



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

January 23, 2025

Case Number: 2024-CVR-838 (2nd Amended) / 2024-CPL-838A (Amended) / 2024-CPL-838B (Amended)

Property Address: 2451 – 2682 West 78th Street, 7649 – 7757 (odd) Diamond Street, 2822 – 2863 Emerald Street, 2801 – 2936 Moonstone Street, 2808 – 2863 Ruby Boulevard, and 7650 – 7740 (even) Walnut Drive (approximate addresses)

Location: Pike Township, Council District #1

Petitioner: Apex Realty Group, by David A. Retherford

Zoning: D-5

Request: Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for:

- a. Construction of 20% of the dwelling units, depending on the home model, at three stories in height (maximum 2.5 stories in height permitted),
- b. Minimum lot size ranging from 4,945 square feet to 4,998 square feet for up to 23 lots (minimum lot size of 5,000 square feet required),
- c. Side yard setback of four feet for Phase 2 Lots 2, 10 and 18 in Block R, Lot 14 in Block J, Lots 1, 2, 8, 16, 17, and 18 in Block S, Lot 7 in Block I, Lot 1 in Block A, Lot 13 in Block T, Lot 17 in Block Y, and Lot 18 in Block X, and for Phase 3 Lot 16 in Block A-A (minimum side yard setback of five feet required),
- d. A side yard setback of three feet for Phase 2 Lot 9 in Block S and for Phase 3 Lot 11 in Block C-C (minimum side yard setback of five feet required),
- e. Corner side yard setbacks of five feet for all corner lots (minimum corner side yard setback of eight feet required),
- f. Construction of some dwelling units, depending on the home model, with front loaded garages of up to 67% of the front façade (maximum 30% of the front façade, if within 12 feet of the front building line, or 45% of the front façade if behind 12 feet of the front building line permitted),
- g. 60% landscaped living material in the front yard (minimum 65% landscaped living material in the front yard required),
- h. Minimum main floor area of 550 square feet of livable space on the main floor of a dwelling over one story in height (minimum 660 square feet of livable space on the main floor of a dwelling over one story in height required).

Approval of a Subdivision Plat, to be known as Augusta Heights, Phase 2, dividing 12.28 acres into 84 lots, with a waiver of the amenity requirements.

Approval of a Subdivision Plat, to be known as Augusta Heights, Phase 3, dividing 3.88 acres into 32 lots, with a waiver of the amenity requirements. |



Current Land Use: Undeveloped
Staff Reviewer: [Marleny Iraheta, Senior Planner]

PETITION HISTORY

ADDENDUM FOR JANUARY 23, 2025 HEARING EXAMINER

This petition was continued for cause from the December 12, 2024 hearing to the January 23, 2025 hearing at the request of the petitioner to allow additional time to amend the request and provide mailed notices.

The request was amended to include a 20% limitation on the number of dwelling units that would be developed with three stories where a maximum of 2.5 stories is permitted in item "a" of the request.

The request was also amended to reduce the front-loaded garage widths from 70% to 67% in item "f" of the request.

Lastly, the two subdivision plats were amended to include a waiver of the amenity requirements. This was in result of staff's analysis that the additional number of units proposed would have required a total of five open space components which were not originally proposed with the subdivision plats submitted.

The Recreational Amenities Plan, dated December 18, 2024, notes Common Area A with an Option "A" Playground measuring 10,539 square feet, a Nature Area measuring 22,748 square feet, a five-foot wide concrete walk measuring 361 total linear feet, and a five-foot wide wood chip path measuring 778 total linear feet. Common Area B is a Dry Detention Area. It also notes a Common Area in Phase I that is a 12,350 square foot Option 2 Playground Area.

The Nature Preserve Area map, dated December 18, 2024, notes four Nature Preserve Areas with a total of 70,276 square feet. It also highlights the Nature Area called out in the Recreational Amenities Plan.

Staff now **recommends approval** of all variance requests as amended.

