

Board of Zoning Appeals Division III

September 15, 2026

Case Number:	2026-DV3-016A
Property Address:	10220 East Washington Street (<i>approximate address</i>)
Location:	Warren Township, Council District #20
Petitioner:	Indy WS40 LLC, by Barnes & Thornburg LLP (Joseph Calderon)
Current Zoning:	C-4 (TOD)
Request:	Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a drive through with access provided by Ring Road instead of an alley (drive throughs prohibited within 600 feet of a transit station except where located behind the building and all access is provided by alleys).
Current Land Use:	Under development
Staff Recommendations:	Staff recommends approval of this petition, subject to substantial compliance with the site plan, file-dated August 7, 2026, with drive-through access limited to the Ring Road/internal drive configuration shown on the plan and a bypass aisle being included.
Staff Reviewer:	Josh Levesque, Senior Planner

PETITION HISTORY

This was originally part of a larger petition.

- **May 26, 2026:**
 - 2026DV3016 was split into 2026DV3016A and 2026DV3016B
 - 2026DV3016B pertained to a variance request to allow for a monument sign within 250 feet of another freestanding sign. 2026DV3016B was granted on May 26, 2026.
 - 2026DV3016A, this petition, was continued from the May 26, 2026, BZA III hearing to the June 16th, 2026, BZA III hearing.
- **June 16, 2026:** 2026DV3016A was continued to the July 21st, 2026, BZA III hearing.
- **July 21, 2026:** A timely automatic continuance was filed ahead of the July 21st hearing to automatically continue this case to the August 18th, 2026, BZA III hearing.
- **August 18, 2026:** The petitioner provided updated site plans on August 7th, 2026, showing the inclusion of bypass aisle, thus eliminating the need for the variance request related to the lack of a bypass aisle. This left the variance regarding access from the ring road rather than an alley as the sole remaining variance. The board voted 2-2 on this petition. The indecisive vote automatically continued the petition to the September 15, 2026, BZA III hearing.

STAFF RECOMMENDATION

Staff recommends **approval** of this petition, subject to substantial compliance with the site plan, file-dated September 4, 2026, with drive-through access limited to the Ring Road/internal drive configuration shown on the plan and a bypass aisle being included.

PETITION OVERVIEW

- 10220 East Washington Street is a parcel totaling roughly 1.326 acres and is part of a larger integrated center just east of the intersection of Washington Street and Mitthoefer Road. This site was previously home to a Golden Corral restaurant. The property is zoned C-4 and is part of the Transit-Oriented Development (TOD) overlay district. Surrounding properties are also zoned C-4 within the TOD overlay. Site plans indicate that a proposed bus rapid transit (BRT) line, is proposed directly south of this site.
 - The petitioner is requesting a variance of development standards to allow a drive-thru with access provided by an interior road (Ring Road) in lieu of a rear alley
- The C-4 (Community-Regional District) is “designed to provide for the development of major business groupings and regional-size shopping centers to serve a population ranging from a community or neighborhoods to a major segment of the total metropolitan area. These centers may feature a number of large traffic generators such as home improvement stores, department stores, and theatres. Even the smallest of such freestanding uses in this district, as well as commercial centers, require excellent access from major thoroughfares. While these centers are usually characterized by indoor operations, certain permitted uses may have limited outdoor activities, as specified.”
- Along with a base zoning district, sites can have secondary zoning districts. Secondary districts regulate development in certain geographies “and are intended to protect a natural resource (Wellfield and Gravel-Sand-Borrow), to enhance the value of existing development (Regional Center), or to assure the public safety (Flood Control and Airspace).” In other words, secondary districts add an extra layer of standards to the existing base district to enhance development in certain geographic areas. TOD is one of these secondary districts.
- According to the Ordinance, “the intent of the Transit Oriented Development (TOD) Secondary District is to coordinate more compact, walkable, and urban development patterns with public investment in the transit system. These development patterns ensure that walking and biking are viable options for short trips and transit is a priority for longer trips. Development patterns and site designs that prioritize automobile travel undermine these public and private investments.” The Metropolitan Development Commission adopted the TOD changes to the Ordinance in 2021 to provide staff, developers, and the board with guidelines for development in specific areas along transit lines. This has continued to remain a part of the Ordinance for the past five years and remains in full force.

