

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-CAP-819 / 2023-CVR-819
Address: 2801 South Pennsylvania Street (*Approximate Address*)
Location: Center Township, Council District #16
Petitioner: 2801 S Pennsylvania LLC, by Jason E. Burk
Zoning: D-8
Requests: Modification of Commitments related to 2019-ZON-086, modifying Commitment Four to reduce the amount of required parking to 1.75 spaces per residential unit, from two spaces per unit, and Commitment Ten to allow for additional lighting elements and height placement.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for parking areas up to 583 feet wide within the front yards of the subject site, depending on final site plan (parking areas within front yard limited to 30-foot widths).

ADDENDUM FOR JUNE 29, 2023, HEARING EXAMINER

The Hearing Examiner continued these petitions from the June 15, 2023 hearing, to the June 29, 2023 hearing, because no one appeared on behalf of the petition.

ADDENDUM FOR JUNE 15, 2023, HEARING EXAMINER

The Hearing Examiner continued these petitions from the May 25, 2023 hearing to the June 15, 2023 hearing, to provide additional time for the petitioner's representative to clarify the location and number of parking spaces.

May 25, 2023

The Hearing Examiner continued these petitions from the May 11, 2023 hearing, to the May 25, 2023 hearing, at the request of staff to provide additional time to clarify rights-of-way.

RECOMMENDATIONS

Staff has **no recommendation** for the modification of commitments.

Staff would, however, request 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 25-foot half right-of-way shall be dedicated along the frontages of Yoke Street and Delaware Street, 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 rights-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).

(Continued)

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2. The site plan and final elevations shall be submitted for Administrator's Approval prior to the issuance of an Improvement Location Permit (ILP).

Staff **recommends approval** of the variance of the development standard, subject to the commitments above being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

- ◇ This 3.91-acre site, zoned D-8, is developed with a three-story brick structure. It was originally constructed as a school and was later converted to office use (Petition 81-Z-88). It is surrounded by single-family dwellings to the north, across Yoke Street; single-family dwellings to the south; single-family dwellings to the east, across Delaware Street; and single-family dwellings to the west, across Pennsylvania Street, all zoned D-5.

MODIFICATION

- ◇ This request would modify commitments related to 2019-ZON-086, modifying Commitment Four to reduce the amount of required parking to 1.75 spaces per residential unit, from two spaces per unit, and Commitment Ten to allow for additional lighting elements and height placement.
- ◇ This request would modify commitments for the Rezoning Petition 2019-ZON-086 (See Exhibit "A"). The commitments relating to the number of parking spaces and lighting elements were originally the result of negotiation between the petitioner and remonstrators during the 2019 rezoning process. Because staff played no role in the negotiation of these subject commitments, staff would ordinarily provide no recommendation under such circumstances. Staff would note, however, that the neighborhood organization negotiated in good faith with the petitioner during the petition process, and their agreement was contingent upon all commitments being included with the rezoning petition.
- ◇ Staff would note that the modifications requested relates to the site plan submitted with the 2019 rezoning (See Exhibit B). The site plan submitted with this modification petition is substantially changed. Consequently, staff would request Administrator Approval of the site plan prior to the issuance of an Improvement Location Permit (ILP).

Department of Public Works

- ◇ The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of 25-foot half rights-of-way along Yoke Street and South Delaware Street. This dedication would also be consistent with the Marion County Thoroughfare Plan.

(Continued)

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VARIANCE OF DEVELOPMENT STANDARDS

- ◇ This request would provide for parking areas up to 583 feet wide within the front yards of the subject site, depending on final site plan when the Ordinance limits parking areas in the front yard to 30-foot widths.
- ◇ The grant of a variance of development standards requires a finding that the strict application of the terms of the Ordinance will result in a practical difficulty in the use of the property.
- ◇ Staff believes a practical difficulty exists on this site because of the three public street frontages. Development of the site for multi-family dwellings would be impossible without the grant of this variance.
- ◇ Additionally, this site was rezoned to the D-8 district prior to the current Ordinance update that included the provision related parking in the front yard.
- ◇ Consequently, staff supports the request to provide for parking areas within the front yard that exceeds the 30-foot width.
- ◇ Because of the impact of this development, staff would request Administrator Approval of the elevations prior to the issuance of an Improvement Location Permit to assure that the elevations would be compatible with the existing building and surrounding neighborhood.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-8 Office building (vacant)

