

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-CVR-800 / 2023-CPL-800
Address: 834 East 64th Street (*Approximate Address*)
Location: Washington Township, Council District #2
Zoning: MU-1 (FF) (TOD)
Petitioner: 834 64th Street, LLC, by Joseph D. Calderon
Requests: Variance of Development Standard of the Consolidated Zoning and Subdivision Ordinance to provide for a 2.9-foot east side setback for proposed Lot One and a one-foot west side setback for Lot Two (10 feet required), and to legally establish parking located 3.9 feet from 64th Street (50-foot setback required) and zero feet from Ferguson Street, in front of the front building line (25-foot setback required, not permitted), a 63.7% front building line for Lot Two and a 20% front building line on Lot One along 64th Street (minimum 80% required), a 47.3% front building line along Ferguson Street for Lot One (60% required), a 32-foot-wide driveway along Ferguson Street (maximum 24 feet permitted), a 16.3-foot setback from Ferguson Street for Lot One (zero to ten foot setback required for the first 25 feet from the corner), a 5.3-foot rear setback for Lot Two (ten feet required), building heights of 21.1 feet for Lot One and 14.2 feet for Lot Two (minimum 25-foot height required), and with parking in the right-of-way of Ferguson Street (not permitted).

Approval of a Subdivision Plat, to be known as Replat of Lot 20 in Lights Broad Ripple Subdivision, dividing 0.17 acre into two lots, with a waiver of sidewalks on Ferguson Street.

Addendum for March 15, 2023

This petition was continued from the **March 1, 2023 hearing to the March 15, 2023 hearing** for an amended site plan.

The petitioner appealed the recommendation for denial of 2023-CVR-800 B, which would provide for parking in front of the front building line on Ferguson Street. The petitioner has provided a revised site plan shown below with one parking space, accessed via the existing paved driveway. Staff continues to recommend denial of the variance. Staff has recommended that the petitioner should instead obtain permits to pave the right-of-way for on-street parallel parking.

(Continued)

2023- CVR-800 / 2023-CPL-800 STAFF REPORT (Continued)

RECOMMENDATIONS

Staff **recommends approval of the variance** for the 2.9-foot east side setback for proposed Lot One and a one-foot west side setback for Lot Two, and to legally establish parking located 3.9 feet from 64th Street, a 63.7% front building line for Lot Two and a 20% front building line on Lot One along 64th Street, a 47.3% front building line along Ferguson Street for Lot One, a 16.3-foot setback from Ferguson Street for Lot One, a 5.3-foot rear setback for Lot Two, and for building heights of 21.1 feet for Lot One and 14.2 feet for Lot Two, with the following commitments:

1. That the gravel parking and driveway be removed.
2. That permits must be obtained for the cooler and signs.

Staff **recommends denial of the variance** to legally establish the parking located zero feet from Ferguson Street in front of the front building line, the 32-foot-wide driveway along Ferguson Street, and parking in the right-of-way of Ferguson Street.

Staff recommends that the Hearing Examiner **approve** and find that the plat, file-dated January 5, 2023, complies with the standards of the Subdivision regulations, subject to the following conditions:

1. That the waiver of sidewalks be **denied**, and that the applicant provides a bond, as required by Section 741-210, of the Consolidated Zoning and Subdivision Ordinance.
2. Subject to the Standards and Specifications of the Department of Public Works, 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.
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 are met, prior to the recording of the final plat

(Continued)

2023- CVR-800 / 2023-CPL-800 STAFF REPORT (Continued)

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

- ◇ The subject site is zoned MU-1 and is developed with two buildings, an outdoor dining patio, and surface parking.
- ◇ This petition would subdivide the property into two lots, with a waiver of sidewalks on Ferguson Street, and provide for a 2.9-foot east side setback for Proposed Lot One and a zero-foot west side setback for proposed Lot Two, and legally establish several existing non-compliant development standards.