- While certain elements of the Ordinance adopt a more conventional approach to zoning, the TOD aspect of the Ordinance is a form-based code. Rather than focusing on a separation of uses, form-based code regulates the physical form to produce predictable results. Form-based code can be used to steer the shape of the built environment and promote more compact, walkable neighborhoods. Because TOD is a form-based code, it lays out a number of specific guidelines that must be met for development to occur within the district. These guidelines are intended to work in unison to promote more compact, walkable neighborhoods. A deviation from one guideline can undermine the larger goal TOD is trying to achieve. Therefore, any request to deviate from the guidelines must be carefully considered. Each case should be considered on its merits and approval of one petition at one site should not determine the outcome of another.
- This is the 5th (if one includes the splitting of this case) variance petition related to this project that has come before the board in the past 3 years. The petitioner has gone back to the drawing board more than once to adjust things like pedestrian street access, window transparency, setbacks, orientation, and more to try and fit this into a TOD model. The remaining matters revolve around the lack of a bypass aisle and the lack of alley access.
- Under TOD regulations, drive through uses within 600 feet of a transit station (as this one will be) are “prohibited, except where located behind the building and all access provided by alleys.” The subject site is in the Metro Context and was originally developed without alleys. The intent of the Ordinance requiring that TOD drive-throughs be accessed via an alley is to help mitigate traffic conflicts in TOD. If automobiles were to access the site directly off of Washington Street, traffic could spill over into the street and either disrupt traffic or cause conflict with pedestrians. Providing rear access via an internal drive can meet the same goal. When an internal drive can handle the traffic capacity, it can help to meet the intent of reducing traffic conflict.
- To be clear, not all private or internal drives will be able to meet the intent of the Ordinance. This drive does have the capacity due to its size and relatively low existing traffic patterns. While the internal drive will be accessed via a curb cut off of Washington Street, automobiles will then have to drive into the integrated center and access the drive-through from the rear. Additionally, the petitioner has added additional stacking spaces to mitigate overflow into the rest of the development. Staff will note that the curb cut off of Washington Street is pre-existing and was previously an entrance for Washington Square Mall among other business.
- A previous variance (2023-DV3-004) granted access for an accessory drive-through via a private drive for the bank. Staff does not treat 2023-DV3-004 as controlling precedent because the prior approval involved an accessory bank drive-through which is different from a drive-through as a primary function. However, this is relevant site-specific history as it reflects prior BZA consideration of this same internal drive as a potential substitute for alley access within this integrated center.
- TOD requires drive-throughs to be accessed from a rear alley, yet the Metro Context area was largely developed without alleys. This constitutes a site-specific practical difficulty and staff must

analyze whether a private/internal drive can carry out the same function while also keeping the spirit of the TOD aspect of the Ordinance. In this case, the internal drive functions more similarly to service/rear access than a conventional front drive, as it is internal to the integrated commercial center, does not require drive-through vehicles to queue directly from East Washington Street, provides rear-oriented access to the drive-through, and separates drive-through circulation from the primary pedestrian frontage to the extent shown on the site plan. As such, staff recommends approval this petition.

- Staff will emphasize that the TOD guidelines are intended to work in unison to promote more compact, walkable neighborhoods. A deviation from one guideline can undermine the larger goal TOD is trying to achieve. Therefore, any request to deviate from the guidelines must be carefully considered. Each case should be considered on its merits and approval of one petition at one site should not determine the outcome of another. This specific drive and the layout of the development allowed for a situation where the intent of the Ordinance was met. Not every private road and design will be able to meet this intent and neither petitioners, nor the Board, nor the public should construe this as an automatic recommendation of approval on future projects.

