



Metropolitan Development Commission Hearing Examiner (January 26, 2023) Meeting Agenda

Meeting Details

Notice is hereby given that the Hearing Examiner of the Metropolitan Development Commission will hold public hearings on:

Date: Thursday, January 26, 2023

Time: 1:00 PM

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

Business:

Special Requests

Petitions for Public Hearing

PETITIONS REQUESTING TO BE CONTINUED:

1. 2022-ZON-124 | 940 West Banta Road | Perry Township, CD #23

John J. Holzer, Trustee, by David Kingen & Emily Duncan

Rezoning of 6.86 acres from the D-A (FW) (FF) district to the C-1 (FW) (FF) district.

***Petition to be withdrawn

2. 2022-ZON-135 | 9100 and 9402 East 21st Street | Warren Township, CD #14

DevCo Preservation, LLC, by Joseph D. Calderon

Rezoning of 30.46 acres from the C-1 and C-4 districts to the D-8 district to provide for a single-family detached residential development.

***Petition to be withdrawn

3. 2022-CZN-848 / 2022-CVC-848 | 419 & 441 East Ohio Street, 424 East Wabash Street and 124 & 132 North East Street | Center Township, CD #17

Moes, LLC / Feroze and Sons, LLC, by David Kingen and Emily Duncan

Rezoning of 0.85 acre from the CBD-2 (RC) and I-3 (RC) Districts to the CBD-2 (RC) district.

Vacation of the first north-south alley west of East Street, being twelve feet in width, from the south right-of-way line of Ohio Street, south 195 feet to the north right-of-way line of Wabash Street, with a waiver of the assessment of benefits.

**To be Continued to February 23, 2023 due to amendment requiring new notice

4. 2022-CZN-872 / 2022-CVR-872 | 4822 East Edgewood Avenue and 5820 South Emerson Avenue | Perry Township, CD #24

IN Indianapolis Emerson, LLC, by Joseph Calderon

Rezoning of 21.232 acres from the D-A, C-1 and C-3 districts to the D-6 district to provide for single-family attached dwellings (townhomes) and multi-family residential development.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building height of 49.5 feet (maximum 45 feet permitted) and a minimum livability ratio of 1.33 (1.80 required).

**Continuance requested to February 23, 2023 by remonstrator

PETITIONS FOR PUBLIC HEARING (Continued Petitions):

5. 2022-ZON-069 (Amended) | 3737 East Washington Street | Center Township, CD #12

Madison Capital V, LLC, by Timothy K. Ryan

Rezoning of 1.530 acres from the C-4 (TOD) district to the D-10 district to provide for multi-family residential development.

6. 2022-ZON-078 | 8965 Rockville Road | Wayne Township, CD #15

Vu Tran, by Pat Rooney

Rezoning of 0.57 acre from the D-2 district to the C-3 district to provide for retail uses.

7. 2022-ZON-091 (Amended) | 3510 Division Street | Perry Township, CD #20

Sumner St, LLC, by Casey Cloyd

Rezoning of 1.69 acres from the D-4 (FF) district to the C-S (FF) district to provide for commercial and building contractors; artisan manufacturing; light manufacturing; mini-warehouses; warehouse, wholesaling and distribution; consumer services or repair of consumer goods; financial and insurance services; hair and body care salon or service; printing services; office: business, professional or government; information, technology, R&D; Logistics R&D; retail, light general; automobile and light vehicle wash; automobile, motorcycle and light vehicle sales or rental; automotive, motorcycle and light vehicle service or repair; heavy vehicle wash; other vehicle sales, rental or repair; truck or heavy vehicle sales, rental or repair; and employee living quarters accessory to a permitted use.

8. 2022-CZN-861 / 2022-CVR-861 (Amended) | 4016 East 82nd Street | Washington Township, CD #3

Edward Rose Properties, Inc., by Joseph D. Calderon

Rezoning of 9.805 acres from the C-S (FW)(FF) district to C-S (FW)(FF) district to provide for a 300-unit multi-family development with a Modification of Commitments related to 89-Z-208, as amended by 94-Z-103 and 2011-CZN-800, to amend Commitment #4 to add multi-family uses as a permitted use to Parcel D of Area B.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a lot with zero-feet of street frontage (50 feet required), with a maximum setback greater than 85 feet from 82nd Street (maximum 85-foot setback permitted), with a maximum building height of 55 feet (maximum 45 feet permitted) and encroachment into the 100-foot stream protection corridor.

9. 2022-CZN-868 / 2022-CVR-868 (Amended) | 431 South Shortridge Road | Warren Township, CD #18

Bhullar Deol Properties, Inc, by David Kingen and Emily Duncan

Rezoning of 2.74 acres from the D-A district to the C-S district to provide for truck fleet services, an event center and C-1 uses with exceptions.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a zero-foot east yard (10-foot rear yard required), and without the required front-yard landscaping (landscaping required).

PETITIONS FOR PUBLIC HEARING (New Petitions):

10. 2022-MOD-023 | 5340 Senour Road | Franklin Township, CD #25

M/I Homes of Indiana L.P., by Joseph D. Calderon

Modification of Commitments related to 2021-ZON-009 to modify:

Commitment #3 to permit two-story duplex dwellings with a minimum of 1,500 square feet (previous commitment allowed for single-story duplex dwellings with lofts, with a minimum of 1,400 square feet)

Commitment #27 to update the architectural character representations to include two-story dwellings.

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

Item 1.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-ZON-124
Address: 940 West Banta Road (approximate address)
Location: Perry Township, Council District #23
Petitioner: John J. Holzer, Trustee, by David Kingen & Emily Duncan
Request: Rezoning of 6.86 acres from the D-A (FW) (FF) district to the C-1 (FW) (FF) district.

ADDENDUM FOR JANUARY 26, 2023, HEARING EXAMINER

The Hearing Examiner continued this petition from the December 1, 2022 hearing, to the January 26, 2023 hearing, at the request of the petitioner's representative.

On December 27, 2022, the petitioner's representative sent an e-mail **withdrawing** this request. The Hearing Examiner will need to acknowledge the withdrawal.

December 1, 2022

RECOMMENDATIONS

Staff **recommends approval** of the request, subject to the following commitments being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. A 40-foot half right-of-way shall be dedicated along the frontage of West Banta Road, as per the request of the Department of Public Works (DPW), Engineering Division. Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to the acceptance of all grants of right-of-way by the DPW. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).
2. A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development; b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.
3. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptables provided for the proper disposal of trash and other waste.

(Continued)

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE ISSUES

- ◇ This 6.86-acre site, zoned D-A (FW)(FF) is developed with a single-family dwelling and accessory structures. It is surrounded a single-family dwelling to the north, zoned D-A; multi-family dwellings to the south, across West Banta Road, zoned D-7; a single-family dwelling to the east, zoned D-A (FW)(FF); and railroad right-of-way to the west, zoned D-A.
- ◇ Petition 2022-UV2-026, requested a variance of use and development standards to provide for the operation of a day care and educational facility with a four-foot tall, eight-foot-wide primary freestanding sign with parking areas with a two-foot setback from the rear lot line, a driveway located 20 feet from the western side lot line and a walking path located four feet from the rear lot line. The petition was withdrawn and the rezoning petition filed.

REZONING

- ◇ This request would rezone the site from D-A (FW)(FF) District to the C-1 (FW)(FF). “The C-1 District is designed to perform two functions: act as a buffer between uses, and provide for a freestanding area that office uses, compatible office-type uses, such as medical and dental facilities, education services, and certain public and semipublic uses may be developed with the assurance that retail and other heavier commercial uses with incompatible characteristics will not impede or disrupt. Since the buildings for office, office-type and public and semipublic uses are typically much less commercial in appearance, landscaped more fully and architecturally more harmonious with residential structures, this district can serve as a buffer between protected districts and more intense commercial or industrial areas/districts - if designed accordingly. This district, with its offices and other buffer type uses, may also be used along certain thoroughfares where a gradual and reasonable transition from existing residential use should occur.
- ◇ The Comprehensive Plan recommends the Rural or Estate Neighborhood. “The Rural or Estate Neighborhood typology applies to both rural or agricultural areas and historic, urban areas with estate-style homes on large lots. In both forms, this typology prioritizes the exceptional natural features – such as rolling hills, high quality woodlands, and wetlands – that make these areas unique. Development in this typology should work with the existing topography as much as possible. Typically, this typology has a residential density of less than one dwelling unit per acre unless housing is clustered to preserve open space.”
- ◇ This site also has non-typology recommendations that include floodway and linear park. The Floodway category delineates areas that exhibit a great potential for property loss and damage from severe flooding, or for water quality degradation. No development should occur within the floodway. Nonconforming uses currently within a floodway should not be expanded or altered.” The Linear Park recommendation is “intended for public or private property designated for active or passive recreation and is primarily used for the passage of people or wildlife. Examples are greenways, parkways, trails, off-street paths, and conservation areas.”

(Continued)

- ◇ The Comprehensive Plan consists of two components that include the Pattern Book and the land use map. The Pattern Book provides a land use classification system that guides the orderly development of the county and protects the character of neighborhoods while also being flexible and adaptable to allow neighborhoods to grow and change over time.
- ◇ The Pattern Book serves as a policy guide as development occurs. Because the request is for the C-1 district and the uses permitted in the C-1 district are not recommended uses within the rural or estate neighborhood typology, no additional information has been provided related to development of the site.

Overlays

- ◇ This site is also located within an overlay, specifically the Environmentally Sensitive Areas. “Overlays are used in places where the land uses that are allowed in a typology need to be adjusted. They may be needed because an area is environmentally sensitive, near an airport, or because a certain type of development should be promoted. Overlays can add uses, remove uses, or modify the conditions that are applied to uses in a typology.”
- ◇ The Environmentally Sensitive Areas (ES) Overlay is intended for areas containing high quality woodlands, wetlands, or other natural resources that should be protected. The purpose of this overlay is to prevent or mitigate potential damage to these resources caused by development. This overlay is also appropriate for areas that present an opportunity to create a new environmental asset. This overlay is not intended for the preservation of open space.
- ◇ This site is located within the floodplain of Little Buck Creek and Forest Alliance Woodlands (high quality woodlands), both of which are located along the eastern portion of the of site.

Floodway / Floodway Fringe

- ◇ This site has a secondary zoning classification of a Floodway (FW) and Floodway Fringe (FF). The Floodway (FW) is the channel of a river or stream and those portions of the floodplains adjoin the channels which are reasonably required to efficiently carry and discharge the peak flood flow of the base flood of any river or stream. The Floodway Fringe (FF) is the portion of the regulatory floodplain that is not required to convey the 100-year frequency flood peak discharge and lies outside of the floodway.
- ◇ The purpose of the floodway district is to guide development in areas identified as a floodway. The Indiana Department of Natural Resources (IDNR) exercises primary jurisdiction in the floodway district under the authority of IC 14-28-1.
- ◇ The designation of the FF District is to guide development in areas subject to potential flood damage, but outside the Floodway (FW) District. Unless otherwise prohibited, all uses permitted in the primary zoning district (C-1 in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.

(Continued)

- ◇ Staff would note the following uses are prohibited in the floodplain:
 - a. Jails;
 - b. Hospitals;
 - c. Assisted living facilities;
 - d. Nursing homes;
 - e. Laboratories;
 - f. Elementary, Middle or High Schools;
 - g. Daycare facilities;
 - h. Fire stations;
 - i. Emergency operation centers;
 - j. Police facilities;
 - k. Truck, train, or bus terminal, storage or maintenance facility;
 - l. Wrecking or salvage facility;
 - m. Gas, oil or propane storage facility;
 - n. Industrial laundry;
 - o. Hazardous waste handling or storage facility; and
 - p. Other public equipment storage facilities.

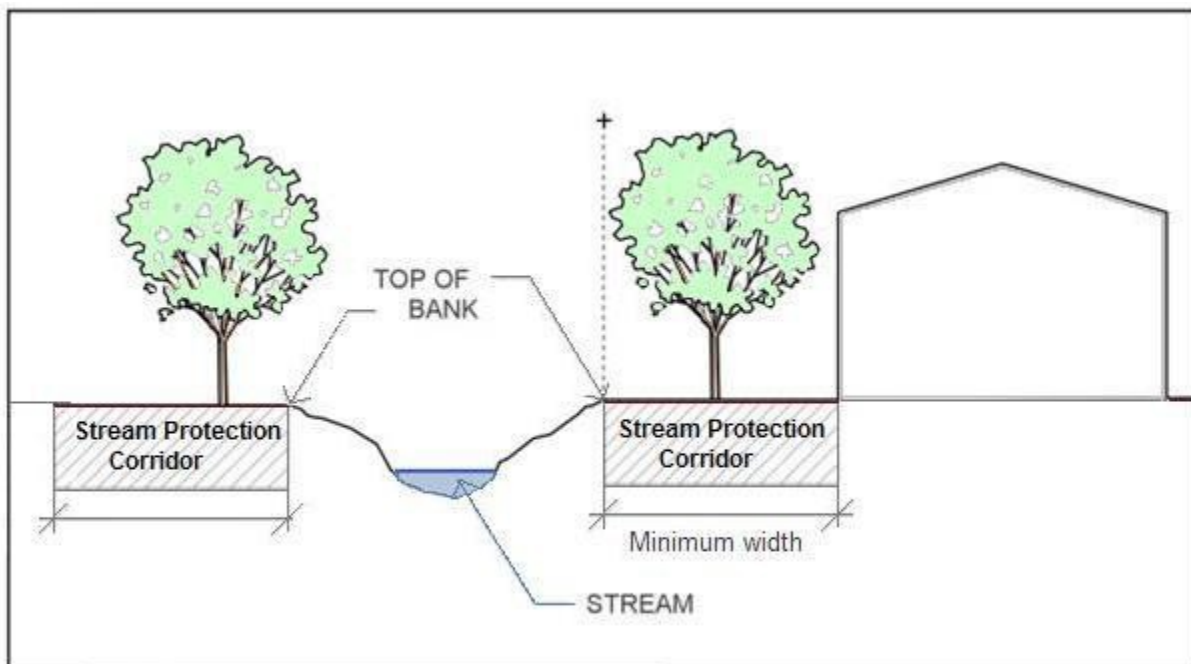
Stream Protection Corridor

- ◇ A stream protection corridor consists of a strip of land, extending along both sides of all streams, with measurements taken from the top of the bank on either side. The width of the corridor is based upon whether the stream is designated as a Category One or Category Two. Category One streams have a corridor width of 60 feet in the compact context area and 100 feet in the metro context area. Category Two streams have a corridor width of 25 feet in the compact context area and 50 feet in the metro context area.
- ◇ The vegetative target for the Stream Protection Corridor is a variety of mature, native riparian tree and shrub species that can provide shade, leaf litter, woody debris, and erosion protection to the stream, along with appropriate plantings necessary for effective stream bank stabilization.
- ◇ The Stream Protection Corridor is defined as:

“A vegetated area, including trees, shrubs, and herbaceous vegetation, that exists or is established to protect a stream system, lake, or reservoir, and where alteration is strictly limited. Functionally, stream protection corridors provide erosion control, improve water quality (lower sedimentation and contaminant removal) offer flood water storage, provide habitat, and improve aesthetic value.”
- ◇ Stream is defined as “a surface watercourse with a well-defined bed and bank, either natural or artificial that confines and conducts continuous or periodic flowing water.”
- ◇ Stream Bank is defined as “the sloping land that contains the stream channel and the normal flows of the stream.”

(Continued)

- ◇ Stream Channel is defined as “part of a watercourse that contains an intermittent or perennial base flow of groundwater origin.”
- ◇ There are two types of categories of Streams: Category One Streams and Category Two Streams. Little Buck Creek is listed as a Category One Stream, which is defined as: “A perennial stream that flows in a well-defined channel throughout most of the year under normal climatic conditions. Some may dry up during drought periods or due to excessive upstream uses. Aquatic organism such as some fish are normally present and easily found in these streams. The Category One Streams are listed in Table 744-205-2: Category One Streams.”
- ◇ Category Two Stream is defined as: “An intermittent stream that flows in a well-defined channel during wet seasons of the year but not necessarily for the entire year. These streams generally exhibit signs of water velocity sufficient to move soil, material, litter, and fine debris. Aquatic organisms, such as fish, are often difficult to find or not present at all in these streams. These streams are identified on the United States Geological Survey (USGS) topographic maps and on the Department of Natural Resources Conservation Service (NRCS) soils maps.”
- ◇ There are 32 Category One streams listed in the Ordinance. The stream protection corridor is a strip of land on both sides of the stream whose width varies according to whether it is within the Compact or Metro Context Area and whether it is a Category One or Category Two Stream.
- ◇ Little Buck Creek is located along the eastern portion of the site and is designated as a Category One stream requiring a 100-foot wide stream protection corridor, as measured parallel from the top of the bank. Top of the bank is not defined by the Ordinance, other than by Diagram UU, Stream Protection Corridor Cross-section, as shown below.



Stream Protection Corridor

(Continued)

Tree Preservation / Heritage Tree Conservation

- ◇ There are significant amounts of natural vegetation and trees located on the eastern portion of the site. Due to their inherent ecological, aesthetic, and buffering qualities, the maximum number of these existing trees should be preserved on the site.
- ◇ All development shall be in a manner that causes the least amount of disruption to the trees.
- ◇ A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development, b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.
- ◇ If any of the trees are heritage trees that would be impacted, then the Ordinance requires that the Administrator, Urban Forester or Director of Public Works determine whether the tree(s) would be preserved or removed and replaced.
- ◇ The Ordinance defines “heritage tree” as a tree over 18 inches Diameter at Breast Height (DBH) and one of the Heritage tree species. Heritage tree species include: Sugar Maple (*Acer saccharum*), Shagbark Hickory (*Carya ovata*), Hackberry (*Celtis occidentalis*), Yellowwood (*Cladrastus kentukea*), American Beech (*Fagus grandifolia*), Kentucky Coffeetree (*Gymnocladus dioica*), Walnut or Butternut (*Juglans*), Tulip Poplar (*Liriodendron tulipifera*), Sweet Gum (*Liquidambar styraciflua*), Black Gum (*Nyssa sylvatica*), American Sycamore (*Platanus occidentalis*), Eastern Cottonwood (*Populus deltoides*), American Elm (*Ulmus americana*), Red Elm (*Ulmus rubra*) and any oak species (*Quercus*, all spp.)
- ◇ The Ordinance also provides for replacement of heritage trees if a heritage tree is removed or dies within three years of the Improvement Location issuance date. See Exhibit A, Table 744-503-3: Replacement Trees.

Department of Public Works

- ◇ The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 40-foot half right-of-way along West Banta Road. This dedication would also be consistent with the Marion County Thoroughfare Plan.

Environmental Public Nuisances

- ◇ The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.

(Continued)

- ◇ All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.
- ◇ Environmental public nuisance means:
 1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
 2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
 3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
 4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.
- ◇ Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

Planning Analysis

- ◇ As proposed this request would not be consistent with the Comprehensive Plan recommendation of rural or estate neighborhood typology. Staff would note that the Pattern Book recommends detached housing, working farms, group homes, bed / breakfast and wind / solar farms. The environmentally sensitive overlay, however, removes working farms and wind / solar farms as recommended uses.
- ◇ Based upon the information submitted with the variance of use and development standards as a childcare and educational facility, staff believes the proposed use would not be detrimental to the adjacent land uses and districts that include the railroad right-of-way and heavy commercial to the west (C-7 District) and multi-family dwellings to the south (D-7).
- ◇ If designed appropriately, the C-1 district can serve as a buffer between protected districts and more intense commercial or industrial areas / districts. Future building designs should be more harmonious with residential character of the area and well integrated with the adjacent residential uses.

(Continued)

- Documents submitted with the variance request (2022-UV3-026) include existing site development, proposed site development and a Plan of Operation. This information is not required for rezoning petitions but is included in this report for informational purposes. See Exhibit B (site plans) and Exhibit C (Plan of Operation).
- Furthermore, the stream protection corridor along the eastern portion of the site would provide a buffer for the single-family dwelling that abuts this property along the eastern boundary.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-A (FW)(FF) Single-family dwelling / accessory buildings.

SURROUNDING ZONING AND LAND USE

North -	D-A (FW)(FF)	Single-family dwelling
South -	D-7 (FW)(FF)	Multi-family dwellings
East -	D-A (FW)(FF)	Single-family dwelling
West -	C-1	Railroad right-of-way

COMPREHENSIVE LAND USE PLAN

The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends rural or estate typology and non-typology uses that include floodway and linear park.

THOROUGHFARE PLAN

This portion of West Banta Road is designated in the Marion County Thoroughfare Plan as a primary collector with an existing 30-86-foot right-of-way and a proposed 80-foot right-of-way.

CONTEXT AREA

This site is located within the metro context area.

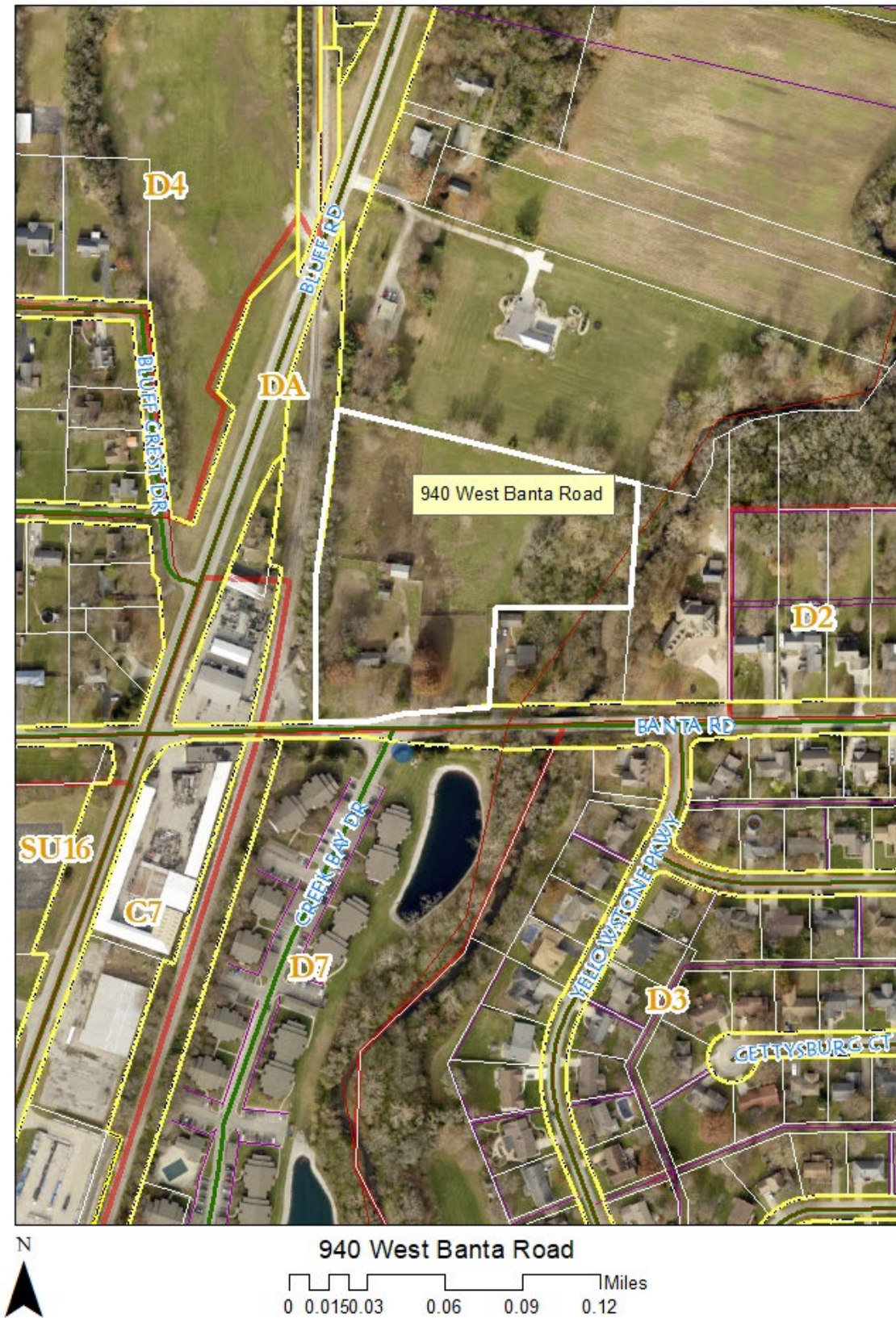
OVERLAY

This site is located within an environmentally sensitive area (100-year floodplain of Little Buck Creek and Forest Alliance Woodlands)

ZONING HISTORY

2022-UV3-026; 940 West Banta Road, requested a variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance provide for the operation of a day care and educational facility with a four-foot tall, an eight foot-wide primary freestanding sign with parking areas with a two-foot setback from the rear lot line, a driveway located 20 feet from the western side lot line and a walking path located four feet from the rear lot line, **withdrawn**.

