

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-ZON-111 / 2024-VAR-001 (Amended)
Address: 9950 East 42nd Street (Approximate Address)
Location: Lawrence Township, Council District #14
Petitioner: Jugaad, LLC, by David Retherford
Request: Rezoning of 0.92 acre from the C-3 district to the C-4 district to provide for the renovation/replacement of a gas station and convenience store.

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a four-foot south setback for a proposed canopy (ten-foot setback required).

ADDENDUM FOR FEBRUARY 15, 2024 HEARING EXAMINER

This petition was continued from the December 28, 2023 hearing to the February 15, 2024 hearing at the request of the petitioner to allow additional time to discuss their proposal with the Department of Public Works.

Amendment: The petitioner amended the request to include a variance for a four-foot south side setback for a proposed canopy on site. After conversations with the Department of Public Works (DPW), the 40-foot half right-of-way was no longer requested by DPW. Instead, a 35-foot half right-of-way should be maintained along 42nd Street. Based on GIS measurements, the existing half right-of-way is 35 feet along 42nd Street so a dedication of right-of-way is not necessary.

Staff **recommends approval of the four-foot south setback** to allow the construction of a canopy above the existing fuel pumps since the site would be zoned appropriately through this request. In staff's opinion, the agreement to not have the canopy in the right-of-way is ideal to provide customers protection from the elements when frequenting this location.

Staff **recommends approval of the rezoning petition**, subject to the following commitment being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. The two existing driveways closest to the intersection of 42nd Street and Mitthoefer Road shall be permanently closed by adding a sidewalk connecting to the existing sidewalk segments as well as a grass strip abutting the new sidewalk segment closest to the street. The new sidewalk connection and grass strip shall be installed within one (1) year of the adoption of 2023-ZON-111.

December 28, 2023

RECOMMENDATIONS

Staff **recommends approval** of the rezoning petition, subject to the following commitments being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

(Continued)

STAFF REPORT 2023-ZON-111 (Continued)

1. A 40-foot half right-of-way shall be dedicated along the frontage of 42nd 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).
2. Two of the existing driveways shall be permanently closed by adding a sidewalk connecting to the existing sidewalk segments as well as a grass strip abutting the new sidewalk segment closest to the street. The new sidewalk connection and grass strip shall be installed within one (1) year of the adoption of 2023-ZON-111.

SUMMARY OF ISSUES

LAND USE

- ◇ The 0.92-acre subject site is developed with an automobile fueling station and convenience store that was constructed between 1966 and 1972 per historical aerial images. At the time, the use was permitted in the C-3 district but was later removed from the list of permitted uses in 2016 with the adoption of Indianapolis-Marion County Consolidated Zoning and Subdivision Ordinance.
- ◇ The site is bordered to the north and west by an undeveloped lot, zoned C-3, to the east by a single-family dwelling, zoned C-3, and to the south by a vacant laundromat, zoned C-3.

REZONING

- ◇ The request would rezone the property from the C-3 district to the C-4 district to allow for the construction of a canopy associated with the automobile fueling station and would include the construction of a new convenience store.
- ◇ The site is zoned C-3, which is for the development of an extensive range of retail sales and personal, professional, and business services required to meet the demands of a fully developed residential neighborhood, regardless of its size. Examples of such types of uses include neighborhood shopping centers, sales of retail convenience or durable goods, shopping establishments, retail, and personal and professional service establishments. At this neighborhood scale of retail, a fine-grain of accessibility requisite for all modes of travel must be provided and maintained. It does not make provision, however, for those businesses that draw customers in significant numbers from well beyond a neighborhood boundary and are, therefore, unusually heavy traffic generators, such as theaters. It does not allow those businesses that require the outdoor display, sale or storage of merchandise; or require outdoor operations. In general, to achieve maximum flexibility of permitted land use, the C-3 District makes possible a highly varied grouping of indoor retail and business functions.

(Continued)

STAFF REPORT 2023-ZON-111 (Continued)

- ◇ The C-4 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.
- ◇ The Comprehensive Plan recommends community commercial development for the southern portion of the site. The Community Commercial typology provides for low intensity commercial, and office uses that serve nearby neighborhoods. These uses are usually in freestanding buildings or small, integrated centers. Examples include small-scale shops, personal services, professional and business services, grocery stores, drug stores, restaurants, and public gathering spaces.
- ◇ The site has historically been used as an automobile fueling station since at least 1972 according to historic aerial images.

