

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-ZON-124
Address: 940 West Banta Road (approximate address)
Location: Perry Township, Council District #23
Petitioner: John J. Holzer, Trustee, by David Kingen & Emily Duncan
Request: Rezoning of 6.86 acres from the D-A (FW) (FF) district to the C-1 (FW) (FF) district.

ADDENDUM FOR JANUARY 26, 2023, HEARING EXAMINER

The Hearing Examiner continued this petition from the December 1, 2022 hearing, to the January 26, 2023 hearing, at the request of the petitioner's representative.

On December 27, 2022, the petitioner's representative sent an e-mail **withdrawing** this request. The Hearing Examiner will need to acknowledge the withdrawal.

December 1, 2022

RECOMMENDATIONS

Staff **recommends approval** of the request, 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:

1. A 40-foot half right-of-way shall be dedicated along the frontage of West Banta Road, 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. A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development; b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.
3. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptables provided for the proper disposal of trash and other waste.

(Continued)

STAFF REPORT 2022-ZON-124 (Continued)

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE ISSUES

- ◇ This 6.86-acre site, zoned D-A (FW)(FF) is developed with a single-family dwelling and accessory structures. It is surrounded a single-family dwelling to the north, zoned D-A; multi-family dwellings to the south, across West Banta Road, zoned D-7; a single-family dwelling to the east, zoned D-A (FW)(FF); and railroad right-of-way to the west, zoned D-A.
- ◇ Petition 2022-UV2-026, requested a variance of use and development standards to provide for the operation of a day care and educational facility with a four-foot tall, eight-foot-wide primary freestanding sign with parking areas with a two-foot setback from the rear lot line, a driveway located 20 feet from the western side lot line and a walking path located four feet from the rear lot line. The petition was withdrawn and the rezoning petition filed.

REZONING

- ◇ This request would rezone the site from D-A (FW)(FF) District to the C-1 (FW)(FF). “The C-1 District is designed to perform two functions: act as a buffer between uses, and provide for a freestanding area that office uses, compatible office-type uses, such as medical and dental facilities, education services, and certain public and semipublic uses may be developed with the assurance that retail and other heavier commercial uses with incompatible characteristics will not impede or disrupt. Since the buildings for office, office-type and public and semipublic uses are typically much less commercial in appearance, landscaped more fully and architecturally more harmonious with residential structures, this district can serve as a buffer between protected districts and more intense commercial or industrial areas/districts - if designed accordingly. This district, with its offices and other buffer type uses, may also be used along certain thoroughfares where a gradual and reasonable transition from existing residential use should occur.
- ◇ The Comprehensive Plan recommends the Rural or Estate Neighborhood. “The Rural or Estate Neighborhood typology applies to both rural or agricultural areas and historic, urban areas with estate-style homes on large lots. In both forms, this typology prioritizes the exceptional natural features – such as rolling hills, high quality woodlands, and wetlands – that make these areas unique. Development in this typology should work with the existing topography as much as possible. Typically, this typology has a residential density of less than one dwelling unit per acre unless housing is clustered to preserve open space.”
- ◇ This site also has non-typology recommendations that include floodway and linear park. The Floodway category delineates areas that exhibit a great potential for property loss and damage from severe flooding, or for water quality degradation. No development should occur within the floodway. Nonconforming uses currently within a floodway should not be expanded or altered.” The Linear Park recommendation is “intended for public or private property designated for active or passive recreation and is primarily used for the passage of people or wildlife. Examples are greenways, parkways, trails, off-street paths, and conservation areas.”

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- ◇ The Comprehensive Plan consists of two components that include the Pattern Book and the land use map. The Pattern Book provides a land use classification system that guides the orderly development of the county and protects the character of neighborhoods while also being flexible and adaptable to allow neighborhoods to grow and change over time.
- ◇ The Pattern Book serves as a policy guide as development occurs. Because the request is for the C-1 district and the uses permitted in the C-1 district are not recommended uses within the rural or estate neighborhood typology, no additional information has been provided related to development of the site.

