

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-UV3-003 (Amended)
Address: 3146 and 3202 Arbor Street (approximate address)
Location: Perry Township, Council District #20
Zoning: D-4 (FF)
Petitioner: Jose Ariza
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a commercial contractor with outdoor storage and multiple commercial vehicles (not permitted, prohibited within the Floodway Fringe) with a parking area in the front yard greater than 30 feet in width (maximum 30-foot wide parking area permitted) and a six-foot fence within the front yard of Arbor Street and a four-foot fence in the front yard of Arbor Street and Murray Street, encroaching within the clear sight triangle of these intersecting streets (maximum 3.5-foot tall fence permitted in front yards, encroachment of clear sight triangle not permitted) and 336 square-foot garage with a three-foot rear setback (accessory structure not permitted without a primary structure and five-foot rear setback required).

This petition was automatically continued from the February 21, 2023 hearing to the March 21, 2023 hearing at the request of a registered neighborhood organization.

This petition was continued for cause from the March 21, 2023 hearing to the May 23, 2023 hearing at the request of the petitioner to allow additional time to amend the request and provide proper notice.

This petition was continued for cause from the May 23, 2023 hearing to the July 18, 2023 hearing to finalize changes to the request and provide proper notice.

RECOMMENDATIONS

Staff **strongly recommends denial** of this request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

EXISTING ZONING AND LAND USE

D-4 Compact Commercial

(Continued)

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SURROUNDING ZONING AND LAND USE

North	D-4	Residential (Single-family dwelling)
South	D-4	Undeveloped
East	D-4	Undeveloped
West	D-4	Residential (Single-family dwellings)

COMPREHENSIVE PLAN The Comprehensive Plan recommends suburban neighborhood development.

- ◇ The approximate 0.96-acre six-parcel subject site is developed with an accessory structure and has outdoor storage of commercial vehicles and construction materials.
- ◇ The subject site is surrounded to the north and west by single-family dwellings, undeveloped residential parcels to the east and south and there appears to be a commercial building northwest of the site with an associated single-family dwelling.

VARIANCE OF USE

- ◇ The grant of the request would permit the operation of a commercial contractor with the parking of multiple commercial vehicles and the location of a detached garage on site.
- ◇ The purpose of the D-4 district is intended for low or medium intensity single-family and two-family residential development. Land in this district needs good thoroughfare access, relatively flat topography, and nearby community and neighborhood services and facilities with pedestrian linkages. Provisions for recreational facilities serving the neighborhood within walking distance are vitally important. Trees fulfill an important cooling and drainage role for the individual lots in this district. The D-4 district has a typical density of 4.2 units per gross acre. This district fulfills the low-density residential classification of the Comprehensive General Land Use Plan.
- ◇ The use would be classified as a Commercial and Building Contractor, which is defined as an “establishment or activity that supplies materials and labor to fulfill work at a remote site and that work is typically a building trade or activity associated with the construction or maintenance of a physical building or structure. This definition includes uses such as contractors for awning; building/construction; carpentry work; concrete; decorating; demolition; electrical; excavation; extermination/disinfection; fence; flooring; home remodeling; masonry/stonework/tile/setting; painting; pest control; plastering/drywall; plumbing; roofing; septic system; sheet metal; siding; sign; storm door; window; construction companies, contractors, lumber yards; swimming pool installation and services; home remodeling companies; heating; air conditioning; landscaping; lawn services; tree services; and water softener services. This definition may include accessory offices for operation of the contracting business but does not include retail sales of goods to the public.
- ◇ Commercial and Building Contractors are only permitted in the C-5 and C-7 district, by special exception in the C-4 district, or in any industrial district since it is classified as a heavy commercial service in Table 743-1: Use Table.