Department of Public Works

- ◇ The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 40-foot half right-of-way along 42nd Street. This dedication would also be consistent with the Marion County Thoroughfare Plan.
- ◇ DPW has also requested that two of the driveways be eliminated and replaced with a sidewalk and grass strip to be closest to the street to increase walkability. This could allow for additional parking if needed.
- ◇ The petitioner provided five different truck routes, to which DPW determined the elimination of Entrances B and C, as shown on the Truck Route Site Plan in the report, would be most appropriate. The two drives to remain would be Entrances A and D to prevent fewer accidents when leaving the site by being furthest from the intersection.

Staff Analysis

- ◇ The rezoning request would allow for the continued operation of an automobile fueling station on a correctly zoned C-4 district since it was constructed and operated in the C-3 district when it was permitted prior to the 2016 adopted Zoning Ordinance changes.
- ◇ Because the C-4 district would not negatively affect the surrounding existing properties and would align with the community commercial recommendation of the Comprehensive Plan, staff is supportive of the request subject to two commitments for the right-of-way dedication and driveway removal and replacement with sidewalks and grass.
- ◇ Staff notified the applicant that the canopy would need to meet the ten-foot front setback requirement of the Ordinance so they should keep that in mind with finalizing their plans. Otherwise, they would need to seek a variance of development standards.

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STAFF REPORT 2023-ZON-111 (Continued)

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

C-3	Metro	Commercial (Fuel station)
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SURROUNDING ZONING AND LAND USE

North	C-3	Undeveloped
South	C-3	Commercial (Vacant Laundromat)
East	C-3	Residential (Single-family dwelling)
West	C-3	Undeveloped

COMPREHENSIVE PLAN

The Comprehensive Plan recommends community commercial development.

THOROUGHFARE PLAN

42nd Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary collector street, with a 67-foot existing right-of-way and an 80-foot proposed right-of-way.

THOROUGHFARE PLAN

Mitthoefer Road is classified in the Official Thoroughfare Plan for Marion County, Indiana as a secondary arterial street, with a 70-foot existing right-of-way and an 80-foot proposed right-of-way.

FLOODWAY / FLOODWAY FRINGE

This site is not located within a floodway or floodway fringe.

WELLFIELD PROTECTION DISTRICT

This site is not located within a wellfield protection district.

SITE PLAN

File-dated November 15, 2023.

TRUCK ROUTE SITE PLAN

File-dated December 18, 2023.

FINDINGS OF FACT

File-dated January 17, 2024.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

None.

PREVIOUS CASES

87-UV1-12; 9950 East 42nd Street (subject site), Variance of use of the Commercial Zoning Ordinance to provide for the use of an existing building for an automobile muffler shop, **withdrawn**.

(Continued)

STAFF REPORT 2023-ZON-111 (Continued)

ZONING HISTORY – VICINITY

2018-ZON-078; 10002 East 42nd Street (east of site), Rezoning of 6.10 acres from the SU-1 district to the C-3 classification, **approved.**

