot violate other laws established by local, state or federal jurisdictions. Violations could still be assessed if an enforcement agency determined that they existed. In this case, BNS and IDEM have conducted inspections and provided report to the owner. However, within the context of Planning and Zoning the Administrator has determined the use of the property is not a violation of the Consolidated Zoning and Subdivision Ordinance of Indianapolis-Marion County due to being an established business prior to 1996.

GENERAL INFORMATION**THOROUGHFARE PLAN**

This portion of Deloss Street is classified as a Local Street in the Official Thoroughfare Plan for Marion County, Indiana with an existing and proposed 48-foot right-of-way.

ZONING HISTORY – SITE

None.

EDH

2023-AP1-001; Exhibit A

July 21, 2023

Cameron Perisutti
cameronperisutti@gmail.com

Regarding: 1531/1535 Deloss Street, Indianapolis, IN (Marion County)

Dear Mr. Perisutti,

The Department of Metropolitan Development – Division of Planning has been tasked to make an official determination regarding use conformity on 1531/1539 Deloss Street (the “Property”) in Indianapolis, IN. The Property is currently zoned I-2 Light Industrial District.

Property Zoning History

The first official Zoning Ordinance in Indianapolis was established in 1922. This Ordinance established general zoning districts throughout the City. Industrial Districts, at the time, permitted residential housing which is why there may be areas of the City with a mix of industrial uses and residential uses. Between 1922 and 1963, the Zoning Ordinance was amended making smaller changes to the code. However, in 1963, the City adopted 1963-AO-4: Industrial Zoning Ordinance which established multiple industrial zoning districts and development standards for said districts. This Ordinance established I-2-U zoning district which has carried forward under such names as ‘light industrial’ and “I-2” in subsequent amendments to the Consolidated Zoning Ordinance of Indianapolis Marion County. The first comprehensive revision to the Consolidated Zoning Ordinance came in 1969, which we use as a basis for modern zoning. From 1963 to 1969, the Industrial Zoning Districts were iterative: each set of uses that were allowed in the less restrictive districts were allowed in the next most intense district (i.e. — I-1-U uses were allowed in I-2-U, etc.). 96-AO-03 further refined the development standards for I-2-U. At this time, the Ordinance changed from strictly iterative to allowing more intense operations as a Special Exceptions in more restrictive districts. If uses were already legally established—it can be proven that they were in operation prior to 1996, they would not have been required to seek a Special Exception as they were legally established.

With regard to 1531/1539 Deloss Street, we find that prior to 1969, the use as described would have been comparable to other uses that were allowed by-right (without a variance) in I-2-U as part of the permitted uses or the iterative uses from I-U-1. **Subsequently, in 1992, when the current business began and permits were granted, the uses were still within the parameters of the I-2-U uses.** In



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2023-AP1-001; Exhibit A (Continued)

1996, when the Ordinance was updated, the uses were legally established and would not require a variance. Subsequently, this would apply when the Ordinance was updated again in 2015 and 2021.

Administrator's Determination

It is the Administrator's opinion that the legally established uses continued without interruption from 1996-2016 when Indy Rezone (the next comprehensive update to the Consolidated Zoning and Subdivision Ordinance) was adopted. The property transitioned to an I-2 (Light Industrial) zoning designation; again, the uses were legally established when the City adopted a new Ordinance, so the owner would not have been required to seek a variance. The use has been established since 1992 establishing itself as a Legally Established Nonconforming Use.

A Legally Established Nonconforming Use is defined as: "Any continuous, lawful land use having commenced prior to the time of adoption, revision or amendment of the Zoning ordinance, or granted a variance of the Zoning Ordinance, but that fails, by reason of such adoption, revision, amendment or variance to conform to the present requirements of the Zoning Ordinance."

Legally established uses cannot violate other laws established by local, state or federal jurisdictions. Violations could still be assessed if an enforcement agency determined that they existed. However, in this case, the Administrator has determined the use of the property is not a violation of the Consolidated Zoning and Subdivision Ordinance of Indianapolis-Marion County due to being an established business prior to 1996.

If you have any questions, please contact me at matt.pleasant@indy.gov.

Thank you,

By:  Date: July 21, 2023.
 Matt Pleasant, AICP
 Current Planning Administrator, Division of Planning
 Department of Metropolitan Development
 Suite 1842, City-County Building
 200 East Washington Street
 Indianapolis, Indiana 46204



Photo One: Looking West Along Deloss Street.