Overlays

- ◇ This site is also located within an overlay, specifically the Environmentally Sensitive Areas. “Overlays are used in places where the land uses that are allowed in a typology need to be adjusted. They may be needed because an area is environmentally sensitive, near an airport, or because a certain type of development should be promoted. Overlays can add uses, remove uses, or modify the conditions that are applied to uses in a typology.”
- ◇ The Environmentally Sensitive Areas (ES) Overlay is intended for areas containing high quality woodlands, wetlands, or other natural resources that should be protected. The purpose of this overlay is to prevent or mitigate potential damage to these resources caused by development. This overlay is also appropriate for areas that present an opportunity to create a new environmental asset. This overlay is not intended for the preservation of open space.
- ◇ This site is located within the floodplain of Little Buck Creek and Forest Alliance Woodlands (high quality woodlands), both of which are located along the eastern portion of the of site.

Floodway / Floodway Fringe

- ◇ This site has a secondary zoning classification of a Floodway (FW) and Floodway Fringe (FF). The Floodway (FW) is the channel of a river or stream and those portions of the floodplains adjoin the channels which are reasonably required to efficiently carry and discharge the peak flood flow of the base flood of any river or stream. The Floodway Fringe (FF) is the portion of the regulatory floodplain that is not required to convey the 100-year frequency flood peak discharge and lies outside of the floodway.
- ◇ The purpose of the floodway district is to guide development in areas identified as a floodway. The Indiana Department of Natural Resources (IDNR) exercises primary jurisdiction in the floodway district under the authority of IC 14-28-1.
- ◇ The designation of the FF District is to guide development in areas subject to potential flood damage, but outside the Floodway (FW) District. Unless otherwise prohibited, all uses permitted in the primary zoning district (C-1 in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.

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- ◇ Staff would note the following uses are prohibited in the floodplain:
 - a. Jails;
 - b. Hospitals;
 - c. Assisted living facilities;
 - d. Nursing homes;
 - e. Laboratories;
 - f. Elementary, Middle or High Schools;
 - g. Daycare facilities;
 - h. Fire stations;
 - i. Emergency operation centers;
 - j. Police facilities;
 - k. Truck, train, or bus terminal, storage or maintenance facility;
 - l. Wrecking or salvage facility;
 - m. Gas, oil or propane storage facility;
 - n. Industrial laundry;
 - o. Hazardous waste handling or storage facility; and
 - p. Other public equipment storage facilities.