SURROUNDING ZONING AND LAND USE

North -	D-5	Single-family dwelling
South -	D-5	Single-family dwelling
East -	D-5	Single-family dwelling
West -	D-5	Single-family dwellings

COMPREHENSIVE PLAN	The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends office commercial typology.
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THOROUGHFARE PLAN	This portion of Pennsylvania Street is designated in the Marion County Thoroughfare Plan as a local street, with an existing 40-foot right-of-way and a proposed 48-foot right-of-way. This portion of Yoke Street is designated in the Marion County Thoroughfare Plan as a local street, with an existing 36-foot right-of-way and a proposed 48-foot right-of-way. This portion of Delaware Street is designated in the Marion County Thoroughfare Plan as a local street, with an existing 24-foot right-of-way and a proposed 48-foot right-of-way.
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(Continued)

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CONTEXT AREA	This site is located within the compact context area.
OVERLAY	There is no overlay for this site.
SITE PLAN	File-dated March 14, 2023
ELEVATIONS	File-dated March 14, 2023
FINDINGS OF FACT	File-dated March 14, 2023

ZONING HISTORY

2019-ZON-086, 2801 South Pennsylvania Street, requested rezoning of 3.91 acres from the C-1 district to the D-8 district, **approved**.

2005-ZON-036; 2801 South Pennsylvania Street, requested rezoning of 4.0 acres from the C-1 District to the SU-7 classification to provide for the development of a women's center housing up to 120 women and children, **withdrawn**.

2004-UV3-006; 2801 South Pennsylvania Street, requested a variance of use of the Commercial Zoning Ordinance to provide for a two-story multi-family dwelling in an existing 13,630 square foot building and to provide for a 27,924-square foot, two-story addition resulting in a total of 35 units, **withdrawn**.

81-Z-889, 2815 South Pennsylvania Street, requested rezoning of 3.91 acres from the SU-2 District to the C-1 classification to provide for office use, **approved**.

kb



2801 South Pennsylvania Street

0 0.0076.015 0.03 0.045 0.06 Miles



[illegible]



EXHIBIT A

KS
A201900125560

12/13/2019 11:36 AM
KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER
FEE: \$ 35.00
PAGES: 7
By: KS

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 ("Owner"), makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

Legal Description: See Exhibit A attached hereto (the "Real Estate").

STATEMENT OF COMMITMENTS:

1. 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 as Exhibit B and incorporated herein by reference.
2. A 25-foot half right-of way shall be dedicated along the frontage of South Pennsylvania Street, 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 maximum number of residential units on the Real Estate shall be seventy (70) units.
4. There shall be a minimum of two (2) interior (garage) or exterior parking spaces per residential unit.
5. Each residential unit shall be limited to a studio, one (1) bedroom, two (2) bedrooms, or three (3) bedrooms. A maximum of ten (10) units may contain three (3) bedrooms.
6. The occupancy ratio of any residential unit shall not exceed 3:1 (i.e. three (3) adults (persons over the age of eighteen (18) years old) to one (1) residential unit).
7. All leases for residential units must be for a term of at least six (6) months unless preceded by a term of at least six (6) months for the same resident (i.e. a lease renewal term may be for a duration less than six (6) months, so long as the original lease term was for at least six (6) months). None of the apartment units on the Real Estate shall be used for short term lodging (e.g. Airbnb).
8. All leases for residential units shall be developed, marketed, leased and maintained as full "market rate" units.