VARIANCE

- ◇ This petition would provide for a 2.9-foot east side setback for proposed Lot One and a one-foot west side setback for Lot Two. This petition would also legally establish the following:
 - ◇ parking located 3.9 feet from 64th Street and zero feet from Ferguson Street, in front of the front building line,
 - ◇ a 63.7% front building line for Lot Two and a 20% front building line on Lot One along 64th Street,
 - ◇ a 47.3% front building line along Ferguson Street for Lot One,
 - ◇ a 32-foot-wide driveway along Ferguson Street,
 - ◇ a 16.3-foot setback from Ferguson Street for Lot One,
 - ◇ a 5.3-foot rear setback for Lot Two,
 - ◇ building heights of 21.1 feet for Lot One and 14.2 feet for Lot Two,
 - ◇ and with parking in the right-of-way of Ferguson Street.
- ◇ The reduced side setbacks are related to the subdivision petition. The existing lot contains two buildings, and the subdivision would permit each building to be under separate ownership. Since the existing structures are to remain, staff is not opposed to reduced setbacks created by a plat.
- ◇ Most items in this request are existing improvements, several of which would typically be considered legally established non-conforming use and structures. This site was developed prior to the adoption of the Transit-Oriented Development Overlay on November 1, 2021. Several variances are related to the TOD overlay standards. However, some of the requests are the result of non-permitted improvements that create a nonconformity.
- ◇ The gravel parking zero-feet from Ferguson Street in front of the front building line, the 32-foot driveway, and parking in the right-of-way on Ferguson Street did not obtain permits. Gravel is not a permitted surface material for non-residential properties, and the existing parking is encroaching into the street. The 32-foot-wide driveway is also the result of the parking encroaching into the street. Staff would suggest the driveway could easily be reduced to a compliant driveway width of no more than 24 feet to allow access to the north side of the property. Staff would also suggest that the parking could be replaced by on-street parallel parking in compliance with the Department of Public Works Standards. Therefore, staff is recommending denial of these petitions and requests a commitment that the gravel parking be removed.

- ◇ The requirement for minimum front building line percentages is a standard of the TOD overlay, which was adopted after construction of these buildings; therefore, staff would not be opposed to legally establishing reduced front building line percentages for existing structures.
- ◇ The parking lot 3.9 feet from 64th Street is existing parking that is accessed from the alley. The 50-foot setback for parking is a requirement of the TOD overlay. Given that the lot depth is less than 60 feet, and this parking area would typically be considered legally established, staff is not opposed to a variance to legally establish the reduced setback.
- ◇ The existing setback for the building on proposed Lot One is 16.3 feet, which exceeds the ten-foot maximum front setback is a standard of the TOD overlay. Staff is not opposed to legally establishing a structure that existed prior to the adoption of this standard.
- ◇ This request would legally establish a 5.3-foot rear setback for Lot Two. The reduced setback is caused by a cooler addition, which was not permitted. However, this site is less than 60 feet wide, and the rear yard would be the most appropriate location for this cooler. Staff is not opposed to the reduced setback for the cooler, with a commitment that permits must be obtained.
- ◇ The MU-1 district has a minimum height of 25 feet. The MU-1 district was created with the adoption of the Indy Rezone Consolidated Zoning and Subdivision Ordinance in 2016. These buildings have existed at least since the 1960's as shown on historic aerial photos; therefore, staff would not be opposed to legally establishing a reduced building height.

PLAT

- ◇ The plat would subdivide the subject site into two lots, Lots One and Two. Lot One would contain the existing two-story converted office. Lot Two would contain the existing one-story commercial building, and covered outdoor seating area, and surface parking. These lots generally meet the standards for the MU-1 district, or would be subject to variance 2023-CVR-800.

TRAFFIC / STREETS

- ◇ Each lot would have frontage East 64th Street. Lot One would be a corner lot and also front on Ferguson Street. No new streets are proposed as part of this petition.

SIDEWALKS

- ◇ Sidewalks are existing on East 64th Street. Sidewalks will be required on Ferguson Street.

GENERAL INFORMATION

EXISTING ZONING, CONTEXT AREA, AND LAND USE

MU-1	Compact	Commercial
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SURROUNDING ZONING AND LAND USE

North	MU-2	Commercial
South	MU-1	Mixed-use
East	MU-2	Commercial
West	MU-1	Commercial

COMPREHENSIVE LAND USE PLAN	Village Mixed Use / Transit-Oriented Development Overlay
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2023- CVR-800 / 2023-CPL-800 STAFF REPORT (Continued)

THOROUGHFARE PLAN	East 64 TH Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a Local Street, with a 33-foot existing and a 48-foot proposed right-of-way. Ferguson Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a Local Street, with a 44-foot existing and a 48-foot proposed right-of-way.
FINDINGS OF FACT (VARIANCE)	File-dated January 5, 2023
FINDINGS OF FACT (WAIVER)	File-dated January 5, 2023
PRELIMINARY PLAT	File-dated January 5, 2023
SITE PLAN (AMENDED)	File-dated February 23, 2023

ZONING HISTORY – SITE

2008-UV2-018, variance to legally establish a lot with an accessory use area of 2,264.5 square feet, or 141.53 percent of the total living area for the primary dwelling, **approved**.

