



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

November 14, 2024

Case Number: 2024-ZON-099 / 2024-VAR-014 (Amended)
Property Address: 8450 Payne Road and 4025 West 86th Street (Approximate Addresses)
Location: Pike Township, Council District #1
Petitioner: Rocky Mountain Energy Holdings, LLC, by Joseph D. Calderon
Current Zoning: C-S (FF) (FW), I-2 (FF) (FW) and C-1 (FF) (FW)
Rezoning of 33.43 acres from the C-S (FF)(FW), I-2 (FF)(FW), and C-1 (FF)(FW) districts to the C-1 (FF)(FW) district to provide for a battery storage facility.
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to allow for a barbed wire fence (not permitted), a chain link fence in the front yard (not permitted), an eight-foot fence in the front yard (maximum 3.5 feet height permitted), and an eight-foot fence in the side and rear yards (maximum six-foot fence height permitted).
Current Land Use: Undeveloped
Staff Recommendations: Approval of the rezoning with a commitment. Denial of the variances.
Staff Reviewer: Marleny Iraheta, Senior Planner

PETITION HISTORY

ADDENDUM FOR NOVEMBER 14, 2024 HEARING EXAMINER

This petition was continued from the October 10, 2024 hearing to the November 14, 2024 hearing at the request of the petitioner to allow additional time to amend the request with variances.

The request reduced the acreage from 47.62 acres to 33.43 acres and added the request for an eight-foot-tall chain link fence with barbed wire in the front, side, and rear yards. The C-1 district limits fences in the front yard to 3.5 feet and six feet in the side and rear yards.

The petitioner provided a rendering of the proposed fence that was reduced to 7 feet in height with a six-foot tall chain link fence and one-foot t of barbed wire on top.

Fences incorporating barbed wire or razor-wire are prohibited except when used to enclose livestock on a site where the primary property use is agricultural uses, buildings, or structures or when used for public safety or security purposes for a public facility or correctional or penal institution.

Staff recommended that the petitioner consider placing a barrier gate at the entrance of the drive to prevent vehicles from going onto the site if there was a concern with vandalism or theft. Additionally, other elements can be implemented to address security concerns such as hired security, surveillance, or



Department of Metropolitan Development
Division of Planning
Current Planning

specific landscaping and fencing that is specifically designed to be difficult to climb. For these reasons staff cannot support the variance requests since the site can be developed to not require any variances.

Staff **recommends denial** of the variance requests.

Staff continues to **recommend approval of the rezoning** 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. A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval 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). Heritage trees proposed for removal shall be indicated as such and shall be replaced on site per Table 744-503-3 of the Ordinance.

ADDENDUM FOR OCTOBER 10, 2024 HEARING EXAMINER

This petition was continued from the September 12, 2024 hearing to the October 10, 2024 hearing at the request of the petitioner.

The petitioner submitted a revised site plan and a tree survey of the site on September 9, 2024. As long as the stream protection corridors for Payne Branch Stream and Oil Creek Stream will not be encroached, then staff would have no issue with the proposal. Staff would still request a tree preservation plan for the site.

September 12, 2024

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends approval Staff **recommends approval** of the request 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. A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval 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). Heritage trees proposed for removal shall be indicated as such and shall be replaced on site per Table 744-503-3 of the Ordinance.

PETITION OVERVIEW

LAND USE

The 47.62-acre subject site is comprised of two lots subdivided along the Payne Branch Stream. Lot One is located to the east along Payne Road and is developed with a hospital building and Lot Two is to the west and is undeveloped. The portion of the site zoned C-S was for medical uses.

REZONING

This site is split zoned C-1, C-S, and I-2 and would be rezoned to the C-1 district to allow for a battery storage facility.

The C-S District is designed to permit, within a single zoning district, multi-use commercial complexes or land use combinations of commercial and noncommercial uses, or single-use commercial projects. The primary objective of this district is to encourage development which achieves a high degree of excellence in planning, design or function, and can be intermixed, grouped or otherwise uniquely located with maximum cohesiveness and compatibility. The district provides flexibility and procedural economy by permitting the broadest range of land use choices within a single district, while maintaining adequate land use controls. The C-S District can include high-rise or low-rise developments, can be applied to large or small land areas appropriately located throughout the metropolitan area, and can be useful in areas of urban renewal or redevelopment.