(Continued)

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- ◇ Commercial or industrial uses, when located on accurately zoned properties, require transitional yards to buffer such intense uses from protected districts which include dwellings and schools. In this instance, the proposed use would not be required to provide such buffer areas since the D-4 district is intended to be utilized for a variety of housing types. Therefore, the site provides insufficient screening to the surrounding dwelling districts, which staff finds concerning.
- ◇ Staff has concerns that the business could potentially expand with the additional storage of commercial vehicles and materials based on the availability of land that is covered with gravel and fenced in.
- ◇ The site is in the 100-year flood plain also categorized as the floodway fringe, specifically Zone AE. The purpose of the Floodway Fringe (FF) secondary zoning district is to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas.
- ◇ It is the purpose of the Flood Control Secondary Zoning Districts to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
 1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.
 2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
 3. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.
 4. Control filling, grading, dredging, and other development which may increase erosion or flood damage.
 5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
 6. Make federal flood insurance available for structures and their contents in the city by fulfilling the requirements of the National Flood Insurance Program.
- ◇ The storage of commercial vehicles is prohibited in the floodway fringe and staff would not support this intense use on the subject site the is environmentally sensitive.
- ◇ Lastly, the site would have a detached garage on site without a primary structure, which is not permitted.

VARIANCE OF USE FINDINGS OF FACT

- ◇ Staff finds that the grant would be injurious to the general welfare of the community since a commercial operation would attract additional traffic and unnecessary noise from the commercial vehicles on site.
- ◇ The use and value of the area adjacent to the property included in the variance would be adversely affected by the development of this proposed commercial use in the area by decreasing the desirability of the area for potential residents, largely due to the location of a heavy commercial use in a residential area.

(Continued)

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- ◇ The need for the variance does not arise from a condition peculiar to the property in question because the sites could be developed residentially without the need for a variance.
- ◇ The strict application of the terms of the zoning ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is sought because the site is appropriately zoned residentially.
- ◇ Lastly, the proposed use would not align with the suburban neighborhood development recommendation of the Comprehensive Plan. In Staff's opinion, the request would represent a wholly inappropriate deviation from the Plan.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The grant of the request would permit an excessive parking area in the front yard, a detached garage with a three-foot rear setback and four-foot tall and six-foot tall fences in the front yard encroaching into the clear sight triangle.
- ◇ The D-4 district limits parking areas in the front yard to a maximum width of 30 feet. The proposal would have an approximate 212 wide parking area since the site plan notes that approximately half of the width of the lot would have a gravel surface area. The request would also have a three-foot rear setback where five feet is required for an accessory structure.
- ◇ Fences in the dwelling district are limited to 3.5 feet in the front yard or four feet if 30% opacity or less is met and six feet in the sides and rear yards. The request would allow for a four-foot-tall privacy fence along west Murray Street and along a portion of Arbor Avenue, which is not permitted. A six-foot tall gate would be proposed along Arbor Avenue and a six-foot tall fence would be located along the northern property boundary in the front yard.
- ◇ Staff would not support the encroachment in the clear sight triangle or proposed fence heights at this site since taller fences are meant to be more commercial in nature and that would not be appropriate in this residential neighborhood. The grant of the request would be injurious to the public safety of the community because the relocation of the fence outside of the clear sight triangles while meeting the height limitations of the Ordinance would provide the best opportunity for accident prevention in an area that does not have sidewalks for safe travel.
- ◇ The strict application of the terms of the Zoning Ordinance would not result in practical difficulty with the use of the site since residential development could be possible without requiring the development standards associated to a commercial use.
- ◇ For these reasons, staff is not supportive of the variance of development standards request.

GENERAL INFORMATION

THOROUGHFARE PLAN

Arbor Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 50-foot existing and proposed right-of-way.

