

## STAFF REPORT

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

**Case Number:** 2022-CZN-848 / 2022-CVC-848 / 2022-CVR-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 Michael Rabinowitch  
**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.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for encroachments into the clear-sight triangles of the abutting streets and alleys.

### **ADDENDUM FOR JUNE 29, 2023, HEARING EXAMINER, ASSESSMENT OF BENEFITS HEARING**

An appraisal has been submitted for the Hearing Examiner's consideration. Staff has reviewed the findings of the appraisal and agrees with its findings.

### **ASSESSMENT OF BENEFITS**

Appraiser Used: Paul K. Schuster  
Appraiser's Benefits: \$800.00  
Appraiser's Fee: \$800.00

**RECOMMENDED MOTION (approval):** That the Hearing Examiner sustain, confirm, approve and adopt the Final Assessment Roll in 2022-CVC-848, assessing benefits in accordance therewith, in the amount of \$800.00 and that the petitioner pay the Appraiser's Fee of \$800.00.

### **ADDENDUM FOR MAY 25, 2023, HEARING EXAMINER**

This companion petition was continued, by request of the petitioner, from the April 27, 2023, hearing to the May 25, 2023, hearing. Revised site plans and a set of conceptual plans were submitted to the file on April 18, 2023 and are inserted below. The conceptual plans indicate that there would be a proposed five-story multi-family development west of the existing gasoline station. The site plans indicate that the development would encroach upon the subject alley. Staff believes that this development is a missed opportunity to develop the corner of the site, at East Street and Ohio Street that could result in the removal of the gasoline station, a suburban-type development within the Mile Square. On May 17, 2023, revised Findings of Fact and a list of Commitments were submitted to the file. Staff continues to **recommend denial** of the variance and vacation petitions. Staff, continues to **recommend approval** of the rezoning petition.

(Continued)

## **STAFF REPORT 2022-CZN-848 / 2022-CVC-848 / 2022-CVR-848 (Continued)**

Vacation pavers – staff has been made aware that the existing pavers within the subject alley right-of-way are likely historic and could be salvageable. Staff would suggest that if the vacation would be approved a commitment should be made part of that approval. Staff, therefore, provides the following amended vacation recommendation:

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, and the following commitment:

All pavers within the proposed alley vacation right-of-way shall be removed with utmost care and donated to the Department of Public Works.

### **ADDENDUM FOR APRIL 27, 2023, HEARING EXAMINER**

This companion petition was continued, by request of the petitioner, from the January 26, 2023, hearing to the April 27, 2023, hearing. The owner of the site has retained new representation, who has submitted a written request to continue this companion petition. A hearing date was not identified in the request.

### **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:  
(Continued)

## **STAFF REPORT 2022-CZN-848 / 2022-CVC-848 / 2022-CVR-848 (Continued)**

**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.

### **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.

(Continued)

## **STAFF REPORT 2022-CZN-848 / 2022-CVC-848 / 2022-CVR-848 (Continued)**

### **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.

### **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 pavers, 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.

(Continued)

## **STAFF REPORT 2022-CZN-848 / 2022-CVC-848 / 2022-CVR-848 (Continued)**

- ◇ 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.
- ◇ 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 |
|---------------------------------|--|

#### **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             |

(Continued)

## **STAFF REPORT 2022-CZN-848 / 2022-CVC-848 / 2022-CVR-848 (Continued)**

|   |   |
|---|---|
| COMPREHENSIVE PLAN                                  | The Comprehensive Plan recommends the site for City Neighborhood development.   |
| 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. |
| URBAN DESIGN GUIDELINES<br>DISTRICT TYPOLOGY        | The site is located within the Urban mixed-use typology.  |
| TRANSIT-ORIENTED<br>DEVELOPMENT<br>VACATION EXHIBIT | The site is located within a transit-oriented development area.<br>File-dated August 1, 2022  |
| SITE PLAN / CONCEPT PLANS                           | File-dated April 18, 2023   |
| FINDINGS OF FACT<br>Revised                         | File-dated August 1, 2022<br>File-dated May 17, 2023  |

