

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-CZN-848 / 2022-CVC-848 (Amended)
Address: 419 and 441 East Ohio Street, 424 East Wabash Street, and 124 and 132 North East Street (*Approximate Addresses*)
Location: Center Township, Council District #17
Petitioner: Moe's, LLC / Feroze and Sons, LLC, by David Kingen and Emily Duncan
Request: Rezoning of 0.35 acre from the I-3 (RC) district to the CBD-2 (RC) district.

Vacation of the first north-south alley west of East Street, being twelve feet in width, from the south right-of-way line of Ohio Street, south 195 feet to the north right-of-way line of Wabash Street, with a waiver of the assessment of benefits.

ADDENDUM FOR DECEMBER 1, 2022, HEARING EXAMINER

This companion petition was continued from the October 13, 2022, hearing, to the December 1, 2022, hearing. As of this writing, no new information has been submitted to the file.

OCTOBER 13, 2022, HEARING EXAMINER

RECOMMENDATIONS

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

Staff **recommends denial** of the vacation request and provides the following motion:

RECOMMENDED MOTION (Denial): That the Hearing Examiner find that the proposed vacation is not the public interest; that the Hearing Examiner deny Declaratory Resolution 2022-CVC-848.

Should the vacation request be approved against staff's recommendation, staff provides the following motion:

RECOMMENDED MOTION (Approval): That the Hearing Examiner find that proposed vacation is in the public interest; that a hearing upon the assessment of benefits be waived; that the Hearing Examiner confirm and ratify the adoption of Declaratory Resolution 2022-CVC-848; and that the vacation be subject to the rights of public utilities under IC 36-7-3-16.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

(Continued)

STAFF REPORT 2022-CZN-848 / 2022-CVC-848 (Continued)

REZONING PETITION / COMPREHENSIVE PLAN

- ◇ After Legal Notice was provided, the rezoning request was amended to include only the land area that is currently zoned I-3 (RC). Originally, the request included land that was already zoned CBD-2 (RC). The resulting amendment would rezone 0.35-acre to CBD-2 (RC).
- ◇ The subject site contains two lots, with one lot being 12,334 square feet in size , with the other lot, being 3,040 square feet in size. Both lots are improved with a surface parking lot.
- ◇ The Comprehensive Plan recommends City Neighborhood development. City Neighborhood largely consists of multifamily dwellings. However, City Neighborhood areas are dense and walkable with a full range of city services and public amenities. Access to individual parcels is generally by an alley or internal parking structures. City Neighborhood development would also support small- and large-scale commercial uses on the first floor of mixed-use structures.
- ◇ To the north of the site, across Ohio Street, are attached single-family dwellings. Adjacent to the east is a gasoline station, with restaurant space, and an office building. To the south is a parking structure and to the west is a surface parking lot, an event venue, and offices. The site is near very densely developed land and is notably within the Mile Square. The request to rezone to CBD-2 (RC) would be consistent with existing zoning surrounding the site. Since mixed-use development would be an acceptable use within the City Neighborhood recommendation and permitted in CBD-2 (RC), this request would be compatible with the Plan.

TRANSIT-ORIENTED DEVELOPMENT

- ◇ The site is within the transit-oriented development (TOD) overlay zone. The Ordinance specifies that sites zoned CBD would not be required to comply with the TOD development standards. However, much of the intent of the TOD, which includes reduced parking and increased pedestrian use, is noted in the Regional Center Design Guidelines and would apply to any new development.

REGIONAL CENTER OVERLAY DISTRICT

- ◇ The site is located within the Regional Center overlay district. Design of all new construction, sidewalk cafes, and signage in the Regional Center overlay district is subject to the approval of the Administrator of the Division of Planning. A Regional Center Approval petition has been filed for demolition of an existing commercial structure at 419 East Ohio Street.

VACATION SUMMARY

- ◇ This request would vacate an improved alley with direct access of several lots to Ohio Street and an east-west alley to the south. The subject alley is the first north-south alley west of the Ohio Street and East Street intersection. It is located between an office building at 424 East Wabash Street and the gasoline station at 132 North East Street. The alley also provides access to existing surface parking lots at 419 East Ohio Street.

(Continued)

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- ◇ The submitted Findings of Fact state that the vacation would 'consolidate five pieces of property and allow for the development of a Regional Center / Cole Noble Historic neighborhood mixed-use project'. 'Furthermore, it will eventually rid the Regional Center and Cole Noble neighborhood of three surface parking lots.'
- ◇ As of this writing, no plans have been submitted for development of this site, other than a proposed demolition of the existing office building, located at 419 East Ohio Street.
- ◇ Alleys provide an important means of access to interior portions of property. The Comprehensive Plan, as noted above, recommends City Neighborhood development. This typology indicates that 'typical access to individual parcels is generally by an alley or internal parking structures'.
- ◇ This alley is improved with brick, which is an indication of its long-standing use. Any proposed development should be designed to use this alley to provide access to the alley to the south and to Ohio Street to the north. Approval of vacation of rights-of-way are required to be 'in the public interest'. There has not been any established reasoning to indicate that this vacation request would be in the public interest.
- ◇ Therefore, staff **recommends denial** of the proposed vacation.