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FLOODWAY/FLOODWAY FRINGE	The eastern portion of this site is located in the 100-year floodplain of Highland Creek.
SITE PLAN	File-dated December 28, 2022.
AMENDED SITE PLAN	File-dated June 23, 2023.
PLAN OF OPERATION	File-dated January 26, 2023.
FINDINGS OF FACT	File-dated December 28, 2022.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

1. VIO21-004938:

- a. The outdoor storage of junk, trash, or debris in any zoning district, the provisions of which do not specifically permit such a use; (Wood pallets, scrap metal, scrap wood and miscellaneous items throughout the property).
- b. The outdoor storage of inoperable vehicles or vehicle parts in any zoning district, the provisions of which do not specifically permit such a use; (Tires, box truck body and miscellaneous vehicle parts throughout the property).
- c. The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Trailer, open or enclosed, with a cargo holder measuring more than 12 ft. in length, open trailer measuring 17 ft).
- d. The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Trailer, open or enclosed, with a cargo holder measuring more than 12 ft. in length, closed trailer measuring 16 ft).
- e. The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Vehicle, regardless of weight, used or designed to be used as a, Bobcat).
- f. The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - Outdoor storage of pallets of building material is not a permitted accessory use for a D-4 zoning district).
- g. Failure to comply with use-specific standards and zoning district development standards for the D-4 district; (744-404.A.2.a. - Parking areas in front yards shall be paved with bricks, concrete, asphalt, permeable pavers or pavement, or a gravel surface with a distinct edge boundary to retain the gravel; the parking of vehicles on grass in the front yard is prohibited).
- h. The failure to obtain an Improvement Location Permit when one is required by the terms and provisions of the Zoning Ordinance; (740-801.A.3. - Failure to obtain an Improvement Location Permit (ILP) for mini-barns or sheds exceeding 200 sq. ft.).
- i. Failure to comply with use-specific standards and zoning district development standards for the D-4 district; (Accessory uses or structures shall not be permitted on a lot prior to the erection of the primary building).

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PREVIOUS CASES

None.

ZONING HISTORY – VICINITY

2001-DV2-068; 3304 Coffey Street (southwest of site), Variance of development standards of the Flood Control Districts Zoning Ordinance to legally establish a 24 by 36-foot, or 864 square foot accessory structure 10 feet below the base flood elevation (maximum accessory use area of 400 square feet permitted when not elevated above the base flood elevation), and the Dwelling Districts Zoning Ordinance to provide for the construction of 45 square foot breezeway resulting in 1,438 square feet of accessory use area, or 128% of the primary use of the lot (accessory use not permitted to exceed 99.9% of the total floor area of the primary use), **granted**.