The I-2 district is for those industries that present minimal risk and typically do not create objectionable characteristics (such as dirt, noise, glare, heat, odor, etc.) that extend beyond the lot lines. Outdoor operations and storage are completely screened if adjacent to protected districts and are limited throughout the district to a percentage of the total operation. Wherever possible, this district is located between a protected district and a heavier industrial area to serve as a buffer. For application to the older industrial districts within the central city, standards specifically accommodate the use of shallow industrial lots.

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.



STAFF ANALYSIS

The request would allow for the development of a battery storage facility on Lot 2 of the site. Per the submitted site plan, the proposed development would be west of the Payne Branch Stream at 4025 West 86th Street. It would include a fenced in utility switchyard at the entrance of 86th Street, a fenced in project substation further south into the site, and a fenced in outdoor storage area of inverters and transformers, battery energy storage systems, and a building and additional equipment.

The battery storage facility is classified under the Substations and Utility Distribution Nodes definition, which is a hub or distribution facility for any physically connected utility systems such as electricity, gas, cable/fiber optic communications, telephone, and water services, including facilities that transform electric voltage or natural gas pressure to the level supplied to the distribution system, but not including any facility that occupies less than 16 sq. ft. of ground area and is less than 8 ft. in height.

This use is permitted in all commercial districts, industrial districts, CBD districts, and in MU-1, MU-1, and MU-3.

Because the C-1 district would align with the office commercial recommendation of the Comprehensive plan and is a low intensity district, staff would be supportive of this district next to the D-P residential district east and D-3 district south of Lot 2.

The following use specific standards would apply to substations and utility distribution nodes:

1. High-tension power transmission lines shall only be permitted in industrial districts or in SU-43 district for power transmission lines.
2. After the first day of the month that is six months after the date of adoption, new uses shall include motion-activated lighting that complies with Chapter 744, Article VI Street and Exterior Lighting.
3. After the first day of the month that is six months after the date of adoption, new uses shall comply with landscaping and buffering standards applicable to freestanding wireless communication facilities.

Staff has concerns regarding the amount of wooded area that falls within an environmentally sensitive overlay, specifically the Forest Alliance Woodlands, and the proposed location of the facility. Therefore, staff is requesting a tree inventory, tree assessment and preservation plan to be submitted for Administrator’s Approval.

GENERAL INFORMATION

Existing Zoning	C-1, C-S, and I-2	
Existing Land Use	Undeveloped and hospital building	
Comprehensive Plan	Floodway, Office Commercial, and Light Industrial	
Surrounding Context	Zoning	Land Use
North:	C-1 / C-S / SU-9	Commercial / Government

	South:	D-P / D-3 / D-1	Residential (Multi-family and Single-family)
	East:	D-6II / D-P	Residential (Multi-family)
	West:	C-S / I-2	Commercial / Industrial
Thoroughfare Plan			
	Payne Road	Primary Collector Street	80-foot proposed right-of-way and 30-foot existing right-of-way.
	86 th Street	Primary Arterial Street	134-foot proposed right-of-way and 148-foot existing right-of-way.
Context Area		Metro	
Floodway / Floodway Fringe		Yes	
Overlay		Yes	
Wellfield Protection Area		No	
Site Plan		August 11, 2024	
Site Plan (Amended)		September 9, 2024	
Elevations		August 20, 2024	
Elevations (Amended)		N/A	
Landscape Plan		N/A	
Findings of Fact		October 21, 2024.	
Findings of Fact (Amended)		N/A	
C-S/D-P Statement		N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book (2019)
- Indy Greenways Full Circle Master Plan, Part One (2014)

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book (2019) recommends floodway, light industrial and office commercial development for the subject site.
- Some areas around the Payne Branch Stream and Oil Creek Stream are recommended for floodway. 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 narrow western portion of Lot 2 that runs north and south is recommended for light industrial development. The Light Industrial typology provides for industrial, production, distribution, and

repair uses conducted within enclosed structures and unlikely to create emissions of light, odor, noise, or vibrations. This typology is characterized by freestanding buildings or groups of buildings, often within industrial parks. Typical uses include warehousing, self-storage, assembly of parts, laboratories, wholesaling, and printing. Industrial or truck traffic should be separated from local/residential traffic.