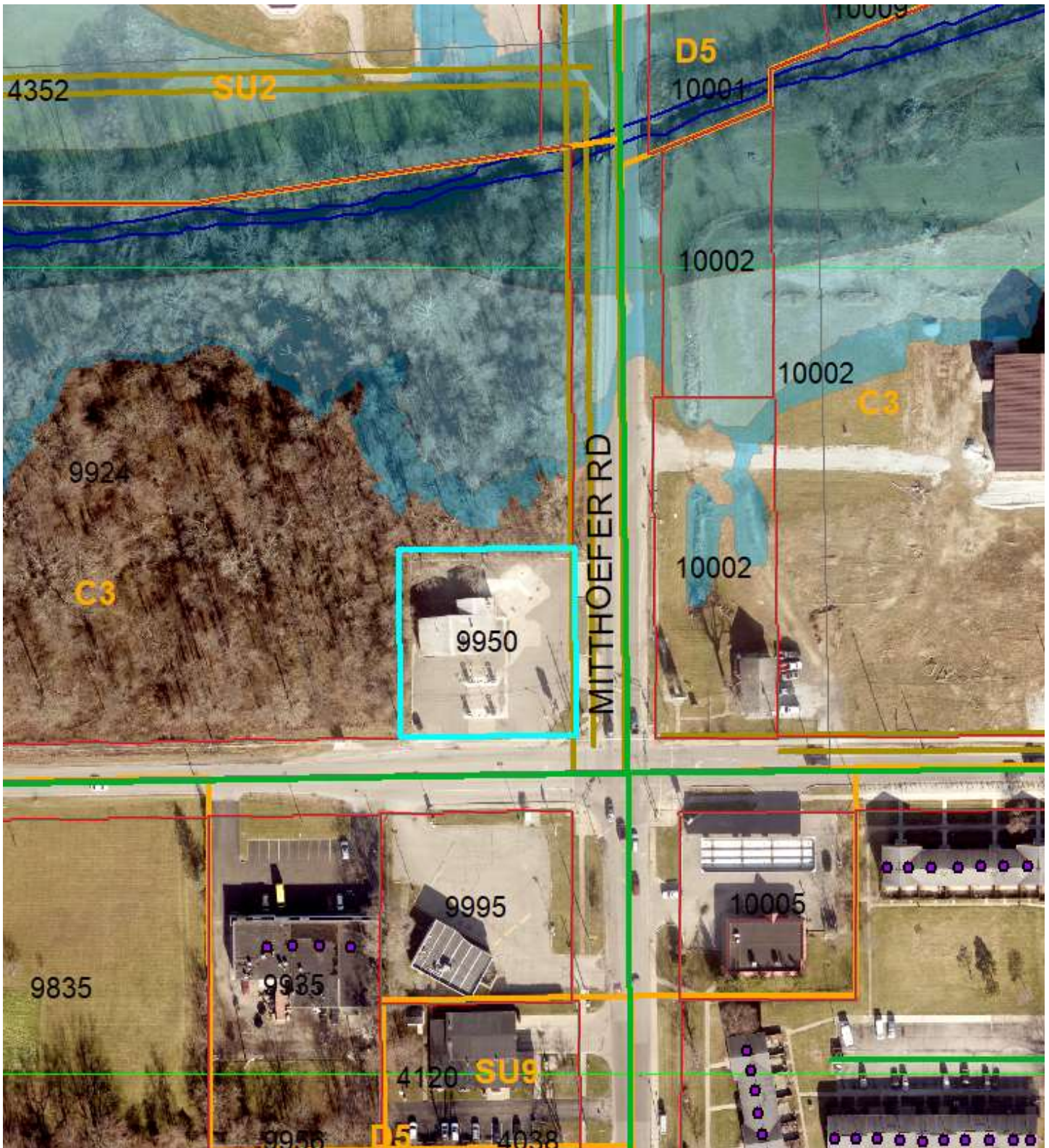
2008-ZON-850; 4352 North Mitthoefer Road (north of site), Rezoning of 10.11 acres, from the SU-1 District, to the SU-2 classification to provide for educational uses, **approved.**

2002-ZON-104; 10023 East 42nd Street (southeast of site), Rezoning of 0.71 acres, being in the D-7 District, to the C-3 classification to provide for a gas station and convenience store, **approved.**