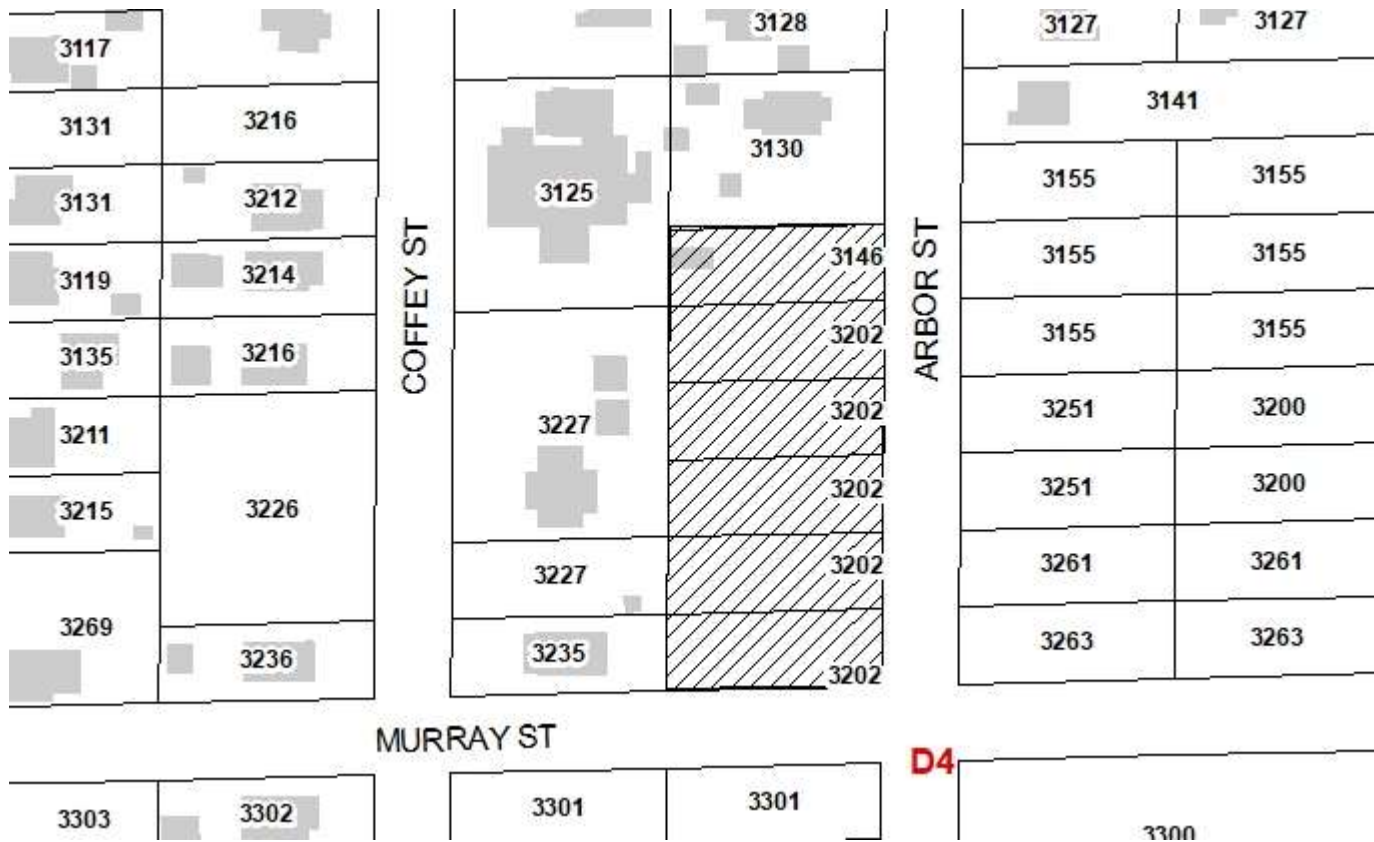
92-UV2-118; 3306 South Chase Street (southwest of site), Variance of use of the Dwelling Districts Zoning Ordinance to allow for the continued use of an existing mobile home (not permitted) for the care of the petitioner's aging parent and differently abled sibling, **granted**.

90-UV2-105; 3306 South Chase Street (southwest of site), Variance of use to permit the placement of a mobile home, **granted**.