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

Staff recommends that the Hearing Examiner **approves** and find that the plats, file-dated August 27, 2024, and December 5, 2024 comply with the standards of the Subdivision regulations, subject to the following conditions:

1. That the applicant provide a bond, as required by Section 741-210, of the Consolidated Zoning and Subdivision Ordinance.
2. Subject to the Standards and Specifications of Citizens Energy Group, Sanitation Section.
3. Subject to the Standards and Specifications of the Department of Public Works, Drainage Section.
4. Subject to the Standards and Specifications of the Department of Public Works, Transportation Section.



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5. That addresses and street names, as approved by the Department of Metropolitan Development, be affixed to the final plat prior to recording.
6. That the Enforcement Covenant (Section 741-701, of the Consolidated Zoning and Subdivision Ordinance) be affixed to the final plat prior to recording
7. That the Site Distance Covenant (Section 741-702, of the Consolidated Zoning and Subdivision Ordinance) be affixed to the final plat prior to recording.
8. That the Sanitary Sewer Covenant (Section 741-704, of the Consolidated Zoning and Subdivision Ordinance) be affixed to the final plat prior to recording.
9. That the Storm Drainage Covenant (Section 741-703, of the Consolidated Zoning and Subdivision Ordinance) be affixed to the final plat prior to recording.
10. That the plat restrictions and covenants, done in accordance with the rezoning commitments, be submitted prior to recording the final plat.
11. That all the standards related to secondary plat approval listed in Sections 741-207 and 741-208 of the Consolidated Zoning and Subdivision Ordinance be met prior to recording the final plat.
12. That all standards related to 741.201.A-C – Primary Plat Requirements be met prior to recording the final plat.
13. That a Traffic Control Plan compliant with Section 741-203.D of the Consolidated Zoning and Subdivision Ordinance be submitted prior to recording the final plat.
14. That a Natural Infrastructure Plan compliant with Section 741-203.E of the Consolidated Zoning and Subdivision Ordinance be submitted prior to recording the final plat.
15. That all standards related to 741.305 – Numbering and naming be met prior to recording the final plat.
16. That an amended plat with sidewalks compliant with Section 741-306 of the Consolidated Zoning and Subdivision Ordinance be submitted prior to recording the final plat.
17. That all standards related to 741.310 – Common Areas, Open Space and Public Sites (Compact Context Area) be met prior to recording the final plat.
18. That a Monumentation plan compliant with Section 741-312 of the Consolidated Zoning and Subdivision Ordinance be submitted prior to recording the final plat.
19. That a street lighting plat compliant with Section 741-316 of the Consolidated Zoning and Subdivision Ordinance be submitted prior to recording the final plat.
20. That the approval shall be in accordance with the variances requested.
21. That the amenity spaces be subject to the Nature Preserve Area map and Recreational Amenities Plan both dated December 18, 2024.

December 12, 2024

This petition was continued for cause from the November 14, 2024 hearing to the December 12, 2024 hearing at the request of staff to allow the petitioner additional time to amend the request to include additional variances that were needed and to add an additional lot to the Augusta Heights, Phase 2 subdivision plat that the petitioner wanted to include.

STAFF RECOMMENDATION

Staff **recommends denial** of the variance for the Construction of some dwelling units, depending on the home model, with front loaded garages of up to 70% of the front façade.

Staff **recommends approval** of all other variances as requested.

Staff recommends that the Hearing Examiner **approves** and find that the plats, file-dated August 27, 2024, and December 5, 2024 comply with the standards of the Subdivision regulations, subject to the following conditions:

1. That the applicant provide a bond, as required by Section 741-210, of the Consolidated Zoning and Subdivision Ordinance.
2. Subject to the Standards and Specifications of Citizens Energy Group, Sanitation Section.
3. Subject to the Standards and Specifications of the Department of Public Works, Drainage Section.
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15. That all standards related to 741.305 – Numbering and naming be met prior to recording the final plat.
16. That an amended plat with sidewalks compliant with Section 741-306 of the Consolidated Zoning and Subdivision Ordinance be submitted prior to recording the final plat.
17. That all standards related to 741.310 – Common Areas, Open Space and Public Sites (Compact Context Area) be met prior to recording the final plat.