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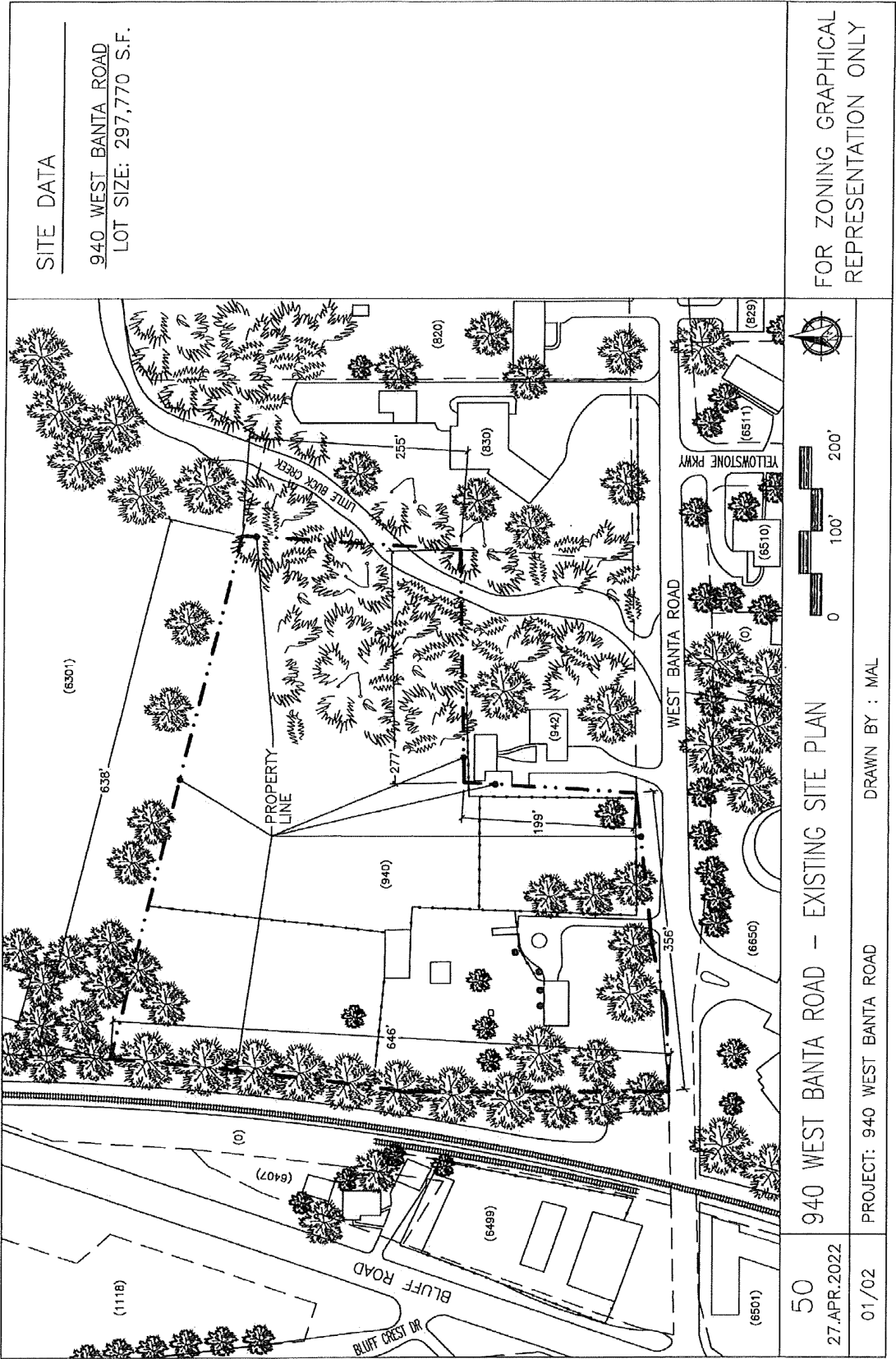


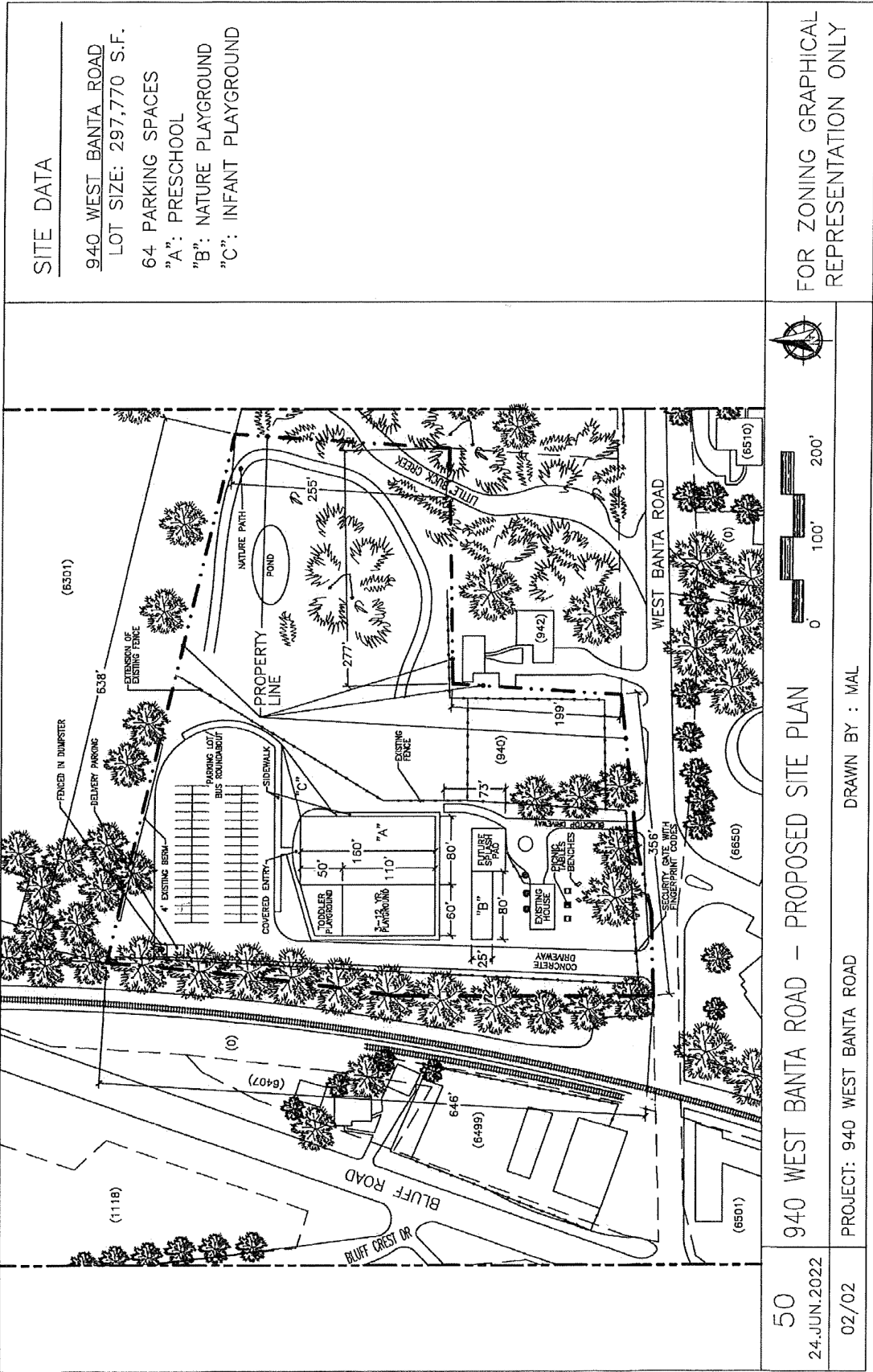
Heritage Tree Conservation

Removal of any Heritage Tree is prohibited unless any of the following determinations are made before removal:

1. The Administrator or the city's Urban Forester determines that the tree is dead, significantly and terminally diseased, a threat to public health or safety, or is of an undesirable or nuisance species.
2. The Director of the Department of Public Works determines that the tree interferes with the provision of public services or is a hazard to traffic.
3. The Administrator determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree.
4. The site from which the tree is removed is zoned D-A and the tree is harvested as timber or similar forestry product.

Table 744-503-3: Replacement Trees		
Size of tree removed or dead (inches)	Number of Trees to be planted to replace a Heritage Tree	Number of Trees to be planted to replace an existing tree
Over 36 DBH	15	10
25.5 to 36 DBH	11	8
13 to 25 DBH	8	6
10.5 to 12.5 DBH	6	4
8.5 to 10 DBH	5	4
6.5 to 8	3	2
4 to 6	2	2
2.5 to 3.5	1	1





940 West Banta Street Plan of Operation

- Organization:** Top Notch Early Childhood Educational Preschool
- Address:** 940 West Banta Road Indianapolis, IN 46217
- Capacity:** Licensed for approximately 165 children
- Ages:** 6 weeks -12 years old
- Employees:**
- Three (3) Administrators
 - Three (3) Kitchen Aides / Janitorial Staff
 - Twenty-Five (25) - Thirty (30) full-time & part-time Preschool Teachers
- Parking:**
- Sixty-four (64) parking spaces
 - Bus roundabout
 - Delivery truck parking spot
- Hours of Operation:**
- 7:00 am - 6:00 pm Monday - Friday
 - Closed:
 - Week between Christmas & New Year
 - Thanksgiving (and the following Friday)
 - Martin Luther King Day
 - Labor Day
 - Memorial Day
 - 4th of July
- Amenities:**
- Cafeteria
 - Two (2) indoor gross motor gymnasiums
 - Four (4) age-appropriate playgrounds
- Trash:** Dumpster surrounded by landscaping, per site plan on file
- Sign:** Four-foot x Eight-foot (4'x8') ground sign located near the West entrance
- Security / Safety:**
- Easy emergency exit routes
 - Built-in sprinkler system
 - Video camera surveillance
 - Secured door that will require a personal code or fingerprint to enter the building

v.8/15/22



View looking west along West Banta Road



View looking east along West Banta Road



View of site looking north across West Banta Road



View of site looking north across West Banta Road



View of site looking north across West Banta Road



View of western portion of site looking north



View of western portion of site looking north



View of site looking east



View of site looking north



View of site looking northwest



View from site looking north at abutting neighbor



View from site looking south across West Banta Road

STAFF REPORT

Department of Metropolitan Development
Division of Planning
Current Planning Section

Case Number: 2022-ZON-135
Address: 9100 and 9402 East 21st Street (*Approximate Address*)
Location: Warren Township, Council District #14
Petitioner: DevCo Preservation, LLC, by Joseph D. Calderon
Request: Rezoning of 30.46 acres from the C-1 and C-4 districts to the D-8 district to provide for a single-family detached residential development.

Staff has received communication from the petitioner's representative **withdrawing this petition** from consideration.

STAFF REPORT

Item 3.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-CZN-848 / 2022-CVC-848 (Amended)
Address: 419 and 441 East Ohio Street, 424 East Wabash Street, and 124 and 132 North East Street (*Approximate Addresses*)
Location: Center Township, Council District #17
Petitioner: Moe's, LLC / Feroze and Sons, LLC, by David Kingen and Emily Duncan
Request: Rezoning of 0.35 acre from the I-3 (RC) district to the CBD-2 (RC) district.

Vacation of the first north-south alley west of East Street, being twelve feet in width, from the south right-of-way line of Ohio Street, south 195 feet to the north right-of-way line of Wabash Street, with a waiver of the assessment of benefits.

ADDENDUM FOR JANUARY 26, 2023, HEARING EXAMINER

This companion petition was amended in early January to include a variance petition. New Legal Notice is required in order for this companion petition to be heard; therefore, a continuance is warranted to the February 23, 2023, hearing.

ADDENDUM FOR DECEMBER 1, 2022, HEARING EXAMINER

This companion petition was continued from the October 13, 2022, hearing, to the December 1, 2022, hearing. As of this writing, no new information has been submitted to the file.

OCTOBER 13, 2022, HEARING EXAMINER

RECOMMENDATIONS

Staff **recommends approval** of the rezoning request.

Staff **recommends denial** of the vacation request and provides the following motion:

RECOMMENDED MOTION (Denial): That the Hearing Examiner find that the proposed vacation is not the public interest; that the Hearing Examiner deny Declaratory Resolution 2022-CVC-848.

Should the vacation request be approved against staff's recommendation, staff provides the following motion:

RECOMMENDED MOTION (Approval): That the Hearing Examiner find that proposed vacation is in the public interest; that a hearing upon the assessment of benefits be waived; that the Hearing Examiner confirm and ratify the adoption of Declaratory Resolution 2022-CVC-848; and that the vacation be subject to the rights of public utilities under IC 36-7-3-16.

(Continued)

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

REZONING PETITION / COMPREHENSIVE PLAN

- ◇ After Legal Notice was provided, the rezoning request was amended to include only the land area that is currently zoned I-3 (RC). Originally, the request included land that was already zoned CBD-2 (RC). The resulting amendment would rezone 0.35-acre to CBD-2 (RC).
- ◇ The subject site contains two lots, with one lot being 12,334 square feet in size , with the other lot, being 3,040 square feet in size. Both lots are improved with a surface parking lot.
- ◇ The Comprehensive Plan recommends City Neighborhood development. City Neighborhood largely consists of multifamily dwellings. However, City Neighborhood areas are dense and walkable with a full range of city services and public amenities. Access to individual parcels is generally by an alley or internal parking structures. City Neighborhood development would also support small- and large-scale commercial uses on the first floor of mixed-use structures.
- ◇ To the north of the site, across Ohio Street, are attached single-family dwellings. Adjacent to the east is a gasoline station, with restaurant space, and an office building. To the south is a parking structure and to the west is a surface parking lot, an event venue, and offices. The site is near very densely developed land and is notably within the Mile Square. The request to rezone to CBD-2 (RC) would be consistent with existing zoning surrounding the site. Since mixed-use development would be an acceptable use within the City Neighborhood recommendation and permitted in CBD-2 (RC), this request would be compatible with the Plan.

TRANSIT-ORIENTED DEVELOPMENT

- ◇ The site is within the transit-oriented development (TOD) overlay zone. The Ordinance specifies that sites zoned CBD would not be required to comply with the TOD development standards. However, much of the intent of the TOD, which includes reduced parking and increased pedestrian use, is noted in the Regional Center Design Guidelines and would apply to any new development.

REGIONAL CENTER OVERLAY DISTRICT

- ◇ The site is located within the Regional Center overlay district. Design of all new construction, sidewalk cafes, and signage in the Regional Center overlay district is subject to the approval of the Administrator of the Division of Planning. A Regional Center Approval petition has been filed for demolition of an existing commercial structure at 419 East Ohio Street.

(Continued)

VACATION SUMMARY

- ◇ This request would vacate an improved alley with direct access of several lots to Ohio Street and an east-west alley to the south. The subject alley is the first north-south alley west of the Ohio Street and East Street intersection. It is located between an office building at 424 East Wabash Street and the gasoline station at 132 North East Street. The alley also provides access to existing surface parking lots at 419 East Ohio Street.
- ◇ The submitted Findings of Fact state that the vacation would 'consolidate five pieces of property and allow for the development of a Regional Center / Cole Noble Historic neighborhood mixed-use project'. 'Furthermore, it will eventually rid the Regional Center and Cole Noble neighborhood of three surface parking lots.'
- ◇ As of this writing, no plans have been submitted for development of this site, other than a proposed demolition of the existing office building, located at 419 East Ohio Street.
- ◇ Alleys provide an important means of access to interior portions of property. The Comprehensive Plan, as noted above, recommends City Neighborhood development. This typology indicates that 'typical access to individual parcels is generally by an alley or internal parking structures'.
- ◇ This alley is improved with brick, which is an indication of its long-standing use. Any proposed development should be designed to use this alley to provide access to the alley to the south and to Ohio Street to the north. Approval of vacation of rights-of-way are required to be 'in the public interest'. There has not been any established reasoning to indicate that this vacation request would be in the public interest.
- ◇ Therefore, staff **recommends denial** of the proposed vacation.

Procedure

- ◇ Neither the Division of Planning nor the Hearing Examiner or Metropolitan Development Commission determine how vacated right-of-way is divided. The approval of a vacation petition only eliminates the public right-of-way. The vacation approval does nothing more. A petitioner will not receive a deed or other document of conveyance after the approval of a vacation.
- ◇ The general rule under Indiana case law is that when a street or highway is vacated or abandoned the title to the land reverts to the abutting property owners. This rule exists by virtue of the fact that the abutting landowner owns to the center of the street or highway subject only to an easement for the public to the use of the street or highway. *Gorby v. McEndarfer* 135 Ind.App. 74, *82, 191 N.E.2d 786, **791 (Ind.App.1963). However, there are possible exceptions to this general rule.
- ◇ After a vacation of a public right-of-way the county assessor determines how the vacated right-of-way will be assessed for tax purposes.

(Continued)

- ◇ Petitioners and abutters of the vacated right-of-way should consult their own attorneys for advice regarding the ownership of the vacated right-of way.

ASSESSMENT OF BENEFITS

- ◇ The petitioner has requested a waiver of the Assessment of Benefits. The subject right-of-way is improved, with brick. The City clearly invested in the establishment, use and maintenance of this alley in the past. Therefore, staff would not support a waiver of the assessment of benefits.

GENERAL DESCRIPTION:

Vacation of the first north-south alley west of East Street, being twelve feet in width, from the south right-of-way line of Ohio Street, south 195 feet to the north right-of-way line of Wabash Street, with a waiver of the assessment of benefits.

UTILITIES AND AGENCY REPORT

Telephone:	No answer, retain easement
CEG, Gas:	No answer, retain easement
CEG, Water:	No answer, retain easement
CEG, Wastewater	No answer, retain easement
Power:	No answer, retain easement
Cable:	No answer, retain easement
DPR:	No answer, retain easement
DPW, TS:	No answer, retain easement

GENERAL INFORMATION**EXISTING ZONING, CONTEXT AND LAND USE**

I-3 (RC) and CBD-2 (RC) Compact	One commercial structure and surface parking
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SURROUNDING ZONING AND LAND USE

North -	CBD-2 (RC)	Attached single-family dwellings
South -	CBD-2 (RC)	Parking structure
East -	CBD-2 (RC)	Bank
West -	I-3 (RC) and CBD-2 (RC)	Office / event venue

COMPREHENSIVE PLAN	The Comprehensive Plan recommends the site for City Neighborhood development.
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THOROUGHFARE PLAN	The Official Thoroughfare Plan for Marion County indicates that Ohio Street is a primary street, with a 78-foot right-of-way existing and proposed. East Street is a primary street, with a 78-foot right-of-way existing and proposed.
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(Continued)

URBAN DESIGN GUIDELINES
DISTRICT TYPOLOGY

The site is located within the Urban mixed-use typology.

TRANSIT-ORIENTED
DEVELOPMENT

The site is located within a transit-oriented development area.

VACATION EXHIBIT

File-dated August 1, 2022

FINDINGS OF FACT

File-dated August 1, 2022

ZONING HISTORY - SITE

2022-REG-055; 419 East Ohio Street, requested Regional Center Approval for demolition of an existing commercial building, **pending**.

2019-MOD-003; 124 and 132 North East Street and 441 East Ohio Street; requested a modification of commitments, related to 2003-MOD-152 to modify commitment one to provide for the sale of alcohol beverages for on-premises consumption in a family restaurant, without carry-out sales, **approved**.

2010-REG-064; 441 East Ohio Street, requests Regional Center Approval for wall signs, **approved**.

2004-DV1-002; 441 East Ohio Street, requests a variance of development standards of the Sign Regulations, to provide for an 11.9-foot tall, 9.17-foot wide, 107.75-square foot pylon sign, with a three-foot setback from the Ohio Street right-of-way and 4.17-foot setback from the East Street right-of-way, **granted**.

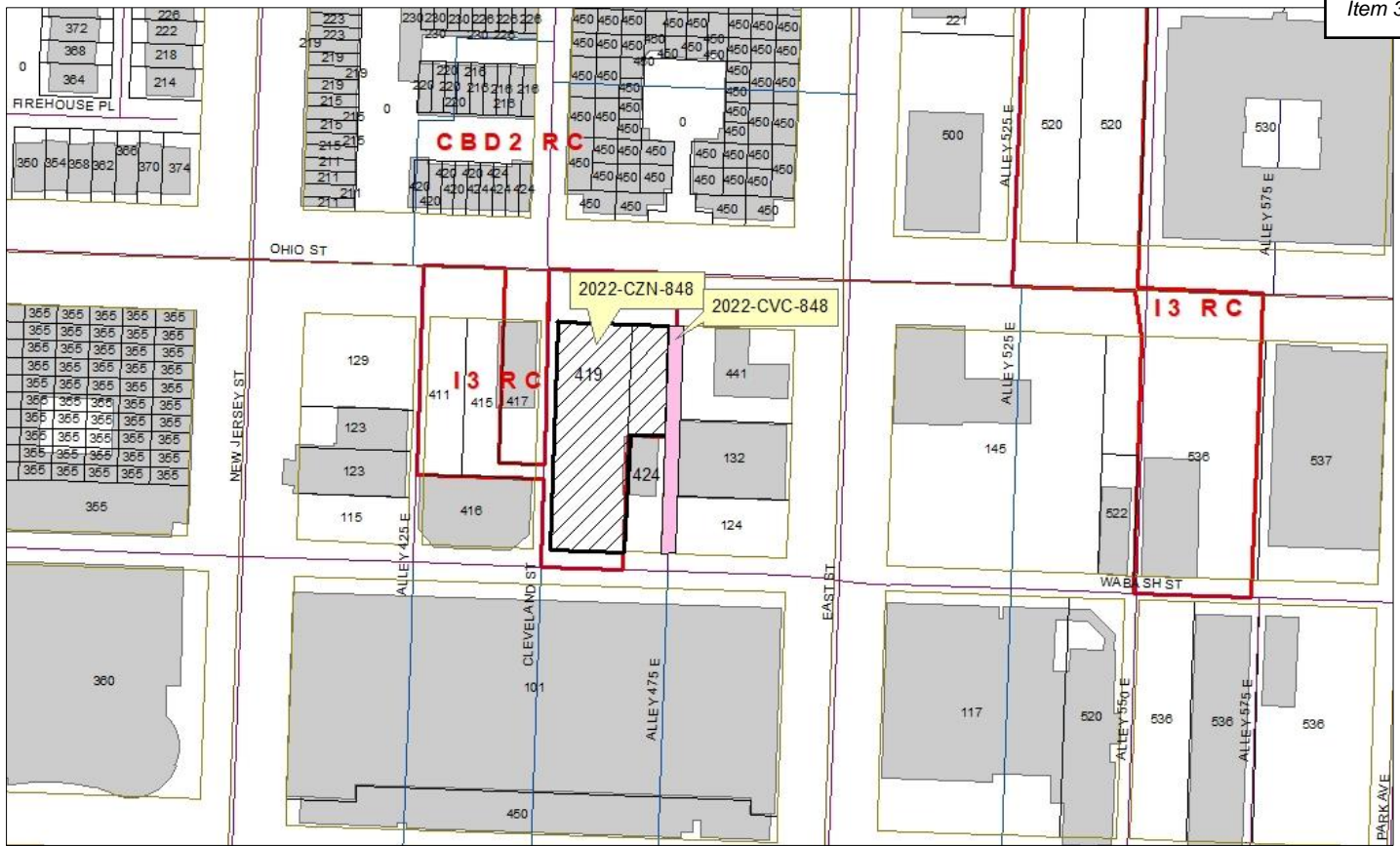
2003-APP-067; 441 East Ohio Street, requests Regional Center Approval for a remodeling of a gasoline station and to provide for an 11.9-foot tall, 9.17-foot wide, 107.75-square foot pylon sign, with a three-foot setback from the Ohio Street right-of-way and 4.17-foot setback from the East Street right-of-way, **approved**.

2003-ZON-152; 441 East Ohio Street and 132 North East Street, requests a rezoning of 0.32-acre, from the I-3-U (RC) district to the CBD-2 (RC) classification, **approved**.

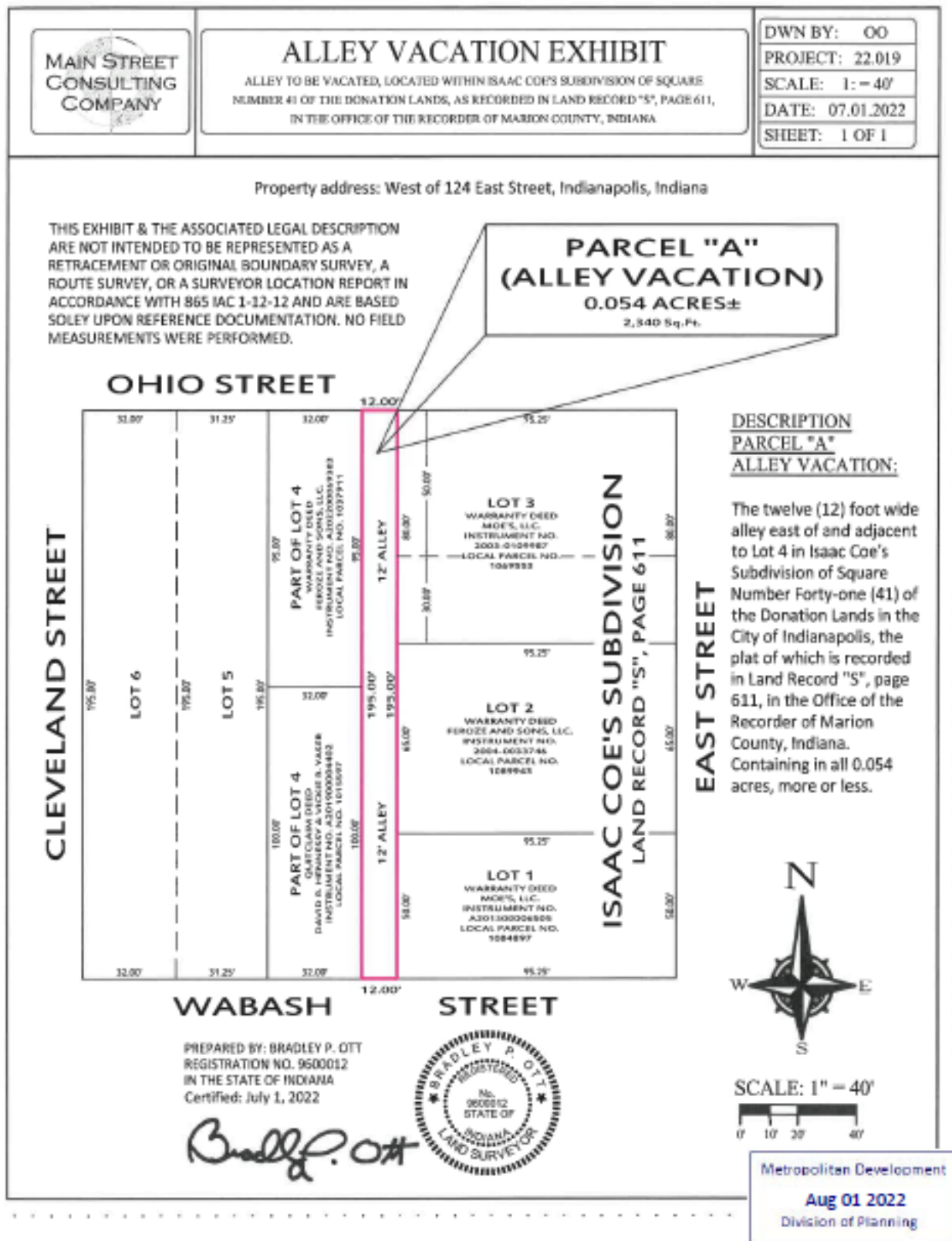
ZONING HISTORY - VICINITY

None.

JY



Zoning and aerial maps of the site and surrounding area - 2022-CZN-848 / 2022-CVC-848



Vacation Exhibit - 2022-CZN-848 / 2022-CVC-848

Petition Number _____

**METROPOLITAN DEVELOPMENT COMMISSION
PLAT COMMITTEE
HEARING EXAMINER
OF MARION COUNTY, INDIANA**

PETITION FOR VACATION OF A PUBLIC WAY, EASEMENT OR PUBLIC PLACE

FINDINGS OF FACT

1. THE PROPOSED VACATION IS IN THE PUBLIC INTEREST because: The vacation would be in the public interest as it will consolidate five pieces of property and allow for the development of a Regional Center/ Cole Noble Historic neighborhood mixed use project. Furthermore it will eventually rid the Regional Center and the Cole Noble neighborhood of three surface parking lots.

DECISION

IT IS THEREFORE the decision of this body that this VACATION petition is APPROVED, subject to any conditions stated in the minutes (which conditions are incorporated herein by reference and made a part of this decision).

Adopted this _____ day of _____, 20 ____

Metropolitan Development
Aug 01 2022
Division of Planning

Proposed Findings of Fact – 2022-CZN-848 / 2022-CVC-848



View of existing structure at 419 East Ohio Street and the proposed subject alley
2022-CZN-848 / 2022-CVC-848



View of existing building at 419 East Ohio Street and surface parking lots, from the west looking east
2022-CZN-848 / 2022-CVC-848



View of existing building at 419 East Ohio Street and subject alley
2022-CZN-848 / 2022-CVC-848



View of south end of site, looking west
2022-CZN-848 / 2022-CVC-848



View of the subject alley looking north toward Ohio Street
2022-CZN-848 / 2022-CVC-848



Close-up view of existing condition of the subject alley
2022-CZN-848 / 2022-CVC-848

STAFF REPORT

Item 4.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-CZN-872 / 2022-CVR-872
Address: 4822 East Edgewood Avenue and 5820 South Emerson Avenue
(Approximate Addresses)
Location: Perry Township, Council District #24
Petitioner: IN Indianapolis Emerson, LLC, by Joseph Calderon
Request: Rezoning of 21.232 acres from the D-A, C-1 and C-3 districts to the D-6 district to provide for single-family attached dwellings (townhomes) and multi-family residential development.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building height of 49.5 feet (maximum 45 feet permitted) and a minimum livability ratio of 1.33 (1.80 required).

The Hearing Examiner acknowledged the automatic continuance filed by a registered neighborhood organization that continued this petition from the December 15, 2022 hearing, to the January 12, 2023 hearing. At the request of the petitioner's representative, the Hearing Examiner granted a continuance request from the January 12, 2023, hearing to the January 26, 2023 hearing.

Staff has been advised that an update on the Traffic Impact Study (TIS) is underway but has not been submitted for review. Additionally, the remonstrators have engaged the services of an attorney who has requested a **continuance from the January 26, 2023 hearing, to the February 23, 2023 hearing**. Staff would have no objection of this continuance request.

RECOMMENDATIONS

Staff **recommends approval** of the request, subject to the following commitments being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. Final site plan, landscape plan and elevations shall be submitted for Administrator Approval prior to the issuance of an Improvement Location Permit.
2. A minimum 43-foot half right-of-way shall be dedicated along the frontage of East Edgewood Avenue, including abutting the parcel to the west of the site, as per the request of the Department of Public Works (DPW), Engineering Division. Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to the acceptance of all grants of right-of-way by the DPW. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).
3. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptables provided for the proper disposal of trash and other waste.

(Continued)

4. A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development; b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.
5. Additional DPW commitments installed prior to occupation of any of the dwelling units:
 - A. Install a passing blister at the easternmost access drive along East Edgewood Avenue.
 - B. Sidewalks and ADA-compliant curb ramps shall be installed along both frontages, including extension of perpendicular ramps to the northwest corner of East Edgewood Avenue and South Emerson Avenue intersection to facilitate pedestrian crossing.
 - C. Install continental crosswalk markings to the north leg and west leg of East Edgewood Avenue and south Emerson Avenue.
 - D. Modify the existing curb ramps on the northeast corner and southwest corner of East Edgewood Avenue and South Emerson Avenue to receive the north and west leg crossings.
 - E. Install an ADA-compliant bus boarding pad along the South Emerson Avenue frontage. Such pad shall be paved and eight feet perpendicular to the curb by 5 feet parallel to the curb (may include sidewalk area).
 - F. Install pedestrian heads and push buttons at the northeast, northwest and southwest corners of the intersection to accommodate the north leg and west leg crossings. DPW's approved signal contractor shall be required. DPW will provide the timings.
 - G. Install 5-section head for the east bound and west bound to allow for protected / permitted phasing. DPW's approved signal contractor shall be required. DPW will provide timings.
 - H. Install a south bound right-turn lane on South Emerson Avenue at East Edgewood Avenue with a 300-foot long length, plus taper within the right-of-way and in accordance with DPW standards.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE ISSUES

- ◇ This 21.232-acre site, zoned D-A, C-1 and C-3, is comprised of four parcels. It is undeveloped and surrounded by single-family dwellings, a retention pond and undeveloped land to the north, zoned D-3, D-A and C-1, respectively; single-family dwellings, to the south, across East Edgewood Avenue, zoned D-A; undeveloped land to the east, zoned C-3; and a single-family dwelling to the west, zoned D-A.