### **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**.

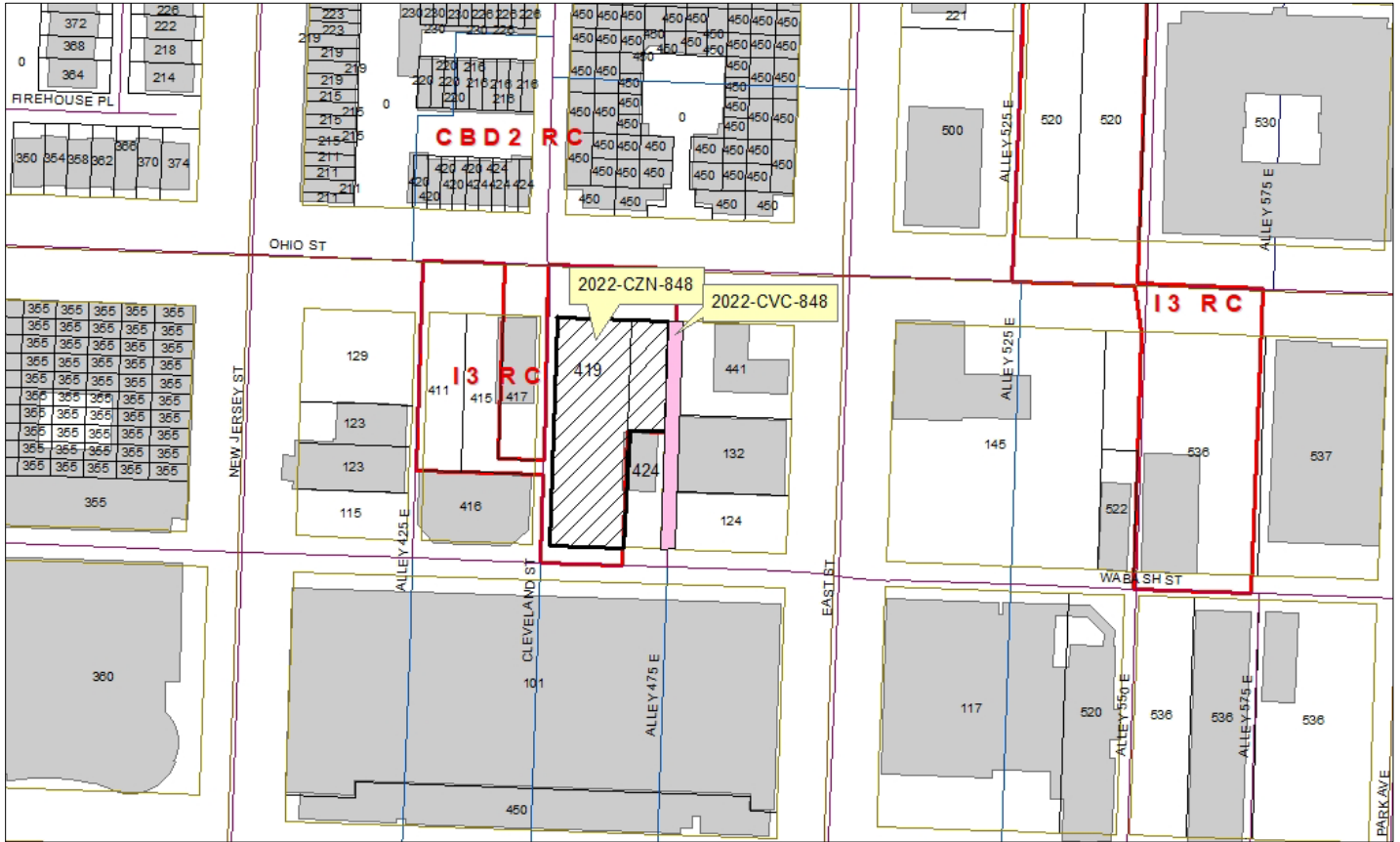
### **ZONING HISTORY - VICINITY**

None.