18. That a Monumentation plan compliant with Section 741-312 of the Consolidated Zoning and Subdivision Ordinance be submitted prior to recording the final plat.
19. That a street lighting plat compliant with Section 741-316 of the Consolidated Zoning and Subdivision Ordinance be submitted prior to recording the final plat. |

PETITION OVERVIEW

HISTORY

The subject site contains 116 lots of the Augusta Heights subdivision as recorded in 1922. None of the 116 lots have been developed. The original Augusta Heights subdivision consists of 456 lots and extends from Michigan Road on the west, Walnut Drive on the east, 79th Street on the north and Crooked Creek on the south. Of the twelve proposed streets internal to the original plat, only portions of five streets were ever constructed.

Within the portion of the plat that is the subject of this petition, portions Amethyst Avenue have been improved. There are dwellings accessing some of these streets which are not part of the 116 lots within the subject site.

Because the streets were already dedicated as right-of-way and the individual lots were subdivided with the original plat, the purpose of this request is not to subdivide lots or dedicate right-of-way. The developer is planning to construct the streets within the existing right-of-way and have them dedicated as public streets. The 116 lots would then be available for development within the D-5 classification.

Staff requested the developer file this plat to add drainage easements that will be needed over some of the lots and to also require the submission of surety bonds for the construction of the infrastructure. Since the right-of-way already exists, the streets could be built and the lots developed without this plat approval, provided the Department of Public Works would accept the streets.

VARIANCES

The grant of the request would allow for deviations from the 2.5 stories in height limitation for three story buildings, minimum lot size ranging from 4,945 square feet to 4,998 square feet for up to 23 lots where 5,000 square feet is required, four-foot side yard setbacks for 15 lots where five feet are required, three-foot side yard setbacks for two lots where five feet are required, five-foot corner yard setbacks for all corner lots where eight feet are required, some dwelling units with up to 70% of the front façade with front loaded garages which are limited to 30% or 45% based on the front building line, 60% landscape living material where 65% is required, and minimum main floor area of 550 square feet of livable space on the main floor of dwellings over one story in height where 660 square feet are required.

The standards that address setbacks and minimum lot sizes are requested to allow for the existing lots that were previously platted to be maintained and used for residential development.

The requests for the three-story buildings, garage width increase on the façade, reduced living material, and reduced main floor area are due to the intent to develop the remaining lots with similar products as was proposed in Phase One in the 2020 plat petition (2020-PLT-042).



However, the petitioner was going to provide a percentage limit for the number of dwellings that would have the increased garage width increase of 70%. This percentage limitation has yet to be provided to staff and would need to be confirmed before staff is comfortable with supporting item f, "Construction of some dwelling units, depending on the home model, with front loaded garages of up to 70% of the front façade (maximum 30% of the front façade, if within 12 feet of the front building line, or 45% of the front façade if behind 12 feet of the front building line permitted)", of the request.

Staff is supportive of all other variances as requested.

STREETS

Vehicular access would be via West 78th Street, Diamond Street, Emerald Street, Moonstone Street, Ruby Boulevard and Walnut Drive. Portions of seven previously platted public streets would be constructed with this plat petition.

All the interior streets included in the plat are local streets. Sapphire Boulevard intersects with Michigan Road to the west and Amethyst Avenue and Walnut Drive connect to 78th Street to the north. Walnut Drive continued further north to connect to 79th Street.

It was determined that the required street width can be accommodated within the existing right-of-way of the original plat with some street widths of 40 feet and others with 50 feet.

SIDEWALKS

Sidewalks would be required along all internal and external streets.