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9. A six-foot (6') high black, decorative wrought iron-type ornamental fence or a six-foot (6') high cedar wood plank fence shall be constructed, maintained and repaired around the pool and playground areas.
10. There shall be no overhead pole lighting along the property lines of the Real Estate, except for street lighting provided by or required by the City of Indianapolis. There shall be no floodlights or other exterior lighting other than ground level landscape lighting or foot lighting near ground level along the property lines of the Real Estate; provided that each unit along such area may have up to two (2) coach lights on the front elevation of these units. Except for wall-mounted "down" lights located on balconies, any overhead pole lighting or coach lights within the development shall not be more than eight feet (8') tall or attached to any structure more than eight feet (8') off the ground. In order to reduce light spillage, all lighting in the development shall include shields, deflectors, or other reasonably sufficient measures to ensure that light generated by the development is directed downward.
11. Owner shall maintain all improvements on the Real Estate in a manner that complies with the following requirements:
 - A. The roof of all buildings shall be (i) inspected not less than once every five (5) years by a qualified roofing contractor, and (ii) replaced when determined necessary by such roofing contractor; provided, however, any twenty-five (25) year roofs installed on any townhomes on the Real Estate need only be inspected once every ten (10) years by a qualified roofing contractor. Any damage to a roof shall be repaired as soon as reasonably possible. If metal roofing materials are used and discoloration of portions of any roof occurs that are visible from the boundary of the Real Estate, actions will be taken in a timely manner to ensure the discoloration is corrected.
 - B. All painted surfaces on all buildings shall be repainted not less than once every ten (10) years. Areas of peeling paint that exceed ten (10) square feet shall be repainted as soon as reasonably possible.
 - C. All grass areas shall be mowed such that the height of the grass does not exceed two and a half inches (2 ½").
 - D. Sidewalks shall be kept reasonably clean of snow and ice, and interior streets shall be plowed after any snow event that exceeds two inches (2") in depth.
 - E. The Real Estate shall be kept reasonably free of trash and rubbish, and Owner shall cause the entirety of the Real Estate to be inspected for trash and rubbish not less than once per week.
 - F. All trash, garbage and refuse stored outside any building shall be stored in covered receptacles and screened from view.

In the event any of the above maintenance requirements are not met or adhered to in a timely manner, any party listed below with the authority to enforce these Commitments may notify Owner, in writing, of such failure. Owner shall then have ten (10) days to correct such failure, subject to delays caused by adverse weather or the availability of necessary equipment, materials, supplies or labor. A cure or correction may take longer than ten (10) days, provided such cure or correction is timely commenced and completed with reasonable diligence. If Owner disagrees that a failure has occurred or that a maintenance requirement has not been met, it shall notify the party attempting to enforce

this Commitment along with the Department of Code Enforcement or its successor department or agency ("DCE"). Thereafter, the decision of the DCE shall be binding upon both Owner and the party attempting to enforce. If the DCE determines that a failure has occurred or a maintenance requirement not met, Owner shall correct within ten (10) days of such decision as provided herein. If Owner fails to timely correct any maintenance requirement failure, after proper notice and applicable cure period, the enforcing party may, but is not required to, enter onto the Real Estate and perform such maintenance work. Owner shall reimburse the enforcing party for the actual cost of such work within thirty (30) days after receipt of an invoice for such work. Owner shall designate a point of contact to assure timely communications and notices relative to these Commitments.

12. During any construction activities on the Real Estate, vehicular ingress and egress to and from the Real Estate for construction purposes shall be limited to Yoke Street and Pennsylvania Street. No equipment, vehicles, or materials related to the construction on the Real Estate will be permitted on Delaware Street.
13. Upon completion of the construction activity on the Real Estate, vehicular ingress and egress to and from the Real Estate shall be limited to Yoke Street and Pennsylvania Street. Accordingly, no vehicular curb cuts shall be permitted on Delaware Street.
14. In the event of any litigation arising out of these COMMITMENTS, the prevailing party shall be entitled to receive from the other party an amount equal to the prevailing party's costs incurred in such litigation, including, without limitation, the prevailing party's attorneys' fees, costs and disbursements.

These COMMITMENTS shall be binding on 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 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 Exhibit B. 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.

The COMMITMENTS contained in this instrument shall be effective upon the adoption of rezoning petition 2019-ZON-086 by the City-County Council changing the zoning classification of the real estate from the C-1 zoning classification to the D-8 zoning classification; and shall continue in effect for as long as the Real Estate remains zoned to a residential 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. DCE;
3. Owners of all parcels of ground adjoining the Real Estate to a depth of two (2) ownerships, but not exceeding six-hundred-sixty feet (660') 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

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personal notice of the rezoning or approval under the rules in force at the time the commitment was made); and

4. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments).

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 **2019-ZON-086**.