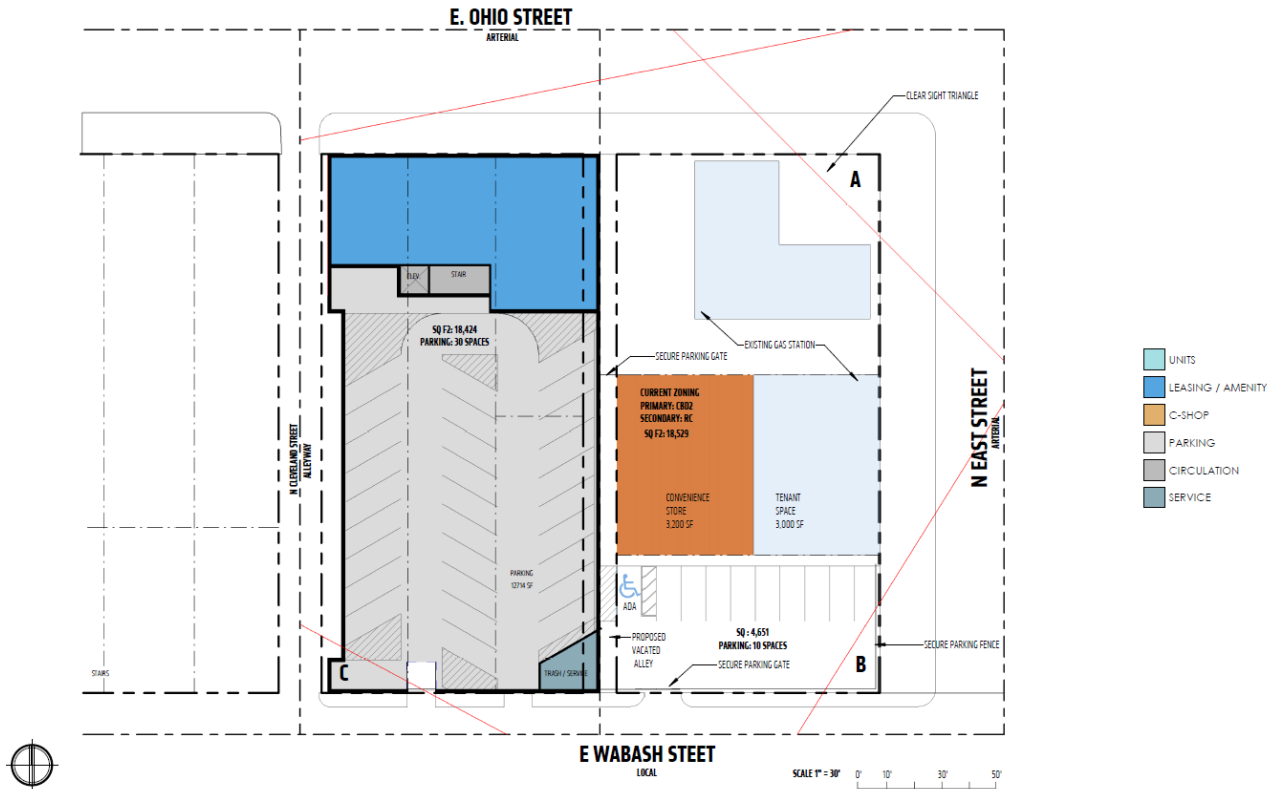
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**2022-CZN-828 / 2022-CVR-848 / 2022-CVC-848 (zoning and aerial maps)**