STAFF ANALYSIS

The final plat for Phase One consisted of 66 total lots with five common areas that measured 69,470 square feet. This met the one required open space component of one acre of natural landscaping, but it did not incorporate the second open space component that was needed.

The proposed plats for Phases Two and Three would consist of an additional 116 lots to the overall subdivision. This would require a total of five open space components throughout the subdivision in addition to the one open space component, natural landscaping, that was needed for the initial 20 dwelling units.

Because the plats for Phases Two and Three would not incorporate any additional open space components, a waiver would be required to not meet the additional open space component required for every 30 dwelling units (or portion thereof) over the initial 20 dwelling units in accordance with Table 741-310-2: Additional Open Space Components and Minimum Standards for Residential Subdivisions.

Staff determined that this petition would need to be continued to address the open space components that would not be met with the two subdivision plats.



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Existing Zoning	D-5		
Existing Land Use	Undeveloped		
Comprehensive Plan	Suburban Neighborhood		
Surrounding Context	Zoning	Land Use	
	North:	D-5	Residential (Single-family dwellings) / Undeveloped lots
	South:	D-5	Residential (Single-family dwellings) / Undeveloped lots
	East:	D-5 / SU-35	Residential (Single-family dwellings) / Telecommunications Tower
	West:	Enter Zoning	Enter Land Use
Thoroughfare Plan			
West 78 th Street	Local Street	50-foot proposed and existing right-of-way.	
Diamond Street	Local Street	50-foot proposed and existing right-of-way.	
Emerald Street	Local Street	50-foot proposed right-of-way and 40-foot existing right-of-way.	
Moonstone Street	Local Street	50-foot proposed right-of-way and 40-foot existing right-of-way.	
Ruby Boulevard	Local Street	50-foot proposed and existing right-of-way.	
Walnut Drive	Local Street	50-foot proposed and existing right-of-way.	
Amethyst Avenue	Local Street	50-foot proposed and existing right-of-way.	
Petition Submittal Date	September 16, 2024		
Final Plat Submittal Date	December 5, 2024		

SUBDIVISION PLAT REGULATIONS

741-203 Required Documents for Approval

EVALUATION

	<p>741.201.A-C – Primary Plat Requirements:</p> <ul style="list-style-type: none"> • Plat name, Legal Description, Surveyor Seal, Scale. • Boundary Lines, Existing Street Names and dimensions. • Layout of Proposed Streets – names, widths, classifications. • Layout of all easements and purpose thereof. • Layout of lots with numbering and dimensions. • Floodway/Floodplain Delineation. • Topographic Map. • Area Map. 	<p>Not Satisfied.</p>
	<p>741-203.D – Traffic Control Plan</p> <ul style="list-style-type: none"> • Traffic control street signs and devices. • Traffic calming devices. • Bicycle facilities. • Sidewalks and pedestrian facilities. • Transit facilities, such as bus stops pads or shelter. • Street lighting. 	<p>Not Satisfied</p>
	<p>741-203.E– Natural infrastructure plan (major plats containing more than 20 lots)</p> <ul style="list-style-type: none"> • Placement of all proposed drainage facilities for the subdivision, indicating type of facility and if the facility is to be designed to be wet or dry • Location of Open Space Areas of the open space common area, indicating size and general improvements • Location of any Stream Protection Corridors in accordance with Section 744-205 (Stream Protection Corridors) 	<p>Not Satisfied</p>