Photo Two: Looking East Along Deloss Street.



Photo Three: Looking South Towards Subject Site.



Photo Four: Commercial Vehicle Parking On Subject Site.



Photo Five: Building Located On Subject Site.



Photo Six: Structures Located Within Covered Structure.

STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2023-UV1-018
Address: 5524 Georgetown Road (approximate address)
Location: Pike Township, Council District #8
Zoning: C-3
Petitioner: GAT LLC, by David Kingen & Emily Duncan
Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a liquor store (not permitted).

ADDENDUM

The Board of Zoning Appeals granted a continuance request by the Petitioner continuing this matter from the September 5, 2023 hearing to the October 3, 2023 hearing.

At the October 3, 2023 hearing, the Board of Zoning Appeals granted a second continuance request by the Petitioner from the October 3, 2023 hearing to the December 5, 2023 hearing. The request was made to allow time for the Petitioner to modify the previously submitted site plan.

RECOMMENDATIONS

Staff **recommends** approval of the request for the variance of use to provide for the operation of a liquor store; however, staff does not support the proposed site plan or any site plan which fails to comply with C-3 district development standards.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

EXISTING ZONING AND LAND USE

C-3 Metro Commercial

SURROUNDING ZONING AND LAND USE

North C-3 Neighborhood commercial (auto parts/drug store)
South C-3 Neighborhood commercial (restaurant)
East C-3 Neighborhood commercial (vacant bank)
West C-3 Neighborhood commercial (light commercial mix / religious)

COMPREHENSIVE PLAN The Comprehensive Plan recommends village mixed-use development.

- ◇ The 1-acre subject site consists of a single parcel wholly within an integrated center developed in the mid-1990's with a single commercial structure. The site was originally used as a restaurant with an accessory drive-thru. The site was converted to a liquor store in or about 2011. The use was permitted at the time the current business was established and Staff supports continuation of the legal nonconforming use.
- ◇ The subject property is abutted by commercial on all sides.
- ◇ It is now subject to three zoning violations related to an unpermitted addition of two shipping containers to the site in the area of the existing drive-thru. Each container is approximately 40' (L) x 8' (W) x 8'6" (H). The containers have been fitted with lighting and air conditioning and are accessed via a pre-existing emergency exit on the south wall of the building.

VARIANCE OF USE

- ◇ The grant of the request would provide for the operation of a liquor store in the C-3 district.
- ◇ The purpose of the C-3 district is for the development of an extensive range of retail sales and personal, professional, and business services required to meet the demands of a fully developed residential neighborhood, regardless of its size. Examples of such types of uses include neighborhood shopping centers, sales of retail convenience or durable goods, shopping establishments, retail, and personal and professional service establishments. At this neighborhood scale of retail, a fine grain of accessibility requisite for all modes of travel must be provided and maintained. It does not make provision, however, for those businesses that draw customers in significant numbers from well beyond a neighborhood boundary and are, therefore, unusually heavy traffic generators, such as theaters. It does not allow those businesses that require the outdoor display, sale, or storage of merchandise; or require outdoor operations. In general, to achieve maximum flexibility of permitted land use, the C-3 District makes possible a highly varied grouping of indoor retail and business functions.
- ◇ Liquor Stores are only permitted in the C-4/5/7, MU-2/3/4, and CBD-1/2/3 districts per Table 743-1: Use Table.
- ◇ Liquor Stores shall not be located within 100' of a protected district nor within 500' of any indoor recreation & entertainment establishment that caters to, or markets itself predominately to, persons under 21-years of age. The site is located more than the minimum distance from the said protected district or use.

VARIANCE OF USE FINDINGS OF FACT

1. THE GRANT WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE COMMUNITY BECAUSE

The building has been located here for many years and the liquor store bought the property and moved into the building in 2011. Indy rezone changed the permitted uses with Indy Rezone in 2016. The pandemic occurred in 2020 which brought on the need for expansion. The addition will be legally established in 2023 with the grant of this variance and the improvements to the site and the addition to the building will be undertaken in late 2023 or early 2024,

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 addition with the landscaping and buffering will be an upgrade of this property and thus the area adjacent will be affected in a positive manner

3. THE NEED FOR THE VARIANCE ARISES FROM SOME CONDITION PECULIAR TO THE PROPERTY INVOLVED BECAUSE

The need for the variance petition is that Indy rezone amended the permitted uses in the C3 Commercial Zoning district where liquor stores are no longer permitted in the C3 district and thus when the liquor store was expanded, thus the need for the variance.