- The remainder of the site is recommended for office commercial development. The Office Commercial typology provides for single and multi-tenant office buildings. It is often a buffer between higher intensity land uses and lower intensity land uses. Office commercial development can range from a small freestanding office to a major employment center. This typology is intended to facilitate establishments such as medical and dental facilities, education services, insurance, real estate, financial institutions, design firms, legal services, and hair and body care salons.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- The site falls within the Indy Greenways Full Circle Master Plan, Part One (2014).
- Plans for a multi-use greenway, 82nd/86th Street Commercial Connector, are in the works from Northwest Boulevard to Hague Road.

ZONING HISTORY

Zoning History - Site

2023-PLT-090; 8450 Payne Road (subject site), Approval of a Subdivision Plat, to be known as Marion Energy Storage, dividing 47.97 acres into two lots, **approved**.

81-Z-28; 4101 West 86th Street (subject site), Rezoning of 7.23 acres, being in C-S district to the C-1 classification, to provide for commercial buffer use, **approved**.

Zoning History - Vicinity

2006-ZON-090; 3906 W 86th Street (north of site), Rezoning of 0.6049 acre, from the D-2 (FW) (FF) District to the C-1 (FW) (FF) classification to provide for office-buffer commercial uses, **approved**.

2000-ZON-033; 3850 West 86th Street (north of site), Rezoning 0.63 acre from D-2 District to the C-1 classification to provide for a commercial office use, **approved**.

93-Z-158; 3711-3721 West 86th Street (east of site), Rezoning of 2.88 acres, being in the D-A and C-1 Districts, to the C-3 classification to provide for commercial development, **approved**.

92-Z-108; 3806 West 86th Street (north of site), Rezoning of 0.689 acre, being in the D-2 District, to the C-1 classification to provide for general office development, **approved**.

89-Z-91; 3806 West 86th Street (north of site), Rezoning of 0.68 acres, being in the D-2 district, to the C-3 classification, to provide for commercial use, **withdrawn**.

87-Z-222 / 87-CV-26; 3850 West 86th Street (north of site), Rezoning of 0.07 acre, being in the D-2 District, to the C-ID classification to provide for an office and electronics distribution facility with a 5-foot side yard setback, **withdrawn**.

87-Z-53; 8401 North Payne Road (east of site), Rezoning of 7.79 acres, being in the D-1 District, to the D-6II classification to provide for multi-family apartment development, **approved**.

86-Z-35; 8501 North Payne Road (east of site), Rezoning of 8.93 acres, being in the D-A District, to the D-6II classification to provide for multi-family apartment development, **approved**.

85-Z-93; 3910 West 86th Street (north of site), Rezoning of 4.0 acres, being in the D-2 District, to the C-1 classification to provide for office use in a residential structure, **approved**.

85-Z-66; 3728 West 86th Street (northeast of site), Rezoning of 0.7 acre from the D-2 District to the C-1 classification to provide for a commercial office, **approved**.

84-Z-164; 2828 West 86th Street (north of site), Rezoning of 0.69 acre from the D-2 District to the C-1 classification to provide for a commercial office, **approved**.



Department of Metropolitan Development
Division of Planning
Current Planning

83-Z-194; 8201 North Payne Road (southeast of site), Rezoning of 73.1 acres, being in the A-2 district, to the D-3 classification to provide for a single-family subdivision by platting, **approved**.

83-Z-99; 4039 West 86th Street (northwest of site), Rezoning of 6 acres, being in C-2 and I-2-S districts, to C-S classification, to provide for office and warehouse uses, **approved**.