	<p>741-205 – Waivers</p> <ul style="list-style-type: none"> • <i>The granting of the waiver or modification will not be detrimental to the public health, safety, or welfare or injurious to other property</i> • <i>The conditions upon which the request is based are individual to the property for which the relief is sought and are not applicable generally to other property;</i> • <i>Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;</i> • <i>The resulting subdivision fulfills the purpose and intent of these regulations at an equal or higher standard than what would have been possible without the deviation; and</i> • <i>The relief sought shall not in any manner vary from the provisions of the Zoning Ordinance, or official zoning base maps, except as those documents may be amended in the manner prescribed by law.</i> 	None Requested
741-300 Design and Installation Standards	All proposed plats submitted for Committee approval under the provisions of these regulations shall meet these standards to the satisfaction of the Committee unless waived by the Committee.	EVALUATION
	<p>741-302.A – Lots:</p> <ul style="list-style-type: none"> • <i>Comply with zoning district and any cluster approval or variance grant.</i> • <i>Lots must have positive drainage away from buildings.</i> • <i>No more than 25% of lot area may be under water.</i> • <i>Side lots lines at right angles to streets or radial to curving street line.</i> • <i>Layout of lots with numbering and dimensions.</i> • <i>Floodway/Floodplain Delineation.</i> • <i>Topographic Map.</i> 	Satisfied
	<p>741-302.B – Frontage and Access:</p> <ul style="list-style-type: none"> • <i>Through lots should be avoided except where necessary for primary arterial separation and topography challenges.</i> • <i>Triple frontage lots are prohibited.</i> • <i>Lots abutting alleys must have vehicular access exclusively from alley.</i> • <i>Lots shall not have direct access to arterial streets.</i> • <i>Non-residential plats shall provide cross-access easements to limits points of access to existing street network to no more than one per 500 feet.</i> 	Satisfied