[Remainder of Page Intentionally Left Blank; Signature to Follow.]

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IN WITNESS WHEREOF, Owner has executed this instrument this 14th day of November, 2019.

TESO DEVELOPMENT GROUP, LLC

By: Harpreet Shaunki

Printed: Harpreet Shaunki

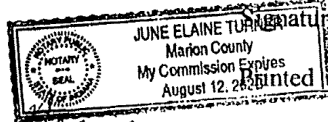
Position: Authorized Signer

STATE OF INDIANA)

COUNTY OF Marion) SS:

Before me, a Notary Public in and for said County and State, personally appeared Harpreet Shaunki, the Authorized Signer of Teso Development Group LLC, a(n) LLC, who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 14th day of November, 2019.



County of Residence Marion

My Commission Expires: 8/12/2023

My Commission No.: 676582

This instrument was prepared by Kyle T. Resetarits, Esq., BINGHAM GREENEBAUM DOLL LLP, 10 West Market Street, 2700 Market Tower, Indianapolis, Indiana 46204.

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. ~ Kyle T. Resetarits, Esq.

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Exhibit A

Legal Description

Part of Lot 10 in Eliza A. Hoefgen, Etal, Partition, 1st Addition to the City of Indianapolis, as recorded in Land Record UU, Page 613 in the Office of the Recorder of Marion County, Indiana, described as follows:

Beginning at a point 326 feet West of the East line and 188.10 feet South of the North line of said Lot 10; running thence South and parallel to the East line of said Lot 10, 485.90 feet to the South line of said Lot 10; thence West upon and along the South line of said Lot 10, 355 feet to the Southwest corner of said Lot 10; thence North upon and along the West line of said Lot 10, 485.90 feet to a point, said point being 188.10 feet South of the Northwest corner of said Lot 10; thence East and parallel to the North line of said Lot 10, 355 feet to the place of beginning.

Property Address: 2801 South Pennsylvania Street, Indianapolis, Indiana
Tax Id. No.: 1002779 / 49-11-24-119-019.000-101

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Exhibit B

OPEN OCCUPANCY AND EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

- (a.) Owner commits that he shall not discriminate against any person on the basis of race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age United States military service veteran status in the sale, rental, lease or sublease, including negotiations for the sale, rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
- (1) any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
 - (2) any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
 - (3) any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
- (b.) Owner commits that in the development, sale, rental or other disposition of the real estate or any portion thereof, neither he nor any person engaged by him to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment, employed or to be employed in the development, sale, rental or other disposition of the real estate, or portion thereof with respect to hire, tenure, conditions or privileges of employment because of race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age United States military service veteran status.

EXEMPT PERSONS AND EXEMPT ACTIVITIES

An exempt person shall mean the following:

1. With respect to commitments (a) and (b) above:
 - (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
 - (b) any school, educational, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution;
 - (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;
2. With respect to commitment b, a person who employs fewer than six (6) employees within Marion County.