Continued)

- ◇ Petitions 2021-ZON-125 / 2022-VAR-001 requested rezoning of 19.82 acres from the D-A, C-1 and C-3 districts to the D-6 classification to provide for multi-family residential development and variance of the development standards to provide for multi-family development with a building height of 56 feet and a minimum livability ratio of 0.51. These petitions were withdrawn.
- ◇ Petitions 2006-ZON-133 and 2006-ZON-134 rezoned the central portion of the site to the C-1 District and the frontages along South Emerson Avenue and East Edgewood Avenue to the C-3 District.

REZONING

- ◇ This request would rezone the site to the D-6 classification to provide for multi-family development, consisting of 62 townhomes and 270 apartments at a density of 15.6 units per acre. “The D-6 district provides for medium intensity residential development of a variety of housing types: multifamily dwellings, triplex, fourplex, two-family and single-family attached dwellings. The district is intended for developments in suburban areas well served by major thoroughfares, sanitary sewers, and school and park facilities. In its application, the district need not be directly associated with more intense land uses such as commercial or industrial areas. The development pattern envisioned is one of trees lining curving drives with the ample open space provided for in the district affording a wide variety of on-site recreational facilities. The D-6 district has a typical density of 6 to 9 units per gross acre. This district fulfills the medium density residential recommendation of the Comprehensive General Land Use Plan. Development plans should incorporate and promote environmental and aesthetic considerations, working within the constraints and advantages presented by existing site conditions, including vegetation, topography, drainage and wildlife.”
- ◇ The Comprehensive Plan recommends Suburban Neighborhood for a majority of the site. “The Suburban Neighborhood typology is predominantly made up of single-family housing but is interspersed with attached and multifamily housing where appropriate. This typology should be supported by a variety of neighborhood-serving businesses, institutions, and amenities. Natural Corridors and natural features such as stream corridors, wetlands, and woodlands should be treated as focal points or organizing systems for development. Streets should be well connected and amenities should be treated as landmarks that enhance navigability of the development. This typology generally has a residential density of 1 to 5 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park.”
- ◇ The Comprehensive Plan recommends Office Commercial for southeast corner of the site. “The Office Commercial typology provides for single and multi-tenant office buildings. It is often a buffer between higher intensity land uses and lower intensity land uses. Office commercial development can range from a small freestanding office to a major employment center. This typology is intended to facilitate establishments such as medical and dental facilities, education services, insurance, real estate, financial institutions, design firms, legal services, and hair and body care salons.”

(Continued)

- ◇ The Pattern Book serves as a policy guide as development occurs. Below are the relevant policies related to this request:

Conditions for All Land Use Types

- All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
- All development should include sidewalks along the street frontage.
- Hydrological patterns should be preserved wherever possible.
- Curvilinear streets should be used with discretion and should maintain the same general direction.
- In master-planned developments, block lengths of less than 500 feet, or pedestrian cut-throughs for longer blocks, are encouraged.

Conditions for All Housing

- A mix of housing types is encouraged.
- Developments of more than 30 housing units must have access to at least one arterial street of three or more continuous travel lanes between the intersections of two intersecting arterial streets.
- Should be within a one-mile distance (using streets, sidewalks, and/or off-street paths) of a school, playground, library, public greenway, or similar publicly-accessible recreational or cultural amenity that is available at no cost to the user.
- Should be oriented towards the street with a pedestrian connection from the front door(s) to the sidewalk. Driveways/parking areas do not qualify as a pedestrian connection.
- Developments with densities higher than five dwelling units per acre should have design character compatible with adjacent properties. Density intensification should be incremental with higher density housing types located closer to frequent transit lines, greenways or parks.

Attached Housing

- Duplexes should be located on corner lots, with entrances located on different sides of the lot or otherwise interspersed with detached housing.
- Duplexes should be architecturally harmonious with adjacent housing.
- Townhomes should be organized around intersections of neighborhood collector streets, greenways, parks or public squares, or neighborhood-serving retail.

Multifamily Housing

- Should be located along arterial or collector streets, parks, or greenways.
- Individual building height, massing, and footprint should gradually transition from adjacent developments. Specifically, buildings located adjacent to existing residential developments should be no more than one and a half times the height and no more than twice the average footprint of the existing adjacent residential buildings.

(Continued)

Traffic Impact Study (TIS)

- ◇ A Traffic Impact Study, file-dated January 10, 2022, was conducted for the previous petitions and remains valid for these petitions because the overall number of units are the same.
- ◇ The parameter used to evaluate traffic operation conditions is referred to as the level-of-service (LOS). There are six LOS (A through F) categories, which relate to driving conditions from best to worst, respectively. LOS directly relates to driver discomfort, frustration, fuel consumption and lost travel time. Traffic operating conditions at intersections are considered to be acceptable if found to operate at LOS D or better.
- ◇ Capacity analysis occurs for four different scenarios. Scenario One is based on existing conditions. Scenario Two is based on 2023 forecasted (full build-out). Scenario Three is based on 2033 no-build conditions, reflecting additional background growth. Scenario Four is based on the 2033 build conditions, with the proposed development.
- ◇ The study analyzed the portion of the site proposed for residential development and the four commercial out parcels (zoned C-3), which would generate a total of approximately 433 and 520 trips during the weekday morning and afternoon peak hours, respectively.
- ◇ Below are the recommended improvements surrounding the Edgewood Avenue and Emerson Avenue intersection related to the proposed development.
 - Install a southbound right-turn lane on Emerson Avenue
 - Add left-turn arrows and implement protected-plus-permitted phasing for the eastbound and westbound approaches
 - Adjust signal timings to account for the new phasing
- ◇ It was also recommended that the City plan for a future northbound right-turn lane on Emerson Avenue, perhaps in conjunction with the development of the southeast quadrant of the intersection.
- ◇ The study noted failing conditions during the P.M. peak period at the Edgewood Avenue and Shelbyville Road intersection located to the east of this site. It was recommended that the City consider the installation of traffic signals or a round-about, independent of the proposed development.

Department of Public Works

- ◇ The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 43-foot half right-of-way along East Edgewood Avenue. This dedication would also be consistent with the Marion County Thoroughfare Plan.
- ◇ Staff would note that the right-of-way along this portion East Edgewood Avenue varies from 37 feet to 140 feet. Consequently, only those portions of the frontage where a 43-foot right-of-way does not exist would be required to be dedicated. Additionally, the right-of-way dedication should continue along the abutting property to the west for approximately 150 feet.

(Continued)

- ◇ The DPW has requested the additional following traffic and pedestrian infrastructure improvements:
1. Install a passing blister at the easternmost access drive along East Edgewood Avenue.
 2. Sidewalks and ADA-compliant curb ramps shall be installed along both frontages, including extension of perpendicular ramps to the northwest corner of East Edgewood Avenue and South Emerson Avenue intersection to facilitate pedestrian crossing. The sidewalk along the East Edgewood Avenue frontage shall connect to the sidewalk to the west of this site
 3. Install continental crosswalk markings to the north leg and west leg of East Edgewood Avenue and south Emerson Avenue.
 4. Modify the existing curb ramps on the northeast corner and southwest corner of East Edgewood Avenue and South Emerson Avenue to receive the north and west leg crossings.
 5. Install an ADA-compliant bus boarding pad along the South Emerson Avenue frontage. Such pad shall be paved eight feet perpendicular to the curb by 5 feet parallel to the curb (may include sidewalk area).
 6. Install pedestrian heads and push buttons at the northeast, northwest and southwest corners of the intersection to accommodate the north leg and west leg crossings. DPW's approved signal contractor shall be required. DPW will provide the timings.
 7. Install 5-section head for the east bound and west bound to allow for protected / permitted phasing. DPW's approved signal contractor shall be required. DPW will provide timings.
 8. Install a south bound right-turn lane on South Emerson Avenue at East Edgewood Avenue with a 300-foot long length, plus taper within the right-of-way and in accordance with DPW standards.

Tree Preservation / Heritage Tree Conservation

- ◇ There are significant amounts of natural vegetation and trees located scattered throughout the site. Due to their inherent ecological, aesthetic, and buffering qualities, the maximum number of these existing trees should be preserved on the site.
- ◇ All development shall be in a manner that causes the least amount of disruption to the trees.
- ◇ A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development, b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.

(Continued)

- ◇ If any of the trees are heritage trees that would be impacted, then the Ordinance requires that the Administrator, Urban Forester or Director of Public Works determine whether the tree(s) would be preserved or removed and replaced.
- ◇ The Ordinance defines “heritage tree” as a tree over 18 inches Diameter at Breast Height (DBH) and one of the Heritage tree species. Heritage tree species include: Sugar Maple (*Acer saccharum*), Shagbark Hickory (*Carya ovata*), Hackberry (*Celtis occidentalis*), Yellowwood (*Cladrastus kentukea*), American Beech (*Fagus grandifolia*), Kentucky Coffeetree (*Gymnocladus dioica*), Walnut or Butternut (*Juglans*), Tulip Poplar (*Liriodendron tulipifera*), Sweet Gum (*Liquidambar styraciflua*), Black Gum (*Nyssa sylvatica*), American Sycamore (*Platanus occidentalis*), Eastern Cottonwood (*Populus deltoides*), American Elm (*Ulmus americana*), Red Elm (*Ulmus rubra*) and any oak species (*Quercus*, all spp.)
- ◇ The Ordinance also provides for replacement of heritage trees if a heritage tree is removed or dies within three years of the Improvement Location issuance date. See Exhibit A, Table 744-503-3: Replacement Trees.

Environmental Public Nuisances

- ◇ The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.
- ◇ All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.
- ◇ Environmental public nuisance means:
 1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
 2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
 3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
 4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.

(Continued)

- ◇ Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

Site Plan (Conceptual)

- ◇ The site plan, file-dated November 16, 2022, provides for eight townhome buildings located on the north, south and west perimeter of the site for a total of 62 units, with five three-story multi-family buildings and three four-story multi-family buildings for a total of 270 multi-family dwelling units located along South Emerson Avenue and interior to the site.
- ◇ There would be 427 surface parking spaces for the multi-family development and 186 parking spaces (surface and garage) for the townhomes.
- ◇ There would be two access drives along South Emerson Avenue and one access along the eastern portion of East Edgewood Avenue.
- ◇ Amenity spaces would include a dog park along the East Edgewood Avenue frontage and firepit / outdoor games area, interior to the site and between the townhomes and the multi-family structures. A clubhouse and swimming pool area would be centrally located. Walking trails and indoor / outdoor fitness facilities would also be available.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ This request would provide for a multi-family development building height of 49.5 feet when the Ordinance limits the building height to 45 feet in the D-6 District. Because the 49.5-foot-tall four-story structures would be located along South Emerson Avenue, staff believes the impact would be minimal on the surrounding residential uses. Furthermore, the two-story townhomes would be adjacent to the single-family dwellings and provide an appropriate buffer from the taller structures.
- ◇ This request would also allow for a minimum livability ratio of 1.33 when the Ordinance requires a ratio of 1.80. The basic intent of the land use intensity ratios for multi-family development is to establish the intensity that would be consistent with the characteristics of the site and the location within the community.
- ◇ Staff believes the reduction in the livability ratio is supportable because of the variety of amenities that are being proposed. Staff, however, would request that the final site plan be submitted for Administrator Approval prior to the issuance of an Improvement Location Permit that would provide more details, including, but not limited to, specific types and locations of amenities.

(Continued)

Planning Analysis

- ◇ As proposed this request would generally be consistent with the Comprehensive Plan recommendation of suburban neighborhood typology. The density would be 15.6 units per acre.
- ◇ Staff would note that this rezoning is part of a larger site that includes a C-3 district along the South Emerson Avenue frontage that would remain commercial and be developed at some future date.
- ◇ This density exceeds the recommended density for the suburban neighborhood typology, but the Pattern Book recommends a higher density if the development is within a quarter mile of a frequent transit line, greenway, or park. IndyGo Route 16 serves this site and the DPW is requesting a bus boarding pad along the South Emerson Avenue frontage. Consequently, staff believes the increased density would be acceptable, with the infrastructure improvements requested by the Department of Public Works.
- ◇ Due to the visibility and the need to comply with the Green Factor, staff is requesting that a landscape plan and building elevations be submitted for Administrator Approval prior to the issuance of an Improvement Location.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-A / C-1 / C-3 Undeveloped

SURROUNDING ZONING AND LAND USE

North -	D-3 / D-A / C-1	Single-family dwellings / retention pond / undeveloped
South -	D-A	Single-family dwellings
East -	C-3	Undeveloped
West -	D-A	Single-family dwelling

COMPREHENSIVE LAND USE PLAN	The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends suburban neighborhood typology and office commercial.
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THOROUGHFARE PLAN	<p>This portion of East Edgewood Avenue is designated in the Marion County Thoroughfare Plan as a primary arterial with an existing right-of-way ranging from 37 feet to 140 feet and a proposed 80-foot right-of-way.</p> <p>This portion of South Emerson Avenue is designated in the Marion County Thoroughfare Plan as a primary arterial with an existing 140-foot right-of-way and a proposed 86-foot right-of-way.</p> <p>(Continued)</p>
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CONTEXT AREA	This site is located within the metro context area.
OVERLAY	There is no overlay for this site
CONCEPTUAL SITE PLAN	File-dated November 16, 2022
CONCEPTUAL LANDSCAPE PLAN	File-dated November 16, 2022
ELEVATIONS – MULTI-FAMILY	File-dated November 16, 2022
ELEVATIONS - TOWNHOMES	File-dated November 23, 2022
FINDINGS OF FACT	File-dated November 16, 2022
TRAFFIC ANALYSIS STUDY (TIS)	File-dated January 10, 2022

ZONING HISTORY

2021-ZON-125 / 2022-VAR-001; 4822 East Edgewood Avenue and 5820 South Emerson Avenue, requested rezoning of 19.92 acres from the D-A, C-1 and C-3 districts to the D-6 district to provide for multi-family residential development and a variance of development standards to provide for a building height of 56 feet and a minimum livability ratio of 0.51, **withdrawn**.

2006-ZON-133; 5820 South Emerson Avenue; requested rezoning of 11.027 acres from D-A to C-3 and C-1 to provide for neighborhood commercial uses and office uses, **approved**.

2006-ZON-134; 5820 South Emerson Avenue, rezoning of 4.698 acres from D-A to C-1 to provide for office uses, **approved**.

VICINITY

2004-ZON-049; 5800 South Emerson Avenue (north of site), rezoning of 1.997 acres from D-A to C-1 to provide for office uses, **approved**

2002-UV1-004; 5800 South Emerson Avenue (north of site), variance of use to provide for the construction of a single-family dwelling, with an attached recording studio in D-A, **granted**.

2002-ZON-012; 5935 South Emerson Avenue (east of site), rezoning of 5.23 acres from D-A to C-S to provide for all C-1 uses and limited C-3 uses, **approved**.

2005-APP-002; 5905-5935 South Emerson Avenue (east of site), modification of commitments and site plan to provide for construction of a 12,600-square foot building that does not fit within the footprint indicated on the approved site plan from 2000-ZON-012, **approved**.

(Continued)

2005-ZON-857/2005-APP-857/2005-VAR-857; 5901-5935 South Emerson Avenue (east of site), rezoning of 6.556 acres from D-A to C-S to provide for expansion of an office/commercial center with C-1 uses, limited C-3 uses, and a fitness center; a variance of development standards to provide for a second freestanding identification sign with inadequate street frontage and sign separation; a modification of commitments to provide for additional signage, **approved.**

2005-ZON-215; 5640 South Emerson Avenue (north of site), rezoning of 2.087 acres from D-A to C-1 to provide for office uses, **approved.**

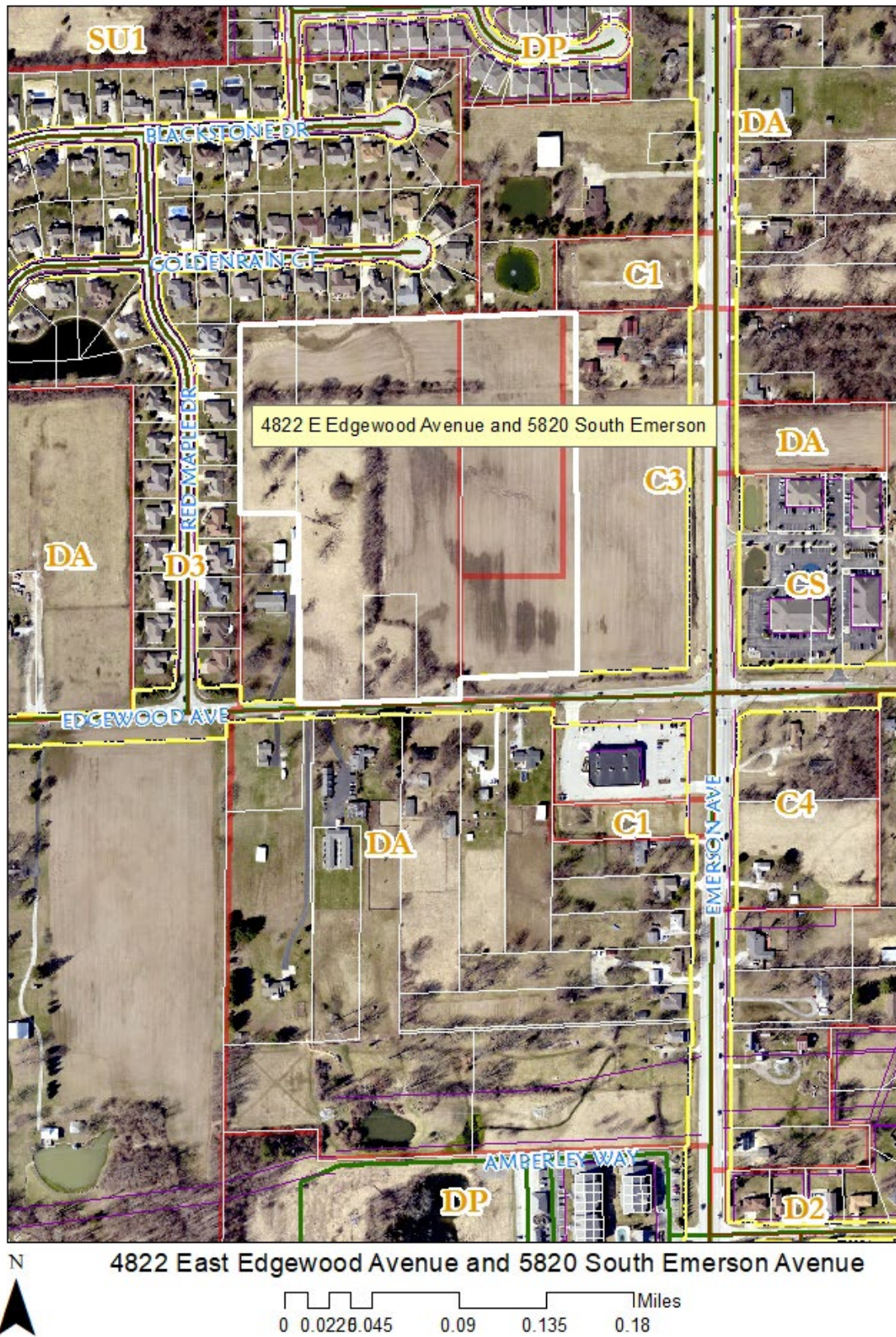
2004-ZON-078; 5500 and 5640 South Emerson Avenue (north of site), rezoning of 25.539 acres from D-P and D-A to D-P to provide for the construction of townhouses and two-family dwellings with a total of 104 units, and a density of 4.10 units per acre, **approved.**

95-Z-183; 5728 South Emerson Avenue (west of site), rezoning of 0.407 acre from D-A to D-3 to provide for single-family residential development, **approved.**

95-Z-73; 4684 East Edgewood Avenue (west of site), rezoning of 11.38 acres from D-A to D-3 to provide for single-family residential development, **approved.**

95-Z-35; 4784 East Edgewood Avenue (west of site), rezoning of 19.99 acres from D-A to D-3 to provide for single-family residential development, **approved.**

kb



Petition Number _____

**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 buildings exceeding the maximum height requirement are located to the far east of the Subject Property, in between commercial outlots,
3-story multi-family buildings, and townhomes providing for an appropriate transition, and the overall development will feature meaningful
open / recreation space for the multi-family and townhome components of the development.

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:

there will be a transition in both intensity and building height as it relates to the single family development to the north and
adequate setbacks and buffer yard space will also be provided.

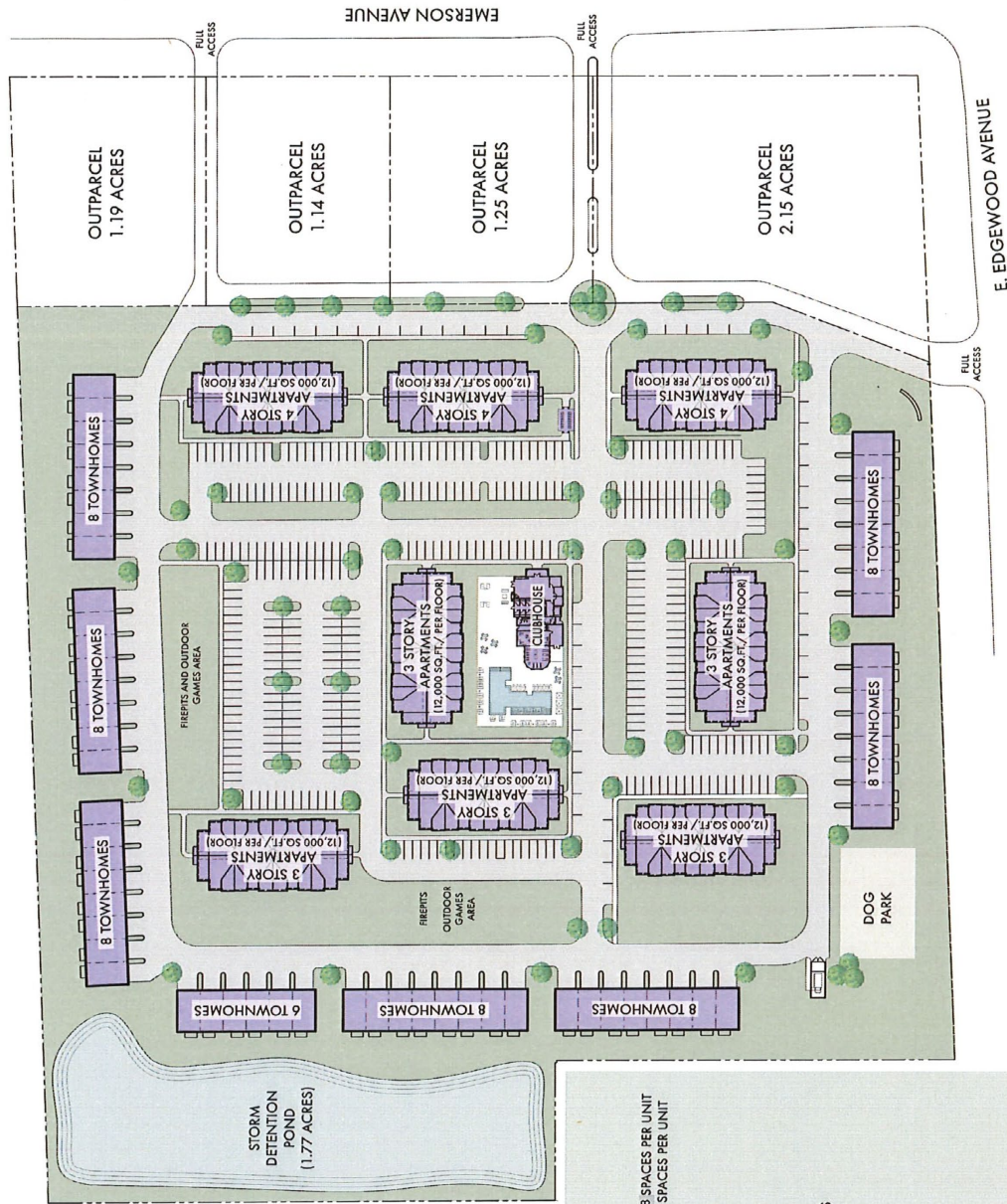
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

the livability space ratio is used on certain assumptions regarding density and open space, which should not be a one-size-fits-all approach
given the property being located along a highly traveled corridor served by public transportation, which is contemplated to have higher
density pursuant to the Comprehensive Plan. The maximum height in the Ordinance is too limiting given the changes to multi-family construction
which have resulted in higher floor to ceiling heights.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____



CSP-13 PROJECT OVERVIEW

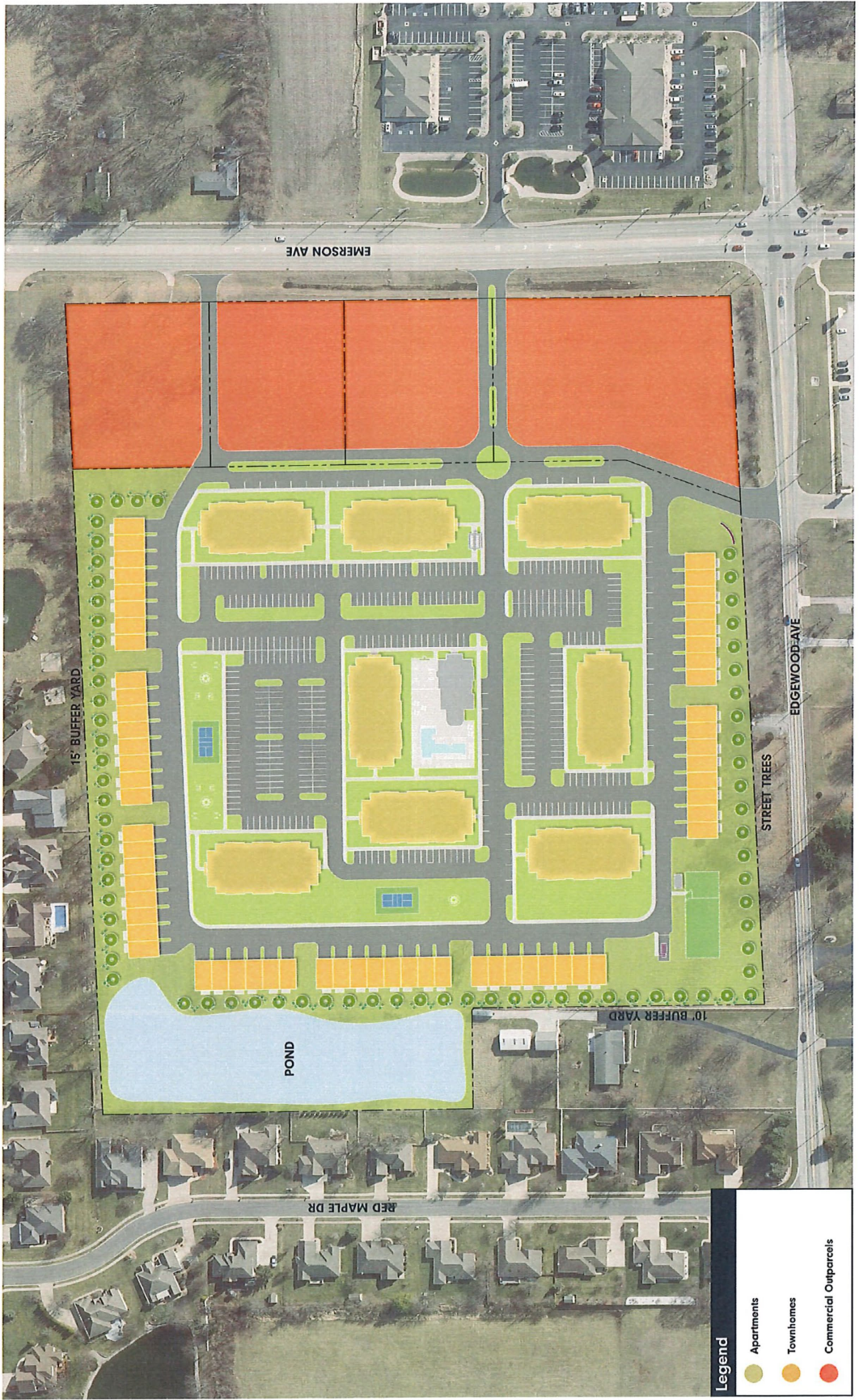
- 270 APARTMENT UNITS
 - 62 TOWNHOME UNITS
 - 427 SURFACE PARKING (APARTMENTS) 1.58 SPACES PER UNIT
 - 184 PARKING SPACES (TOWNHOMES) 3.0 SPACES PER UNIT
- SITE AREA = 921,249 SQ.FT.
 BUILDING AREA = 170,745 SQ.FT.
 TOTAL BUILDING AREA = 433,614 SQ.FT.
 VEHICULAR AREA = 260,811 SQ.FT.
 LIVABILITY SPACE = 226,824 SQ.FT.
 LIVABILITY RATIO = 1.33
- POOL W/ OUTDOOR SEATING AND AMENITIES
 FIRE PITS
 OUTDOOR RECREATION
 WALKING TRAILS
 DOG PARK
 CENTRAL MAIL AND PACKAGE
 VALLET TRASH
 INDOOR AND OUTDOOR FITNESS
 PLENTY OF GREEN SPACE

SCHEMATIC SITE PLAN FOR
 IN-INDIANAPOLIS-EMERSON

CSP-13
 SEPTEMBER 21, 2022

THIS DOCUMENT IS THE PROPERTY OF PLACEHOLDERS ARCHITECTURE AND PLANNING, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM PLACEHOLDERS ARCHITECTURE AND PLANNING, INC.