83-Z-67; 8501 North Payne Road (east of site), Rezoning of 8.94 acres, being in the D-A District, to the D-6II classification to provide for multi-family residential apartment development, **denied**.

82-Z-61; 8902 North Michigan Road (north of site), Rezoning of 97.49 acres, being in the D-6II, C-4 and I-2-S Districts, to the C-S classification to provide for mixed uses, **approved**.

82-Z-31; 8043 Georgetown Road (south of site), Rezoning of 54.28 acres, being in D-2 district, to D-3 classification, to provide for single-family residential use, **approved**.

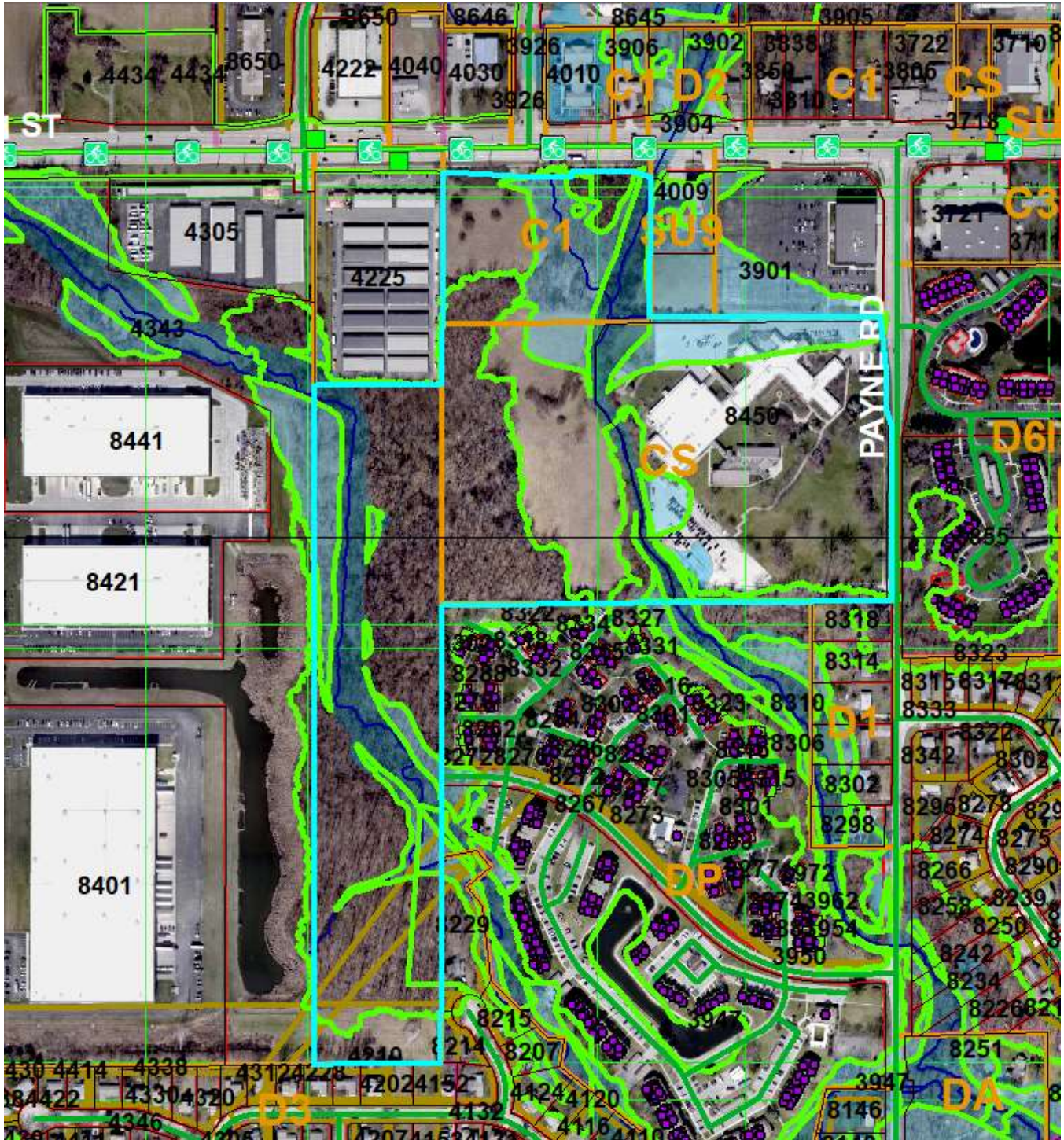
81-Z-140; 4101 West 86th Street (north of site), Rezoning of 2.0 acres, being in the C-S District, to the C-1 classification to provide for an integrated office center, **approved**.