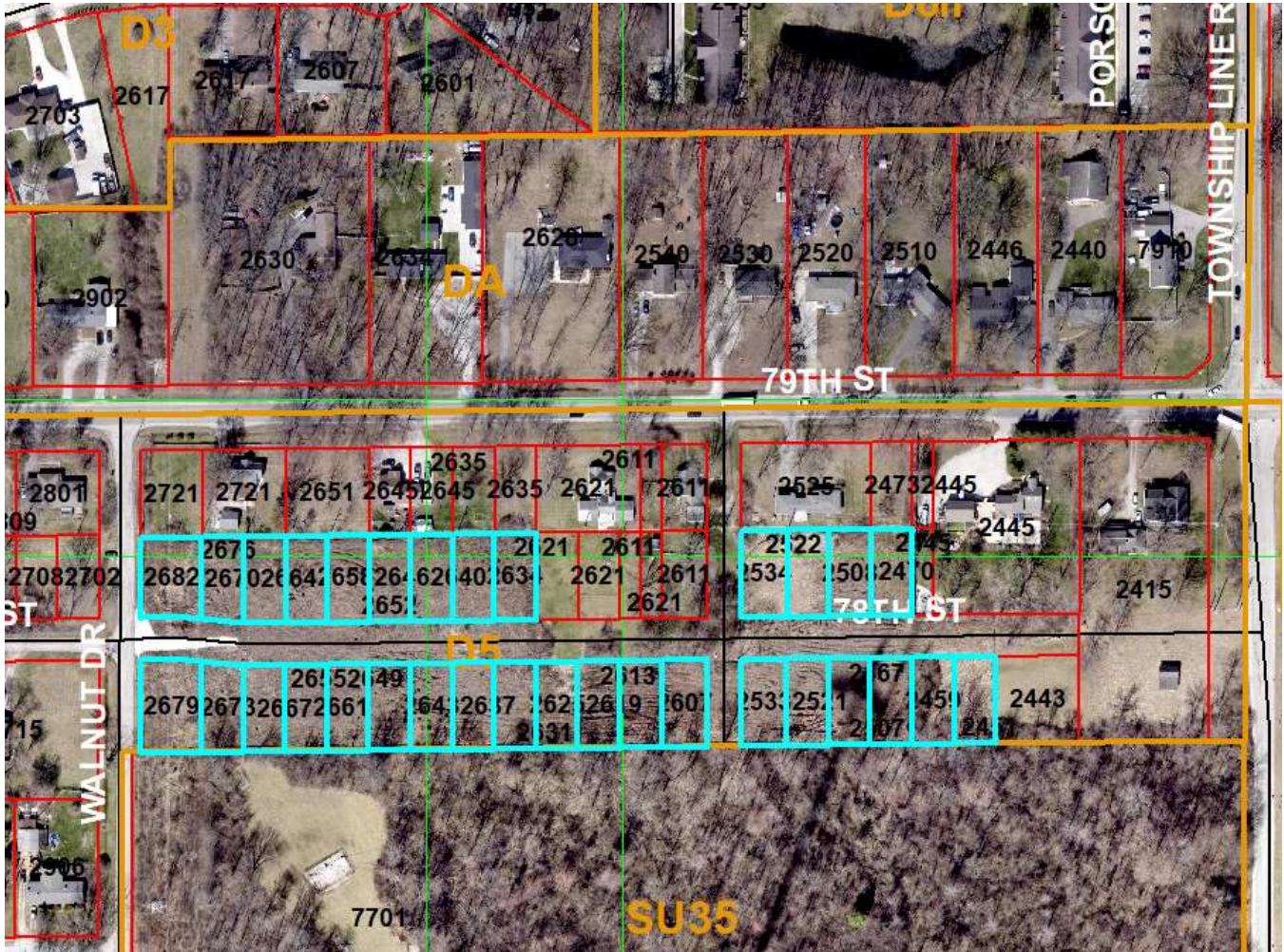
	<p><i>741-302.C – Blocks:</i></p> <ul style="list-style-type: none"> • <i>Shall not exceed maximum block lengths per Table 741-302.1</i> • <i>If exceeded, it must be demonstrated that:</i> <ul style="list-style-type: none"> ○ <i>There are improved pedestrian easements at intervals of 400 feet or less.</i> ○ <i>Adequate traffic calming provisions are made.</i> ○ <i>The block length must be exceeded because of physical conditions of the land.</i> 	<p>Satisfied</p>
<p>741-303 Streets and Connectivity</p>	<p>All proposed plats shall allocate adequate areas for streets in conformity with the Comprehensive Plan and Official Thoroughfare Plan for Marion County, Indiana, and these regulations.</p>	<p>EVALUATION</p>
	<p><i>741-303.A – General:</i></p> <ul style="list-style-type: none"> • Subdivisions shall provide a logical street layout in relation to topographical conditions, public convenience, safety, multi-modal use and the proposed use of the land to be served by such streets. <i>Triple frontage lots are prohibited.</i> • Streets shall intersect as nearly as possible at right angles. No street shall intersect another at an angle of less than 75 degrees. • Not more than two streets shall intersect at any one point. • Bicycle lanes meeting the Indiana Manual on Uniform Traffic Control Devices (IMUTCD) for location, width, and marking shall be provided along collector streets. • All streets shall be dedicated to the public. Alleys may be private. • Turn lanes or other improvements recommended by the Department of Public Works shall be added to the existing street system to minimize the impact of the connection upon the existing street system. 	<p>Satisfied</p>
	<p><i>741-303.B – Through Connectivity (Metro Context Area):</i></p> <ul style="list-style-type: none"> • Emergency vehicles must not have to use more than two different local streets (any street other than a primary arterial, a secondary arterial or a collector street) to reach their destination. • Permanently dead-ended streets and alleys, except for cul-de-sac streets, are prohibited. • All existing or platted streets that terminate at the property boundary line of a proposed subdivision shall be continued into the proposed subdivision to provide street connections to adjoining lands and streets within the proposed subdivision. • Streets entering opposite sides of another street shall be laid out either directly opposite one another or with a minimum offset of 125 ft. between their centerlines. • Whenever cul-de-sac streets are created, a 15-foot-wide pedestrian access/public utility easement shall be provided between the cul-de-sac head or street. • Subdivisions with 30 or more lots shall have more than one entrance to the existing street network. 	<p>Satisfied</p>
	<p><i>741-303.D – Cul-de-sacs (Metro Context Area):</i></p> <ul style="list-style-type: none"> • In the Metro Context Area, cul-de-sac lengths shall not exceed 500 feet or serve more than 20 dwelling units. 	<p>Satisfied</p>