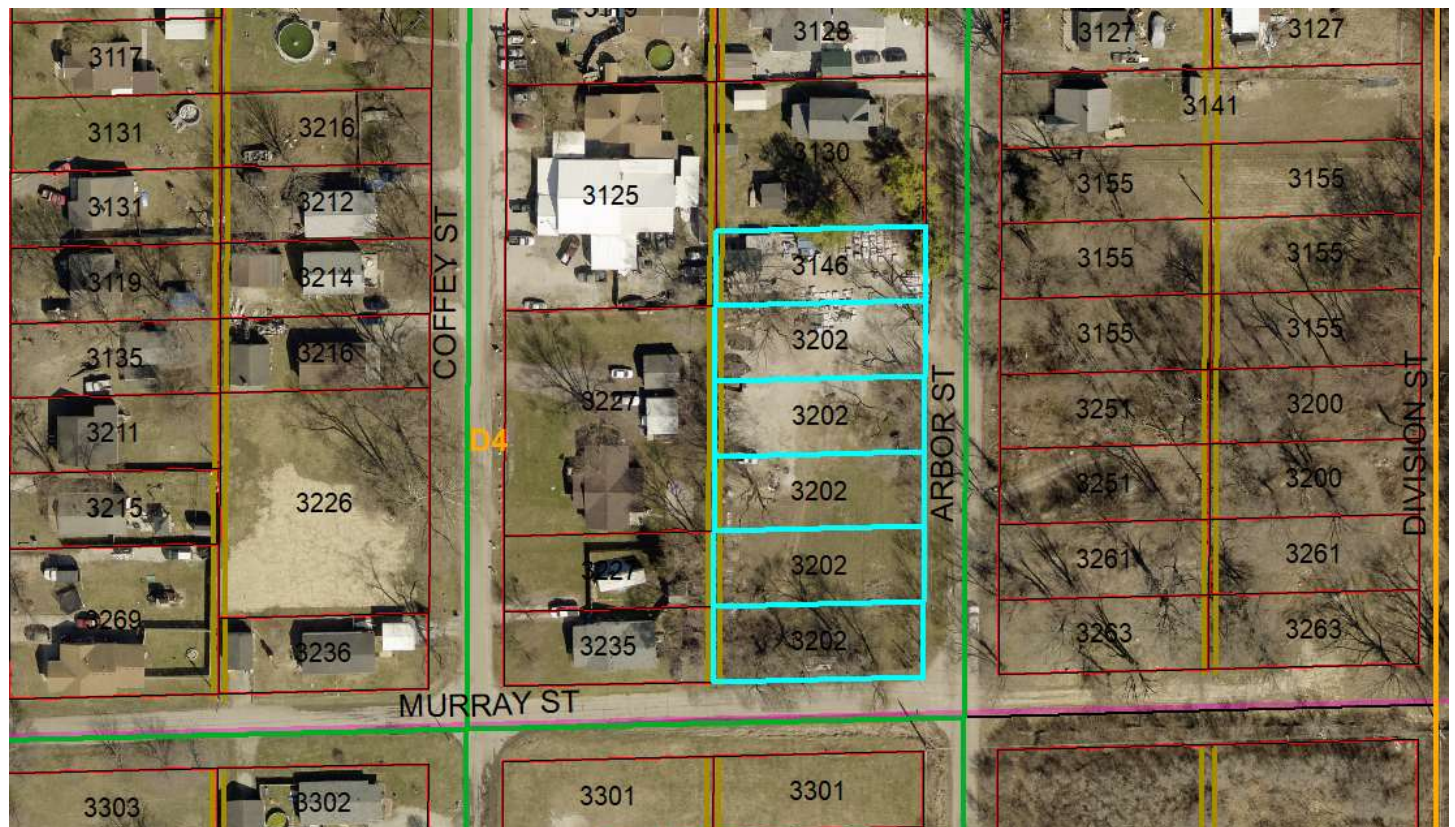
85-UV1-84; 3331 Arbor Street (southeast of site), Variance of use of the Dwelling Districts Zoning Ordinance to provide for the construction of a 3,200 square foot building to be used for storage of commercial trucks, minor repair, and maintenance of the trucks, **granted**.