Stream Protection Corridor

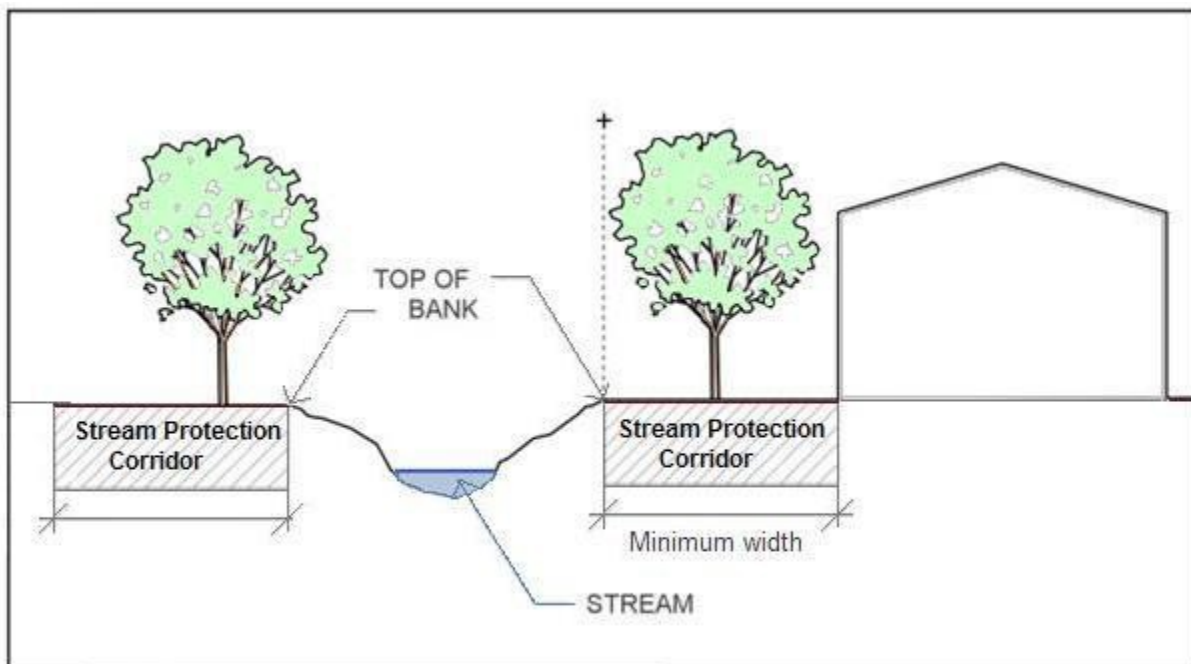
- ◇ A stream protection corridor consists of a strip of land, extending along both sides of all streams, with measurements taken from the top of the bank on either side. The width of the corridor is based upon whether the stream is designated as a Category One or Category Two. Category One streams have a corridor width of 60 feet in the compact context area and 100 feet in the metro context area. Category Two streams have a corridor width of 25 feet in the compact context area and 50 feet in the metro context area.
- ◇ The vegetative target for the Stream Protection Corridor is a variety of mature, native riparian tree and shrub species that can provide shade, leaf litter, woody debris, and erosion protection to the stream, along with appropriate plantings necessary for effective stream bank stabilization.
- ◇ The Stream Protection Corridor is defined as:

“A vegetated area, including trees, shrubs, and herbaceous vegetation, that exists or is established to protect a stream system, lake, or reservoir, and where alteration is strictly limited. Functionally, stream protection corridors provide erosion control, improve water quality (lower sedimentation and contaminant removal) offer flood water storage, provide habitat, and improve aesthetic value.”
- ◇ Stream is defined as “a surface watercourse with a well-defined bed and bank, either natural or artificial that confines and conducts continuous or periodic flowing water.”
- ◇ Stream Bank is defined as “the sloping land that contains the stream channel and the normal flows of the stream.”

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- ◇ Stream Channel is defined as “part of a watercourse that contains an intermittent or perennial base flow of groundwater origin.”
- ◇ There are two types of categories of Streams: Category One Streams and Category Two Streams. Little Buck Creek is listed as a Category One Stream, which is defined as: “A perennial stream that flows in a well-defined channel throughout most of the year under normal climatic conditions. Some may dry up during drought periods or due to excessive upstream uses. Aquatic organism such as some fish are normally present and easily found in these streams. The Category One Streams are listed in Table 744-205-2: Category One Streams.”
- ◇ Category Two Stream is defined as: “An intermittent stream that flows in a well-defined channel during wet seasons of the year but not necessarily for the entire year. These streams generally exhibit signs of water velocity sufficient to move soil, material, litter, and fine debris. Aquatic organisms, such as fish, are often difficult to find or not present at all in these streams. These streams are identified on the United States Geological Survey (USGS) topographic maps and on the Department of Natural Resources Conservation Service (NRCS) soils maps.”
- ◇ There are 32 Category One streams listed in the Ordinance. The stream protection corridor is a strip of land on both sides of the stream whose width varies according to whether it is within the Compact or Metro Context Area and whether it is a Category One or Category Two Stream.
- ◇ Little Buck Creek is located along the eastern portion of the site and is designated as a Category One stream requiring a 100-foot wide stream protection corridor, as measured parallel from the top of the bank. Top of the bank is not defined by the Ordinance, other than by Diagram UU, Stream Protection Corridor Cross-section, as shown below.