4. THE STRICT APPLICATION OF THE TERMS OF THE ZONING ORDINANCE CONSTITUTES AN UNUSUAL AND UNNECESSARY HARDSHIP IF APPLIED TO THE PROPERTY FOR WHICH THE VARIANCE IS SOUGHT BECAUSE

Since the pandemic in 2020, liquor sales have increased and thus facilities such as the one at 5524 Georgetown Road needed more storage space; but could not do so because in 2016 Indy rezone removed the liquor store from a permitted use in the C3 Commercial Zoning District

5. THE GRANT DOES NOT INTERFERE SUBSTANTIALLY WITH THE COMPREHENSIVE PLAN BECAUSE

The area where the liquor store will remain is in an area that recommends Community commercial uses in the Comprehensive Plan.

- ◇ Staff determined that the grant would not be injurious to the general welfare of the community. The current use has been in place since about 2011.
- ◇ The use and value of the area adjacent to the property included in the variance would not be adversely affected by the use as it is surrounded by similar light commercial uses.

GENERAL INFORMATION

THOROUGHFARE PLAN 56th St is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial, with a 110-foot existing right-of-way and a 102-foot proposed right-of-way. Georgetown Rd is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial, with a 125-foot existing right-of-way and a 102-foot proposed right-of-way.

SITE PLAN File-dated August 7, 2023.

FINDINGS OF FACT File-dated August 7, 2023.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

1. VIO23-002884. (April 26, 2023) Indianapolis Building Standards and Procedures 2016: Section(s) 536-201; 536-609; 536-705; 536-709. A Stop Work-Order has been issued for failure to obtain an electrical permit prior to installing new electrical wiring in an addition (2 steel storage containers 16'x40') attached to the back (SOUTH SIDE) of a one-story commercial building.
2. VIO23-002888. (April 26, 2023) Indianapolis Building Standards and Procedures 2016: Section(s) 536-201; 536-609; 536-705; 536-709. A Stop Work-Order has been issued for failure to obtain an HVAC permit prior to installing new AC unit system for refrigeration in an addition (2 steel storage containers 16'x40') as a cooler attached to the back (SOUTH SIDE) of a one-story commercial building.
3. VIO23-002890. (April 26, 2023) Indianapolis Building Standards and Procedures 2016: Section(s) 536-201; 536-609; 536-705; 536-709. A Stop Work-Order has been issued for failure to obtain an HVAC permit prior to installing new AC unit system for refrigeration in an addition (2 steel storage containers 16'x40') as a cooler attached to the back (SOUTH SIDE) of a one-story commercial building.