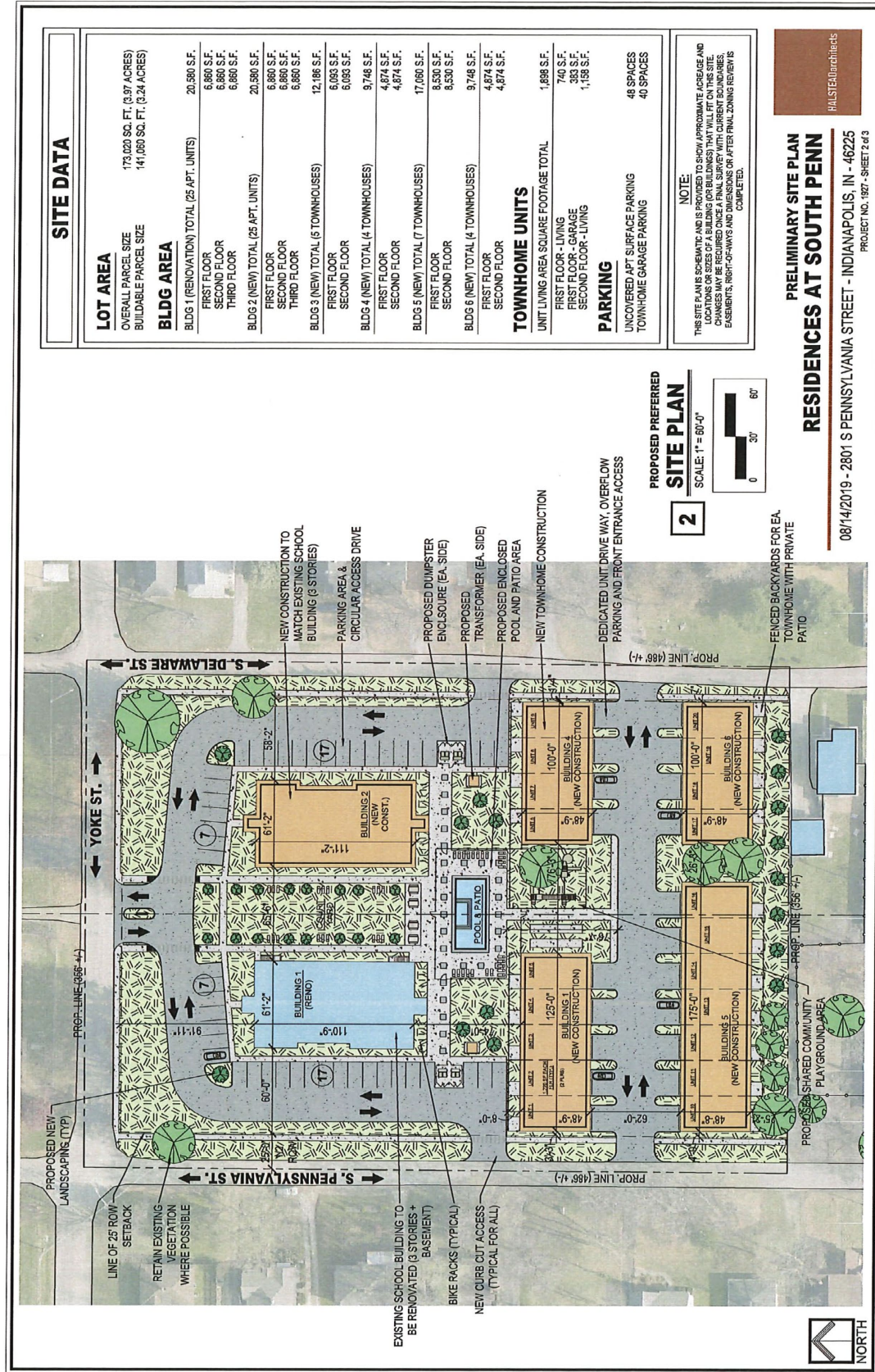
An exempt activity with respect only to commitment (a) shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