Stream Protection Corridor

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Tree Preservation / Heritage Tree Conservation

- ◇ There are significant amounts of natural vegetation and trees located on the eastern portion of the site. Due to their inherent ecological, aesthetic, and buffering qualities, the maximum number of these existing trees should be preserved on the site.
- ◇ All development shall be in a manner that causes the least amount of disruption to the trees.
- ◇ A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development, b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.
- ◇ If any of the trees are heritage trees that would be impacted, then the Ordinance requires that the Administrator, Urban Forester or Director of Public Works determine whether the tree(s) would be preserved or removed and replaced.
- ◇ The Ordinance defines "heritage tree" as a tree over 18 inches Diameter at Breast Height (DBH) and one of the Heritage tree species. Heritage tree species include: Sugar Maple (*Acer saccharum*), Shagbark Hickory (*Carya ovata*), Hackberry (*Celtis occidentalis*), Yellowwood (*Cladrastus kentukea*), American Beech (*Fagus grandifolia*), Kentucky Coffeetree (*Gymnocladus dioica*), Walnut or Butternut (*Juglans*), Tulip Poplar (*Liriodendron tulipifera*), Sweet Gum (*Liquidambar styraciflua*), Black Gum (*Nyssa sylvatica*), American Sycamore (*Platanus occidentalis*), Eastern Cottonwood (*Populus deltoides*), American Elm (*Ulmus americana*), Red Elm (*Ulmus rubra*) and any oak species (*Quercus*, all spp.)
- ◇ The Ordinance also provides for replacement of heritage trees if a heritage tree is removed or dies within three years of the Improvement Location issuance date. See Exhibit A, Table 744-503-3: Replacement Trees.

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 West Banta Road. This dedication would also be consistent with the Marion County Thoroughfare Plan.

Environmental Public Nuisances

- ◇ The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.

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- ◇ All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.
- ◇ Environmental public nuisance means:
 1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
 2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
 3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
 4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.
- ◇ Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

Planning Analysis

- ◇ As proposed this request would not be consistent with the Comprehensive Plan recommendation of rural or estate neighborhood typology. Staff would note that the Pattern Book recommends detached housing, working farms, group homes, bed / breakfast and wind / solar farms. The environmentally sensitive overlay, however, removes working farms and wind / solar farms as recommended uses.
- ◇ Based upon the information submitted with the variance of use and development standards as a childcare and educational facility, staff believes the proposed use would not be detrimental to the adjacent land uses and districts that include the railroad right-of-way and heavy commercial to the west (C-7 District) and multi-family dwellings to the south (D-7).
- ◇ If designed appropriately, the C-1 district can serve as a buffer between protected districts and more intense commercial or industrial areas / districts. Future building designs should be more harmonious with residential character of the area and well integrated with the adjacent residential uses.

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- ◇ Documents submitted with the variance request (2022-UV3-026) include existing site development, proposed site development and a Plan of Operation. This information is not required for rezoning petitions but is included in this report for informational purposes. See Exhibit B (site plans) and Exhibit C (Plan of Operation).
- ◇ Furthermore, the stream protection corridor along the eastern portion of the site would provide a buffer for the single-family dwelling that abuts this property along the eastern boundary.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-A (FW)(FF) Single-family dwelling / accessory buildings.

SURROUNDING ZONING AND LAND USE

| | | |
|---------|--------------|------------------------|
| North - | D-A (FW)(FF) | Single-family dwelling |
| South - | D-7 (FW)(FF) | Multi-family dwellings |
| East - | D-A (FW)(FF) | Single-family dwelling |
| West - | C-1 | Railroad right-of-way |

COMPREHENSIVE LAND USE PLAN

The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends rural or estate typology and non-typology uses that include floodway and linear park.