**2022-CZN-828 / 2022-CVR-848 / 2022-CVC-848 (site plans)**



### CONCEPTUAL GROUND FLOOR PLAN

STUDIO AXIS

04/14/2023



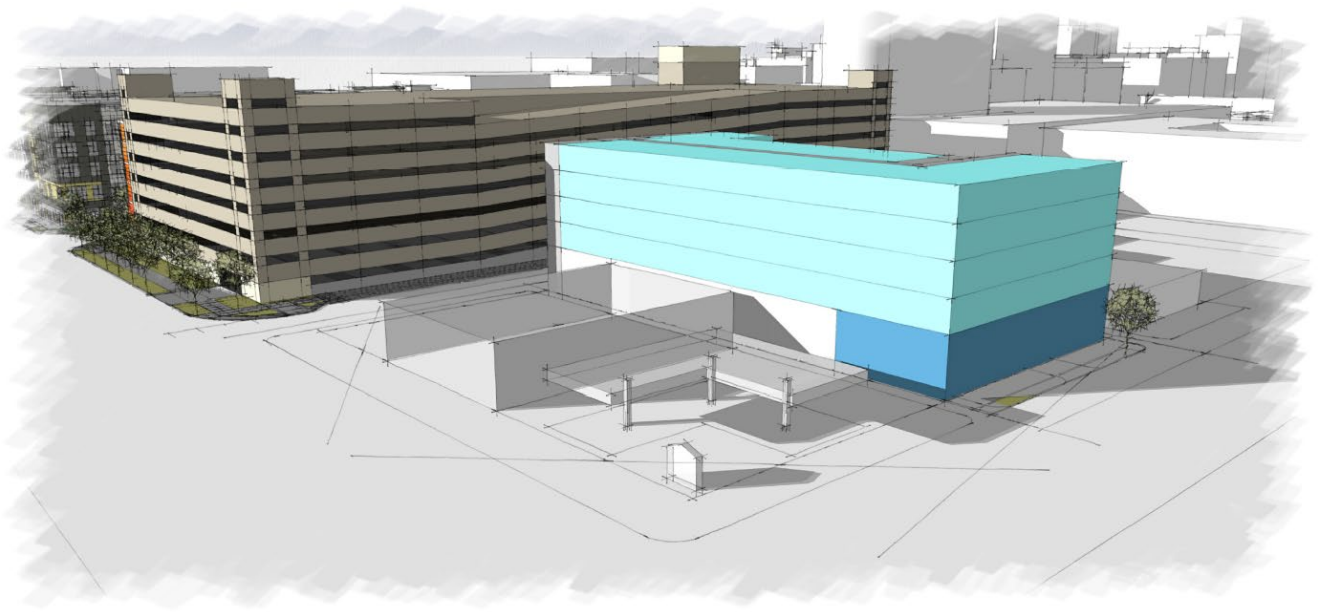
### CONCEPTUAL UPPER FLOOR PLAN



STUDIO AXIS

04/14/2023

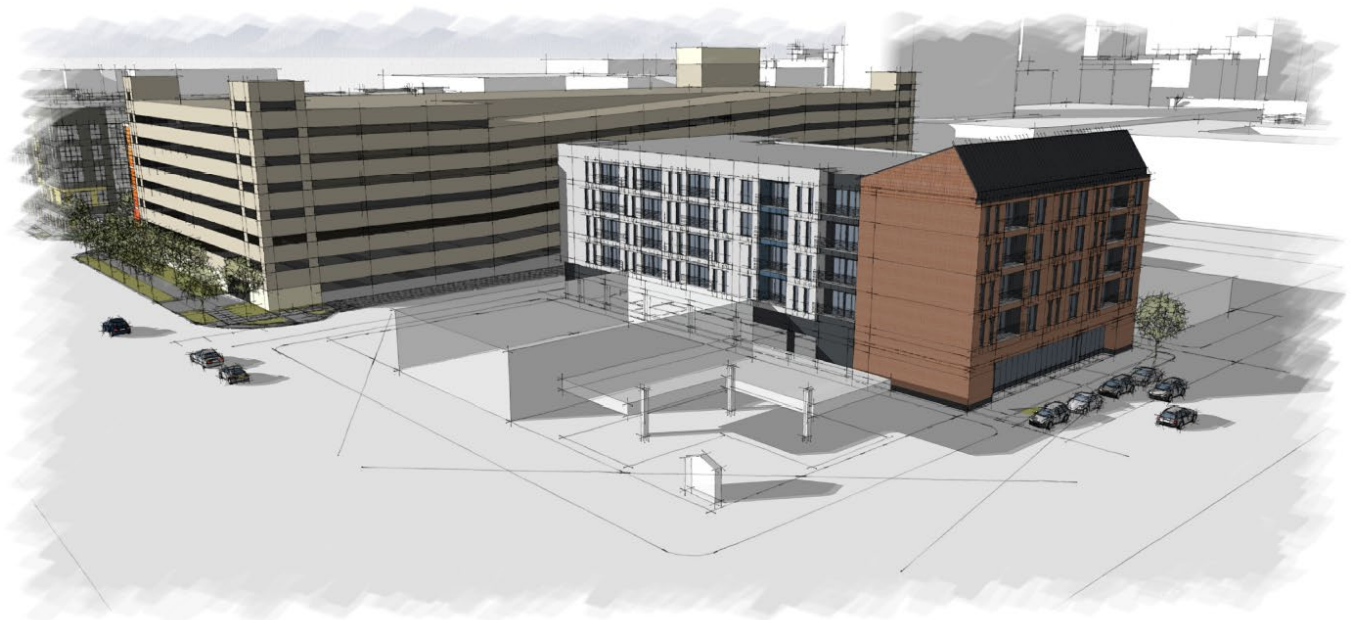




CONCEPTUAL BLOCKING DIAGRAM

 STUDIO **AXIS**

04/14/2023



EARLY DESIGN CONCEPT

 STUDIO **AXIS**

04/14/2023

MAIN STREET  
CONSULTING  
COMPANY

## ALLEY VACATION EXHIBIT

ALLEY TO BE VACATED, LOCATED WITHIN ISAAC COE'S SUBDIVISION OF SQUARE  
NUMBER 41 OF THE DONATION LANDS, AS RECORDED IN LAND RECORD "S", PAGE 611,  
IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA

DWN BY: 00  
PROJECT: 22.019  
SCALE: 1" = 40'  
DATE: 07.01.2022  
SHEET: 1 OF 1

Property address: West of 124 East Street, Indianapolis, Indiana

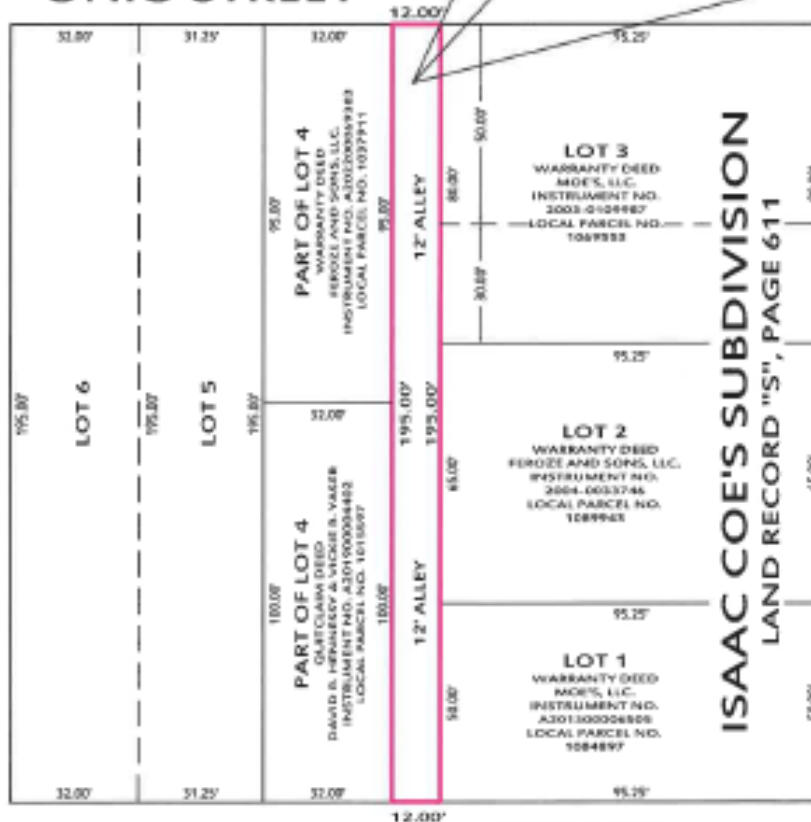
THIS EXHIBIT & THE ASSOCIATED LEGAL DESCRIPTION  
ARE NOT INTENDED TO BE REPRESENTED AS A  
RETRACEMENT OR ORIGINAL BOUNDARY SURVEY, A  
ROUTE SURVEY, OR A SURVEYOR LOCATION REPORT IN  
ACCORDANCE WITH 865 IAC 1-12-12 AND ARE BASED  
SOLELY UPON REFERENCE DOCUMENTATION. NO FIELD  
MEASUREMENTS WERE PERFORMED.

### PARCEL "A" (ALLEY VACATION)

0.054 ACRES±  
2,840 Sq. Ft.

## OHIO STREET

CLEVELAND STREET



### DESCRIPTION PARCEL "A" ALLEY VACATION:

The twelve (12) foot wide  
alley east of and adjacent  
to Lot 4 in Isaac Coe's  
Subdivision of Square  
Number Forty-one (41) of  
the Donation Lands in the  
City of Indianapolis, the  
plat of which is recorded  
in Land Record "S", page  
611, in the Office of the  
Recorder of Marion  
County, Indiana.  
Containing in all 0.054  
acres, more or less.

EAST STREET

WABASH

STREET

PREPARED BY: BRADLEY P. OTT  
REGISTRATION NO. 9600012  
IN THE STATE OF INDIANA  
Certified: July 1, 2022

*Bradley P. Ott*



SCALE: 1" = 40'  
0 10 20 40

Metropolitan Development

Aug 01 2022

Division of Planning

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: it will permit the vacated area, which is seldom used by through traffic and does not serve any significant transportation purpose, to be incorporated into a comprehensive development of the adjacent property and thus eliminating from the Regional Center and the Cole Noble neighborhood three surface parking lots. The alley serves no public use at the present time, as no motor vehicles, bicycles, scooters use the alley to travel between East Ohio Street and East Wabash Street. Moreover, the alley has become a safe haven for crime and inappropriate and lewd behavior.

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**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 \_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_





View of existing structure at 419 East Ohio Street and the proposed subject alley





View of existing building at 419 East Ohio Street and surface parking lots, from the west looking east





View of existing building at 419 East Ohio Street and subject alley





View of south end of site, looking west





View of the subject alley looking north toward Ohio Street





Close-up view of existing condition of the subject alley