741-304-316 Additional Development Items		EVALUATION
741.304.A-C – Traffic Control Devices: <ul style="list-style-type: none"> Street name signs, traffic control signs, bike route signs. Traffic control devices for streets exceeding 900 feet in length. Bicycle Facilities for subdivisions with a collector street serving more than 100 dwelling units. 	Satisfied	
741.305 – Numbering and naming: <ul style="list-style-type: none"> Street numbering per adopted addressing guidelines. Streets that are extensions or continuations of existing or approved streets must bear the name of such existing street. 	Not Satisfied.	
741.306 – Sidewalks: <ul style="list-style-type: none"> Sidewalks shall be provided along all internal and external streets. 	Not Satisfied	
741.307-309 – Easements, Utilities, Stream Protection Corridors: <ul style="list-style-type: none"> Utility easements shall be located along lot lines and shall be a minimum of 10 feet. All BMPs and drainage facilities must be located within an easement. The easement must accommodate adequate access for maintenance. Generally, pedestrian easements shall be 15 feet in width and be considered open to the public unless specifically declared otherwise. All utilities shall be located underground. All subdivisions must be designed in accordance with the Stream Protection Corridor requirements of Section 744-205. 	Satisfied	
741.310 – Common Areas, Open Space and Public Sites (Compact Context Area): <ul style="list-style-type: none"> Required for subdivisions with more than 20 dwelling units. Access easements shall be provided to connect all common areas to a public street right-of-way. The minimum width of such access must be at least 15 feet. Basic Open Space Requirements: Multi-purpose path, natural landscaping area, entrance landscaping. Additional Open Space Requirements: Community garden, dog park, game court, picnic area, playground, pool, etc. Additional component required for every 30 additional dwelling units overall. Reservation of land for public/semi-public purpose. 	Not Satisfied.	
741-312 – Monuments <ul style="list-style-type: none"> Permanent reference monuments shall be placed in the subdivision by a Professional Surveyor. Where no existing permanent monuments are found, monuments must be installed no more than 600 feet apart in any straight line and in accordance with the schedule in Table 741-312-1. 	Not Satisfied.	



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	<p>741.313 – Flood Control:</p> <ul style="list-style-type: none"> • All development shall comply with all provisions of Section 742-203 (Flood Control Zoning District). • Floodway and Floodway Fringe zones shall be delineated and labeled on the primary plat and the plat to be recorded. • For Zone AE areas, the plat must show the BFE topographic line. • For Zone A areas, the plat must show the delineation study with the floodway and floodway fringe lines shown on the FIRM maps. 	<p>Satisfied</p>
	<p>741.316 – Street Lighting:</p> <ul style="list-style-type: none"> • All subdivisions must be designed and constructed in accordance with the Street Lighting requirements of Section 744-600 (Street and Exterior Lighting). 	<p>Not Satisfied</p>