IN-INDIANAPOLIS-EMERSON
SCHEMATIC ELEVATIONS
THREE AND FOUR STORY APARTMENT BUILDINGS
NOVEMBER 8, 2022

Exhibit A

Heritage Tree Conservation

Removal of any Heritage Tree is prohibited unless any of the following determinations are made before removal:

1. The Administrator or the city's Urban Forester determines that the tree is dead, significantly and terminally diseased, a threat to public health or safety, or is of an undesirable or nuisance species.
2. The Director of the Department of Public Works determines that the tree interferes with the provision of public services or is a hazard to traffic.
3. The Administrator determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree.
4. The site from which the tree is removed is zoned D-A and the tree is harvested as timber or similar forestry product.

Table 744-503-3: Replacement Trees		
Size of tree removed or dead (inches)	Number of Trees to be planted to replace a Heritage Tree	Number of Trees to be planted to replace an existing tree
Over 36 DBH	15	10
25.5 to 36 DBH	11	8
13 to 25 DBH	8	6
10.5 to 12.5 DBH	6	4
8.5 to 10 DBH	5	4
6.5 to 8	3	2
4 to 6	2	2
2.5 to 3.5	1	1



View looking east along East Edgewood Avenue



View looking north at intersection of South Emerson Avenue and East Edgewood Avenue



View of site looking north across East Edgewood Avenue



View of site looking northwest across East Edgewood Avenue



View of site looking north across East Edgewood Avenue



View of site looking north across East Edgewood Avenue



View of site looking west across South Emerson Avenue



View of site looking northwest across South Emerson Avenue

STAFF REPORT

Item 5.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-ZON-069 (Amended)
Address: 3737 East Washington Street (*Approximate Address*)
Location: Center Township, Council District #12
Petitioner: Madison Capital V, LLC, by Timothy K. Ryan
Request: Rezoning of 1.53 acre from the C-4 (TOD) district to the D-10 district to provide for multi-family residential development.

This petition was continued from the June 23, 2022 hearing to the January 26, 2023 hearing. This allowed time for the petitioner to amend the petition by adding area to the subject site.

RECOMMENDATION

Staff **recommends approval** of this request, subject to the following commitment being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

Elevations of any building to be constructed on the site shall be submitted for Administrator's Approval prior to the issuance of an Improvement Location Permit for that building.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation.

LAND USE

- ◇ The subject site is a 1.5-acre section of a larger commercial site on the southeast corner of Washington Street and Sherman Drive. The subject site appears to have been undeveloped until the late 1970s/early 1980s when it was paved for a parking lot for the then newly-developed commercial center.
- ◇ Ewing Street curves from Washington Street to Sherman Drive. The site is on the inside of that curve. Ewing Street has a history of mixed residential, commercial and industrial uses. Currently it's lined with seven single-family dwellings, a contractor's office, cell tower, vacant industrial land, a retail center, and an auto salvage facility. A row of mature street trees along the Ewing Street frontage of the subject is a major asset to the streetscape.
- ◇ The 2018 Comprehensive Land Use Plan recommends Community Commercial for the subject site. The Community Commercial typology provides for low-intensity commercial and offices uses that serve nearby neighborhoods.

(Continued)

- ◇ The subject site is within a quarter mile of the proposed Sherman Drive station of the proposed Blue Line Bus Rapid Transit Line. The Blue Line Transit-Oriented-Development Strategic Plan indicates that the area should be redeveloped as a dense mixed-use neighborhood.
- ◇ The vacant industrial land adjacent across Ewing Street is a brownfield site, locally known as Black Mountain. The once thriving industrial area declined over the years. Some of the buildings fell into disrepair and were demolished. The site became a dumping ground for foundry sand. By 2005, an estimated 200,000 tons of gray iron foundry sand was piled and left. The 12.5-acre site became tax delinquent and eventually became the property of the City of Indianapolis. Approximately 95% of the foundry sand has been removed. The remainder will be removed and new soil will be brought in. Even with the removal of the foundry sand, the site remains a brownfield. There are indications of onsite soil and groundwater contamination, and soil vapor contamination.
- ◇ As part of the environmental clean-up of Black Mountain, a planning effort is underway to determine the most appropriate reuse of that site. The plan is not yet complete, but the most likely redevelopment scenarios involve some combination of mixed-use residential/commercial space, green space, and industrial flex space. Access to the site would most likely be by way of Ewing Street.

ZONING

- ◇ This petition requests a rezoning from the C-4 district to the D-10 district. The existing C-4 district is intended for major business groupings, regional shopping centers and uses that generate significant automobile traffic. The D-10 district is a residential district intended for high density, multi-family dwellings of up to 12 floors.
- ◇ The site plan and renderings submitted with the petition propose a four-story multi-family building. The first floor would house offices, common areas, bicycle parking and 11 dwelling units. Floors two through four would have 13 dwelling units each, utility space and some common area. Total number of units would be 63. The proposed building parallels Ewing Street with a wing projecting east.
- ◇ The site plan depicts 44 parking spaces for a ratio of 0.7 parking spaces per unit. The Ordinance requires 0.75 off-street parking spaces per unit, which for the proposed structure would be 47 parking spaces. However, the Ordinance permits a reduction in the number of required parking spaces if a site within one-quarter mile of a transit stop that is improved with a shelter and located Transit Emphasis Corridor. The subject site meets this criterion, so the proposed development would meet the parking requirement of the Ordinance.
- ◇ As it is shown on the site plan, the proposed development doesn't meet the development standards of the Ordinance. The front setback is too great. There is no side setback on the north side and there is no pedestrian entry facing Ewing Street. The proposed buildings don't meet the Floor-Area Ratio or Livability Space Ratio requirements. A redesign of the site plan and building or the grant of variances of development standards would be required before permits could be issued.

(Continued)

- ◇ Due to the clean-up of Black Mountain, construction of the Blue Line, and recent real estate investment in the area the proposed development may be the start of a major redevelopment of the vicinity. As this site is likely to set a standard for that future development, it's important that the architecture of the building be of a high standard. As such, staff requests that the elevations be subject to Administrator's Approval.
- ◇ The requested district is not responsive to the Community Commercial recommendation of the current Comprehensive Land Use Plan. Although the site makes sense as a commercial site when combined with the abutting retail centers, its lack of direct access to an arterial or collector street makes its viability as a stand-alone commercial site questionable. The proposal would be responsive to the Blue Line Transit-Oriented-Development Strategic Plan. As such, staff recommends approval of the petition.

GENERAL INFORMATION**EXISTING ZONING, CONTEXT AREA, AND LAND USE**

C-4	Compact	Parking lot for a retail center
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SURROUNDING ZONING AND LAND USE

North	C-4	Retail center
East	C-4	Retail center
Southwest	I-4	Single-family dwellings, wireless communications facility, contractor's office, vacant industrial land

COMPREHENSIVE LAND USE PLAN	The Center Township Comprehensive Plan (2018) recommends Community Commercial.
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THOROUGHFARE PLAN	Ewing Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a Local Street, with a 95-foot existing right-of-way and a 48-foot proposed right-of-way.
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FLOODWAY / FLOODWAY FRINGE	This site is not located within a floodway or floodway fringe.
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WELLFIELD PROTECTION DISTRICT	This site is not located within a wellfield protection district.
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ZONING HISTORY – SITE

None.

ZONING HISTORY – VICINITY

2021-ZON-020 / 2021-VAR-004; 3710 & 3714 East Washington Street (north of site), requested the rezoning of 0.28 acre from the C-1 district to the D-8 district and a variance of development standards to provide for deficient setbacks, **approved.**

2017-UV2-016; 17, 21, 25, 29, & 33 South Ewing Street (north of site), requested a variance of use to provide for auto repair and a variance of development standards to provide for walls in a clear sight triangle, and deficient setbacks and landscaping, **dismissed**.

2015-UV2-024; 52 South Ewing Street (west of site), requested a variance of use to provide for primary and accessory residential structures in an industrial district and a variance of development standards to provide for deficient site setbacks, **approved**.

2012-ZON-065; 3525 & 3547 East Washington Street (west of site), requested the rezoning of 4.5 acres from the I-4-U district to the D-8 district, **approved**.

2008-UV2-016; 3714 East Washington Street (north of site), requested a variance of use to legally establish a two-family dwelling in a commercial district, **approved**.

96-UV1-14; 3605 East Washington Street (north of site), requested a variance of use to provide for a five-unit dwelling in an industrial district and a variance of development standards to provide for unpaved parking lot, **approved**.

91-UV2-81; 4 Ewing Street (north of site), requested a variance of use to provide for a residential pool in a C-7 district, **approved**.

91-UV3-53; 3525 East Washington Street (northwest of site), requested a variance of use to provide for auto restoration and sales, **approved**.

88-Z-39; 3709 East Washington Street (north of site), requested the rezoning of 0.15 acre from the I-2-U district to the C-4 district, **approved**.

86-V1-89; 3115 East Washington Street (north of site), requested a variance of development standards to provide for an additional pole sign, **denied**.

84-Z-68; 3739 East Washington Street (northeast of site), requested the rezoning of 0.94 acre from the I-2-U district to the C-4 district, **approved**.

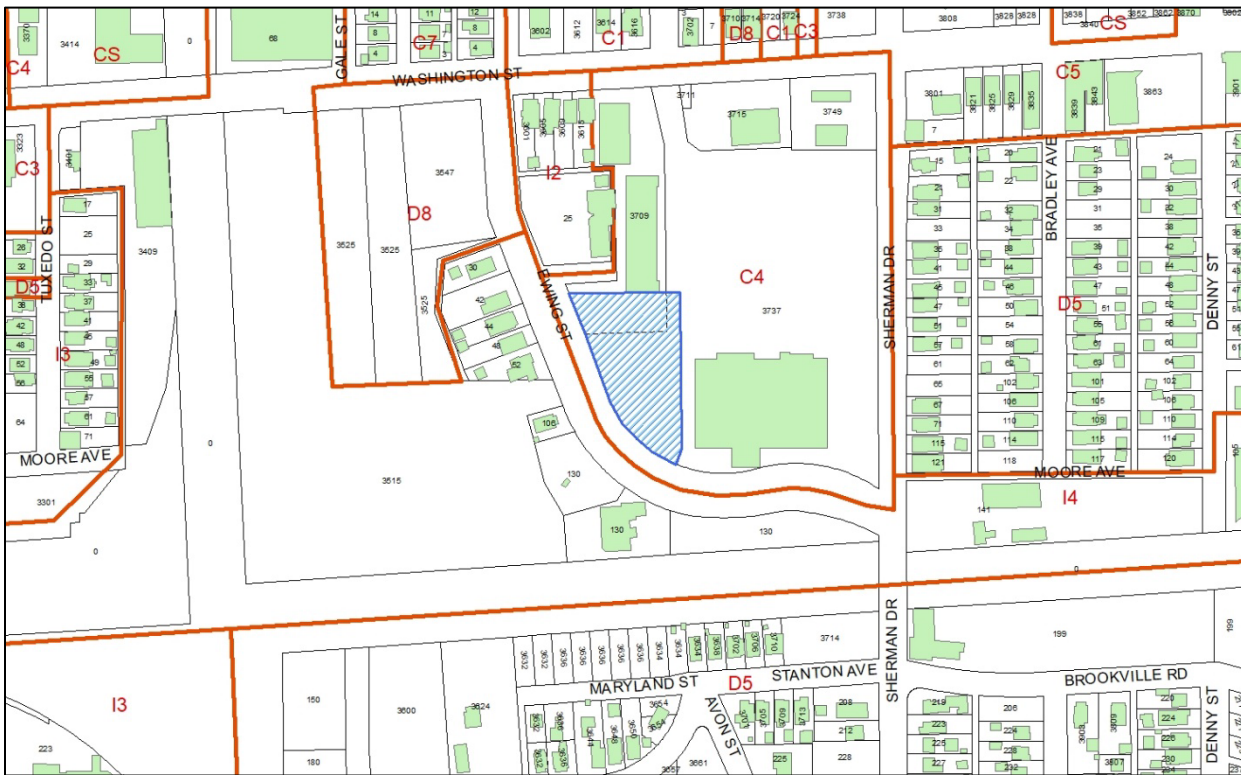
83-V2-52; 3737 East Washington Street (north of site), requested a variance of development standards to provide for an electronic message center, **approved**.

83-V3-21; 3732 East Washington Street (northeast of site), requested a variance of development standards to provide for a pricing panel on an existing sign, **approved**.

klh

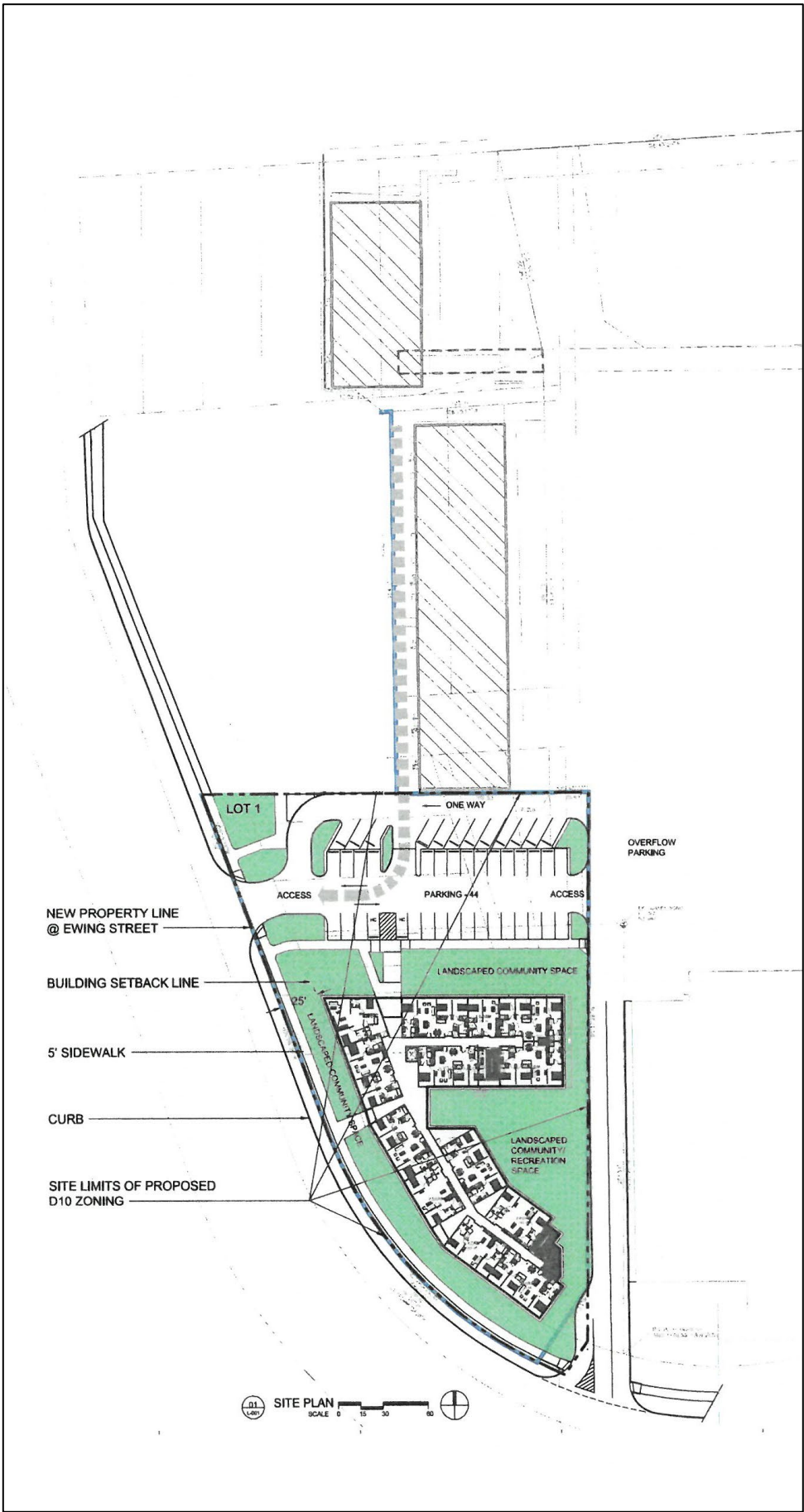
STAFF REPORT 2022-ZON-069, Location

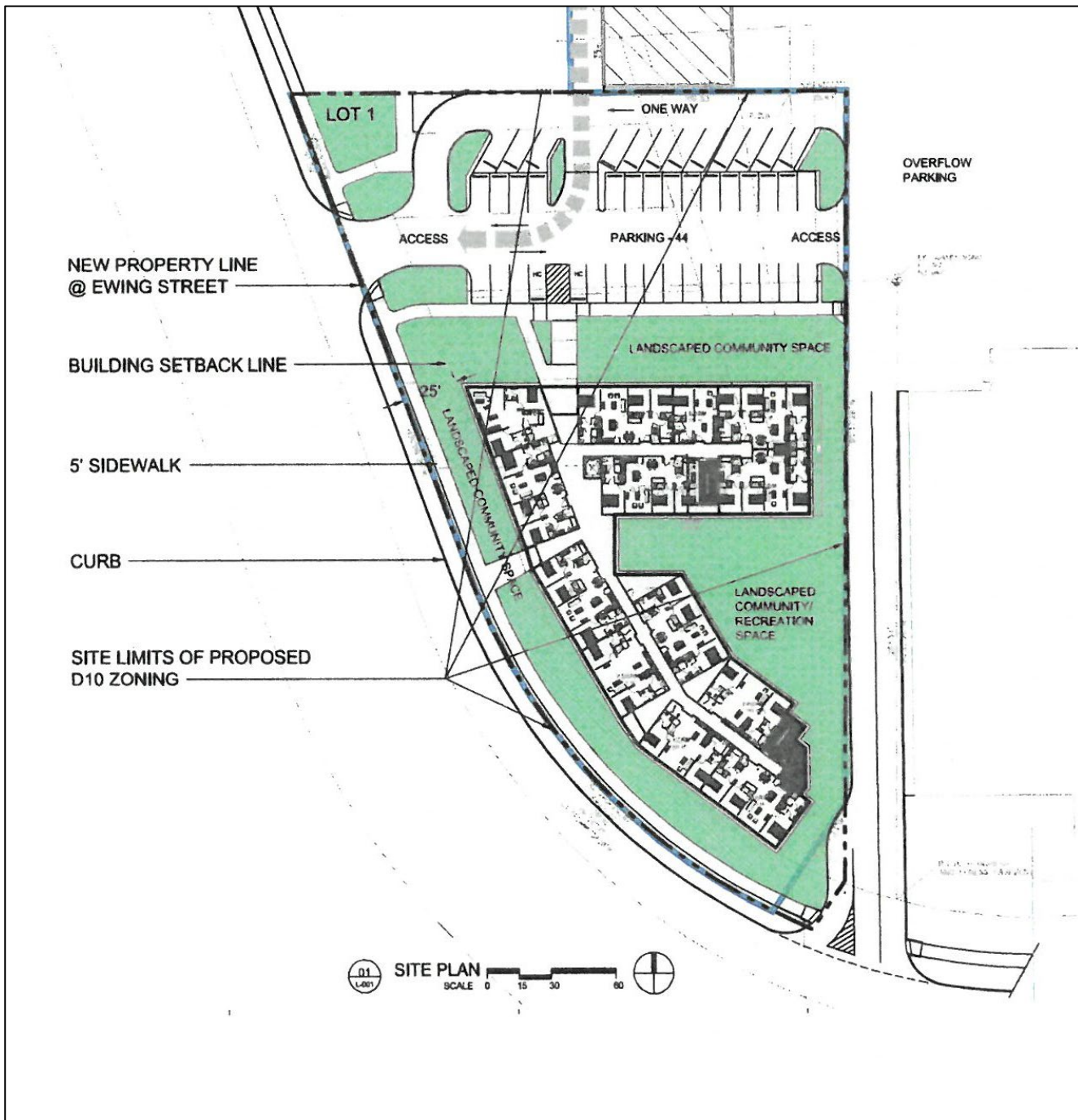
Item 5.



STAFF REPORT 2022-ZON-069, Aerial photograph (2022)













Looking northwest across the subject site from the south access to Ewing Street.



Looking north from Ewing Street. The site is on the right side of the photo.



Looking northwest from the site.



Looking southeast at the neighbors to the east.



Looking west across the site to the Ewing Street access point and the neighbors to the west.



Looking south along Ewing Street. The subject site is to the left.



Looking north along Ewing Street from the site's access point.

STAFF REPORT

Item 6.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-ZON-078
Address: 8965 Rockville Road (Approximate Addresses)
Location: Wayne Township, Council District #15
Petitioner: Vu Tran, by Pat Rooney
Request: Rezoning of 0.57 acre from the D-2 district to the C-3 district to provide for retail uses.

ADDENDUM FOR DECEMBER 1, 2022, HEARING EXAMINER

The Hearing Examiner continued this petition from the October 13, 2022 hearing to the December 1, 2022 hearing, at the request of the petitioner's representative.

ADDENDUM, FOR OCTOBER 13, 2022, HEARING EXAMINER

The Hearing Examiner continued this petition from the September 29, 2022 hearing, to the October 13, 2022 hearing, at the request of the petitioner's representative.

ADDENDUM FOR SEPTEMBER 29, 2022, HEARING EXAMINER

The Hearing Examiner continued this petition from the August 25, 2022 hearing, to the September 29, 2022 hearing at the request of the City-County Councilor for this district.

ADDENDUM FOR AUGUST 25, 2022, HEARING EXAMINER

The Hearing Examiner continued this petition from the July 28, 2022 hearing, to the August 25, 2022 hearing, at the request of the petitioner's representative.

July 28, 2022

RECOMMENDATIONS

Staff **recommends denial** of the request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

(Continued)

LAND USE ISSUES

- ◇ This 0.57-acre site, zoned D-2, is developed with a single-family dwelling. It is surrounded by undeveloped land to the north, across Rockville Road, zoned C-4; single-family dwellings to south and east, zoned D-2; and a single-family dwelling to the west, zoned C-3.

REZONING

- ◇ This request would rezone the site from D-2 District to the C-3 classification (neighborhood commercial district) to provide for retail uses. “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.”
- ◇ The Comprehensive Plan recommends Suburban Neighborhood typology. “The Suburban Neighborhood typology is predominantly made up of single-family housing but is interspersed with attached and multifamily housing where appropriate. This typology should be supported by a variety of neighborhood-serving businesses, institutions, and amenities. Natural Corridors and natural features such as stream corridors, wetlands, and woodlands should be treated as focal points or organizing systems for development. Streets should be well-connected and amenities should be treated as landmarks that enhance navigability of the development. This typology generally has a residential density of 1 to 5 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park.”
- ◇ The Pattern Book serves as a policy guide as development occurs. Below are the relevant policies related to this request:

Conditions for All Land Use Types

- All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
- All development should include sidewalks along the street frontage.
- Hydrological patterns should be preserved wherever possible.
- Curvilinear streets should be used with discretion and should maintain the same general direction.
- In master-planned developments, block lengths of less than 500 feet, or pedestrian cut-throughs for longer blocks, are encouraged.

(Continued)

Small-Scale Offices, Retailing, and Personal or Professional Services (defined as commercial uses with minimal outdoor operations, storage, or display on lots of less than 1.5 acres and a height of less than 35 feet.)

- If proposed within one-half mile along an adjoining street of an existing or approved residential development, then connecting, continuous pedestrian infrastructure between the proposed site and the residential development (sidewalk, greenway, or off-street path) should be in place or provided.
- Should be located at the intersections of arterial streets and should be no closer than one mile to another commercial node with one acre or more of commercial uses except as reuse of a historic building.
- Should be limited to an aggregate of 3.5 acres per intersection, with no one corner having more than 1.5 acres.
- Should be limited to areas and parcels with adequate space for required screening and buffering.
- Automotive uses (such as gas stations and auto repair) and uses requiring a distance of separation of greater than 20 feet under the zoning ordinance (such as liquor stores, adult uses, and drive-through lanes) are excluded.
- Should not include outdoor display of merchandise.

Planning Analysis

- ◇ As proposed, this request would be consistent with the Comprehensive Plan recommendation of suburban neighborhood. However, based on the guidelines provided by The Pattern Book the proposed commercial use would not be an appropriate use for this site.
- ◇ This site is not located at an intersection of arterial streets and would be the ninth parcel of commercial zoning along the south side of Rockville Road, totaling approximately 11 acres when The Pattern Book recommends 3.5 acres per intersection.
- ◇ Additionally, commercial use on this residentially developed parcel would not be supportable because it is unlikely that appropriate buffering and screening from the commercial operations could be provided due to the limited space of the parcel and the likely need for variances. Therefore, staff would not support any variances from the development standards.
- ◇ Furthermore, this would be commercial encroachment into a residentially developed area that would negatively impact the surrounding land uses because development guidelines cannot be met that would minimize impact of expansion of commercial uses along this area of Rockville Road.
- ◇ Finally, staff would also note that no information has been provided related to parking that would include the number of required paved parking spaces (15 paved spaces would be required) and the location of those parking spaces. Consequently, if this request would be approved staff would request the following commitment:

A site plan shall be submitted within 30 days of approval for Administrator Approval depicting the number of required paved parking spaces and the location of the parking lot.

(Continued)

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-2 Single-family dwelling

SURROUNDING ZONING AND LAND USE

North -	C-4	Undeveloped land
South -	D-2	Single-family dwellings
East -	D-2	Single-family dwelling
West -	C-4	Single-family dwelling

COMPREHENSIVE LAND USE PLAN	The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends suburban neighborhood typology.
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THOROUGHFARE PLAN	This portion of Rockville Road is designated in the Marion County Thoroughfare Plan as a primary arterial with an existing 155-foot right-of-way and a proposed 102-foot right-of-way.
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CONTEXT AREA	This site is located within the metro context area.
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OVERLAY	There is no overlay for this site.
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ZONING HISTORY

2017-MOD-020; 9003, 9055, 9057, 9073 and 9129 Rockville Road (west of site), requested modification of commitments to modify Commitment Two of 2012-ZON-014 and 2015-ZON-073 to eliminate the prohibition on fast-food restaurants within 100 feet of a protected district, **approved.**

2015-ZON-073; 9003 Rockville Road (west of site), requested rezoning of 0.57 acre from the D-2 district to the C-4 classification, **approved.**

2012-ZON-014; 9055-9149 Rockville Road (west of site), requested rezoning of 5.12 acres, from the D-2 District, to the C-4 classification to provide for commercial uses, **approved.**

2011-UV2-027; 9003 Rockville Road (west of site), requested a variance of use of the Dwelling Districts Zoning Ordinance to provide for an insurance office, **denied.**

2011-DV2-020; 91 16 Rockville Road (north of site), requested a variance of development standards of the Commercial Zoning Ordinance to provide for a 1,277 square feet outdoor seating area, **granted.**

(Continued)

2008-ZON-056; 9000, 9030, 9054 and 9100 Rockville Road (north of site), requested rezoning of 14.92 acres from the C-S District to the C-4 classification to provide for community-regional commercial uses, **approved**.

2006-ZON-057; 9201 Rockville Road (west of site), requested rezoning of 0.63 acre from the D-2 District to the C-1 classification to provide for commercial uses, **approved**.

2005-ZON-168; 55 and 105 South Raceway Road (west of site), requested rezoning of 5.46 acres being in the C-3 and C-1 Districts to the C-3 classification to provide for neighborhood commercial uses, **approved**.