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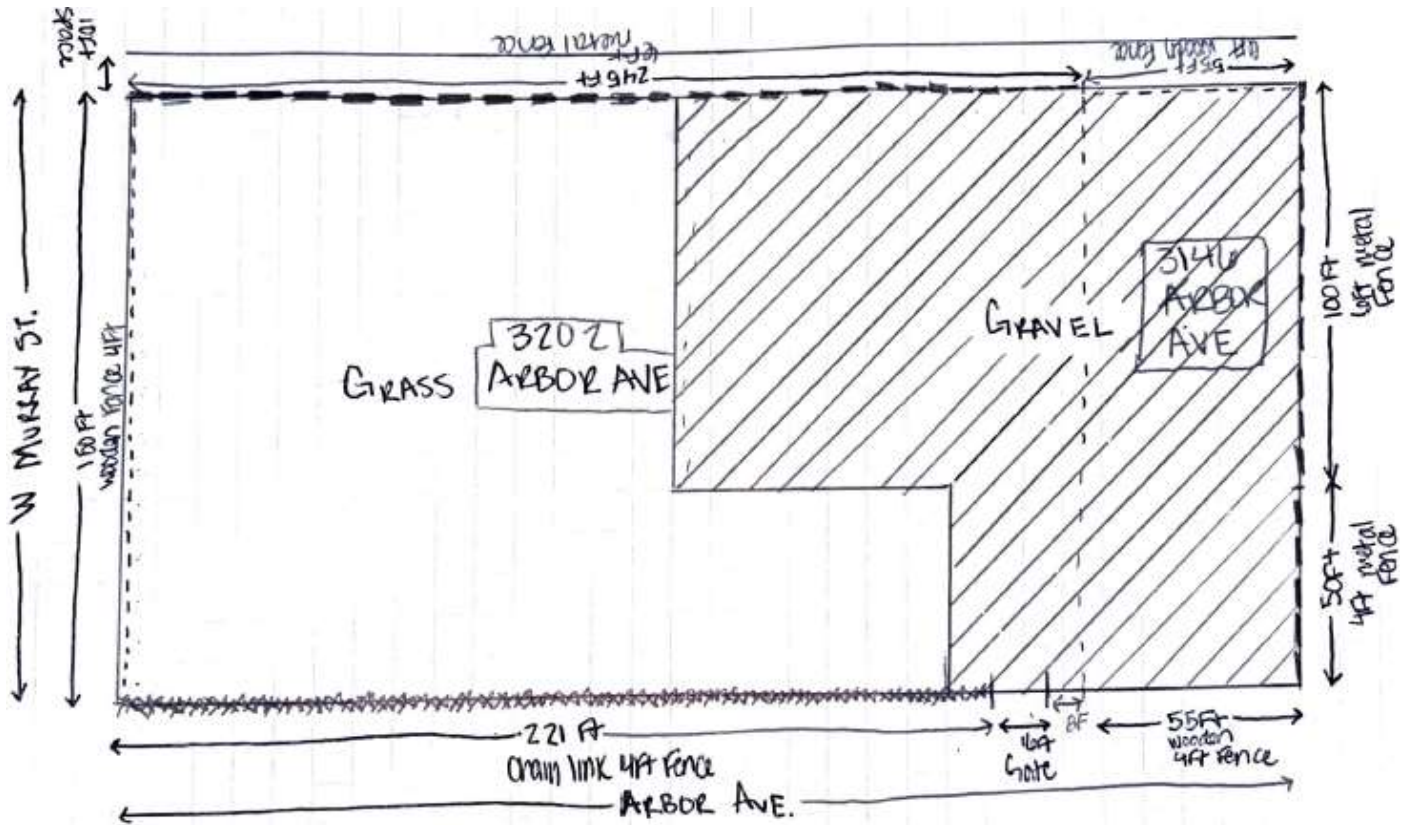
2023-UV3-003; Location Map