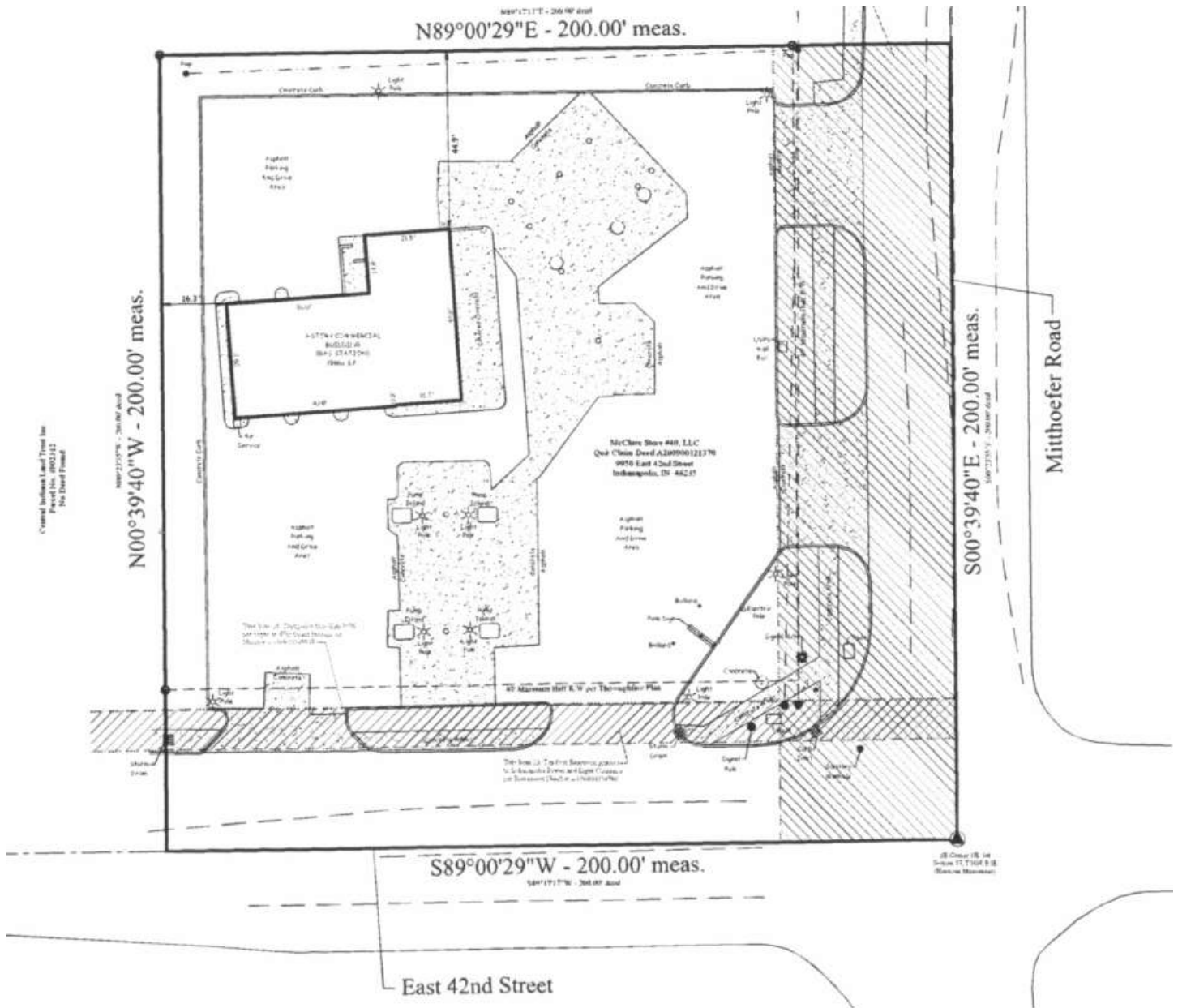
98-Z-102; 4352 North Mitthoefer Road (north of site), Rezoning of 10.11 acres from SU2 to SU-1 to provide for a church, and associated day care and school, **approved.**