GENERAL INFORMATION

Existing Zoning	C-4 (TOD)	
Existing Land Use	Undergoing development	
Comprehensive Plan	Regional Commercial	
Surrounding Context	<u>Zoning</u>	Surrounding Context
	North: C-4	North: Commercial
	South: C-4	South: Commercial
	East: C-4	East: Commercial
	West: C-4	West: Commercial
Thoroughfare Plan		
Washington Street	Primary Arterial	170-foot existing right-of-way and 124-foot proposed right-of-way
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	3/09/2026	
Site Plan (Amended)	9/4/2026	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	3/10/2026	

Findings of Fact (Amended)	7/15/2026
C-S/D-P Statement	N/A

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book (2019)

Pattern Book / Land Use Plan

- 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.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

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

- Not Applicable to the Site.

ZONING HISTORY

ZONING HISTORY – SITE

2023-DV3-004, Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the development of an integrated center with: a) an accessory drive through within 600 feet of a transit station with access provided by a private drive (alley access required); b) a surface parking area within the minimum 50-foot front yard setback (not permitted); c) all buildings maintaining a 20-foot front yard setback (maximum 10-foot setback permitted); d) and a 46% front building line (80% required), **approved**.

2024-DV3-013, Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a bank with one primary entry (two required), **approved**.

2024-DV3-024 (Amended), Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a drive-through without an exclusive bypass aisle (bypass aisle required) and the construction of freestanding buildings with front building line setbacks of up to 33 feet (maximum 20-feet permitted per 2023-DV3-004), a front building line width of 33.5 percent (46% required per 2023-DV3-004), and deficient first-story transparency on the front façade of the westernmost building (60% transparency required), **denied**.

ZONING HISTORY – VICINITY

73-Z-176; 10029 East Washington Street, Rezoning of 2.517 acre parcel from the A-2 district to the C-4 classification to provide for commercial development, **approved**.

76-Z-105; 10025 East Washinton Street, Rezoning of a 0.694-acre parcel from the A-2 to the C-4 classification, **approved**.

80-Z-11; 10115 East Washington Street, Rezoning of unimproved land from the D-2 to the C-4 classification to allow for the construction of a retail sales facility with off-street parking, **approved**.