ZONING HISTORY – VICINITY

2022-DV1-039, 6407 Ferguson Street, variance to provide for an office with 68 parking spaces, **approved**.

2020-VAC-008, 6407 Ferguson Street, Vacation of a portion of 65th Street, being 15.28 feet wide, beginning at a point on the south right-of-way line of 65th Street 3.54 feet east of the northwest corner of Lot 16 in Lights Broad Ripple Addition, an Addition to the City of Indianapolis, as recorded in Plat Book 9, Page 20 in the Office of the Marion County Recorder's Office and extending eastward 110.2 feet to a point; and Vacation of a portion of Ferguson Street, being 12.45 feet wide, beginning at the northwest corner of said Lot 16 and extending southward 229.26 feet along the western lot lines of Lot 16, 17, 18 and 189 of said Lights Broad Ripple Addition, and both with a waiver of the assessment of benefits, **approved**.

2020-DV1-021, 6419 Ferguson Street, to provide for an office building with 74 parking spaces and parking within the right-of-way and front setback of 65th Street, **approved**.

2016-CZN-843, 6367 Guilford Avenue, rezoning of 0.47 acre from the C-4 (FF) district to the MU-2 (FF) district, **approved**.

2016-CVR-843, 6367 Guilford Avenue, variance to provide for a mixed-use building, with a portion of the west front setback being four feet, with the building height exceeding the maximum, with the building within the clear sight triangles of the abutting streets, and with stairs and an enclosed outdoor seating area within the required front setback and right-of-way of Main Street, and with an off-site parking lot with zero-foot setbacks from the front property lines, **denied**.

2015-DV1-026, 6406 Cornell Avenue, variance to provide for a two-story 5,000-square foot retail and office building, with eight parking spaces, with deficient maneuvering area, and with one deficiently sized handicapped space, **approved**.

2005-ZON-046, 6407 Ferguson Street, rezoning of 0.171 acre from the C-2 district to the C-3 district, **approved**.