MI

2023-ZON-111; Location Map



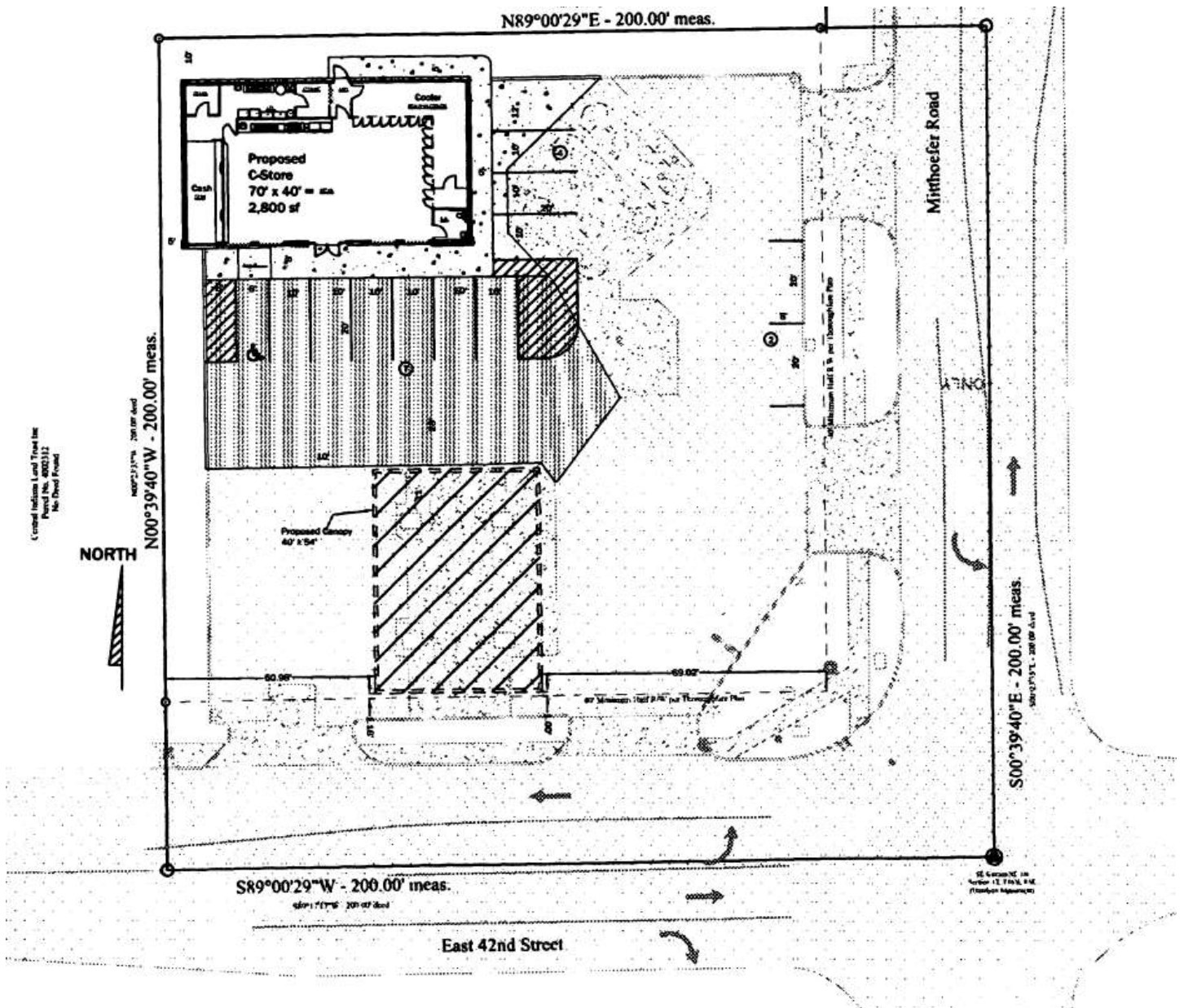
2023-ZON-111; Existing Site Plan



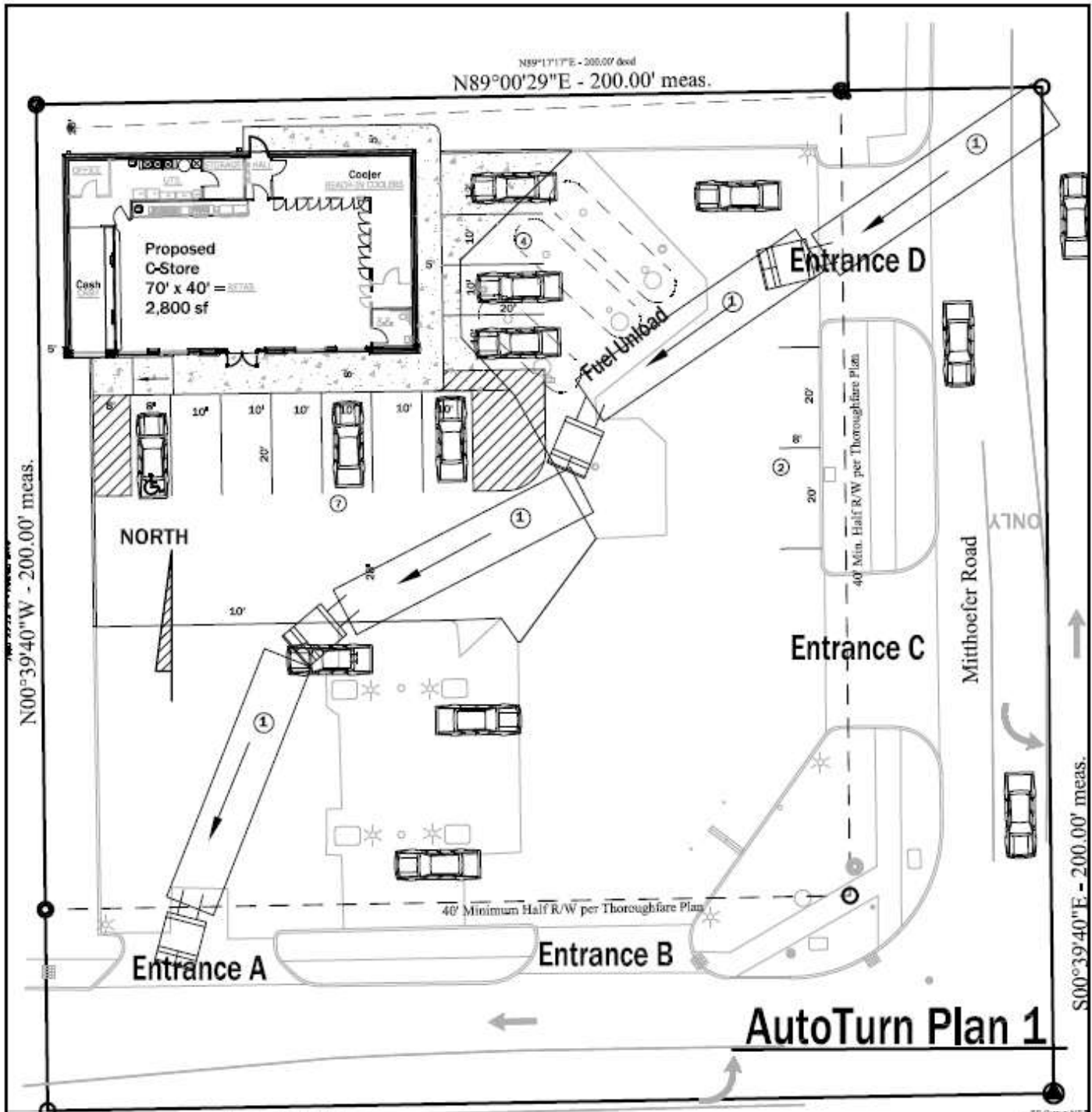
Created Indiana Land Trust Inc
 Parcel No. 000212
 No Detail Printed