PREVIOUS CASES

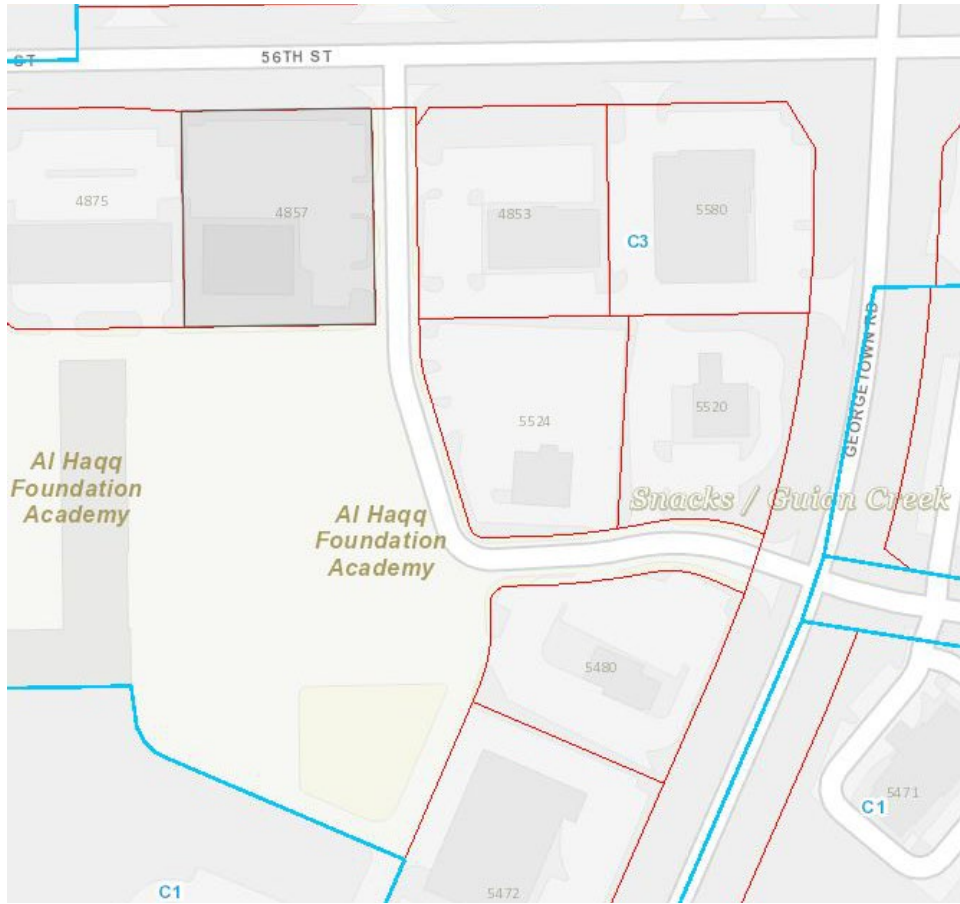
83-Z-152; 4859 West 59th St (includes subject site), Rezoning of 15.7 acres from the D-P district to the C-3 district, **granted**.

ZONING HISTORY – VICINITY

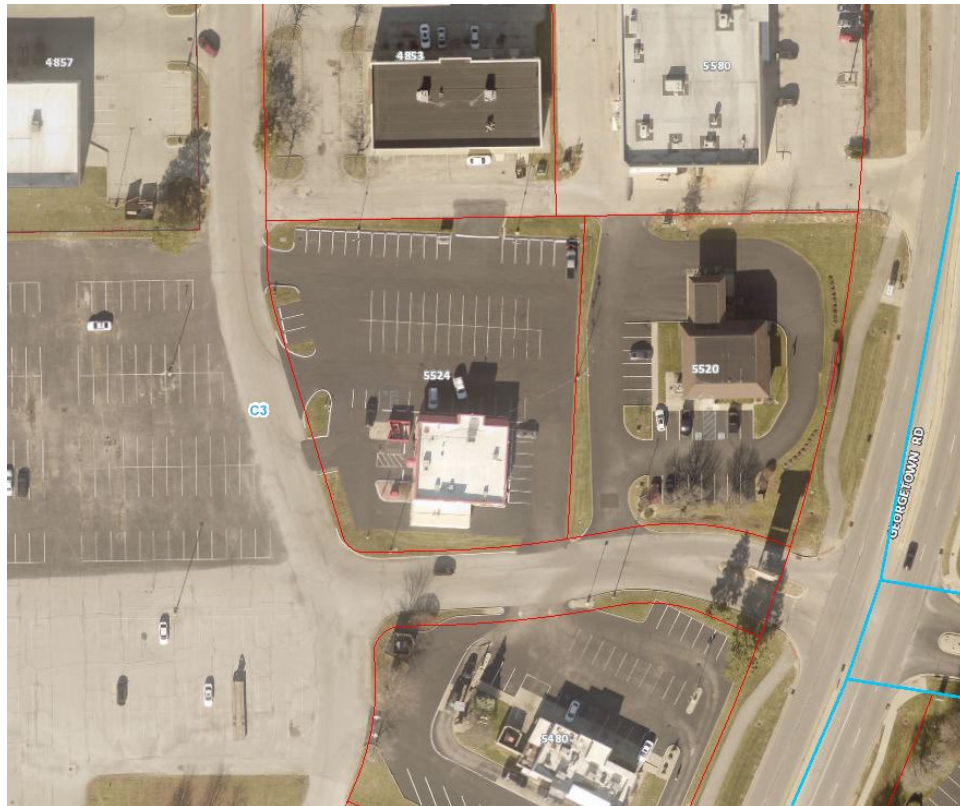
2013-UV1-004; 4853 West 56th St (north of site), Variance of use of the Commercial Zoning Ordinance to provide for an automobile parts store, **granted**.