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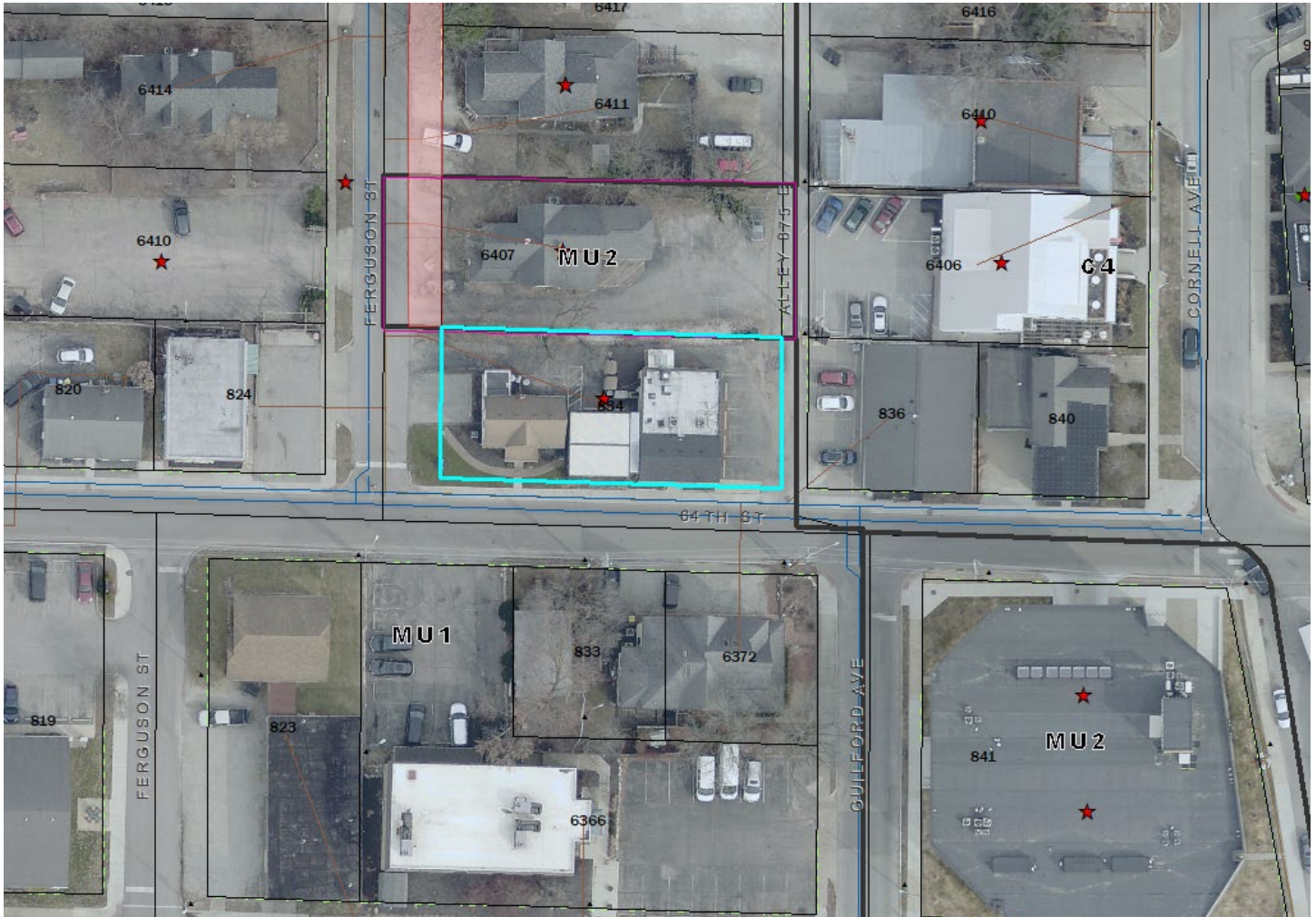
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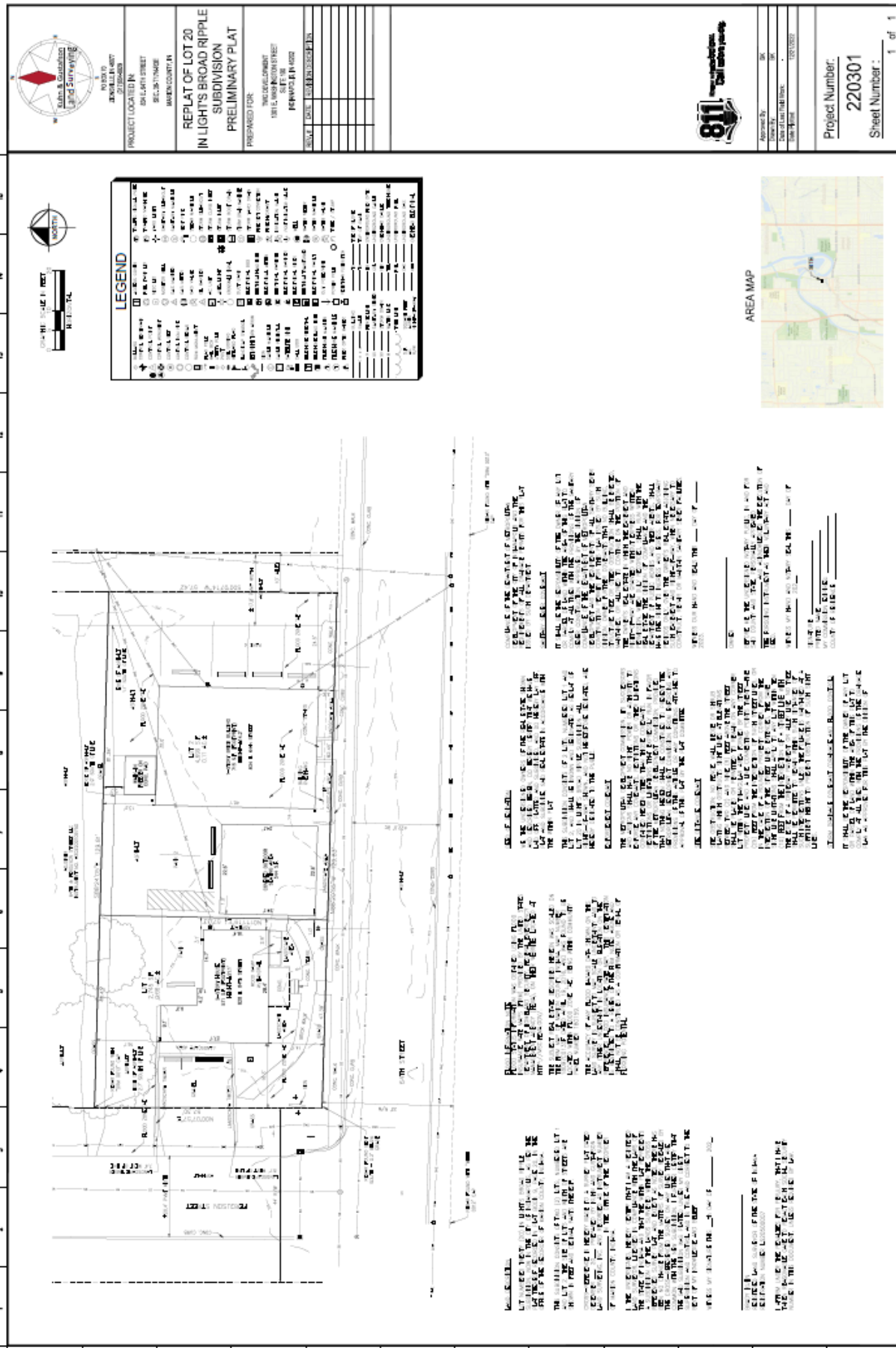
84-UV1-113, 6412 & 6414 Ferguson Street, variance to provide for the use of a portion of an existing building as a commercial party room, **approved**.