JE Create 18.14
 Scale 1:1000 8.18
 (Review Maximum)

2023-ZON-111; Proposed Site Plan



2023-ZON-111; Truck Route Site Plan



AutoTurn Plan 1

Site Plan

No Scale
Sligh C-Store
 9950 E. 42nd Street
 Indianapolis, IN

Engineer Associates, Inc.

645 Main Street, Suite 201
 Tell City, Indiana 47586
 Phone 812-547-1100
 e-mail KLSimpsonPE@comcast.net
 Kenneth Leo Simpson, P.E.
 Date of drawing 12-18-23

Seal



SS Code NE
 Section 17, 17.16N
 (Minimum Mix)

Petition Number _____

**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: Permitting the proposed new canopy roof to extend within a minimum of 4' north of the new 35' half right of way line for 42nd street is not likely to create any such risk of injury. The existing situation on the subject property includes a building in very poor shape, and the overall property is poorly maintained; so permitting the site to be remodeled as proposed, along with the agreed closing of the two existing entries closest to the intersection with Mitthoefer Road, is likely to increase the overall health, general welfare and safety of the community. The height of the canopy roof is above the vehicle height, and only the roof is permitted to extend into the setback by the grant of this variance.

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 subject property has been developed and operated as a gasoline service station with a convenience store for over 50 years. The surrounding property is either commercial or older residential. Replacing the existing older building, closing the two existing entries closest to the intersection as requested by DPW, and remodeling the entire site is more likely to have a positive impact on the use and value of the abutting properties as compared to leaving it as exists today; and the variance is only required to add the canopy roof, which is above the height of vehicles, and still located at least 14' feet north of the curb for the north edge of 42nd street.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: The conversion of this C-3 zoned site to C-4 was only required to add the canopy in the remodeling process, but after the petitioner grants the additional right of way DPW has requested via the authority provided to them via the rezoning process, then the canopy would no longer be able to actually cover the refueling location along the south side of the island, without the grant of this variance to reduce the minimum setback from the new right of way line.

2023-ZON-111; Photographs



Photo of the Subject Property: **9950 East 42nd Street**



Photo of the two entrances on 42nd Street.



Photo of the two entrances on Mitthoeffer Road.



Photo of the proposed location of the new convenience store closer to the northern property boundary.



Photo of the two drives to be removed per DPW's request.



Photo of the fuel station southeast of the site.



Photo of the vacant commercial building south of the site.



Photo of the adjacent bus station west of the site and undeveloped parcel north of it.