2005-ZON/VAR-809; 9201 Rockville Road (west of site), requested a rezoning of 0.568 acres, being in the D-2 district to the C-1 classification to provide for a computer sales and service store; and a variance of use and development standards of the Commercial Zoning Ordinance to provide for a computer sales and service store in an existing 2,216-square foot building (not permitted), with a ten-foot wide interior access drive (minimum 24-foot wide interior access drive required); **denied**.

2003-ZON-146; 55 South Raceway Road (west of site); requested rezoning of 0.2 acre, being in the C-1 district to the C-3 classification to provide for neighborhood commercial uses; **approved**.

2002-ZON-039; 9215, 9249, 9229, and 9251 Rockville Road and 59, 75, 85, and 153 South Raceway Road (west of site), requested rezoning of 5.46 acres from D-2 and C-3 to the C-1 and C-3 classifications to provide for office and neighborhood commercial uses; **approved**.

2002-UV1-020; 6603 Rockville Road (east of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for an insurance office in a dwelling, and a three-foot tall ground sign, **denied**.

2000-ZON-182; 9215, 9220 and 9240 Rockville Road and 75, 85, 121, and 153 South Raceway Road (west of site), requested rezoning of 5 acres from the D-2 district to the C-3 classification to provide for neighborhood commercial development; **withdrawn**.

2000-ZON-020; 9220-9260 Rockville Road (west of site), requested rezoning of 9.854 acres from the D-A District to the C-4 classification for commercial development, **approved**.

2000-ZON-019; 9150 Rockville Road (west of site), requested rezoning of 5.971 acres from the D-A District to the C-4 classification to provide for commercial development, **withdrawn**.

95-UV1-42; 6502 Rockville Road (east of site), requested a variance of use of the Dwelling Districts Zoning Ordinance to provide for a dental office use with 5 parking spaces (not permitted), **granted for a temporary period expiring June 6, 1998**.

94-Z-46; 9186 Rockville Road (north of site), requested rezoning of 14.92 acres from the D-A District to the C-5 classification to provide for a family entertainment complex, **approved**.
C-1 classification to provide for one-story office building, **denied**.





View looking east along Rockville Road



View of site looking southeast across Rockville Road



View of site looking south across Rockville Road



View of site looking south across Rockville Road

STAFF REPORT

Item 7.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-ZON-091 (Amended)
Address: 3510 Division Street (*Approximate Address*)
Location: Perry Township, Council District #20
Petitioner: Sumner St, LLC, by Casey Cloyd
Request: Rezoning of 1.69 acres from the D-4 (FF) district to the C-S (FF) district to provide for commercial and building contractors; artisan manufacturing; light manufacturing; mini-warehouses; warehouse, wholesaling and distribution; consumer services or repair of consumer goods; financial and insurance services; hair and body care salon or service; printing services; office: business, professional or government; information, technology, R&D; Logistics R&D; retail, light general; automobile and light vehicle wash; automobile, motorcycle and light vehicle sales or rental; automotive, motorcycle and light vehicle service or repair; heavy vehicle wash; other vehicle sales, rental or repair; truck or heavy vehicle sales, rental or repair; and employee living quarters accessory to a permitted use.

ADDENDUM FOR JANUARY 26, 2023, HEARING EXAMINER

The Hearing Examiner continued this petition from the December 15, 2022 hearing, to the January 26, 2023 hearing at the request of staff and the neighborhood organization to provide time for the petitioner's representative to amend the petition and send new notice.

The petitioner's representative amended the petition rezoning from the D-4 (FF) District to the C-S (FF) District and provided a C-S Statement, file-dated December 20, 2022. Because the site is currently developed, the previously filed site plan, file-dated July 14, 2022, would remain as the site plan for the proposed C-S rezoning.

◇ The purpose of the C-S District is to:

1. Encourage:
 - a. A more creative approach in land planning.
 - b. Superior site and structural design and development.
 - c. An efficient and desirable use of open space.
2. Provide for a use of land with high functional value.
3. Assure compatibility of land uses, both within the C-S District and with adjacent areas.
4. Permit special consideration of property with outstanding feature, including, but not limited to, historical, architectural or social significance, unusual topography, landscape amenities, and other special land characteristics.
5. Provide maximum adaptability and flexibility in zoning and development controls to meet the changing and diverse needs of the metropolitan area.

(Continued)

As proposed staff is generally supportive of the request but believes some of the proposed uses, either through definition of what would be permitted or use specific standards, would not be appropriate for this site primarily because most of the site is covered with buildings or asphalt, which leaves little space for appropriate and required buffering between more intense commercial and industrial uses and the surrounding neighborhood.

Consequently, staff **recommends approval**, subject to removal of the following uses that are proposed with this amended rezoning request: light manufacturing; mini-warehouses (self-storage facility); warehouse, wholesaling and distribution; automobile and light vehicle wash; heavy vehicle wash; other vehicle sales, rental or repair; and truck or heavy vehicle sales, rental or repair.

Staff's approval is also subject to the following commitment being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptables provided for the proper disposal of trash and other waste.

Environmental Public Nuisances

- ◇ The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.
- ◇ All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.
- ◇ Environmental public nuisance means:
 1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
 2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
 3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
 4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.

(Continued)

- ◇ Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

ADDENDUM FOR DECEMBER 15, 2022, HEARING EXAMINER

The Hearing Examiner continued this petition from the October 27, 2022 hearing, to the December 15, 2022 hearing, at the request of the petitioner's representative to provide additional time to work with staff, the neighbors and neighborhood organization.

Staff understood that an amendment to the request may be required but nothing new has been submitted. Consequently, staff requests this petition be **continued to the January 12, 2023 hearing**.

ADDENDUM FOR OCTOBER 27, 2022, HEARING EXAMINER

The Hearing Examiner continued this petition from the September 15, 2022 hearing, to the October 27, 2022 hearing, at the request of a remonstrator.

September 15, 2022

The Hearing Examiner acknowledged the automatic continuance filed by a registered neighborhood organization that continued this petition from the August 25, 2022 hearing, to the September 29, 2022 hearing.

RECOMMENDATIONS

Staff **recommends approval** of the request, subject to the following commitment being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

The following uses shall be prohibited:

- Dry cleaning plant / industrial laundry
- Heavy equipment sales, services or repair
- Local power generating facility
- Substations and utility distribution nodes
- Wireless communications facility
- Automobile and vehicle auction
- Automobile fueling station
- Truck stop
- Waste or recycling transfer facility
- Heavy outdoor storage
- Accessory uses: temporary outdoor display and sales,

(Continued)

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE ISSUES

- ◇ This 1.69-acre site, zoned D-4 (FF) is developed various commercial and industrial buildings. It is surrounded to the north by commercial uses, across West Sumner Avenue, single-family dwellings and religious, zoned C-3 (FF), D-4 (FF) and SU-1(FF), respectively; a single-family dwelling to the south, zoned D-4 (FF); single-family dwellings to the east, across Division Street, zoned D-4 (FF) and D-A (FF), respectively; and single-family dwellings to the west, zoned D-4 (FF).
- ◇ Beginning with petition 70-V2-4 that provided for an expansion to an existing non-conforming warehouse, subsequent petitions (see Zoning History) allowed for the operation of a plumbing / heating company (including retail sales, service supplies); a commercial glass / glazing contracting business; legal establishment of a cold-storage building for the glass / glazing business; and outdoor storage of recreational and inoperable vehicles and construction equipment, and expansion of a parking lot.

REZONING

- ◇ This request would rezone the site from D-4 (FF) District to the I-2 (FF) classification to provide for multi-family development uses. “The I-2 district is for those industries that present minimal risk and typically do not create objectionable characteristics (such as dirt, noise, glare, heat, odor, etc.) that extend beyond the lot lines. Outdoor operations and storage are completely screened if adjacent to protected districts and are limited throughout the district to a percentage of total operation. Wherever possible, this district is located between a protected district and a heavier industrial area to serve as a buffer.

For application to the older industrial districts within the central city, standards specifically accommodate the use of shallow industrial lots.”

- ◇ The Comprehensive Plan recommends Heavy Industrial typology. “The Heavy Industrial typology provides for industrial, production, distribution, and repair uses that are intense and may create emissions of light, odor, noise, or vibrations. This typology is characterized by freestanding buildings or groups of buildings, often within industrial parks. Outdoor operations and storage are common. Typical uses include food processing, milling, storage of petroleum products, recycling, welding, and concrete mixing. Industrial or truck traffic should be separated from local/residential traffic.”

(Continued)

- ◇ The Pattern Book serves as a policy guide as development occurs. Below are the relevant policies related to this request:

Light Industrial Uses (defined as industrial uses that create minimal emissions of light, odor, noise, or vibrations. Examples include warehousing and logistics facilities. These land uses do not use, store, produce, emit, or transport hazardous materials).

- Industrial truck traffic should not utilize local, residential streets.
- Streets internal to industrial development must feed onto an arterial street.
- **Removed as a recommended land use where they would be adjacent to a living or mixed-use typology.**

Heavy Industrial Uses (defined as being located only in the Heavy Industrial District, these industrial uses create emissions of light, odor, noise, or vibrations. All uses requiring an air permit and/or wastewater permit from the Indiana Department of Environmental Management (IDEM) is considered Heavy Industrial, but not all Heavy Industrial uses necessary require an IDEM permit).

- The primary entrance should be served by an arterial street.
- Industrial truck traffic should not utilize local, residential streets.
- Streets internal to industrial development must feed onto an arterial street.
- **Removed as a recommended land use where they would be adjacent to a living or mixed-use typology.**

Heavy Commercial Uses (defined as commercial uses that generally include outdoor operations, storage, and/or display).

- Recommended without additional conditions.

Small-Scale Offices, Retailing, and Personal or Professional Services (defined as Commercial uses with minimal outdoor operations, storage, or display on lots of less than 1.5 acres and a height of less than 35 feet.

- Should be subordinate to and serving the primary uses of production, warehousing, and offices.
- Should be adjacent to interstate interchanges if present. If no interchange is present, should be located along arterial streets at the edge of the heavy industrial typology.
- Should be located and served in such a way that the use will not interfere with industrial traffic or loading.

Overlays

- ◇ This site is also located within an overlay, specifically the Environmentally Sensitive Areas. "Overlays are used in places where the land uses that are allowed in a typology need to be adjusted. They may be needed because an area is environmentally sensitive, near an airport, or because a certain type of development should be promoted. Overlays can add uses, remove uses, or modify the conditions that are applied to uses in a typology."

Continued)

- ◇ The Environmentally Sensitive Areas (ES) Overlay is intended for areas containing high quality woodlands, wetlands, or other natural resources that should be protected. The purpose of this overlay is to prevent or mitigate potential damage to these resources caused by development. This overlay is also appropriate for areas that present an opportunity to create a new environmental asset. This overlay is not intended for the preservation of open space.
- ◇ The entire site is located within the 100-year flood plain of White River.
- ◇ The Pattern Book provides guidance and recommendations related to the ES overlays that include modified and removed uses.

Modified Uses

- Small-Scale Offices, Retailing, and Personal or Professional Services - Any development impacting wetlands or high-quality woodlands should include a one-for-one replacement of such features. Additionally, development should preserve or add at least 10% of the entire parcel as tree canopy or naturalized area.

Removed Uses

- Heavy Commercial Uses
- Light Industrial Uses
- Wind or Solar Farms
- Heavy Industrial Uses

Floodway Fringe

- ◇ This site has a secondary zoning classification of a Floodway Fringe (FF), which is the portion of the regulatory floodplain that is not required to convey the 100-year frequency flood peak discharge and lies outside of the floodway.
- ◇ The designation of the FF District is to guide development in areas subject to potential flood damage, but outside the Floodway (FW) District. Unless otherwise prohibited, all uses permitted in the primary zoning district (I-2 in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.
- ◇ Staff would, however, note the following uses are prohibited in the floodplain:
 - a. Jails;
 - b. Hospitals;
 - c. Assisted living facilities;
 - d. Nursing homes;
 - e. Laboratories;
 - f. Elementary, Middle or High Schools;
 - g. Daycare facilities;
 - h. Fire stations;

(Continued)

- i. Emergency operation centers;
- j. Police facilities;
- k. Truck, train, or bus terminal, storage or maintenance facility;
- l. Wrecking or salvage facility;
- m. Gas, oil or propane storage facility;
- n. Industrial laundry;
- o. Hazardous waste handling or storage facility; and
- p. Other public equipment storage facilities.

Planning Analysis

- ◇ As proposed this request would be consistent with the Comprehensive Plan but in conflict with the development guidelines recommended in the Pattern Book relating to industrial uses adjacent to mixed-use or living typologies. However, the grant of variances throughout the years has resulted in the current development and use of the site and pre-dates the adoption of the Pattern Book.
- ◇ The site fronts on Division Street, with a secondary access drive along Sumner Avenue. Most of the site is covered by buildings and paving, leaving little space for any expansion.
- ◇ During a site visit, staff observed spaces for indoor storage, offices and small dwelling units. Some spaces are occupied with car and motorcycle repair operations, storage for concessions operations and storage of street vendor equipment. Otherwise, the existing buildings are vacant.
- ◇ Because of the historical use of the site and the lack of space for expansion, staff supports this request subject to the prohibition of some of the I-2 uses that would have a negative impact on the abutting and surrounding residential uses. Those uses would include:

- Dry cleaning plant / industrial laundry
- Heavy equipment sales, services of repair
- Local power generating facility
- Substations and utility distribution nodes
- Wireless communications facility
- Automobile and vehicle auction
- Automobile fueling station
- Truck stop
- Waste or recycling transfer facility
- Heavy outdoor storage
- Accessory uses: temporary outdoor display and sales

(Continued)

GENERAL INFORMATION**EXISTING ZONING AND LAND USE**

D-4 (FF)

Commercial / industrial uses

SURROUNDING ZONING AND LAND USE

North - C-3 / D-4 / SU-1

Commercial uses / single-family dwellings / religious uses

South - D-4

Single-family dwelling

East - D-4 / D-A

Single-family dwellings

West - D-4

Single-family dwelling

COMPREHENSIVE LAND USE PLAN

The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends heavy industrial typology.

THOROUGHFARE PLAN

This portion of Division Street is designated in the Marion County Thoroughfare Plan as a local street with an existing 30-foot right-of-way and a proposed 50-foot right-of-way.

This portion of Sumner Avenue is designated in the Marion County Thoroughfare Plan as a primary collector with an existing 75-foot right-of-way and a proposed 80-foot right-of-way.

CONTEXT AREA

This site is located within the metro context area.

OVERLAY

This site is located within an environmentally sensitive area (100-year floodplain of White River)

SITE PLAN

File-dated July 14, 2022

C-S STATEMENT

File-dated December 20, 2022

(Continued)

ZONING HISTORY

2011-UV2-006; 3506 and 3510 Division Street and 1255 West Sumner Avenue, requested a variance of use and development standards Dwelling Districts Zoning Ordinance to provide for the outdoor storage of recreational vehicles in the front and side yards of 1255 Sumner Avenue, the outdoor storage and repair of inoperable vehicles and the outdoor storage of construction equipment and building materials; with multiple window signs; with multiple wall signs; with a trash container located in the side yard of 3506 Division Street; and with a second trash container at 1255 Sumner Avenue; with a 48-inch wood fence encroaching five feet into the front yard of 1255 Sumner Avenue, and with a 48-inch vinyl fence in the front yard of 3506 and 3510 Division Street, within the sight-distance triangle of the access drive of 3506 Division Street, and to provide for the expansion of a parking lot onto 3506 Division Street, **granted**.

2000-UV1-046; 1255 West Sumner Avenue, requested a variance of use of the Dwelling Districts Zoning Ordinance to legally establish a 2,460 square foot cold storage building for a legally established glass contractor, in D-4 (FF), **granted**.

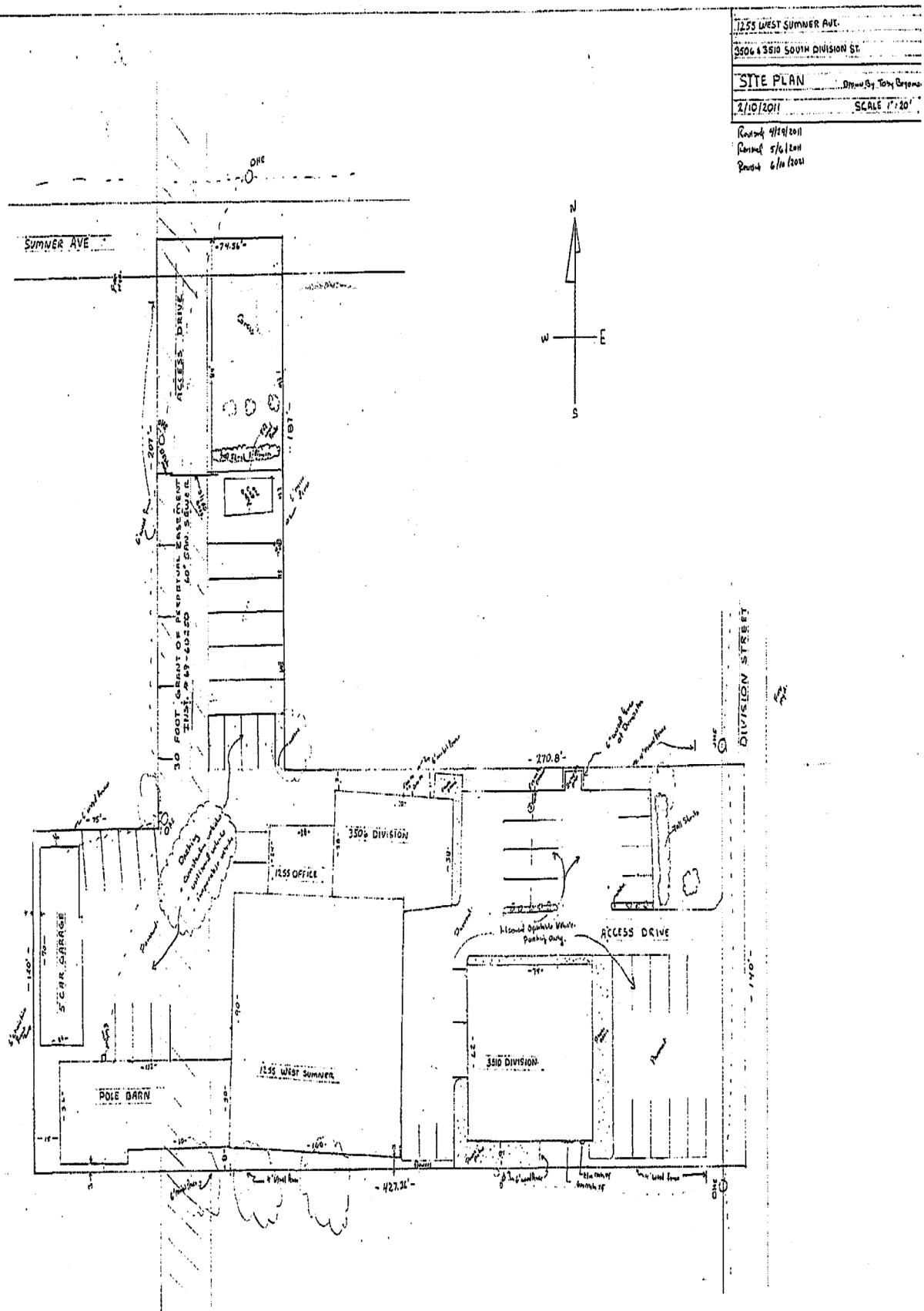
98-UV1-44; 1255 West Sumner Avenue, requested a variance of use of the Dwelling Districts Zoning Ordinance to provide for the operation of a commercial glass and glazing contracting business, in D-4 (FF), **granted**.

78-UV3-35; 3510 South Division Street, requested a variance of use, Flood Plain and Development Standards to permit the operation of a plumbing and heating company, retail sales, service and warehouse of related business products and supplies, in D-4 (FF), **granted**.

70-V2-4; 3510 South Division Street, requested a variance of use to permit the erection of an addition to the existing non-conforming sheet metal building being used as a warehouse and remove the existing garage to the west side of the lot, in D-4 (FF), **granted**.

kb





**Exhibit A
to Amended Petition**

C-S STATEMENT

Petitioner respectfully requests that the 1.69 acre site ("Site") located at the southwest corner of the intersection of South Division Street and West Sumner Avenue in Indianapolis, Indiana be rezoned to the C-S district to provide for certain limited industrial and commercial uses on the Site.

The Site is presently zoned D-4. There were prior variances on the Site for various uses: 2011-UV2-006 (RV storage and storage for vehicles being repaired); 2000-UV1-046 (cold storage facility); 98-UV1-44 (commercial glass and glazing); 78-UV3-35 (plumbing heating company with retail sales and warehousing); 70-V2-4 (building addition). Petitioner requests to replace the prior zoning and variances with the C-S Statement and site plan to be approved as a part of this rezoning and any commitments recorded in connection with this rezoning.

1. Industrial Uses

Petitioner proposes the following industrial uses on the Site:

- a. Commercial and building contractors;
- b. Artisan manufacturing;
- c. Light manufacturing;
- d. Mini-warehouses (self-storage facility); and
- e. Warehouse, wholesaling and distribution.

2. Commercial Uses

Petitioner proposes the following commercial uses on the Site:

- a. Consumer services or repair of consumer goods;
- b. Financial and insurance services;
- c. Hair and body care salon or service;
- d. Printing services;
- e. Office: business, professional or government;
- f. Information, technology, R&D;
- g. Logistics R&D;
- h. Retail, light general;
- i. Automobile and light vehicle wash;
- j. Automotive, motorcycle and light vehicle sales or rental.
- k. Automotive, motorcycle and light vehicle service or repair.

- l. Heavy vehicle wash;
- m. Other vehicle sales, rental or repair; and
- n. Truck or heavy vehicle sales, rental or repair.

3. Accessory Uses

Petitioner proposes the following accessory uses on the Site:

- a. Employee living quarters, as an accessory to any permitted use.

4. Commitments

Petitioner proposes the following commitment:

Petitioner shall make a commitment that the following described uses shall not be permitted on the site:

- a. Auctioneering and liquidating services;
- b. Dry cleaning plant or industrial laundry;
- c. Heavy equipment sales, service and/or repair;
- d. Power generating facility, local;
- e. Substations and utility distribution nodes;
- f. Wireless communication facility;
- g. Automobile storage or auction;
- h. Automobile fueling station;
- i. Truck stop;
- j. Recycling station;
- k. Waste or recycling transfer facility;
- l. Heavy outdoor storage;
- m. Outdoor display and sales, temporary;
- n. Outdoor storage and operations.



View looking north along Division Street



View looking south along Division Street



View of site looking southwest



View of site looking west



View from site looking north at adjacent religious use



View from site looking west across Division Street



View of access drive along Sumner Avenue looking west

STAFF REPORT

Item 8.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-CZN-861 / 2022-CVR-861 (Amended)
Address: 4016 East 82nd Street (*Approximate Addresses*)
Location: Washington Township, Council District #3
Petitioner: Edward Rose Properties, Inc., by Joseph D. Calderon
Request: Rezoning of 9.805 acres from the C-S (FW)(FF) district to C-S (FW)(FF) district to provide for a 300-unit multi-family development with a Modification of Commitments related to 89-Z-208, as amended by 94-Z-103 and 2011-CZN-800, to amend Commitment #4 to add multi-family uses as a permitted use to Parcel D of Area B.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a lot with zero-feet of street frontage (50 feet required), with a maximum setback greater than 85 feet from 82nd Street (maximum 85-foot setback permitted), with a maximum building height of 55 feet (maximum 45 feet permitted) and encroachment into the 100-foot stream protection corridor.

ADDENDUM FOR JANUARY 26, 2023, HEARING EXAMINER

The Hearing Examiner continued these petitions from the December 15, 2022 hearing, to the January 26, 2023 hearing, at the request of the petitioner's representative.

The petitioner's representative submitted an analysis of redevelopment of the site on the stream protection corridor (See Exhibit B), file-dated December 30, 2022. Staff acknowledges the efforts by the developer to mitigate the negative impact on the stream protection corridor but continues to have concern about the stream protection corridor and need to protect this environmental amenity.

ADDENDUM FOR DECEMBER 15, 2022, HEARING EXAMINER

The Hearing Examiner continued these petitions from the November 10, 2022 hearing, to the December 15, 2022 hearing, at the request of the petitioner's representative to provide additional time to respond to staff's concern regarding encroachment into the stream protection corridor.

In response to encroachment into the stream protection corridor, a site plan, dated November 21, 2022 (Exhibit A), was submitted that depicts a number of rain gardens throughout the site that would replace approximately 6,400 square feet of impervious surfaces. Further efforts to mitigate the impact of encroachment into the stream protection corridor would include directing storm water away from White River, underground detention and installing curbing around the parking areas.

(Continued)

Staff understands that the existing development of the site encroaches into the corridor, but staff believes the proposed site plan could be reconfigured to eliminate encroachment into and protect the stream protection corridor. Consequently, staff continues to recommend denial of this variance. If approved staff would request that approval be subject to the site plan, dated November 21, 2022, that would provide for the on-site rain gardens, along with all the other proposed improvements.

November 10, 2022**RECOMMENDATIONS**

Staff **recommends approval** of the rezoning request, subject to the following commitment being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptacles provided for the proper disposal of trash and other waste.

Staff **recommends approval** of the variance requests related to the street frontage, setback and building height. Staff **recommends denial** of the variance request for encroachment into the stream protection corridor.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE ISSUES

- ◇ This 9.805-acre site, zoned C-S (FW)(FF), is developed with a currently vacant commercial building and associated parking. It is surrounded by multi-family dwellings to the north, zoned C-S; commercial uses to the south, zoned C-4; the White River to the east, zoned C-S; and commercial uses to the west, zoned C-S.
- ◇ This site was included in a 64-acre site rezoning in 1989 (89-Z-208) to the C-S classification. That rezoning case established four distinct commercial areas that provided for all C-1 uses, C-4 uses, restaurants, health clubs, indoor theater, hotel, apartment hotel, motor hotel, motel and commercial sales and services, including retail, primarily for service to office uses within this area and to employees, guests and visitors to such office uses.
- ◇ Petition 94-Z-103 amended the terms of 89-Z-208 to allow for all C-1, C-3 and C-4 uses.

(Continued)

REZONING

- ◇ The request would rezone the site from the C-S (FW)(FF) district to the C-S (FW)(FF) classification to provide for a 300-unit multi-family development and to modify commitments related to 89-Z-208, as amended by 94-Z-103 and 2011-CZN-800, to amend Commitment #4 to add multi-family uses as a permitted use to Parcel D of “Area B.”
- ◇ “The C-S District is designed to permit, within a single zoning district, multi-use commercial complexes or land use combinations of commercial and noncommercial uses, or single-use commercial projects. The primary objective of this district is to encourage development which achieves a high degree of excellence in planning, design or function, and can be intermixed, grouped or otherwise uniquely located with maximum cohesiveness and compatibility. The district provides flexibility and procedural economy by permitting the broadest range of land use choices within a single district, while maintaining adequate land use controls. The C-S District can include high-rise or low-rise developments, can be applied to large or small land areas appropriately located throughout the metropolitan area, and can be useful in areas of urban renewal or redevelopment.”
- ◇ The Comprehensive Plan recommends Regional Commercial typology. “The Regional Commercial typology provides for general commercial and office uses that serve a significant portion of the county rather than just the surrounding neighborhoods. Uses are usually in large freestanding buildings or integrated centers. Typical examples include shopping malls, strip shopping centers, department stores, and home improvement centers.”
- ◇ The Comprehensive Plan consists of two components that include the Pattern Book and the land use map. The Pattern Book provides a land use classification system that guides the orderly development of the county and protects the character of neighborhoods while also being flexible and adaptable to allow neighborhoods to grow and change over time.
- ◇ The Pattern Book serves as a policy guide as development occurs. Below are the relevant policies related to this request:

Conditions for All Land Use Types

- All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
- All development should include sidewalks along the street frontage.

(Continued)

Large-Scale Multi-Family Housing (defined as single or multiple buildings each with five or more legally-complete dwelling units in a development of more than two acres and at a height greater than 40 feet)

- Should be within a one-half-mile distance (using streets, sidewalks, and/or off-street paths) of a school, playground, library, public greenway, or similar publicly accessible recreational or cultural amenity that is available at no cost to the user.
- Must be located within one-half mile of a bus or rapid transit using sidewalks or off-street paths.
- Should be oriented towards the street with a pedestrian connection from the front door(s) to the sidewalk. Driveways/parking areas do not qualify as a pedestrian connection.

◇ Large-scale multi-family housing is a removed use in environmentally sensitive areas.