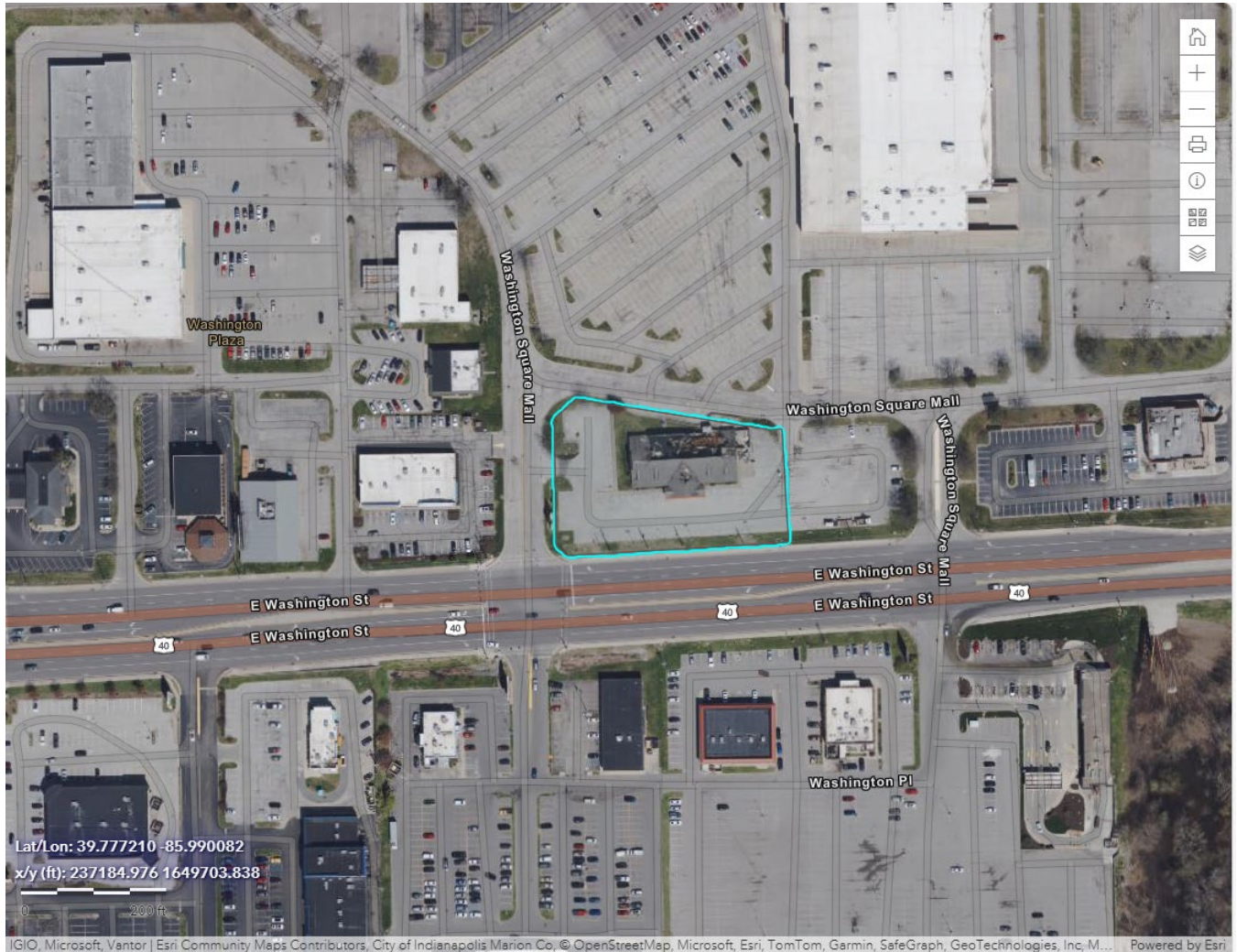
80-Z-12; 10117 East Washington Street, Rezoning of 3 acres from the D-2 to the C-4 classification to allow for the construction of a retail sales facility with off-street parking, **approved**.

84-Z-35; 10225 East Washington Street, Rezoning of 10.6 acres from the A-2 classification to the C-4 classification to permit development of the property for retail commercial use, **approved**.