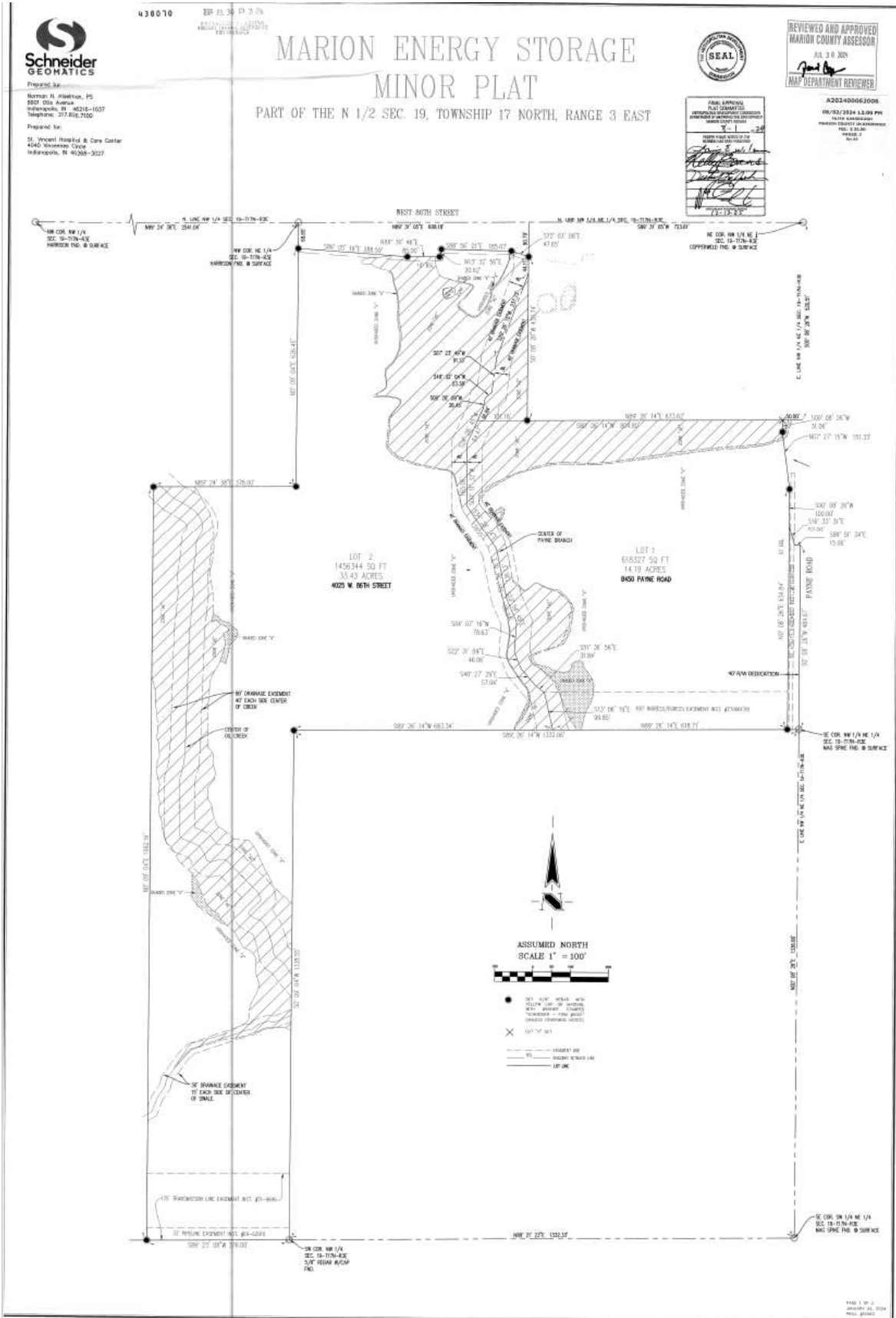
80-Z-164; 4040 W 56th Street (northwest of site), Rezoning from D-2 and I-2-S to the C-1 classification, **approved**.