2008-UV2-005; 4857 West 56th Street (northwest of site), Variance of use of the Commercial Zoning Ordinance to provide for an automobile parts store, **granted**.

2023-UV1-018; Location Map



2023-UV1-018; Aerial Map



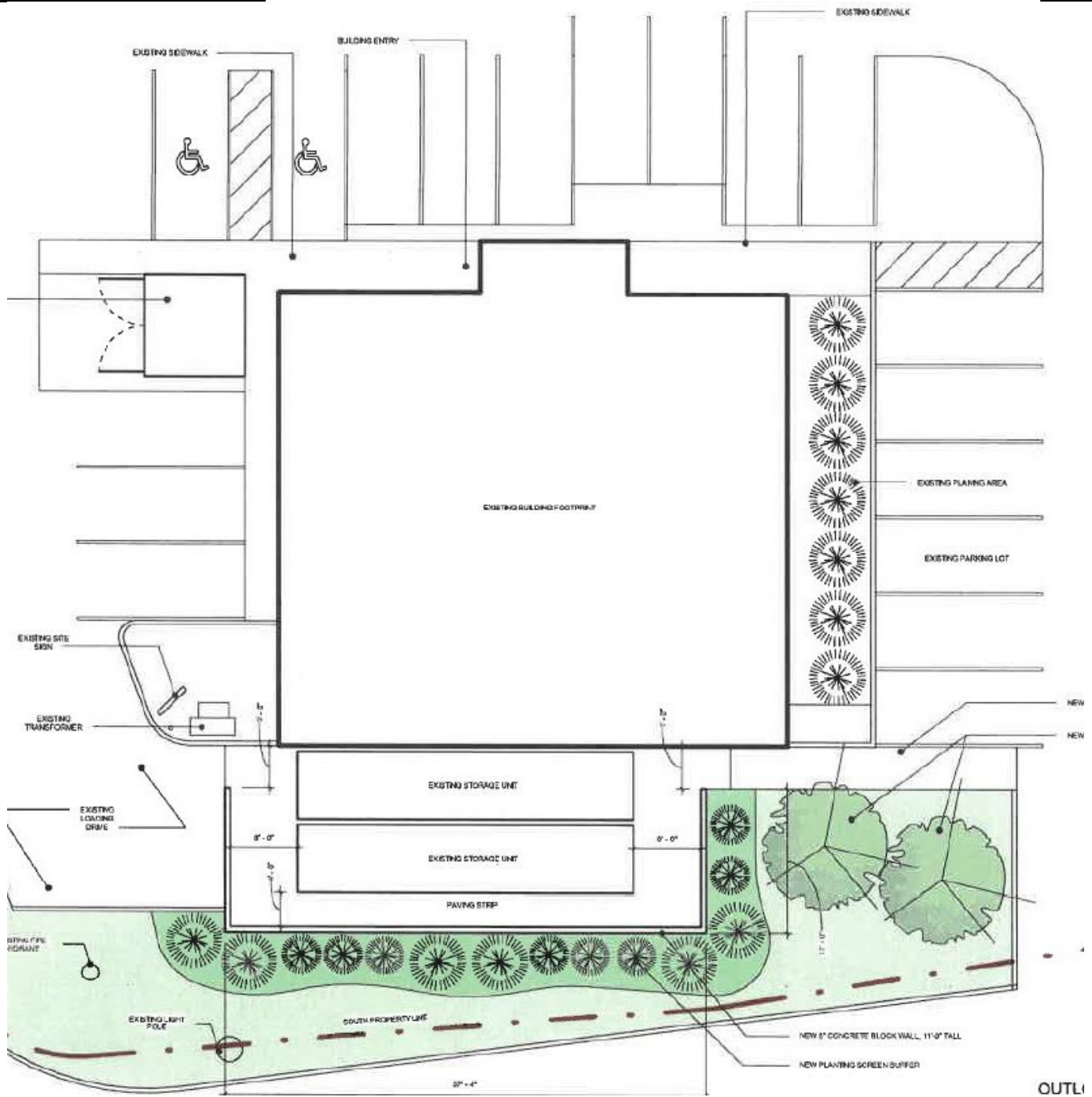




Photo of the Subject Property, southwest view



Photo of the Subject Property, southeast view