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EXHIBIT B



VIEW FROM SOUTHWEST

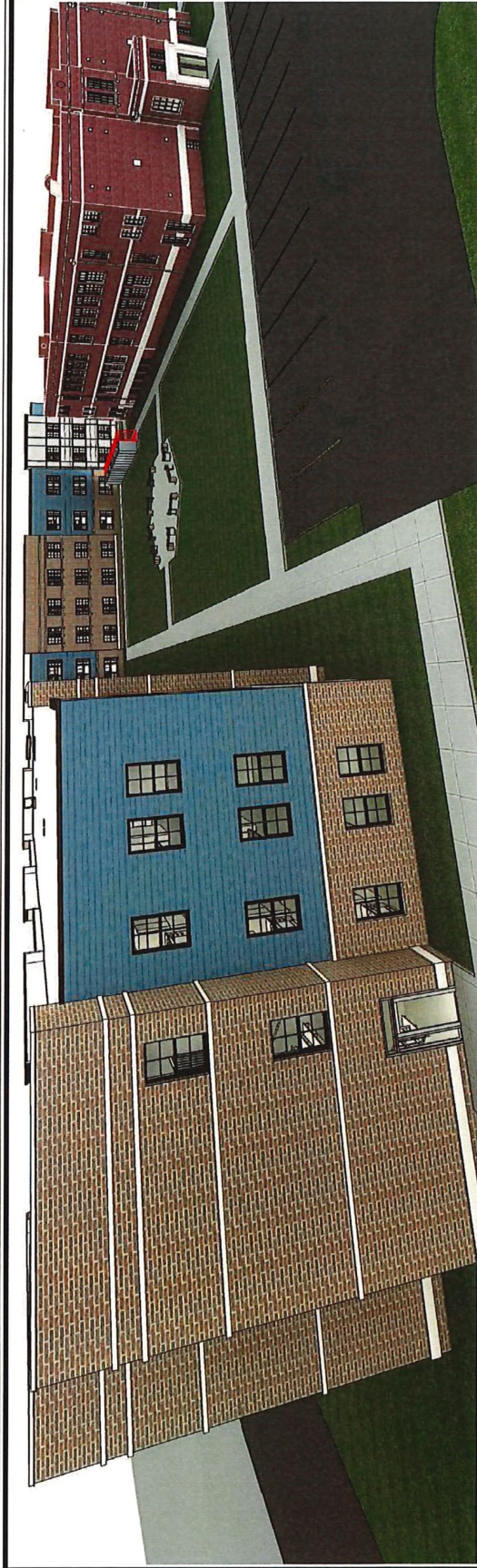


VIEW FROM SOUTHEAST

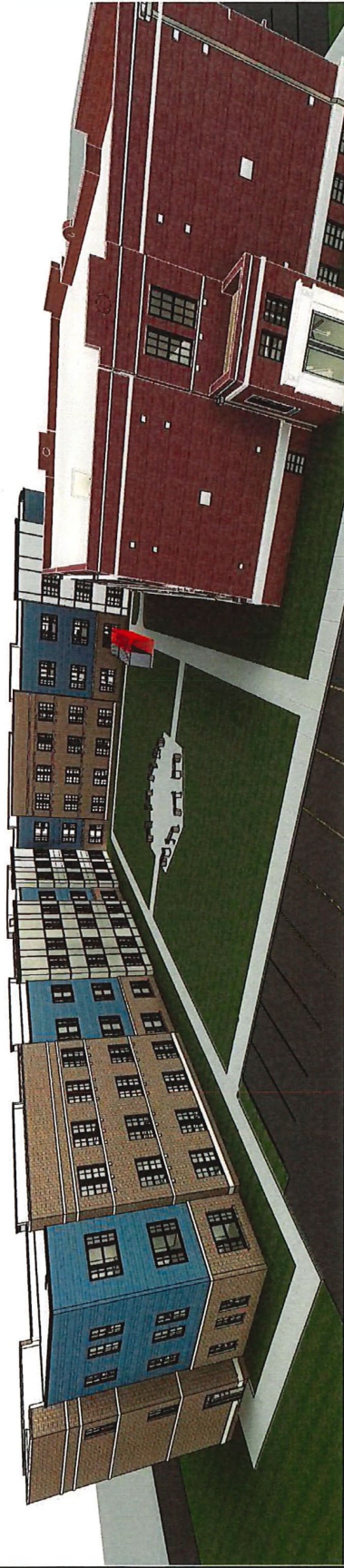
RESIDENCES ON PENN

2801 S PENNSYLVANIA ST.
INDIANAPOLIS, IN 46225
03/08/2023 | PROJ #2138

HALSTEADarchitects



AERIAL VIEW FROM NORTHEAST (PROPOSED OPTION)



AERIAL VIEW FROM NORTHWEST (PROPOSED OPTION)

RESIDENCES ON PENN

2801 S PENNSYLVANIA ST.
INDIANAPOLIS, IN 46225
03/08/2023 | PROJ #2138

HALSTEAD architects

PROPOSED COURTYARD EXPANSION AFTER VARIANCE AND PARKING RATIO IS APPROVED



View looking east along Yoke Street



View looking west along Yoke Street



View looking east along Berwyn Street



View looking west along Berwyn Street



View of site looking east along Yoke Street



View of site looking south along South Delaware Street



View of site looking south across Yoke Street



View of site looking south from intersection of Yoke Street and South Pennsylvania Street



View of site looking east across South Pennsylvania Street



View of site looking east across South Pennsylvania Street



View of site looking east across South Pennsylvania Street



View of site looking east across South Pennsylvania Street



View of site looking west across South Delaware Street



View of site looking west across South Delaware Street



View of site looking west across South Delaware Street