75-UV2-116, 6410, 6412, & 6414 Ferguson Street, variance to provide for the use of an existing building for offices and retail sales, with a pole sign and off-street parking, **approved**.

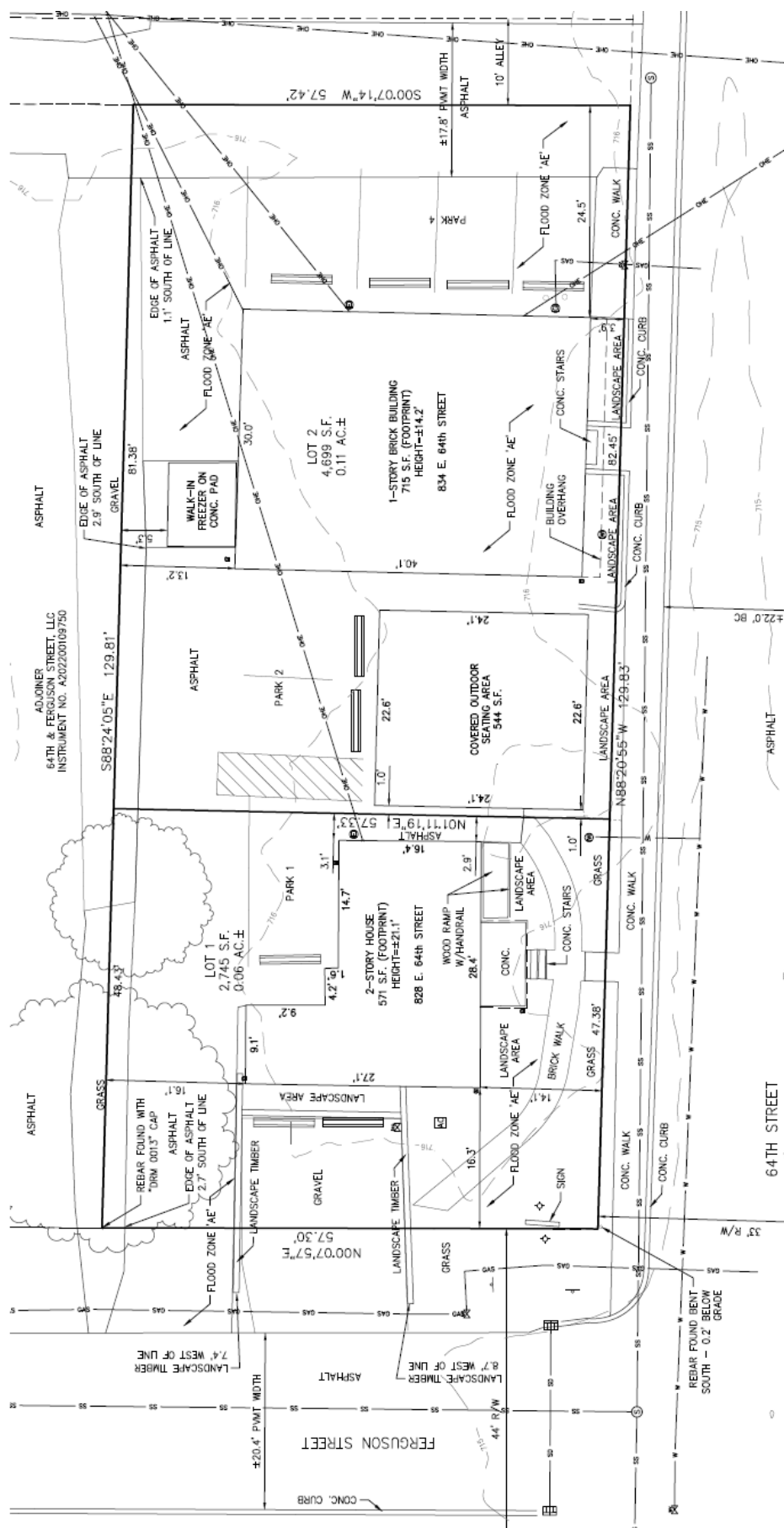
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2022-CZN-855 / 2022-CVR-855 / 2022-CPL-855 Area Map