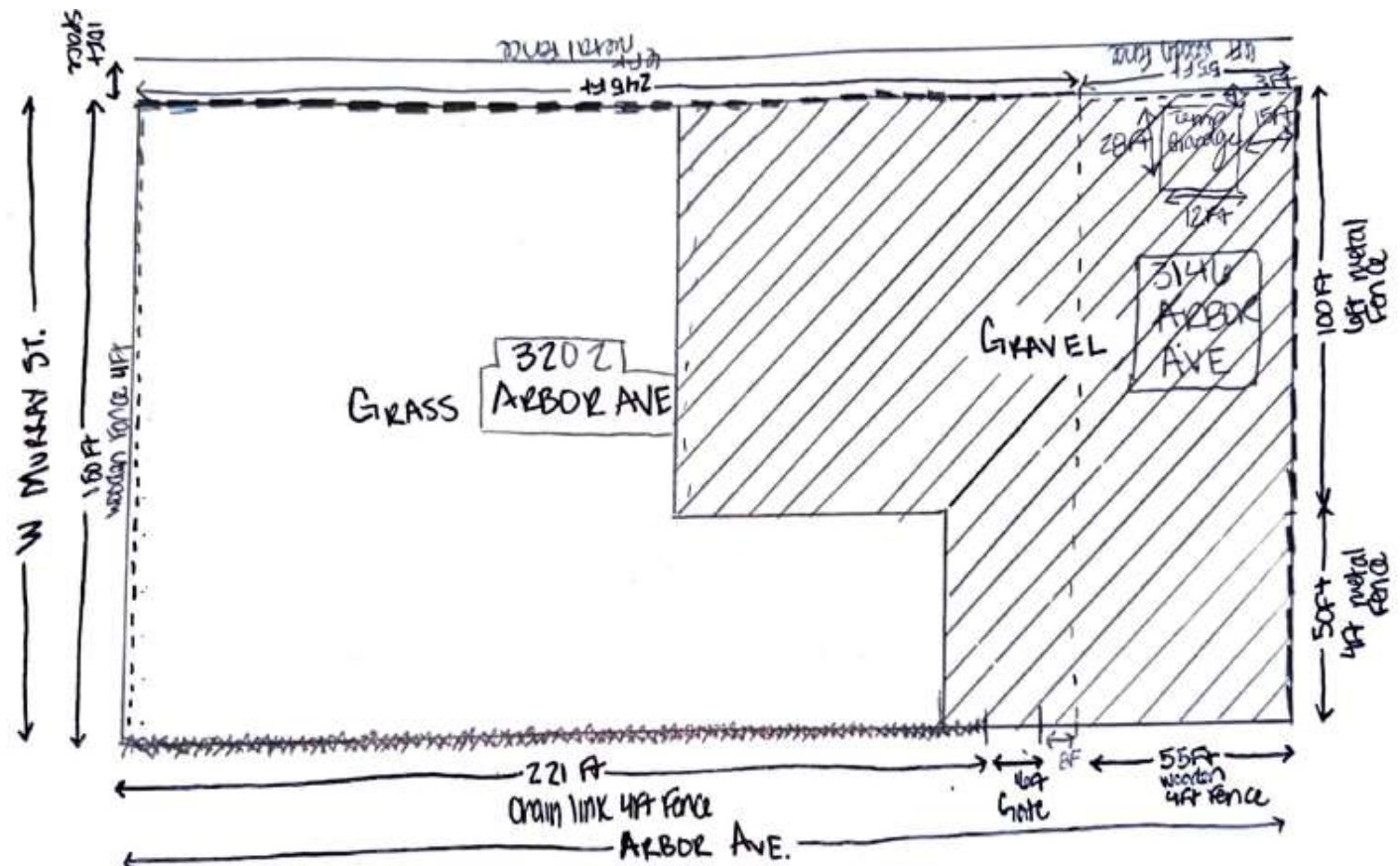
2023-UV3-003; Aerial Map



2023-UV3-003; Site Plan



2023-UV3-003; Amended Site Plan



2023-UV3-003; Plan of Operation

Plan of Operation

Currently at the property there is a total of 9 dump trailer, 3 diesel pickup trucks, and one Bobcat. The area where they are going to be parked and stored where there is gravel as shown in the site plan. There are no hours of operations or any employees. The reason why there is that amount of commercial vehicle is because I work in construction and roofing and need somewhere to store them.

2023-UV3-003; Photographs



Photo of 3202 Arbor Street and clear sight triangle encroachment.



Photo of the Subject Property: 3202 Arbor Street



Photo of the Subject Property: 3202 Arbor Street



Photo of the Subject Property: 3202 Arbor Street



Photo of the Subject Property: 3202 Arbor Street



Photo of the Subject Property: 3202 Arbor Street



Photo of 3146 Arbor Street and the four foot tall privacy fence in the front yard.



Photo of the northern property boundary with four-foot and six-foot privacy fence in the front yard.



Photo of the construction material stored on site.



Photo of the construction material stored on site and accessory structures.



Photo of the six-foot tall fences in the front yard of Murray Street.



Photo of the single-family dwelling west of the site at 3235 Coffey Street.



Photo of the single-family dwelling west of the site at 3227 Coffey Street.



Photo of what appears to be a commercial building northwest of the site at 3125 Coffey Street.



Single-family dwelling associated to the commercila building at 3125 Coffey Street.



Photo of the undeveloped lots south of the site.



Photo of the undeveloped lots east of the site.



Photo of the single-family dwelling north of the site.