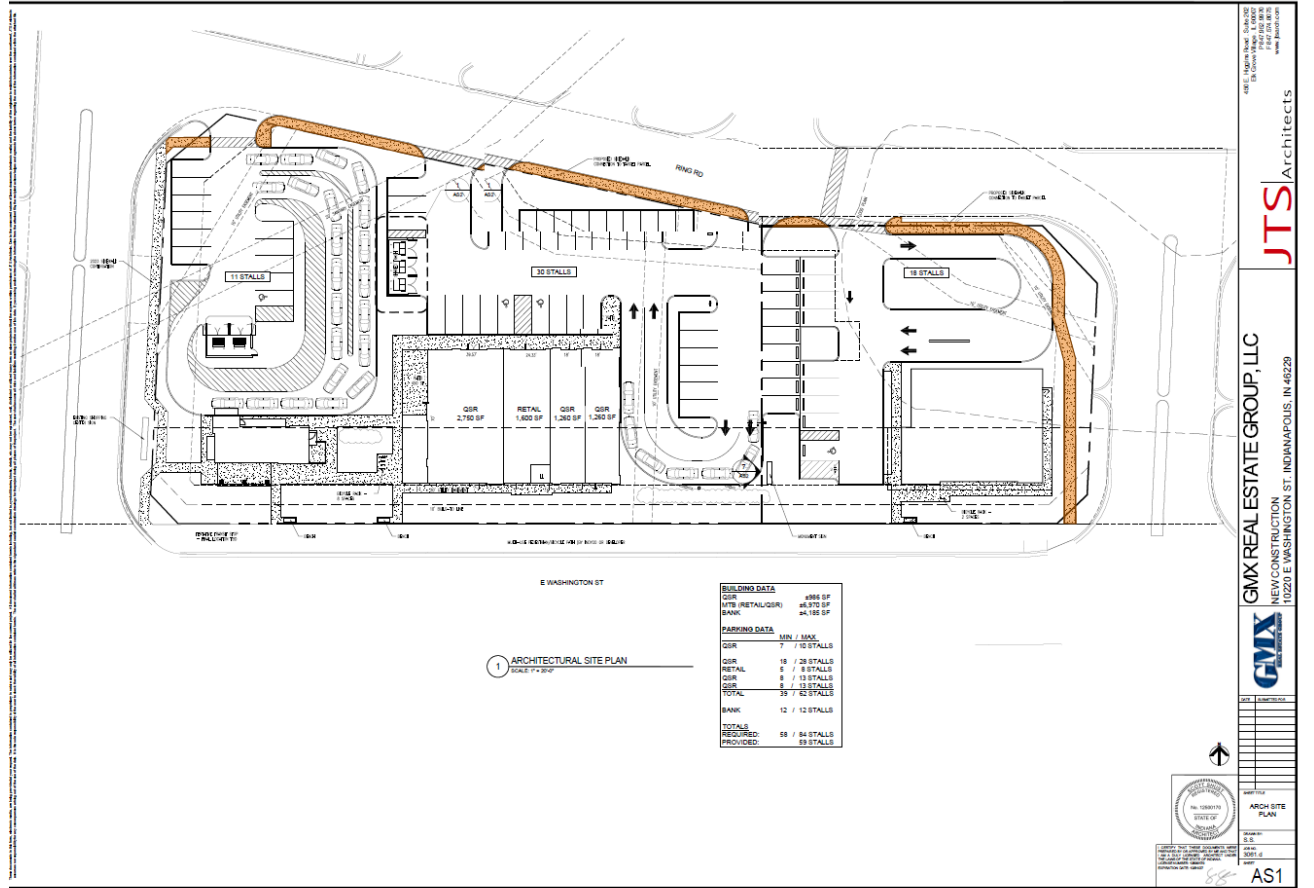
87-Z-24; 10229 East Washington Street, Rezoning of 4+ acres from the A-2 to the C-4 classification, **approved**.