Overlays

- ◇ This site is also located within an overlay, specifically the Environmentally Sensitive Areas .
“Overlays are used in places where the land uses that are allowed in a typology need to be adjusted. They may be needed because an area is environmentally sensitive, near an airport, or because a certain type of development should be promoted. Overlays can add uses, remove uses, or modify the conditions that are applied to uses in a typology.”
- ◇ The Environmentally Sensitive Areas (ES) Overlay is intended for areas containing high quality woodlands, wetlands, or other natural resources that should be protected. The purpose of this overlay is to prevent or mitigate potential damage to these resources caused by development. This overlay is also appropriate for areas that present an opportunity to create a new environmental asset. This overlay is not intended for the preservation of open space.
- ◇ This site is located within the floodway and floodway fringe of White River.

Stream Protection Corridor

- ◇ A stream protection corridor consists of a strip of land, extending along both sides of all streams, with measurements taken from the top of the bank on either side. The width of the corridor is based upon whether the stream is designated as a Category One or Category Two. Category One streams have a corridor width of 60 feet in the compact context area and 100 feet in the metro context area. Category Two streams have a corridor width of 25 feet in the compact context area and 50 feet in the metro context area.
- ◇ The vegetative target for the Stream Protection Corridor is a variety of mature, native riparian tree and shrub species that can provide shade, leaf litter, woody debris, and erosion protection to the stream, along with appropriate plantings necessary for effective stream bank stabilization.

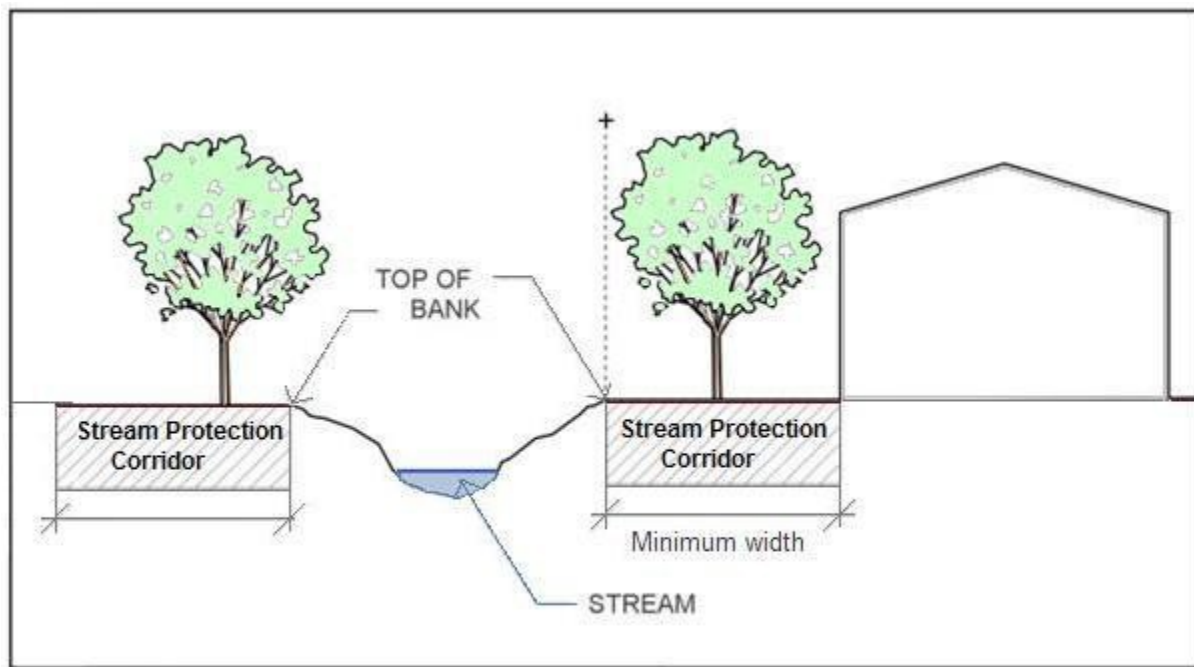
(Continued)

◇ The Stream Protection Corridor is defined as:

“A vegetated area, including trees, shrubs, and herbaceous vegetation, that exists or is established to protect a stream system, lake, or reservoir, and where alteration is strictly limited. Functionally, stream protection corridors provide erosion control, improve water quality (lower sedimentation and contaminant removal) offer flood water storage, provide habitat, and improve aesthetic value.”

- ◇ Stream is defined as “a surface watercourse with a well-defined bed and bank, either natural or artificial that confines and conducts continuous or periodic flowing water.”
- ◇ Stream Bank is defined as “the sloping land that contains the stream channel and the normal flows of the stream.”
- ◇ Stream Channel is defined as “part of a watercourse that contains an intermittent or perennial base flow of groundwater origin.”
- ◇ There are two types of categories of Streams: Category One Streams and Category Two Streams. Pleasant Run is listed as a Category One Stream, which is defined as: “A perennial stream that flows in a well-defined channel throughout most of the year under normal climatic conditions. Some may dry up during drought periods or due to excessive upstream uses. Aquatic organism such as some fish are normally present and easily found in these streams. The Category One Streams are listed in Table 744-205-2: Category One Streams.”
- ◇ Category Two Stream is defined as: “An intermittent stream that flows in a well-defined channel during wet seasons of the year but not necessarily for the entire year. These streams generally exhibit signs of water velocity sufficient to move soil, material, litter, and fine debris. Aquatic organisms, such as fish, are often difficult to find or not present at all in these streams. These streams are identified on the United States Geological Survey (USGS) topographic maps and on the Department of Natural Resources Conservation Service (NRCS) soils maps.”
- ◇ There are 32 Category One streams listed in the Ordinance. The stream protection corridor is a strip of land on both sides of the stream whose width varies according to whether it is within the Compact or Metro Context Area and whether it is a Category One or Category Two Stream.
- ◇ White River forms the eastern boundary of the site and is designated as a Category One stream requiring a 100-foot-wide stream protection corridor on both sides of the stream, as measured parallel from the top of the bank. Top of the bank is not defined by the Ordinance, other than by Diagram UU, Stream Protection Corridor Cross-section, as shown below.

(Continued)

**Stream Protection Corridor**

Environmental Public Nuisances

- ◇ The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.
- ◇ All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.
- ◇ Environmental public nuisance means:
 1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
 2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
 3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or

(Continued)

4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.

- ◇ Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

C-S Statement

- ◇ The C-S Statement, file-dated October 6, 2022, states permitted uses would include multi-family dwellings and all C-1 uses and C-4 uses, if the property would not be developed with multi-family dwellings.
- ◇ Accessory uses would include all accessory uses permitted in the D-9 district, if developed with multi-family dwellings and the C-1 or C-4 districts.
- ◇ The development of the site would comply with the development standards of the C-S district, except for a required minimum street frontage, maximum setback, maximum height and stream protection corridor.
- ◇ Signage would be in accordance with that allowed in multi-family development or commercial development, depending upon development of the site. A sign program would be submitted for Administrator Approval prior to the issuance of a sign permit.
- ◇ Final site and development plans would be submitted for Administrator Approval.

Preliminary Site Plan

- ◇ The preliminary site plan, file-dated October 6, 2022, depicts three buildings. The two northern buildings would be L-shaped, with the southern building configured with an amenity space centrally located and surrounded by the structure.
- ◇ Parking would be located on the perimeter of the site, with the larger parking area along the southern portion of the site, abutting the commercial uses.
- ◇ Access to the site would be from a private street that gains access along East 82nd Street and opposite Dean Road.

Planning Analysis

- ◇ As proposed the rezoning request would be consistent with the Comprehensive Plan recommendation of regional commercial, except that the environmental sensitive area overlay removes the use of large-scale multi-family dwellings.
- ◇ Staff, however, supports this use because the site has been developed since 1989 as mixed use and multi-family dwellings adjacent to the site to the north. This request would be a reasonable and appropriate expansion of the existing residential uses.

(Continued)

- ◇ Additionally, the Ordinance provisions related to the stream protection corridor could provide some mitigation of the impact of the use in this environmentally sensitive area.
- ◇ Furthermore, the surrounding uses would not be negatively impacted and redevelopment of this commercial site with residential uses would be appropriate because of the apparent challenges of commercial viability in recent years.

VARIANCES OF DEVELOPMENT STANDARDS

- ◇ This request would provide for a lot with zero-feet of street frontage with a maximum setback greater than 85 feet from 82nd Street. The Ordinance requires 50 feet of street frontage and limits the setback to 85-feet. These two variances are linked because this request would be redevelopment of an integrated mixed-use site whose site configuration and layout was established many years ago.
- ◇ This 63-acre site was developed prior to the current development standards, which results in a practical difficulty as portions of this site are redeveloped to respond to changes that have occurred during the intervening years. Furthermore, support of these two variances would have minimal impact on the surrounding land uses.
- ◇ This request would provide for a maximum building height of 55 feet, which would be 10 feet above the permitted maximum height of 45 feet. The existing multi-family dwellings to the north are three stories. The proposed multi-family dwellings would be four stories.
- ◇ Staff believes the additional ten feet in height would have minimal impact on the adjacent three-story buildings to the north and the surrounding commercial uses. Furthermore, the proposed buildings would be in proximity of the East 82nd Street, a primary arterial, and along a highly traveled and dense commercial corridor. Therefore, taller buildings would be an acceptable deviation from the Ordinance.
- ◇ The request would allow for encroachment into the 100-foot stream protection corridor, which staff does not support. Because more detailed documents have not been submitted, the depth of the encroachment causes concern about the level of impact on this corridor and whether any efforts have been made to mitigate the impact.
- ◇ Staff believes mitigation would be absolutely necessary and at a minimum should include green infrastructure such as rain gardens, bio swales and curbing along the parking areas that would direct water away from White River and into the existing on-site drainage system.

(Continued)

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

C-S (FW)(FF)

Commercial building (vacant) / parking

SURROUNDING ZONING AND LAND USE

North - C-S

Multi-family dwellings

South - C-4

Commercial uses

East - C-S

White River

West - C-S

Commercial uses

COMPREHENSIVE LAND USE
PLAN

The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends regional commercial typology.

THOROUGHFARE PLAN

This portion of East 82nd Street is designated in the Marion County Thoroughfare Plan as a primary arterial with an existing 136-foot right-of-way and a proposed 112-foot right-of-way.

CONTEXT AREA

This site is located within the metro context area.

OVERLAY

This site is located within an environmentally sensitive area (Floodway and 100-year floodplain of White River)

C-S STATEMENT

File-dated October 6, 2022

SITE PLAN

File-dated October 6, 2022

ELEVATIONS

File-dated October 6, 2022

FINDINGS OF FACT

File-dated October 6, 2022

ZONING HISTORY

2011-CZN 800 / 2011-CVR-800; 3810, 3820 and 4106 East 82nd Street, requested rezoning of 13.832 acres from the C-S (FW) (FF) District to the C-S (FW) (FF) classification to provide for C-1 and C-4 uses on the Cinema Parcel and Parcels "F" and "G" and a variance of Variance of Use of the Commercial Zoning Ordinance to provide for an amusement arcade without the grant of a special exception within 500 of protected district, **approved and granted**.

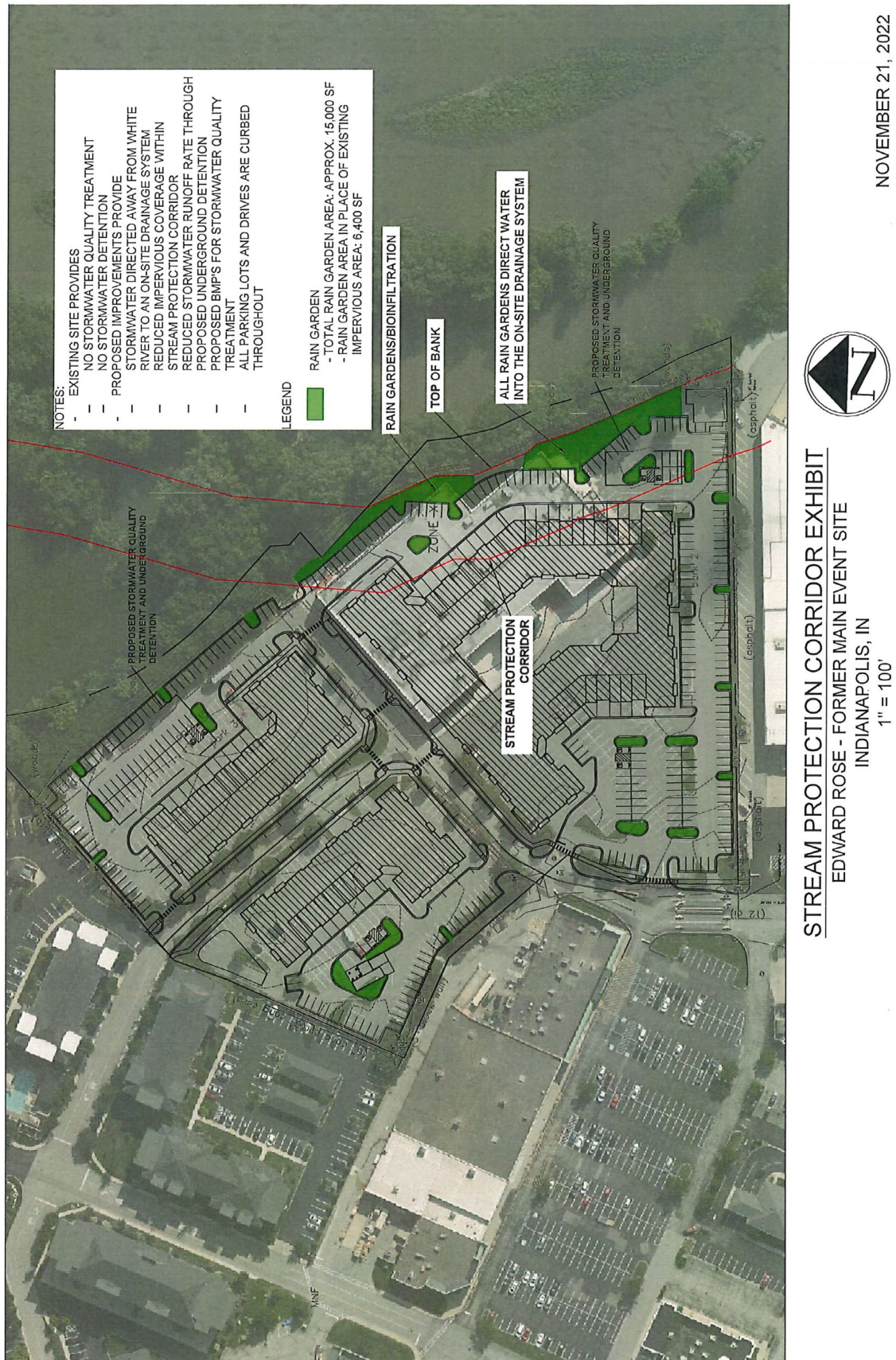
(Continued)

94-Z-103 / 94-CSE1; 3850 East 82nd Street (includes subject site), the rezoning of 40.369 acres, being in the C-S district, to the C-S classification to reduce the maximum square footage of offices from 329,000 to 253,445 in order to accommodate a family entertainment center (previously not a permitted use in "Area B" as described in petition 89-Z-208) and a special exception of the commercial Zoning Ordinance to permit a family entertainment center, **approved and granted**.

89-Z-208; 3850 East 82nd Street (includes subject site), requested rezoning of 63.85 acres, being in the A-2 to C-S to provide for a commercial mixed-use commercial development, including retail commercial on the southern portion of the site and office development for the northern portion of the site, **approved**.

kb





C-S Development Statement

Introduction:

Petitioner, Edward Rose Properties, Inc., seeks to rezone approximately 9.8 acres of property commonly known as 4016 East 82nd Street (the "Subject Property") as shown on the Concept Plan in order to develop the Subject Property with a multi-family residential complex containing approximately 300 Units.

Zoning:

The Subject Property is currently zoned C-S, as more particularly set forth in the City of Indianapolis Consolidated Zoning and Subdivision Ordinance ("Zoning Ordinance"). The current C-S zoning permits indoor recreation and entertainment by virtue of case 2011-CZN-800.

Permitted Uses:

Proposed Permitted Primary Uses of the Subject Property as described and defined in Chapter 743, Art II, Table 743-1 in the Zoning Ordinance shall be as follows:

- 1) Multi-family Dwellings
- 2) All C-1 and C-4 uses (as permitted as of 10/6/22, if the Subject Property is not developed for Multi-Family uses)

Accessory Uses:

Permitted Accessory Uses of the Subject Property shall include all accessory uses permitted in the D-9 zoning district, if developed as a multi-family development, and the C-1 or C-4 zoning district, depending on the underlying commercial use of the Subject Property. For example, if the Subject Property is developed with a C-1 underlying use, then C-1 accessory use standards shall apply. If developed with a C-4 underlying use, then C-4 accessory use standards shall apply.

Development Standards:

Petitioner hereby incorporates the Lot and Building Dimensions for properties in the C-S zoning district set forth in Chapter 744; Art. II, Section 01.C, Table 744-201-3 of the Zoning Ordinance; however, Petitioner is seeking a variance of minimum street frontage, maximum setback and maximum height requirements.

Landscaping for the multi-family development or commercial development, as the case might be, shall meet the requirements of Chapter 744, Art. V of the Zoning Ordinance.

Signs:

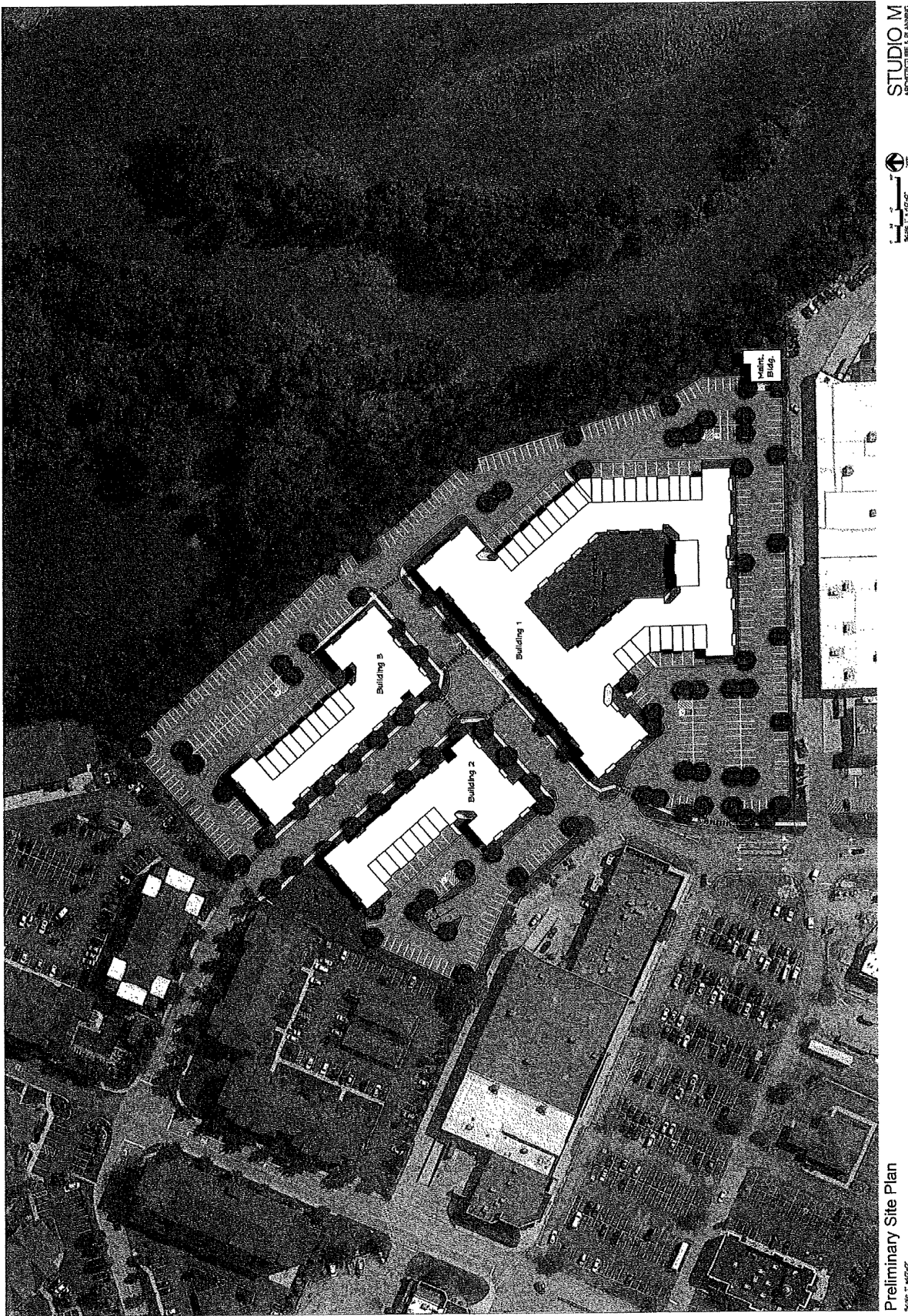
The following sign types shall be permitted on the Subject Property:

Monument, Marquee, Blade, Wall, Incidental, Temporary, and Other Signs as would otherwise be permitted in a multi-family zoning district, if developed for multi-family use, or as would be otherwise be permitted in a commercial zoning district, if developed for commercial use.

All signs shall be submitted as part of a sign program to be submitted for Administrator's Approval prior to obtaining a sign permit.

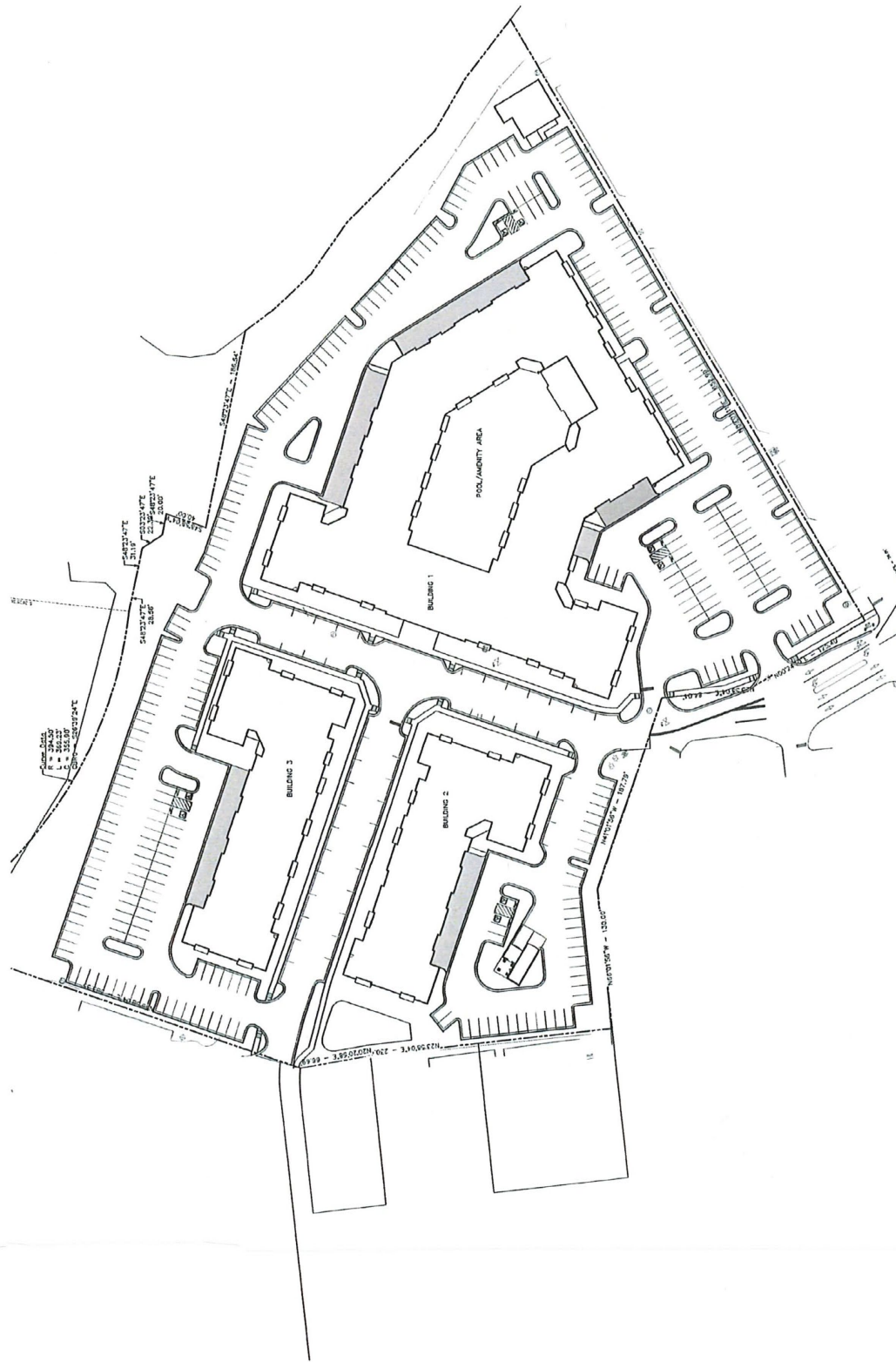
Final Site and Development Plan:

Final site and development plans shall be consistent with the standards set forth in this C-S Statement, and shall be submitted for Administrator's Approval prior to applying for an Improvement Location Permit.