Procedure

- ◇ Neither the Division of Planning nor the Hearing Examiner or Metropolitan Development Commission determine how vacated right-of-way is divided. The approval of a vacation petition only eliminates the public right-of-way. The vacation approval does nothing more. A petitioner will not receive a deed or other document of conveyance after the approval of a vacation.
- ◇ The general rule under Indiana case law is that when a street or highway is vacated or abandoned the title to the land reverts to the abutting property owners. This rule exists by virtue of the fact that the abutting landowner owns to the center of the street or highway subject only to an easement for the public to the use of the street or highway. *Gorby v. McEndarfer* 135 Ind.App. 74, *82, 191 N.E.2d 786, **791 (Ind.App.1963). However, there are possible exceptions to this general rule.
- ◇ After a vacation of a public right-of-way the county assessor determines how the vacated right-of-way will be assessed for tax purposes.
- ◇ Petitioners and abutters of the vacated right-of-way should consult their own attorneys for advice regarding the ownership of the vacated right-of way.

ASSESSMENT OF BENEFITS

- ◇ The petitioner has requested a waiver of the Assessment of Benefits. The subject right-of-way is improved, with brick. The City clearly invested in the establishment, use and maintenance of this alley in the past. Therefore, staff would not support a waiver of the assessment of benefits.

(Continued)

STAFF REPORT 2022-CZN-848 / 2022-CVC-848 (Continued)

GENERAL DESCRIPTION:

Vacation of the first north-south alley west of East Street, being twelve feet in width, from the south right-of-way line of Ohio Street, south 195 feet to the north right-of-way line of Wabash Street, with a waiver of the assessment of benefits.

UTILITIES AND AGENCY REPORT

Telephone:	No answer, retain easement
CEG, Gas:	No answer, retain easement
CEG, Water:	No answer, retain easement
CEG, Wastewater	No answer, retain easement
Power:	No answer, retain easement
Cable:	No answer, retain easement
DPR:	No answer, retain easement
DPW, TS:	No answer, retain easement

GENERAL INFORMATION

EXISTING ZONING, CONTEXT AND LAND USE

I-3 (RC) and CBD-2 (RC) Compact	One commercial structure and surface parking
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SURROUNDING ZONING AND LAND USE

North -	CBD-2 (RC)	Attached single-family dwellings
South -	CBD-2 (RC)	Parking structure
East -	CBD-2 (RC)	Bank
West -	I-3 (RC) and CBD-2 (RC)	Office / event venue

COMPREHENSIVE PLAN	The Comprehensive Plan recommends the site for City Neighborhood development.
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THOROUGHFARE PLAN	The Official Thoroughfare Plan for Marion County indicates that Ohio Street is a primary street, with a 78-foot right-of-way existing and proposed. East Street is a primary street, with a 78-foot right-of-way existing and proposed.
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URBAN DESIGN GUIDELINES DISTRICT TYPOLOGY	The site is located within the Urban mixed-use typology.
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TRANSIT-ORIENTED DEVELOPMENT	The site is located within a transit-oriented development area.
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STAFF REPORT 2022-CZN-848 / 2022-CVC-848 (Continued)

VACATION EXHIBIT File-dated August 1, 2022

FINDINGS OF FACT File-dated August 1, 2022

ZONING HISTORY - SITE

2022-REG-055; 419 East Ohio Street, requested Regional Center Approval for demolition of an existing commercial building, **pending**.

2019-MOD-003; 124 and 132 North East Street and 441 East Ohio Street; requested a modification of commitments, related to 2003-MOD-152 to modify commitment one to provide for the sale of alcohol beverages for on-premises consumption in a family restaurant, without carry-out sales, **approved**.

2010-REG-064; 441 East Ohio Street, requests Regional Center Approval for wall signs, **approved**.

2004-DV1-002; 441 East Ohio Street, requests a variance of development standards of the Sign Regulations, to provide for an 11.9-foot tall, 9.17-foot wide, 107.75-square foot pylon sign, with a three-foot setback from the Ohio Street right-of-way and 4.17-foot setback from the East Street right-of-way, **granted**.