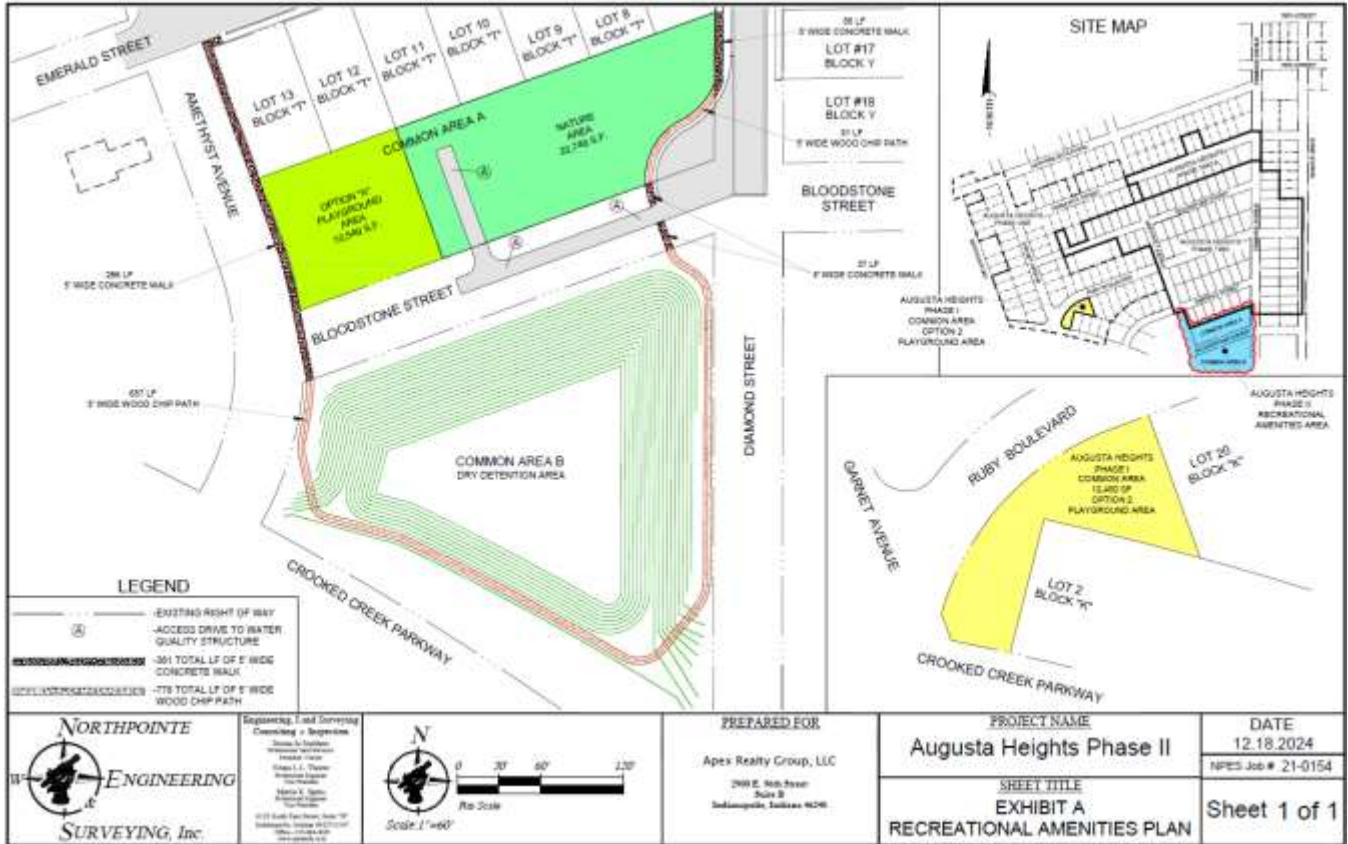




Photo looking northeast along Moonstone Street.



Photo looking southwest along the north side of Moonstone Street from Amethyst Avenue.



Photo looking southwest along the south side of Moonstone Street from Amethyst Avenue.



Photo looking east along Moonstone Street from Amethyst Avenue.



Photo looking north on Amethyst Avenue from Moonstone Street.



Photo looking at the north side of east along Ruby Boulevard.



Photo looking at the south side of east along Ruby Boulevard.



Photo looking northeast along Emerald Street from Amethyst Avenue.



Photo looking southwest along Emerald Street from Amethyst Avenue.



Photo looking east along Bloodstone Street.



Photo of Amethyst Avenue looking north.



Photo of the north side of 78th Street looking east from Walnut Drive.



Photo of the south side of 78th Street looking east from Walnut Drive.



Photo of the subject site looking west from Walnut Drive.



Photo looking south along Walnut Drive.



Photo of the subject site looking west from Walnut Drive.