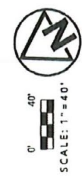


Preliminary Site Plan
Scale: 1"=40'-0"

STUDIO M
ARCHITECTURE & PLANNING



Preliminary Site Plan
Indianapolis, Indiana



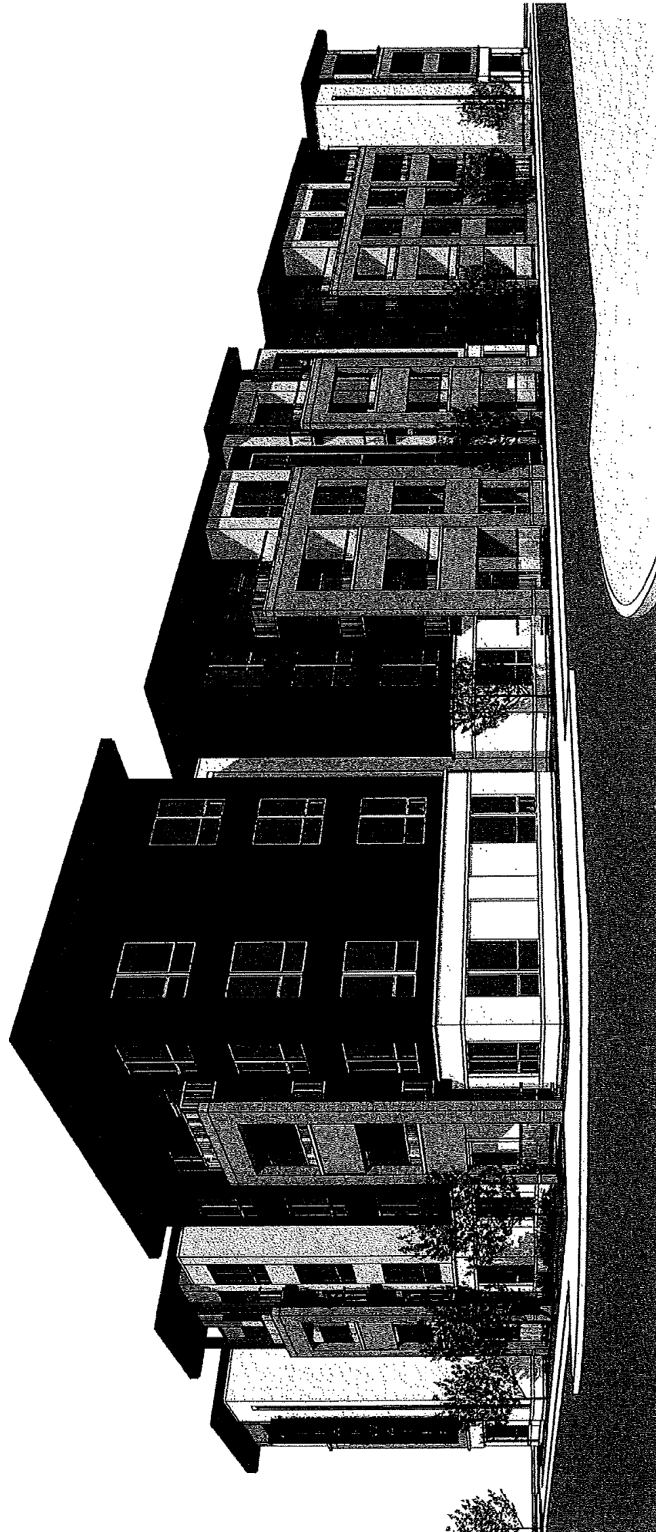
A3

Conceptual Rendering

Edward Rose Properties, Inc.
Multi-Family Residential -
4016 E. 82nd Street

2/20/21
Sept. 2nd, 2022

STUDIO M
ARCHITECTURE & PLANNING



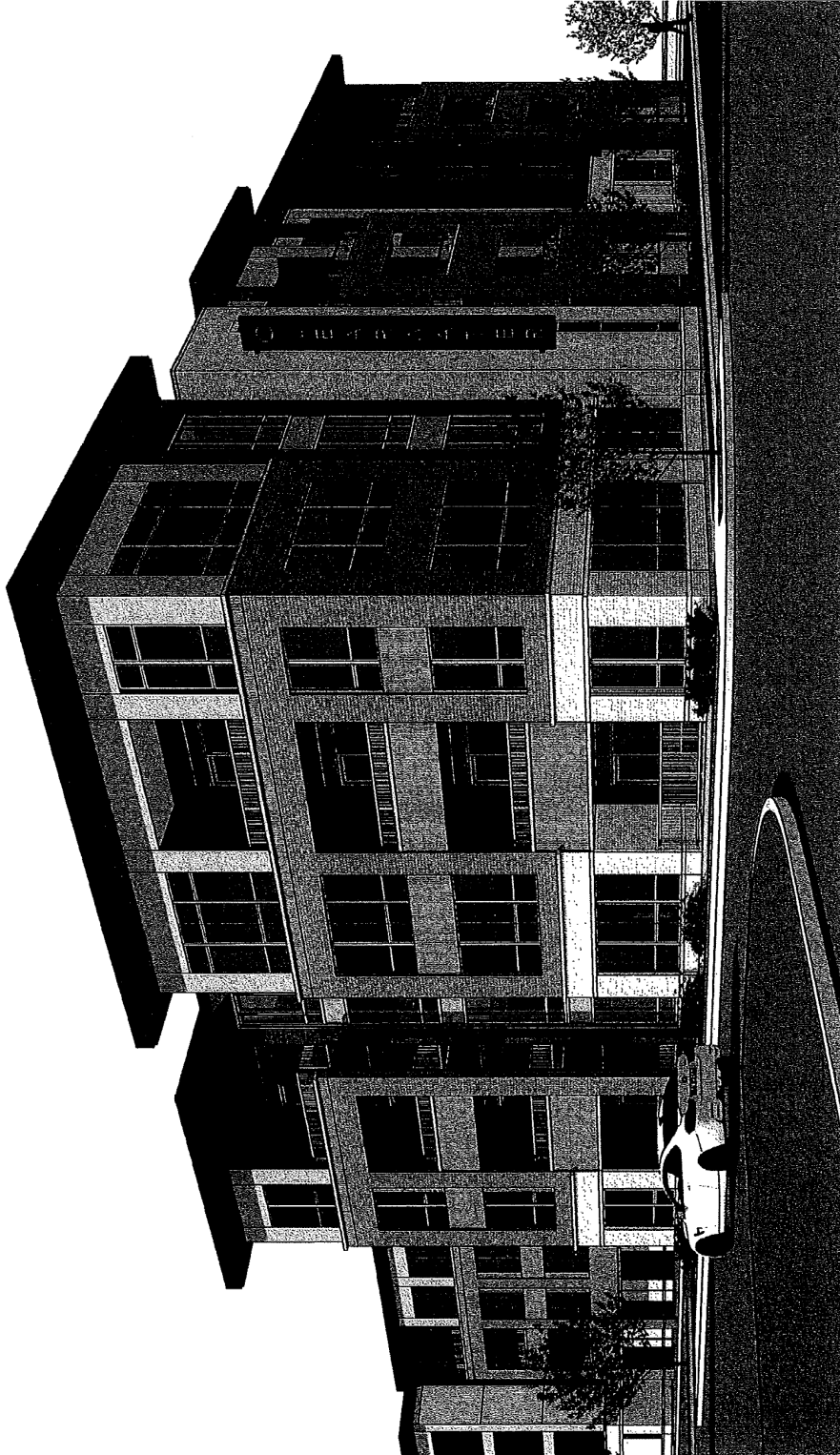
A1

Conceptual Rendering

Edward Rose Properties, Inc.
Multi-Family Residential -
4016 E. 82nd Street

22021
Sept. 29, 2022

STUDIO M
ARCHITECTURE & PLANNING



A2

Conceptual Rendering

Edward Rose Properties, Inc.
Multi-Family Residential -
4016 E. 82nd Street

22021
Sept. 29, 2022

STUDIO M
ARCHITECTURE & PLANNING



Petition Number _____

**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 site has previously been developed, there is legal access to the property, and the buildings are located in a manner such that they will not overwhelm the site.

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 site has previously been developed, traffic to the site will largely flow opposite of traffic visiting the adjacent retail uses, and the height of the buildings will not unreasonably inhibit visibility to adjoining properties.

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

the site was previously developed with access to the subject property via private access drives and before the current version of the Ordinance, and the proposed height is less than is currently permitted under the C-4 zoning classification which is permitted under the current C-S zoning.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____

23883082.1



December 27, 2022

Ms. Judith Weerts Hall, Hearing Examiner, Metropolitan Development Commission
c/o Ms. Kathleen Blackham, Senior Planner
1842 City County Building
200 East Washington Street
Indianapolis, Indiana 46204

**RE: Stream Protection Corridor Analysis for Proposed Improvements at 4016 East 82nd Street
Case 2022-CZN / CVR-868**

Dear Ms. Weerts Hall and Ms. Blackham:

V3 has performed a preliminary analysis of the proposed Edward Rose plan for the redevelopment of the property located at 4016 East 82nd Street in Indianapolis, Indiana. Specifically, V3 focused on the portion of the property that is within an area the City of Indianapolis designates as a "Stream Protection Corridor", a zone that extends 100 feet from the top of bank for Category One Streams such as the White River. As stated in the ordinance, **"Functionally, stream protection corridors provide erosion control, improve water quality (lower sedimentation and containment removal), offer flood water storage, provide habitat, and improve aesthetic value."**

A portion of the existing building and parking lot, containing approximately 39,526 square feet, currently encroaches into the stream protection corridor. The developer's proposed plan provides a material reduction of approximately 4,500 square feet in the impervious area within the stream protection corridor. The existing building and parking lot provide: a) none of the stream protection corridor functions described in bold above, b) no stormwater quality treatment (i.e. no rain gardens, no underground stormwater treatment system), and c) no stormwater release rate control (i.e., no underground detention). In my review, I believe the proposed plan and associated proposed improvements described in more detail below are consistent with the functions and objectives of the stream protection corridor provided within the ordinance.

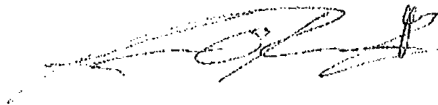
- **Erosion Control:** The developer is proposing to improve bank stability by making improvements which will direct runoff away from the existing bank of the White River. This will be accomplished by diverting stormwater, which is currently flowing down the bank, away from the river, through an underground detention system and into the existing on-site stormwater detention system and adding approximately 15,000 square feet in rain gardens. This runoff will be collected and routed internally through the designed underground treatment system, ultimately discharging to the White River in a controlled and protected manner. This will produce a better result than providing a natural 100 foot corridor, because even if the full 100 foot corridor were to be reestablished, additional runoff would be allowed to flow down the bank in an uncontrolled manner contributing to potential bank erosion.
- **Improves Water Quality:** The developer is proposing to capture the flow in proposed rain gardens and route the runoff through a proposed on-site underground stormwater treatment system that meets or exceeds the requirements of the City of Indianapolis stormwater ordinance. This solution will reduce the rate of runoff from the site and remove a minimum of 80% of total suspended solids before discharging site runoff into a waterway. Once established, alterations to the rain gardens and on-site stormwater treatment are strictly limited with City of Indianapolis easements and operations / maintenance requirements.

- **Improves Downstream Flooding Conditions:** The proposed plan includes rain gardens, an underground storage system, and a material reduction in the impervious area that will provide a significantly lower release rate and will provide an improvement to the regional and downstream flooding conditions. In contrast, the existing building and parking lot runoff flows to the White River unrestricted and has none of these solutions.
- **Provides Habitat and Improves Aesthetic Value:** The proposed rain gardens and proposed landscaping will provide a vegetated area, including trees, shrubs, and herbaceous vegetation. The addition of rain gardens along the perimeter of the development will allow for a proper transition to be planted with vegetative species that can provide the aesthetic desire as well as habitat improvements that do not exist today.

For the stated reasons above, V3's concludes that the proposed improvements accomplish the functions and objectives of the stream protection provisions in the ordinance and will provide an improvement to the stream corridor. We would ask that this letter be made available to the Hearing Examiner in advance of the hearing scheduled for January 26, 2023.

Sincerely,

James O. Rinehart IV, P.E.





View looking north along access drive



View looking southwest along access drive



View looking north along access drive along western boundary of site



View of site looking east



View of south building façade looking northeast



View of site looking northeast along White River



View of southeast corner of the site



View from southern portion of site looking south



View from site looking west along southern boundary



View from site looking southwest



View of northern portion of site along White River looking northeast



View from northern portion of site along White River looking northeast



View of northern portion of site along White River looking southeast

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-CZN-868 / 2022-CVR-868 (Amended)
Address: 431 South Shortridge Road (*Approximate Address*)
Location: Warren Township, Council District #18
Petitioner: Bhullar Deol Properties, Inc, by David Kingen and Emily Duncan
Request: Rezoning of 2.74 acres from the D-A district to the C-S district to provide for truck fleet services, an event center and C-1 uses with exceptions.
 Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a zero-foot east yard (10-foot rear yard required), and without the required front-yard landscaping (landscaping required).

ADDENDUM FOR JANUARY 26, 2022, HEARING EXAMINER

The petition was amended and continued from the December 29, 2022 hearing to the January 26, 2023 hearing to provide time for proper notice to be issued.

The petition was amended from a request for rezoning to the C-7 district to a request for rezoning to the C-S. District. The C-S district allows a petitioner to develop a custom list of permitted land uses. The C-S district requires a development statement and site plan.

The custom list of permitted land uses submitted with this petition would allow for truck fleet services, an event center and C-1 uses with exceptions

Staff continues to **recommend denial** of this request. Staff would recommend approval of the petition if the truck fleet services were excluded from the list of uses and the variances were withdrawn.

Truck Fleet Services falls into the Fleet Terminal land use category of the Ordinance, where it is permitted in the I-3 and I-4 zoning districts, the two most intense industrial districts. Fleet Terminal is defined in the Ordinance as a central facility for the distribution, storage, loading and repair of fleet vehicles, with or without associated dispatch services and offices. This definition includes uses such as ambulance services; courier, delivery, and express services; cleaning services; key and lock services; security services; motor truck terminals; limousine services; armored car services; and taxi services. An inherent characteristic of this use is the parking of operable vehicles.

(Continued)

STAFF REPORT 2022-CZN-868 / 2022-CVR-868 (Continued)

Truck fleet services are not considered to be an appropriate use in the Office Commercial typology of the Comprehensive Land Use Plan. Additionally, the Ordinance notes that the districts that permit truck fleet services present risks to the general public and should be located away from protected districts. As the subject site is located within close proximity to a daycare to the north, residentially-zoned land to the east and a low-intensity office use to the west, staff doesn't believe that this is a suitable location for a heavy industrial use that involves significant truck traffic.

Event centers fall into the Indoor Recreation and Entertainment land use category, which is permitted as a primary use in the C-4, C-5 and C-7 zoning districts. This use is also considered to be too intense for the Office Commercial typology of the Comprehensive Land Use Plan.

The C-1 district generally provides for offices and for personal professional services. The petitioner has indicated that three primary uses and eight accessory uses would be excluded from the permitted C-1 uses. The excluded primary uses are Substation and Utility Distribution Nodes, Wireless Communications Facility and Transit Centers. The eight accessory uses to be excluded can be found in Attachment E below. Staff would note that one of the proposed excluded land use categories, Indoor Recreation and Entertainment, includes event centers, which is one of the primary uses proposed by this petition. This would result in a stand-alone event center being permitted, but an event center that is part of larger facility being excluded.

The C-1 district would be an appropriate zoning district in the Office Commercial typology of the Comprehensive Land Use Plan.

The petition was also amended to remove a request for a variance of development standards to provide for a deficient side yard to the south. Staff has determined that the amended site plan meets the side yard requirement of the Ordinance, so the variance is no longer needed.

The amended site plan would remove parking spaces from the right-of-way and provides some landscaping in the area. Landscaping that meets the standards of the Ordinance would be required.

The site plan does not show a sidewalk along South Shortridge Road. A sidewalk would be required along this frontage.

ADDENDUM FOR DECEMBER 29, 2022, HEARING EXAMINER

This petition was continued from the December 1, 2022 hearing to the December 29, 2022 hearing to provide for the amendment of the petition.

(Continued)

STAFF REPORT 2022-CZN-868 / 2022-CVR-868 (Continued)

December 29, 2022 Staff Report **RECOMMENDATION**

Staff **recommends denial** of this request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation.

LAND USE

- ◇ Historic aerial photography from 1962 shows the subject site under development with the existing structure and parking lots. The nearby Shadeland Avenue freeway was newly constructed and a row of single-family dwellings lined the east side of Shortridge Road north of the site. The nearby industrial dairy was not yet in existence. The site was used for many years as a union hall.
- ◇ The site was most recently occupied by a religious use. The area is now a mix of land uses including a daycare, credit union, woodland and an industrial dairy.
- ◇ The Comprehensive Land Use Plan for Warren Township (2018) recommends Office Commercial for the site and the surrounding area. This land use category is intended for offices, financial institutions and personal care salons.

ZONING

- ◇ This petition requests a rezoning to the C-7 district, which is a high-intensity commercial district. This district is intended for commercial uses that have features such as outdoor storage, sizable merchandise, or outdoor parking and storage of trucks, materials or equipment that make these uses unusually incompatible relative to other commercial uses. These uses should be located near freeway interchanges or on major commercial arterials. This district should not be located in close proximity to retailing, offices or restaurants. It should never be located adjacent to protected districts.
- ◇ The proposed commitments submitted with the request eliminate all uses other than truck and trailer parking. However, truck and trailer parking is considered to fall into the Fleet Terminal land use category of the Ordinance and the C-7 district does not permit fleet terminals. As submitted, this rezoning would have the effect of not permitting any use on the site.

(Continued)

STAFF REPORT 2022-CZN-868 / 2022-CVR-868 (Continued)

- ◇ The site plan shows what might be 19 truck parking spaces. If they are truck parking space, the maneuvering room for the trucks doesn't appear to be adequate.

VARIANCE

- ◇ This petition requests variances of development standards to provide for a 20-foot wide south side transitional yard where a 40-foot wide yard is required, for no east yard where a 10-foot wide rear yard is required, and without the required front-yard landscaping.
- ◇ The purpose of transitional yards is to provide a buffer between a less intense use and a more intense use. The parcel to the south is zoned D-A, which is a dwelling and agricultural district, and would require buffering from a C-7 district under the Ordinance. However, the site is used for neither a dwelling nor agriculture and is solidly wooded. The site is recommended for Office Commercial uses in the Comprehensive Land Use Plan.
- ◇ Rear yards are required for the more intense commercial districts to provide some buffering and open space around these intense uses. In this case the site abuts a rail right-of-way.
- ◇ Front yard landscaping is required for a number of reasons including the provision of an attractive streetscape and the screening of intense uses. The site appears to have been originally developed with parking in the rear. By 1972, a parking lot was constructed in the front of the building and partially in the right-of-way. This parking remains.
- ◇ The site plan shows the parking lot remaining in the right-of-way with stones placed in the center of the lot, but outside of the right-of-way. A low hedge is proposed between the parking lot and the building. This would have no effect on screening the parking lot from the street. The Department of Public Works has requested that the parking be removed from the right-of-way. Additionally, staff would recommend that adequate landscaping be provided between the right-of-way and the parking area to provide an effective landscape screen of the parking area.
- ◇ The back parking lot is fenced. The fence is topped with barbed wire. Barbed wire is not permitted under the Ordinance except for livestock and Public Safety properties such as correctional facilities. The barbed wire should be removed.

(Continued)

STAFF REPORT 2022-CZN-868 / 2022-CVR-868 (Continued)**GENERAL INFORMATION****EXISTING ZONING, CONTEXT AREA, AND LAND USE**

D-A	Metro	Religious use
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SURROUNDING ZONING AND LAND USE

North	C-7	Undeveloped and wooded land
South	D-A	Undeveloped and wooded land
East	D-2	Railroad right-of-way, undeveloped and wooded land, parking lot
West	C-1	Credit Union with drive-thru

COMPREHENSIVE LAND USE PLAN	The Comprehensive Land Use Plan for Warren Township (2018) recommends Office Commercial.
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THOROUGHFARE PLAN	Shortridge Road is classified in the Official Thoroughfare Plan for Marion County, Indiana as a Local Street, with a 115-foot existing right-of-way and a 60-foot proposed right-of-way.
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FLOODWAY / FLOODWAY FRINGE	This site is not located within a floodway or floodway fringe.
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WELLFIELD PROTECTION DISTRICT	This site is not located within a wellfield protection district.
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STREAM PROTECTION CORRIDOR	This site is not located within a Stream Protection Corridor.
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ZONING HISTORY – SITE

86-UV1-4; 431 South Shortridge Road, requested a variance of use to permit an addition to an existing union hall, **approved**.

ZONING HISTORY – VICINITY

2018-ZON-068; 405, 409 & 411 South Shortridge Road (north of site), requested the rezoning of 8.8 acres from the D-11 and C-7 districts to the C-S district to provide for C-1 and I-1 uses, warehousing, commercial and building contractor, truck and trailer parking, heavy truck, heavy equipment and vehicle sales repair and service, **approved**.

(Continued)

STAFF REPORT 2022-CZN-868 / 2022-CVR-868 (Continued)

2007-ZON-071; 415 South Shortridge Road (north of site), requested the rezoning of 2.7 acres from the C-1 district to the C-ID district, **approved**.

98-Z-100; 411 South Shortridge Road (north of site), requested the rezoning of 2.9 acres from the D-A district to the C-ID district, **approved**.

89-Z-144 / 89-CV-21; 405 South Shortridge Road (north of site), requested the rezoning of 5.5 acres from the A-2 district to the D-11 district and a variance of development standards to provide for deficient perimeter yards and deficient distance between buildings, **approved**.

86-UV1-1; 411 South Shortridge Road (north of site), requested a variance of use to provide for a storage and maintenance building for an electric company and the operation of a automobile and small engine repair facility, **approved**.

86-Z-78; 415 South Shortridge Road (north of site), requested the rezoning of four acres from the A-1 district to the C-1 district, **approved**.

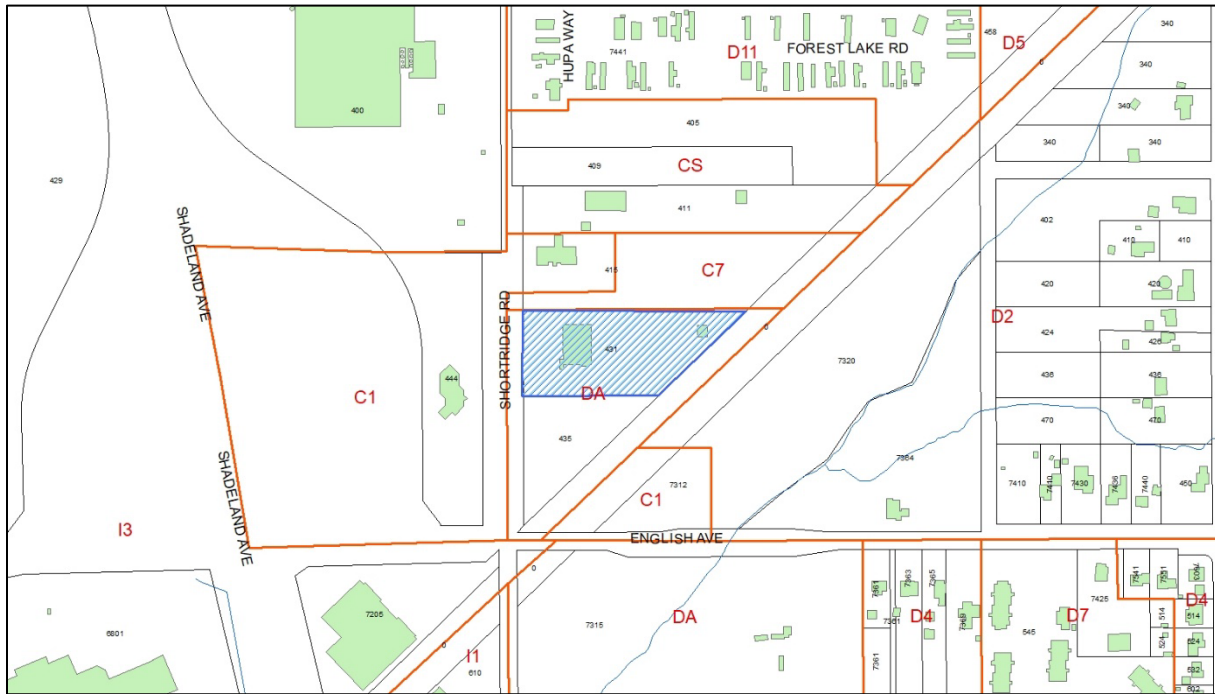
85-Z-157; 7302 English Avenue (south of site), requested the rezoning of 1.1 acre from the D-2 district to the C-1 district, **approved**.

84-UV1-40; 411 South Shortridge Road (north of site), requested a variance of use to provide for retail and repair of commercial search lights, electrical contractor, fabrication, maintenance and sales of radio towers, auto repair and outdoor storage, **approved**.

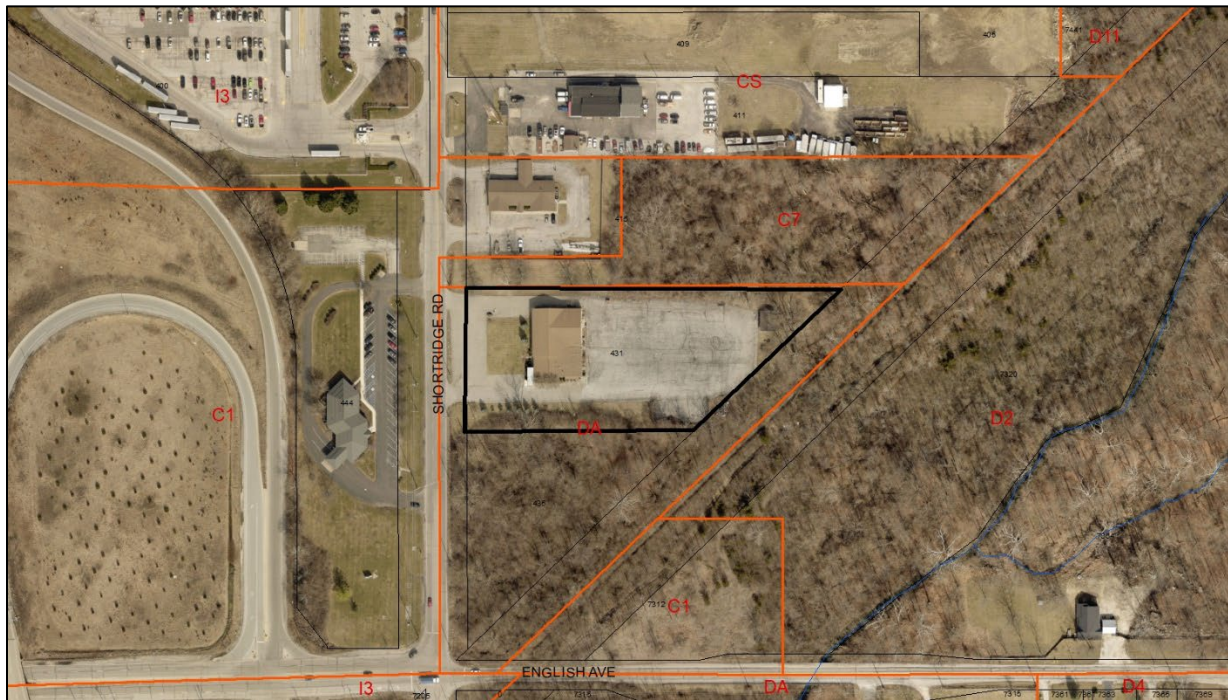
83-UV2-119; 405 South Shortridge Road (north of site), requested a variance of use to provide for automobile service and storage in an A-2 district, **denied**.

klh

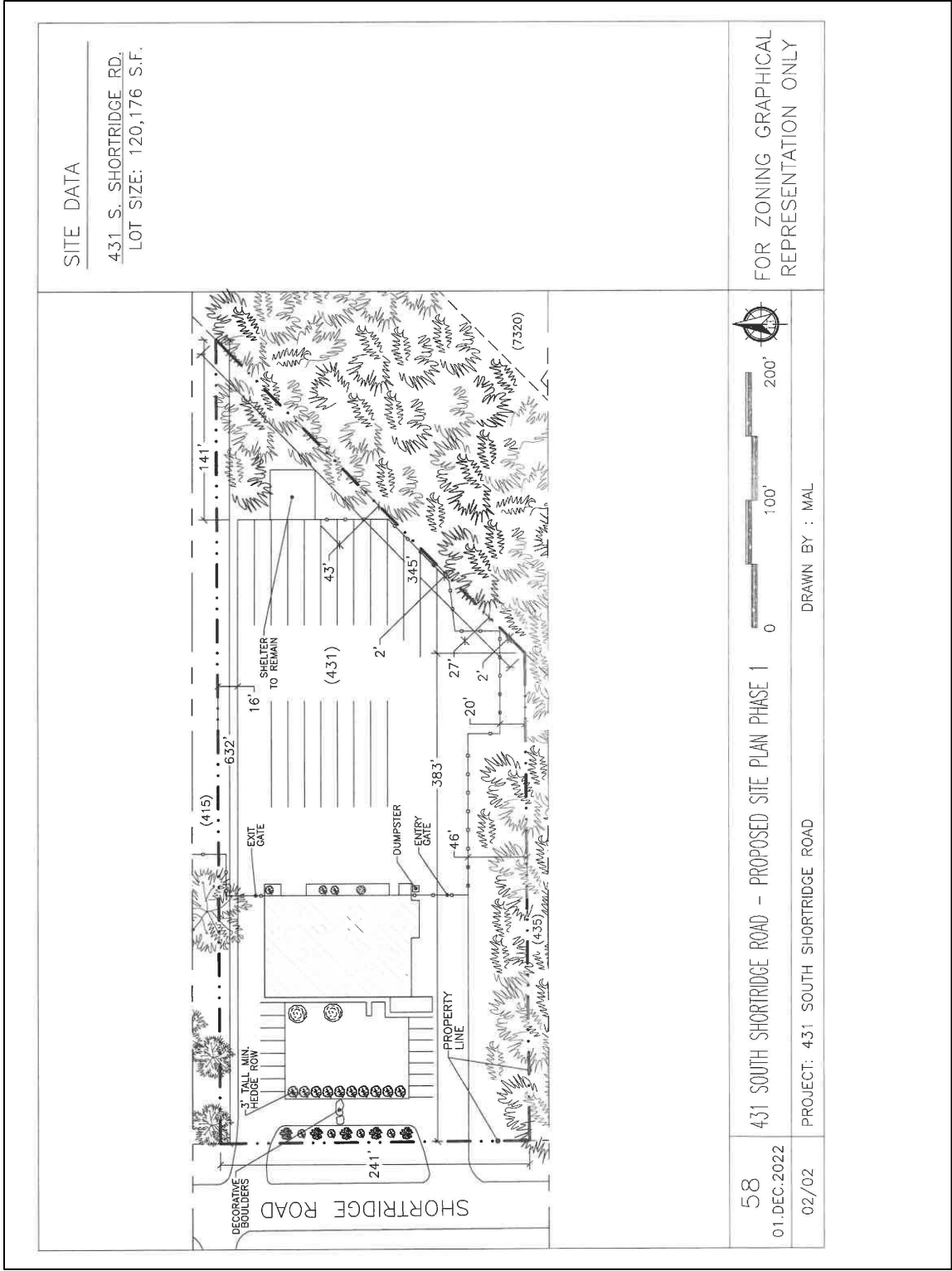
STAFF REPORT 2022-CZN-868 / 2022-CVR-868, Location



STAFF REPORT 2022-CZN-868 / 2022-CVR-868, Aerial photograph (2021)



STAFF REPORT 2022-CZN-868 / 2022-CVR-868, Site Plan



STAFF REPORT 2022-CZN-868 / 2022-CVR-868, Proposed Commitments

ATTACHMENT "C"

Development Plan and Site Plan to allow:

Uses:

1. Truck Fleet Services.
2. Event Center
3. All C1 uses except those listed in the Excluded uses

Building:

Retention of the existing building for the office of both the operation of a commercial truck parking facility and other offices for lease for any C1 use other than those escluded from this site.