73-Z-72; 4401 West 86th Street (west of site), Rezoning of 59.14 acres, being in A-2 district to I-2-S classification to permit light industrial use, **approved**.

72-Z-37; 8102-8290 Payne Road (south of site), Rezoning of 76.6 acres, being in an A-2 district, to the D-P classification, to provide for a planned unit development consisting of garden apartments, townhouses, quadrominiums and a neighborhood marketing facility, **approved**.

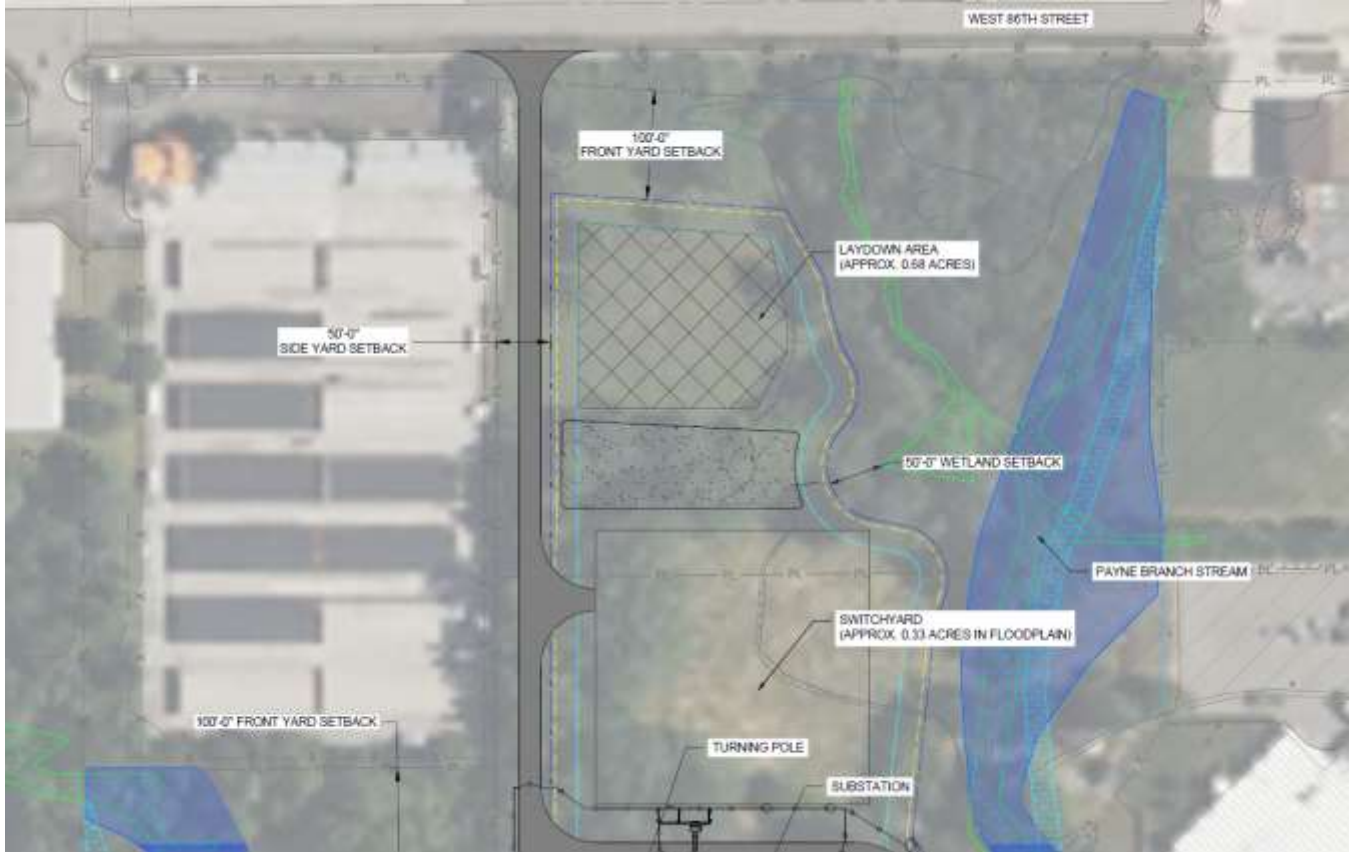
EXHIBITS



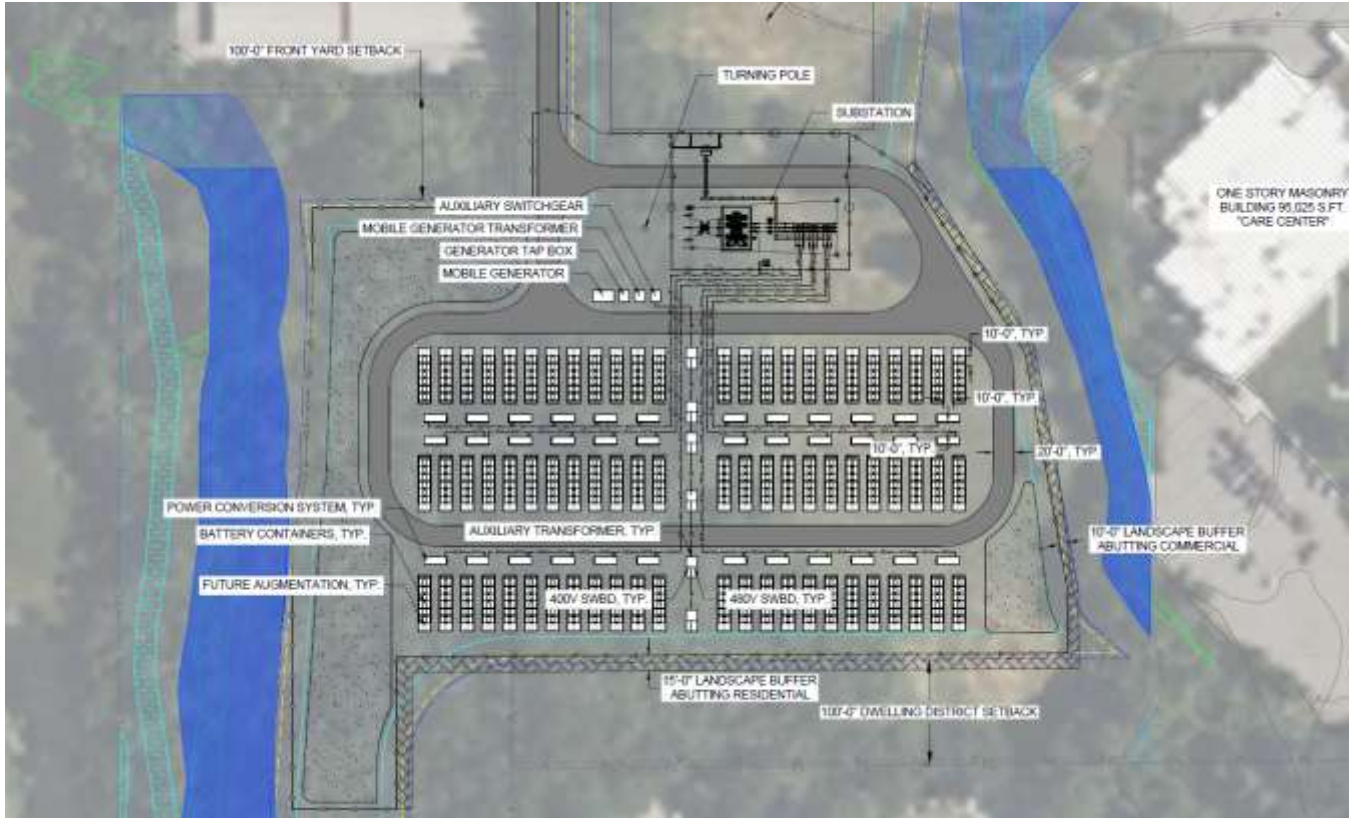




AMENDED SITE PLAN – CLOSE UP



AMENDED SITE PLAN – CLOSE UP





**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 facility on the Subject Property is set significantly