Plan Detail



2023-CVR-800 / 2023-CPL-800 Variance Findings of Fact

**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 improvements have been in existence prior to the MU-1 zoning, and there is no encroachment into the clear site triangle, thus resulting in continued safety for vehicular and pedestrian traffic.

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 variances only seek to legally establish existing improvements preserving the status quo as to existing setbacks / separation between the subject property and 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:

there are existing separate buildings / uses on one lot, and the replatting of the lot into two is triggering the need for variances in order to legally establish their existence.

2023-CVR-800 / 2023-CPL-800 Waiver Findings of Fact

REQUESTED WAIVER:

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

**WAIVER OF THE SUBDIVISION REGULATIONS
FINDINGS OF FACT**

1. The granting of the waiver or modification will not be detrimental to the public health, safety, or welfare or injurious to other property because:

there is no proposed change in use, and the properties with west frontage on Ferguson Street have functioned without sidewalks for years.

2. 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 because:

the subject property has frontage on two streets, and the 64th Street frontage has a sidewalk which provides safe and adequate access to the property.

3. 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:

the property has two frontages, one of which has an existing sidewalk providing adequate access. There is a gas line running north / south along the Ferguson Street frontage which would appear to interfere with a proposed sidewalk.

4. 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 because:

the plat will allow two separate uses to be sold / leased individually, which fulfills the major premise of the subdivision ordinance; to facilitate orderly transfer of properties.

5. 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 because:

there is no change of use, or proposed development of the subject property, which would not trigger application of the sidewalk ordinance.

MEMORANDUM OF EXAMINER'S DECISION

2023-CVR-800B

834 East 64th Street

The petition was included in 2023-CVR-800, which included a number of variance requests for building setback, building height, and parking, and a companion plat petition.

Your Hearing Examiner visited the site prior to the hearing and noted the buildings that had been on the site for a number of years, and noted the newer parking spaces off of Ferguson Street. The site is in a portion of Broad Ripple Village where newer development is mixed with existing development.

The petitioner's representative explained that most of the variances requested are either grandfathered or are a result of the plat proposed. It was stated that the Broad Ripple Village Association voted to support the petitions, and a letter was provided. Because staff was recommending approval of the majority of the variance requests, the petitioner's representative requested that the variance requests for the parking off of Ferguson Street and the driveway along Ferguson Street be separated from the other requests, and this became known as 2023-CVR-800B. The request for waiver of sidewalks along Ferguson Street was also withdrawn.

Staff described its support of 2023-CVR-800A and 2023-CPL-800, with the sidewalk waiver removed. Because the parking and driveway off of Ferguson Street did not receive permits and gravel parking isn't permitted, staff suggested that this part of the site could be reconfigured.

In your Hearing Examiner's opinion, the parking off of Ferguson Street should not be allowed, and the petitioner seems willing to explore alternatives. Denial of this petition was recommended.

For Metropolitan Development Commission Hearing on March 1, 2023

2023-CVR-800 / 2023-CPL-800 Photographs



Subject site proposed Lots One (left) and Two (right) viewed from 64th Street, looking north



Proposed Lot Two viewed from 64th Street, looking north



Proposed Lot Two parking and alley access viewed from 64th Street, looking northwest



Proposed Lot One viewed from Ferguson Street, looking east



North setback, looking east



Existing driveway and parking on Ferguson Street, looking east



North rear setback for proposed Lot Two, looking south



North rear yard and east parking, alley shown left, looking south