EXHIBITS

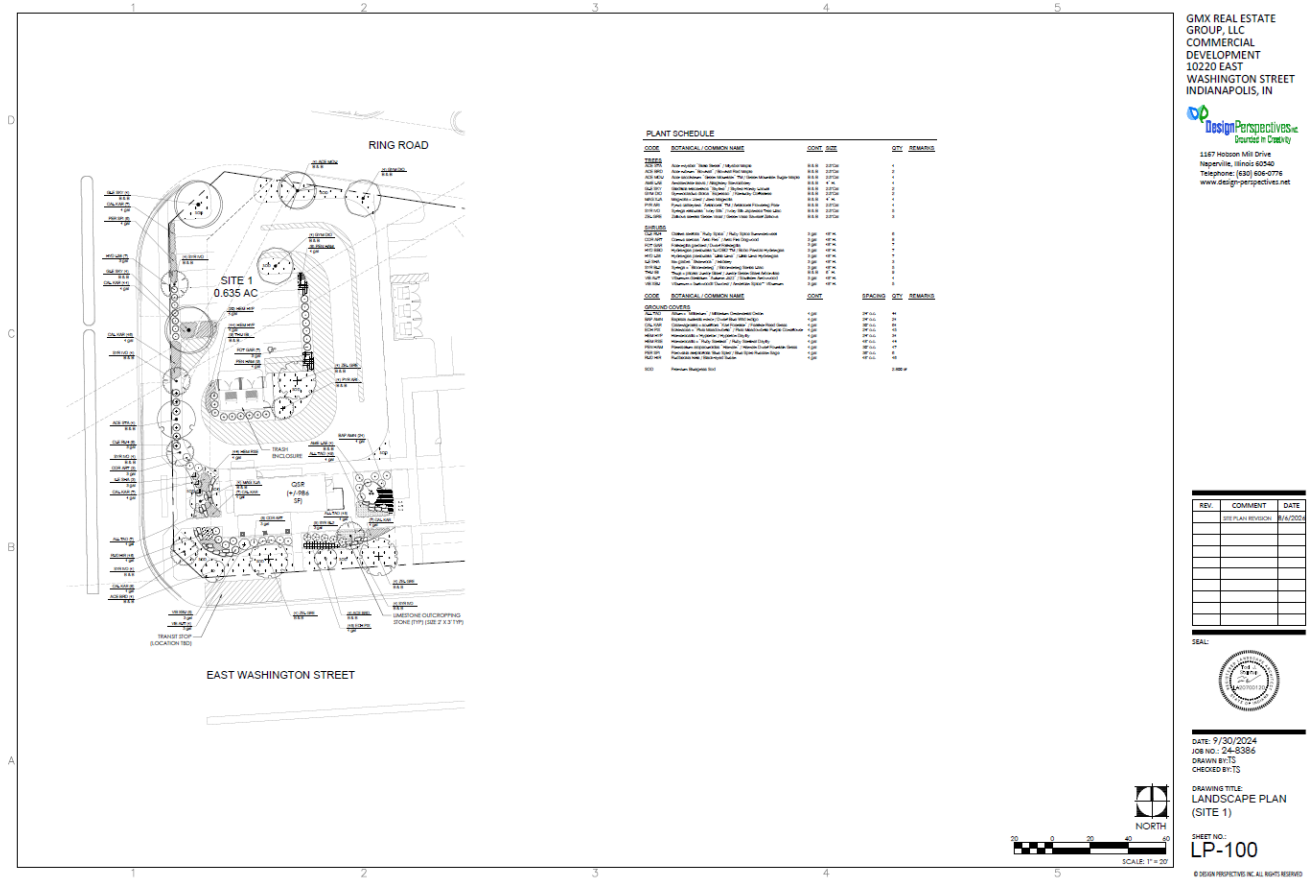
2026DV3016A; Aerial Map



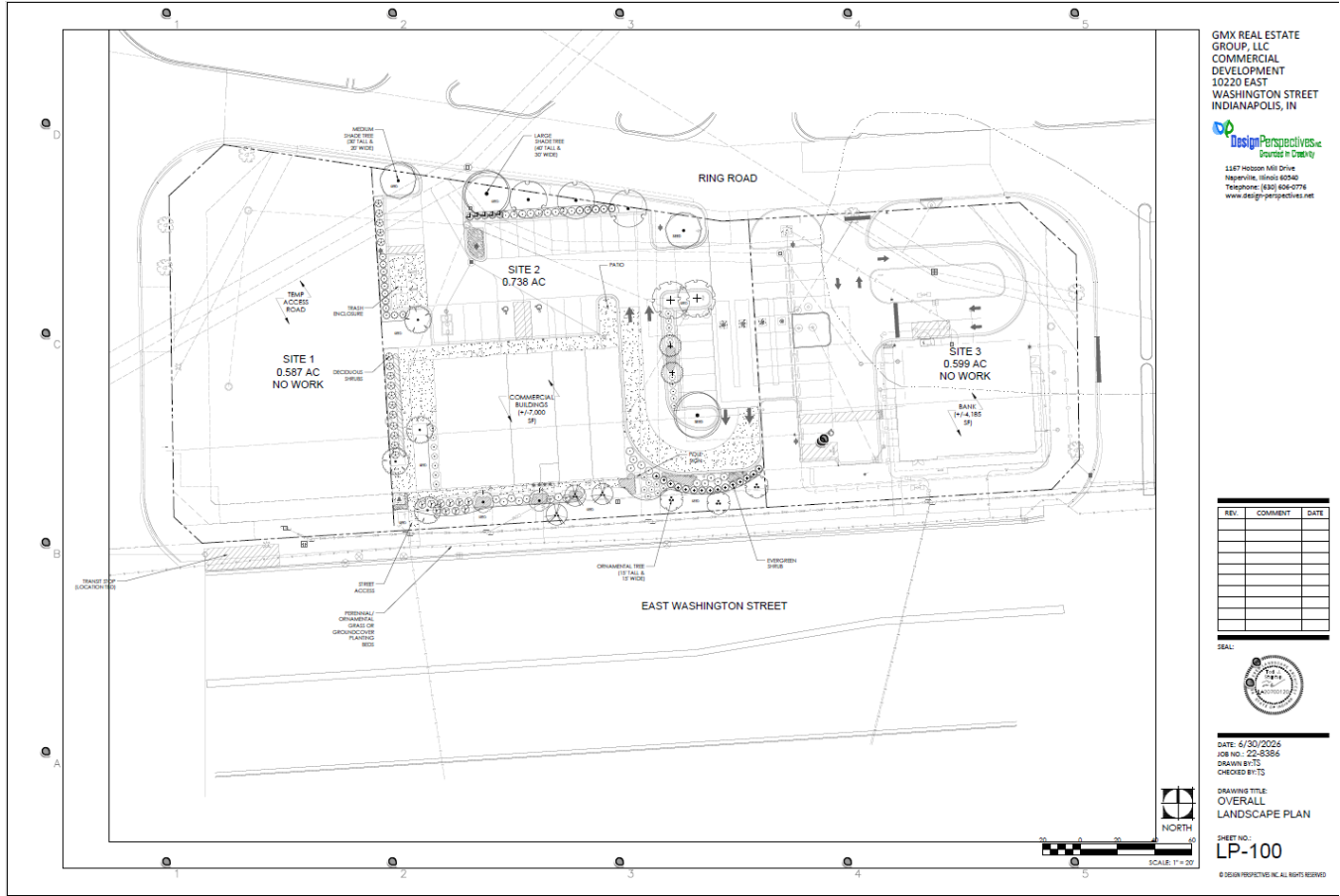
2026DV3016A; Site Plan (Amended 9.4.2026)



2026DV3016A; Landscape Plan (Western Parcel)



2026DV3016A; Landscape Plan (Middle Parcel)



2026DV3016A; Findings of Fact

FINDINGS OF FACT

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

the entrance to the drive through is significantly offset from Washington Street, so there will be no interference with vehicular traffic on a public street. The site plan has been designed to accommodate maximum stacking such that one lane can effectively serve as a bypass aisle without spilling vehicles into public ways.

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:

some adjoining properties use the same ring road as access to their respective properties, and there is adequate stacking and maneuverability to accommodate drive-through traffic (and those waiting to exit/abandon the drive-through lane) to do so without impacting any adjoining property.

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

the subject property is an outlot on a suburban shopping mall development, and there is no alley to provide access to a business with a drive through unit; rather, the existing ring road serves as a functional alley, since it is located behind the proposed buildings. Additionally, to require an exclusive bypass lane when the drive-through lanes and significantly more stacking spaces are available would require unnecessary land and pavement.

2026DV3016A; Photographs



Photo 1: Subject site from mall parking lot

2026DV3016A; Photographs (continued)



Photo 2: Framing of bank at subject site

2026DV3016A; Photographs (continued)



Photo 3: Photo of subject site undergoing development and surrounding context in background