THOROUGHFARE PLAN

This portion of West Banta Road is designated in the Marion County Thoroughfare Plan as a primary collector with an existing 30-86-foot right-of-way and a proposed 80-foot right-of-way.

CONTEXT AREA

This site is located within the metro context area.

OVERLAY

This site is located within an environmentally sensitive area (100-year floodplain of Little Buck Creek and Forest Alliance Woodlands)

ZONING HISTORY

2022-UV3-026; 940 West Banta Road, requested a variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance provide for the operation of a day care and educational facility with a four-foot tall, an eight foot-wide primary freestanding sign with parking areas with a two-foot setback from the rear lot line, a driveway located 20 feet from the western side lot line and a walking path located four feet from the rear lot line, **withdrawn**.



EXHIBIT A

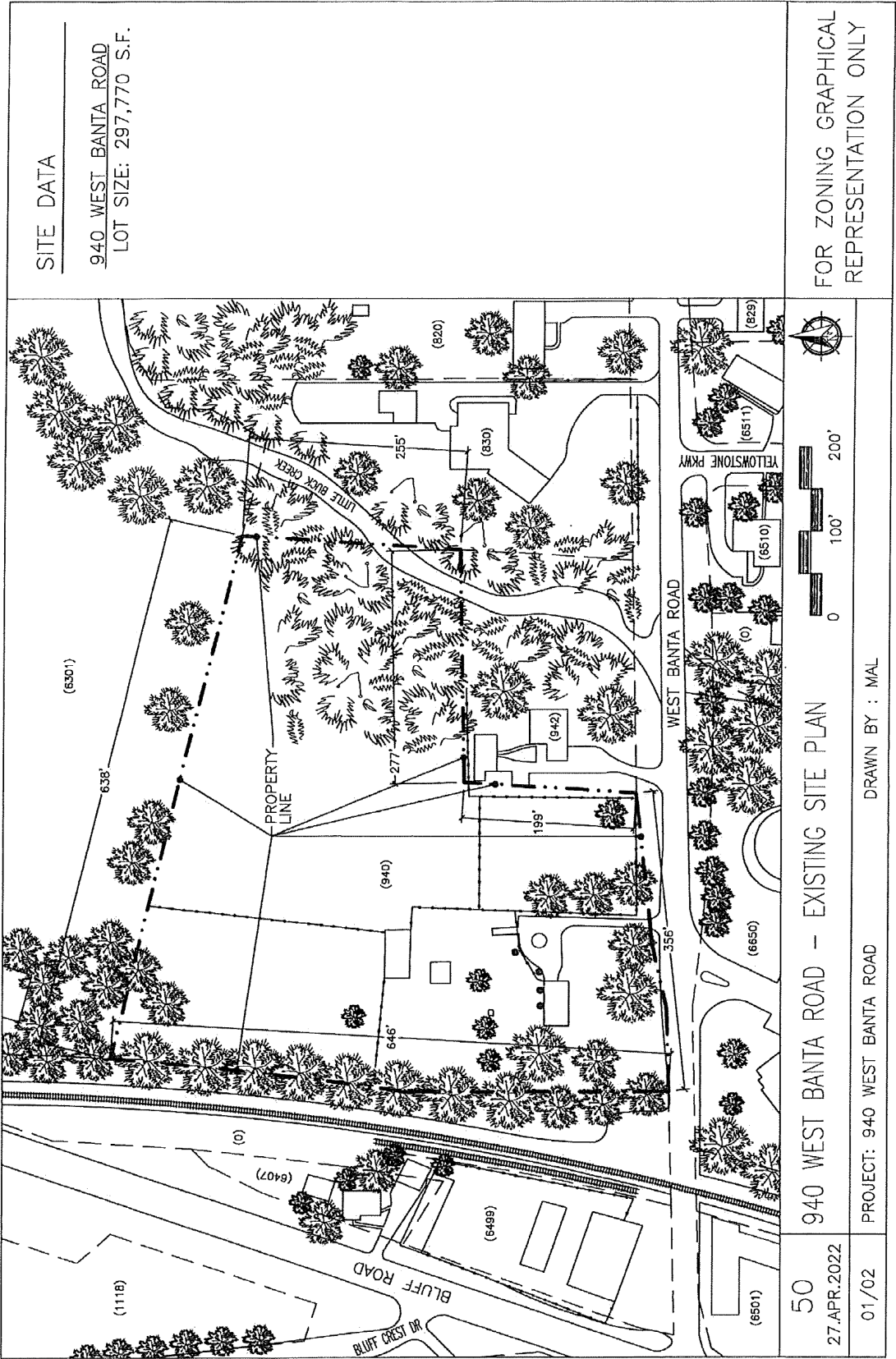
Heritage Tree Conservation

Removal of any Heritage Tree is prohibited unless any of the following determinations are made before removal:

1. The Administrator or the city's Urban Forester determines that the tree is dead, significantly and terminally diseased, a threat to public health or safety, or is of an undesirable or nuisance species.
2. The Director of the Department of Public Works determines that the tree interferes with the provision of public services or is a hazard to traffic.
3. The Administrator determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree.
4. The site from which the tree is removed is zoned D-A and the tree is harvested as timber or similar forestry product.

| Table 744-503-3: Replacement Trees | | |
|--|---|--|
| Size of tree removed or dead (inches) | Number of Trees to be planted to replace a Heritage Tree | Number of Trees to be planted to replace an existing tree |
| Over 36 DBH | 15 | 10 |
| 25.5 to 36 DBH | 11 | 8 |
| 13 to 25 DBH | 8 | 6 |
| 10.5 to 12.5 DBH | 6 | 4 |
| 8.5 to 10 DBH | 5 | 4 |
| 6.5 to 8 | 3 | 2 |
| 4 to 6 | 2 | 2 |
| 2.5 to 3.5 | 1 | 1 |