Parking:

Thirty (30) parking spaces with one (1) additional space reserved for the handicapped, to serve the site.

Signs:

Wall signs and one ground sign, with no signs of any type oriented towards a protected district shall be permitted. Directional signs shall be permitted

No pole signs shall be permitted or sought for approval on the site.

No off-site advertising signs shall be erected on the site.

Landscaping, screening and buffering:

Install the landscaping along So. Shortridge Road where indicated on the site plan, per plans on file.

Security:

Monitored by security cameras, minimum of six (6)

Lighting:

Parking lot lighting may be used on the site, with no light spillage off the site or oriented towards any protected district.

Box lighting shall be used and affixed to the existing building.

Trash Collection:

All dumpsters shall be behind or to the side of the buildings and to the southeast of the building; and enclosed and gated so as not to be visible, from any public street.

12/13/22

ATTACHMENT "E":

Petitioner commits to exclude the following C1 uses from the subject site:

1. Substation and utility Distribution
2. Wireless Communications facility
3. Transit Center
4. Indoor recreation and entertainment
5. Retail, Light general
6. Parking garage commercial
7. Drive through
8. Outdoor seating or patio
9. Recycling collection point
10. Sidewalk Café
11. Swimming pool or hot tub

12/13/22

STAFF REPORT 2022-CZN-868 / 2022-CVR-868, Findings of Fact

Petition Number _____

**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: With the "no touch" zone for the buffering to the south and to the east, and the former railway line to the east; the grant shall not be injurious to the general welfare of the community.

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 trend of the area development along both sides of Shortridge Road, from East Washington Street to East English Street is heavy commercial and thus the "No touch zone" along the transitional yards on the two sides, provides for that area adjacent to be affected in a positive manner.

3. THE STRICT APPLICATION OF THE TERMS OF THE ZONING ORDINANCE WILL RESULT IN PRACTICAL DIFFICULTIES IN THE USE OF THE PROPERTY BECAUSE:

The parking lot is existing and thus the transitional yards are already reduced in width and with the "no touch zone" to the south and east will allow the property to be used and leave all of the existing trees and vegetation and not shrink the parking lot by removing some of the asphalt.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ Day of _____, 20 ____

STAFF REPORT 2022-CZN-868 / 2022-CVR-868, Photographs



Looking east at the subject site.



Looking east along the northern edge of the site.



Looking east along the southern edge of the site.



Looking west along the southern edge of the site.



Looking north along Shortridge Road.



Looking south along the Shortridge Road frontage. Roughly the western half of the parking lot is in the right-of-way.



Looking east from Shortridge Road at the parcel to the north of the site. The site is to the right. A daycare operates behind the green fence to the left.



Looking southwest across Shortridge Road at the neighbor to the west.

STAFF REPORT

Item 10.

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-MOD-023
Address: 5340 Senour Road (*approximate addresses*)
Location: Franklin Township, Council District #25
Zoning: D-4
Petitioner: M/I Homes of Indiana L.P., by Joseph D. Calderon
Request: Modification of Commitments related to 2021-ZON-009 to modify:

Commitment #3 to permit two-story duplex dwellings with a minimum of 1,500 square feet (previous commitment allowed for single-story duplex dwellings with lofts, with a minimum of 1,400 square feet)

Commitment #27 to update the architectural character representations to include two-story dwellings.

RECOMMENDATIONS

Staff has **no recommendation** of the request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE ISSUES

- ◇ This 27.99-acre site, zoned D-4, is currently undergoing development as a residential subdivision. It is surrounded by residential uses (undergoing development) to the north, zoned D-4; a single-family dwelling and religious uses to the south, zoned D-A and SU-1, respectively; residential uses to the east, residential uses to the east, zoned D-1, D-3 (across Senour Road) and D-4; and agricultural uses to the west, zoned D-A and D-4.

MODIFICATIONS

- ◇ This request would modify commitments related to 2021-ZON-009 to modify Commitments #3 permit two-story duplex dwellings with a minimum of 1,500 square feet. The previous commitment allowed for single-story duplex dwellings with lofts, with a minimum of 1,400 square feet and Commitment #27 to update the architectural character representations to include two-story dwellings. See Exhibit A.

(Continued)

- ## GENERAL INFORMATION

D-A

Agricultural uses

North - D-4

Residential uses

South - D-A / SU-1

Agricultural uses / Religious uses

East - D-1 / D-3 / D/4

Single-family dwellings

West - D-A / D-4

Agricultural uses

The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends office / industrial mixed-use.

This portion of Senour Road is designated in the Marion County Thoroughfare Plan as a primary arterial, with an existing 30-foot right-of-way and proposed 80-foot right-of-way.

This site is located within the metro context area.

This site is located within a 100-year flood plain

2021-ZON-009; 5340 and 5440 Senour Road and 10351 East Thompson Road, requested Rezoning of 92 acres from the D-A and SU-1 districts to the D-4 district classification, approved.

2016-CZN-841 / 2016-CPL-841; 11011 East Thompson Road (east ops site), requested rezoning of 62 acres from the D-A (FW) (FF) district to the D-P (FW) (FF) classification to provide for single-family residential development at a density of 2.33 units per acre and approval of a Subdivision Plat to be known as Sagebrook Subdivision, dividing 61.82 acres into 144 lots, **approved.**

142

2009-ZON-034; 7400 Acton Road (including other various addresses) (south of site), requested rezoning of 463.544 acres from multiple zoning districts to the PK-1 classification to provide for park and recreational uses, **approved**.

2007-ZON-859; 5430 and 5440 Senour Road (south of site), requested rezoning of 13.46 acres, from the D-A District, to the SI-1 classification to provide for religious uses; rezoning of 10 acres from the D-A District to the I-2-S classification to provide for light industrial suburban uses; rezoning of 2.48 acres, from the D-A District to the D-1 classification to provide for residential uses; a variance of development standards of the Industrial Zoning Ordinance to provide for a 10-acre industrial lot with zero feet of public street frontage; variance of development standards of the Dwelling Districts Zoning Ordinance to legally establish a detached garage in front of the established front building line a detached garage resulting in excess accessory building and use area; and approval of a subdivision plan, **approved and granted**.

2006-ZON-064; 10559 East Thompson Road (north of site), requested rezoning of 3.57 acres from the SU-2 District, to the SU-9 classification to provide for the construction of a fire station, **approved**.

2005-DV2-062A and B; 5421 Senour Road (south of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance, to provide for the construction of a 23-foot-tall accessory building with a reduced north side setback, **granted**.

2003-ZON-060; 10500 East Thompson Road (north of site), requested rezoning of 422.943 acres from D-P to D-P to provide for a mixed-use development, including single-family dwellings, a golf course, and a neighborhood commercial center, **approved**.

96-Z-18; 10500 East Thompson Road (north of site), requested rezoning of 423 acres from the D-A District to the D-P classification to provide for a mixed-use development including single-family dwellings, a golf course, and a neighborhood commercial center, **approved**.

91-Z-63; 10551 East Thompson Road (north of site), requested rezoning of 30 acres from the A-2 District to the SU-2 classification to provide for a public school, **approved**.

kb

EXHIBIT A – Existing Commitments

Item 10.

A202100107502

08/12/2021 08:49 AM
KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER
FEE: \$ 35.00
PAGES: 16
By: AB

STATEMENT OF COMMITMENTS

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL

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 that parcel of real estate:

Legal Description: See Exhibit "A" attached hereto and incorporated by reference (the "Subject Property")

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. Single Family Section. Any home constructed in this area as shown on the concept plan attached hereto as Exhibit "B" (the "Concept Plan") shall contain livable space (this term as used herein shall not include the garage or any open porch) of no less than 1900 square feet for a 1-story home, and no less than 2200 square feet for a home in excess of 1-story.
3. Duplex Section. Any duplex home constructed in this area, as shown on the Concept Plan, shall contain livable space of no less than 1400 square feet per unit on the main floor. Second story loft area is permitted up to 50% of the main floor living area. Master bedrooms to remain on the main floor.
4. New sidewalks will be constructed on the interior streets of the subdivision, not less than four feet (4') in width, and the separation between the curb and the closest edge of the sidewalk (not including corners, connections to cross streets, trails, and the like) shall not be less than three feet (3'). Sidewalks no less than 5 feet in width shall be constructed along the perimeter of the proposed subdivision along its Senour Road and Thompson Road frontages.

MDC's Exhibit B -- page 1 of 15



5. Vinyl siding shall be permitted on any exterior wall of the Duplex Section, so long as the minimum thickness of any such vinyl is .46 inches or greater. The vinyl siding shall also be textured and show a reveal pattern that simulates wood. No "dutch lap" vinyl siding is permitted. Additionally, siding on homes in the Single Family Section shall be required to have "Hardie Plank" or similar cementitious material.
6. All homes shall feature dimensional shingles and twelve inch (12") roof overhangs, measured before installation of brick or siding.
7. There will be no less than 15 feet of separation between buildings, not including roof overhangs.
8. A landscaped area of no less than 20 feet in width will be provided along the perimeter of the development fronting on Senour Road, as shown on the Concept Plan. The landscaped area shall be planted with a minimum of least 4 Evergreen trees (firs or spruces); 2 Canopy trees (one of which shall be a hardwood, 2 Ornamental trees, and 6 shrubs for every 100 lineal feet of frontage along Senour Road and Thompson Road.
9. Existing, healthy and non-invasive trees greater shown on the Concept Plan as "Tree Preservation Area" shall be reasonably preserved to the extent possible.
10. The development shall be in reasonably substantial conformance with the Concept Plan. However, the above commitment is not intended to prohibit reasonable variances from the Concept Plan, in recognition that the Preliminary Plan is a Conceptual Plan which is still subject to actual engineering after this rezoning is approved.
11. No more than 140 Single Family homes and no more than forty (40) Duplexes (80 individual units) will be permitted on the Subject Property.
12. The subdivision will have a homeowner's association ("HOA"). The HOA shall be created and controlled by the developer or its designee until the subdivision or applicable portion thereof is turned over to the homeowners in the subdivision, which shall be no later than one year after the home on the last lot in the subdivision is completed and sold to a homeowner. The HOA shall be responsible for mandatory membership, mandatory lien enforced assessments, and the collection of said assessments upon improved lots to support the HOA in, among other things, the expense of maintenance and taxes of the common areas such as retention ponds, nature areas, any interior trail, open space, perimeter landscaping, snow removal from subdivision streets to supplement city snow removal, and payment of utility expenses for interior and entry street lights. The HOA will be required to be professionally managed from a third party management company. The HOA shall make all financial records related to income and expenses of the HOA available for review upon at least five days' written request by residents of the subdivision. At the time control of the HOA is turned over to the homeowners, the Developer will provide the Franklin Township Civic League with the name, address and telephone number of the initial contact for the HOA.
13. The HOA shall have appointed from among its members (being the developer or its designee until after all the residences have been completed, unless developer otherwise elects) an Architectural Review Board or Committee (hereinafter "ARC") which shall have the power to approve or disapprove all house plans, additions or alterations thereto, together with any proposed accessory structures and or appurtenances, including but not limited to fencing, pools, pool houses, outbuildings, playground equipment, and the like. Any such approvals must be in compliance with the commitments contained in this document.
14. No outside storage of un-licensed vehicles, inoperable vehicles, RV's, trailers, boats or boat trailers shall be permitted.

15. No above ground pools shall be permitted.
16. All single-family homes shall have a landscaping package at the time of original construction to include, at a minimum, grading and seeding of the yards, and foundation plantings to include a minimum of two (2) deciduous trees planted in the front yard (one of which shall be a hardwood) not less than one and one half inch caliper, plus not less than eight (8) foundation plantings along the front elevation. The trees planted as a part of this landscaping package shall be planted within three (3) months of the completion of the home, weather and appropriate planting seasons permitting. If trees planted as part of this commitment are removed or die from other causes, said trees shall be replaced within six (6) months to bring the property into compliance with the commitments.
17. All of the homes shall have an attached garage capable of storing at least two (2) vehicles, and contain not less than 400 square feet (not including any garage area use for the furnace, water heater or similar mechanicals) and will be added as a requirement in the CCR's.
18. Site access, location, and design approval shall be required from the City of Indianapolis Department of Public Works ("DPW"), Transportation Division, prior to plat approval. It is intended to provide two entrances to Senour Road and one entrance on Thompson Road.
19. No carports shall be permitted.
20. All driveways serving each single family home shall be hard surfaced; and street front facing garages shall have a driveway which is a minimum of sixteen feet (16') in width for the entire length of the driveway.
21. Any fencing installed on the common areas of the perimeter of the development shall be uniform and consistent. Any other fencing permitted to be installed on a lot shall be limited to side and rear yards, and shall not extend any closer to the public street in front of the residence than the applicable rear corner of the residence. Any such fence shall not exceed five (5) feet in height. Chain link and wood stockade fences (solid board fences) shall not be permitted. Perimeter fencing on lots which have frontage on Southeastern Avenue shall be subject to the following conditions: (i) such fencing shall not exceed 48 inches in height; (ii) such fencing shall not exceed 50% opacity; and (iii) all such perimeter fencing shall be of the same design and contain the same materials. These fencing restrictions shall be incorporated into the CCR's, and the HOA shall be responsible for monitoring and enforcing this commitment.
22. A master drainage plan shall be designed for the development and submitted for the review and approval of the drainage division of DPW. At the same time the drainage plan is submitted to DPW, a copy of said plan shall be provided to the Franklin Township Civic League Land Use Committee for their review. Upon the request of the Franklin Township Civic League Land Use Committee, the Developer and its engineer shall appear at a monthly meeting of the Franklin Township Civic League Land Use Committee to explain and discuss the drainage plan.
23. A Preliminary Plat and a landscape plan shall also be designed and submitted as a part of the platting and permitting process. At the time each of these items are submitted, a copy shall be provided in advance to the Franklin Township Civic League Land Use Committee, for their review.
24. The landscaping installed by the Developer shall not include any white pines.
25. To insure and promote the quality appearance of the development, no two single family detached homes shall

- be developed with the same house elevation, either directly next to or directly across the street from one another.
26. Each residence shall have the street number of its address permanently affixed to the front of the home in a prominent place, utilizing numbers at least four (4) inches in height.
 27. The architecture of the homes shall be consistent with the character representations attached hereto as Exhibit "C".
 28. Any recommended infrastructure improvements not already planned as part of improvements to Senour Road or Thompson Road and identified in the Traffic Impact Study prepared by A&F Engineering and dated April, 2021 ("TIS") shall be approved by DPW, and DPW and Petitioner shall cooperate to reach agreement as to the installation of and cost sharing for any such approved infrastructure improvement. Specifically, the development shall contribute One Hundred Sixty-Five Thousand Two Hundred and No/100 Dollars (\$165,200.00) toward the cost of a future roundabout at the intersection of Thompson Road and Southeastern Avenue (the "Improvement Project"), payable in four (4) equal installments of Forty One Thousand Three Hundred and No/100 Dollars (\$41,300.00), pursuant to an Escrow Agreement to be entered into by and among Petitioner, the Department of Business and Neighborhood Services and an unrelated third party serving as Escrow Agent. Such installment payments shall be made to the Escrow Agent, once per year commencing upon the issuance of the first model home permit and the next successive three (3) anniversaries thereafter; provided, however, no such contribution shall be required if sufficient funding has not been obtained for the Improvement Project by December 31, 2026, and any amounts previously paid shall be refunded to Petitioner. Additionally, the Petitioner shall construct a passing blister at both entrances to the development on the Subject Property for northbound through traffic on Senour Road, if there is sufficient right-of-way to do so.
 29. A forty-five foot (45') half right-of-way, or so much as is needed for a forty-five foot (45') half right-of-way along the Thompson Road frontage of the Subject Property, and a forty foot (40') half right-of-way, or so much as is needed for a forty foot (40') half right-of-way along the Senour Road frontage of the Subject Property, both measured from the median of the existing right-of-way shall be dedicated (the "ROW Dedication"), to the City of Indianapolis Department of Public Works ("DPW"). Additional easements shall not be granted to third parties within the ROW Dedication area prior to acceptance of the ROW Dedication by DPW. The ROW Dedication shall be made within sixty (60) days following the adoption of 2021-ZON-009 by the City-County Council and in no event later than issuance of an Improvement Locations Permit ("ILP").
 30. A technical assessment shall be conducted prior to the issuance of an ILP to provide for a wetlands delineation to determine the type and quality of wetlands and how such area(s) could be preserved and integrated into the development as an amenity.
 31. A tree inventory, tree assessment and tree preservation plan (the "Tree Plan"), prepared by a certified arborist shall be submitted for Administrator's Approval prior to preliminary plat approval and in no event later than prior to any site preparation activity or disturbance of the Subject Property. The Tree Plan shall, at a minimum: a) indicate proposed development; b) delineate the location of existing trees; c) characterize the size and species of such trees; d) indicate wooded areas to be preserved by shading or some other means of indenting the tree areas to be preserved; and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the trees individual drip line during construction activity. All trees proposed for removal shall be indicated as such.
 32. The proposed sanitary sewer trunk line to be installed in the right-of-way along the Subject Property's Senour Road frontage shall have sufficient capacity to serve the Allengale subdivision, and the Owner shall allow

connection to the trunk line by the Allengale subdivision; provided; however, Citizens Water shall approve any such connection.

33. The plat shall feature the required number of amenities under Chapter 741 of the Consolidated Zoning/Subdivision Ordinance. At least one of the amenities shall be the walking path shown on the Concept Plan.

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other person acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A" which is attached hereto and incorporated herein by reference. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition # 2021-ZON-009 by the City-County Council changing the zoning classification of the real estate from a D-A zoning classification to a D-4 zoning classification; or
 - (b) the adoption of approval petition # _____ by the Metropolitan Development Commission;
- and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the D-4 zoning classification or until such other time as may be specified herein.

These COMMITMENTS may be enforced jointly or severally by:

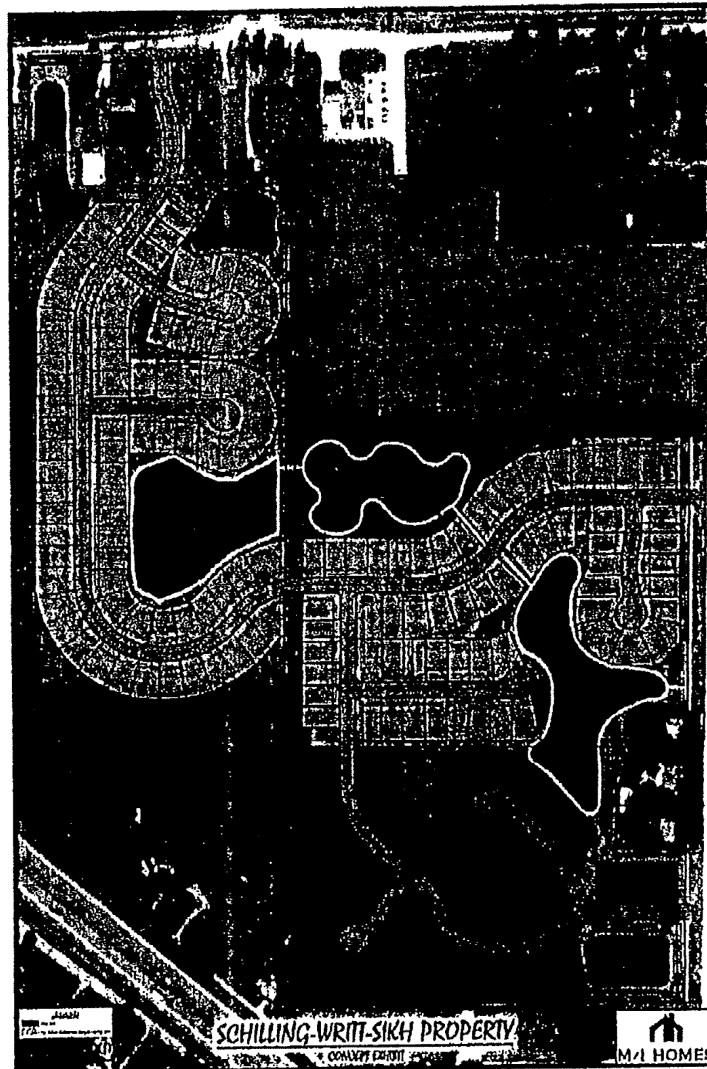
- 1. The Metropolitan Development Commission;
- 2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six-hundred-sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the petition who were not petitioners for the rezoning or approval. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various Township Assessors of Marion County which list the current owners of record. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning or approval under the rules in force at the time the commitment was made);
- 3. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and

The undersigned hereby authorizes the Division of Planning of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of petition # 2021-ZON-009.

[Signature pages follow]

EXHIBIT "B"

Concept Plan



MDC's Exhibit B -- page 12 of 15

EXHIBIT "C"

Architecture

Prestige Series



Prestige Series



Paired Villas



MDC's Exhibit B -- page 15 of 15

**STATEMENT OF MODIFICATION OR TERMINATION
OF COVENANTS OR COMMITMENTS**

**COVENANTS OR COMMITMENTS MODIFYING OR TERMINATING EXISTING COVENANTS OR
COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN
CONNECTION WITH AN APPROVAL PETITION, REZONING OF PROPERTY, A VARIANCE PETITION
OR SPECIAL EXCEPTION PETITION**

In accordance with I.C. 36-7-4-918.8 and I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of covenants or commitments concerning the use and development of that parcel of real estate:

Legal Description: See Exhibit “A” Attached Hereto And Incorporated By Reference (the “Subject Property”).

Statement of MODIFICATION OR TERMINATION of Covenants or Commitments:

1. Commitment #3 in that certain Statement of Commitments recorded as Instrument No. 2021-_____ in the Office of the Recorder of Marion County, Indiana (the “Existing Commitments”), is hereby replaced in its entirety by the following:
 “Duplex Section. Any duplex home constructed in this area, as shown on the Concept Plan attached hereto as Exhibit “B” shall contain livable space of no less than 1400 square feet per unit on the main floor. Second story loft area is permitted up to fifty percent (50%) of the main floor living area. Master bedrooms to remain on the main (first) floor. Any duplex home facing Aspen Wood Lane (consisting of Lots 27 A & B through Lots 48 A & B as shown on the approved Preliminary Plat from case # 2021-PLT-053) as shown on the Concept Plan attached hereto as Exhibit “B” may consist of Two (2) Story duplex homes that contain livable space of no less than 1500 square feet per unit.
2. Exhibit “C” attached to the Existing Commitments is hereby modified by adding the character representations of the two story duplex homes as shown on the attached Exhibit “C”.

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

COVENANTS or COMMITMENTS contained in this instrument shall be effective upon the adoption of modification or termination approved by the Metropolitan Development Commission in petition 2022-MOD-_____.

MDC's Exhibit C - - page 1 of 4

These COMMITMENTS may be enforced jointly or severally by:

1. The Metropolitan Development Commission;
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six-hundred-sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the petition who were not petitioners for the rezoning or approval. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various Township Assessors of Marion County which list the current owners of record. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning or approval under the rules in force at the time the commitment was made);

These COVENANTS may be enforced by the Metropolitan Development Commission.

The undersigned hereby authorizes the Division of Planning of the Department of Metropolitan Development to record this Covenant or Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of modification and/or termination of Covenant(s) or Commitment(s) of petition # 2022-MOD-____ by the Metropolitan Development Commission.

IN WITNESS WHEREOF, owner has executed this instrument this _____ day of _____, 2023.

M/I Homes of Indiana, L.P., an
Indiana limited partnership

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared _____, the general partner of M/I Homes of Indiana, L.P., an Indiana limited partnership, who acknowledged the execution of the foregoing instrument for and on behalf of said general partner of said limited partnership.

Witness my hand and Notarial Seal this

_____ day of _____, 20 _____

Notary Public

Printed Name of Notary Public

My Commission expires: _____

My County of residence: _____

I affirm under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document unless required by law. Joseph D. Calderon

This instrument was prepared by Joseph D. Calderon, Attorney-at-Law,
Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204.

This modification and/or Termination Agreement was approved by the Metropolitan Development Commission on the _____ day of _____, 2022.

Secretary, Metropolitan Development Commission

24281073.1



SAGEBROOK WEST

Franklin Township/Indianapolis

Marion County, Indiana

Proposed Revised Architecture for Paired Homes
November 16, 2022



SAGEBROOK WEST

Current Approved Development
Plan:

135 Single Family Lots: 70' by 125'
40 Paired Villa Lots (80 Units)
Total Dwellings = 215

Total Acres = 86 Acres
Density = 2.5 DU/AC



SAGEBROOK WEST



Proposed Product change to 2
story paired homes:



SAGEBROOK WEST

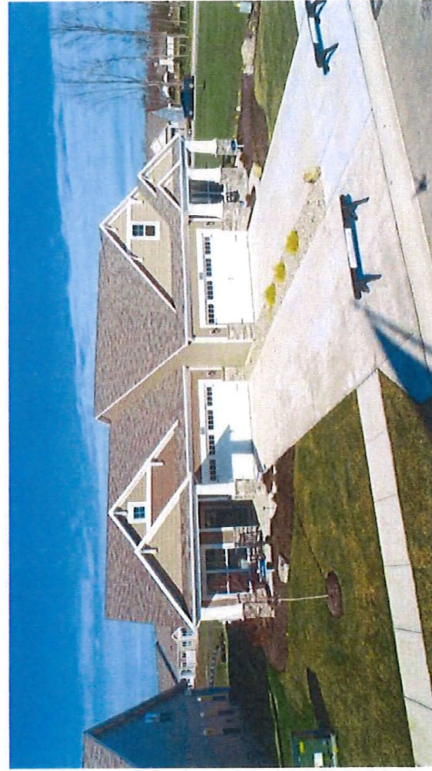


Proposed Product change to 2 story paired homes:

135 Single Family Lots: 70' by 125'
24 Paired 2 story Villa Lots (48 Units)
16 Paired 1 story Villa Lots (32 Units)
Total Dwellings = 215



Single Story Paired Villas:



5

 M/I HOMES

Item 10.

Two Story Paired Villas:



6



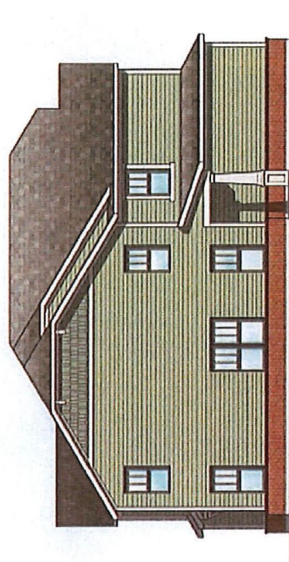
 M/I HOMES

Item 10.

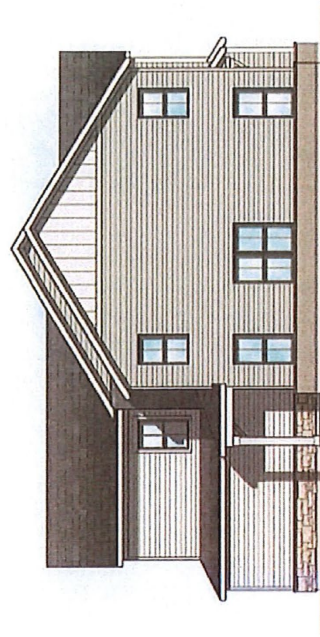
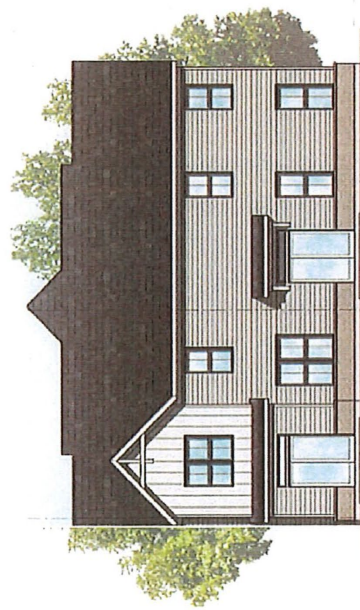
Two Story Paired Villas:



Rear Elevation
scale: 3/16" = 1'-0"



Left Elevation
scale: 3/16" = 1'-0"





View looking south along Senour Road



View looking north along Senour Road



View of site looking west across Senour Road



View of site looking west across Senour Road



View of site looking southwest



View from site looking east across Senour Road



View from site looking east across Senour Road



View of site looking south across East Thompson Road



View of site looking south across East Thompson Road