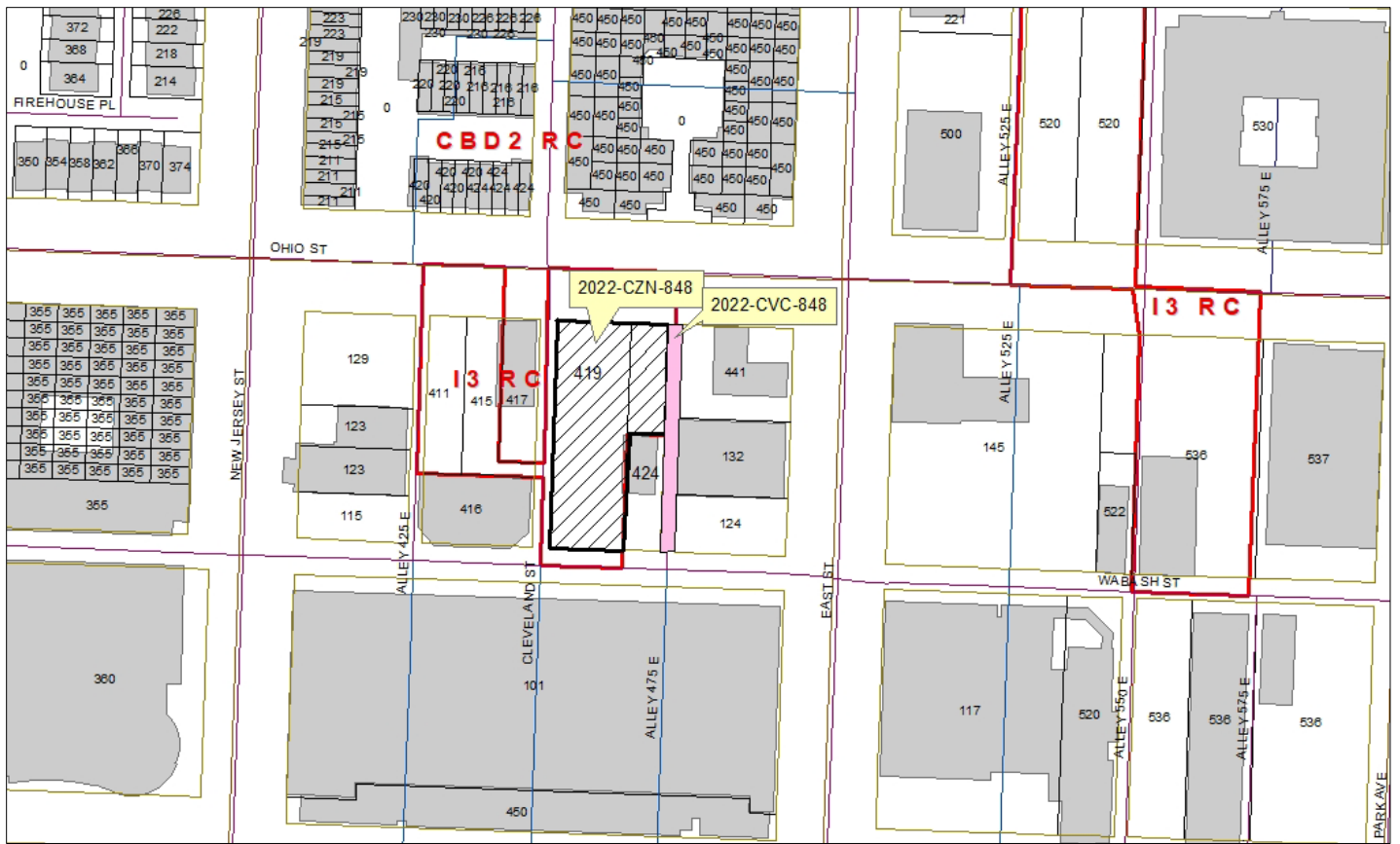
2003-APP-067; 441 East Ohio Street, requests Regional Center Approval for a remodeling of a gasoline station and to provide for an 11.9-foot tall, 9.17-foot wide, 107.75-square foot pylon sign, with a three-foot setback from the Ohio Street right-of-way and 4.17-foot setback from the East Street right-of-way, **approved**.

2003-ZON-152; 441 East Ohio Street and 132 North East Street, requests a rezoning of 0.32-acre, from the I-3-U (RC) district to the CBD-2 (RC) classification, **approved**.

ZONING HISTORY - VICINITY

None.

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Zoning and aerial maps of the site and surrounding area - 2022-CZN/CVC-848

Petition Number _____

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

PETITION FOR VACATION OF A PUBLIC WAY, EASEMENT OR PUBLIC PLACE

FINDINGS OF FACT

1. THE PROPOSED VACATION IS IN THE PUBLIC INTEREST because: The vacation would be in the public interest as it will consolidate five pieces of property and allow for the development of a Regional Center/ Cole Noble Historic neighborhood mixed use project. Furthermore it will eventually rid the Regional Center and the Cole Noble neighborhood of three surface parking lots.

DECISION

IT IS THEREFORE the decision of this body that this VACATION petition is APPROVED, subject to any conditions stated in the minutes (which conditions are incorporated herein by reference and made a part of this decision).

Adopted this _____ day of _____, 20 ____

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_____	_____
_____	_____

Metropolitan Development Aug 01 2022 Division of Planning
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Proposed Findings of Fact – 2022-CZN/CVC-848



View of existing structure at 419 East Ohio Street and the proposed subject alley
2022-CZN/CVC-848



View of existing building at 419 East Ohio Street and surface parking lots, from the west looking east
2022-CZN/CVC-848



View of existing building at 419 East Ohio Street and subject alley
2022-CZN/CVC-848



View of south end of site, looking west
2022-CZN/CVC-848



View of the subject alley looking north toward Ohio Street
2022-CZN/CVC-848



Close-up view of existing condition of the subject alley
2022-CZN/CVC-848