EXHIBIT B



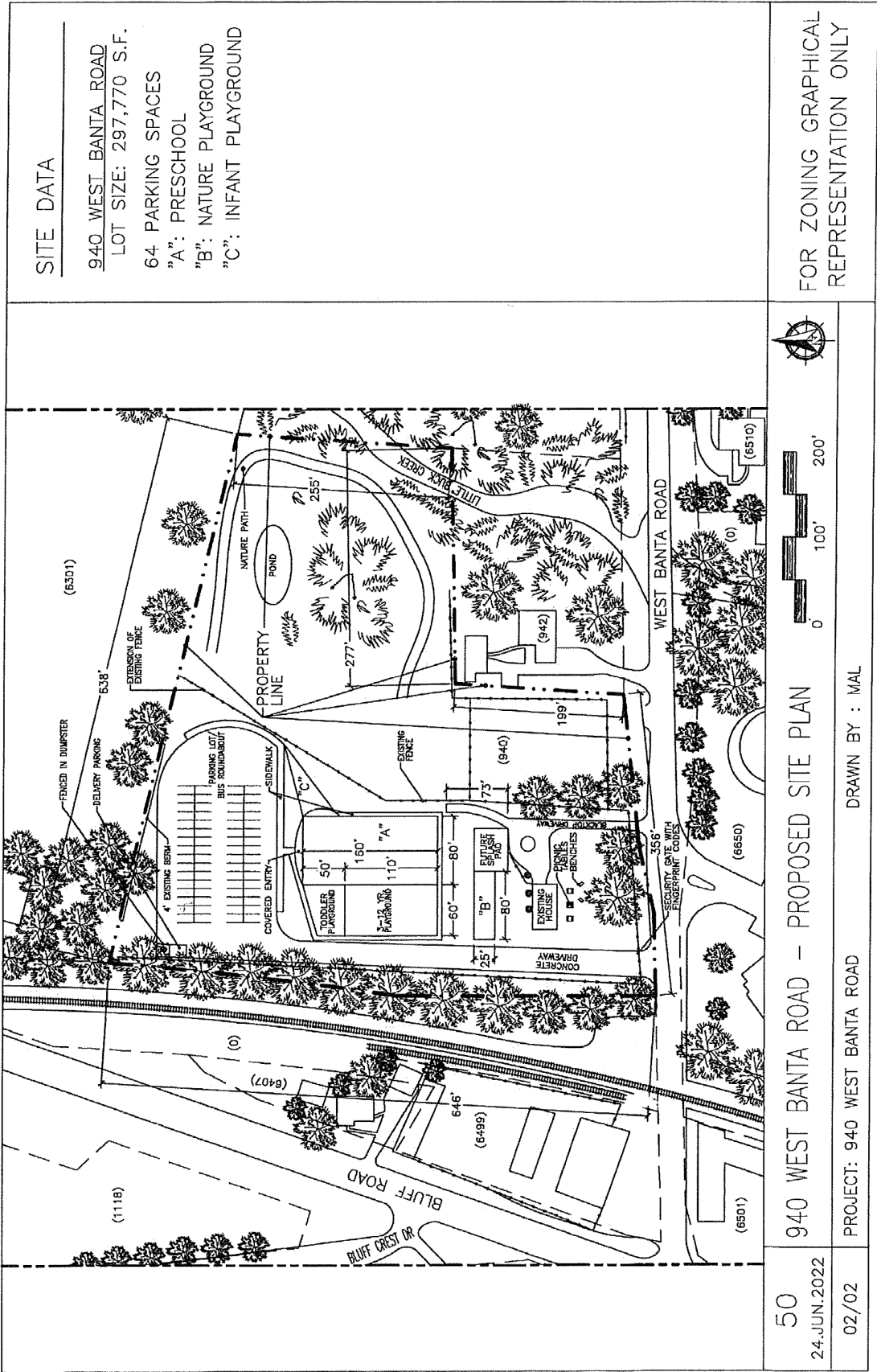


EXHIBIT C

940 West Banta Street Plan of Operation

| | |
|---------------------|--|
| Organization: | Top Notch Early Childhood Educational Preschool |
| Address: | 940 West Banta Road Indianapolis, IN 46217 |
| Capacity: | Licensed for approximately 165 children |
| Ages: | 6 weeks -12 years old |
| Employees: | <ul style="list-style-type: none">• Three (3) Administrators• Three (3) Kitchen Aides / Janitorial Staff• Twenty-Five (25) - Thirty (30) full-time & part-time Preschool Teachers |
| Parking: | <ul style="list-style-type: none">• Sixty-four (64) parking spaces• Bus roundabout• Delivery truck parking spot |
| Hours of Operation: | <ul style="list-style-type: none">• 7:00 am - 6:00 pm Monday - Friday• Closed:<ul style="list-style-type: none">◦ Week between Christmas & New Year◦ Thanksgiving (and the following Friday)◦ Martin Luther King Day◦ Labor Day◦ Memorial Day◦ 4th of July |
| Amenities: | <ul style="list-style-type: none">• Cafeteria• Two (2) indoor gross motor gymnasiums• Four (4) age-appropriate playgrounds |
| Trash: | Dumpster surrounded by landscaping, per site plan on file |
| Sign: | Four-foot x Eight-foot (4'x8') ground sign located near the West entrance |
| Security / Safety: | <ul style="list-style-type: none">• Easy emergency exit routes• Built-in sprinkler system• Video camera surveillance• Secured door that will require a personal code or fingerprint to enter the building |



View looking west along West Banta Road



View looking east along West Banta Road



View of site looking north across West Banta Road



View of site looking north across West Banta Road



View of site looking north across West Banta Road



View of western portion of site looking north



View of western portion of site looking north



View of site looking east



View of site looking north



View of site looking northwest



View from site looking north at abutting neighbor



View from site looking south across West Banta Road