back from 86th Street and the fencing will provide security for the facility, thus permitting the public health, safety, morals and general welfare.

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 facility will secure the facility and largely be secured from view from 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:

the facility is akin to a public utility facility, which needs to be secure in order to serve the public and therefore the barbed wire and 6 foot are necessary. Additionally, the facility is set significantly beyond any minimum front yard along 86th Street, rendering the reduced height requirement meaningless.

Main Gate Facing South



Facing East





Photo of the eastern property boundary and fire station east of the site looking south from 86th Street.



Photo of the street frontage along 86th Street looking south.

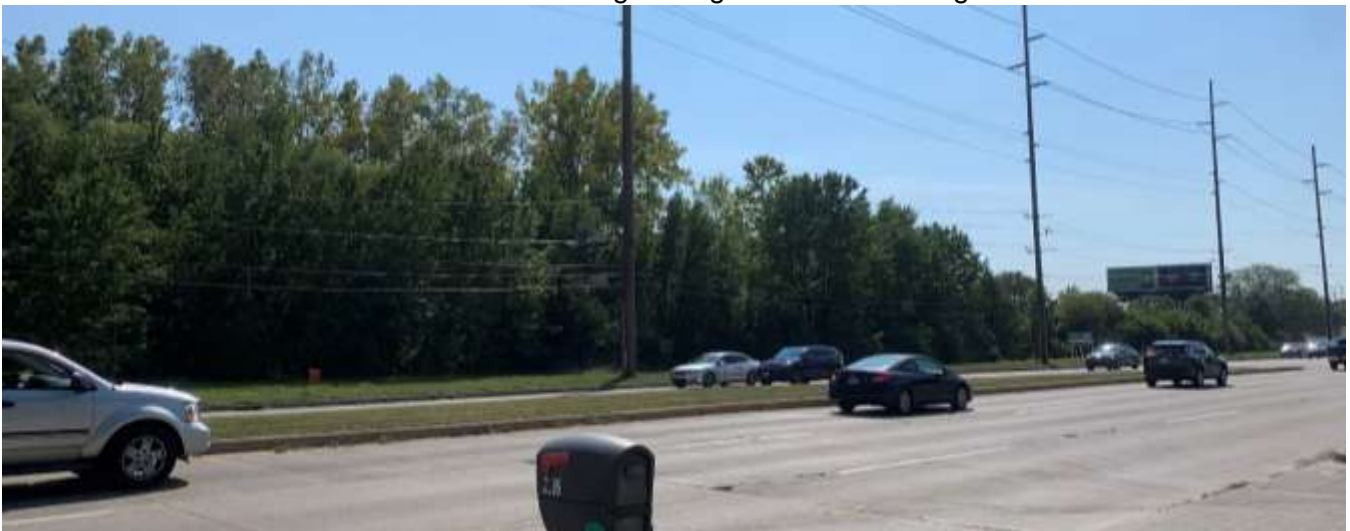


Photo of the street frontage along 86th Street looking south.



Photo of the street frontage along 86th Street looking south toward proposed entrance drive.



Photo of the street frontage along 86th Street looking south.



Photo of an animal hospital to the north.



Entrance to a commercial business park north of the site.



Photo of offices north of the site.



Photo of offices north of the site.



Photo of the southern wooded portion of the site looking west from Braddock Road.



Photo of the adjacent quadrominiums southeast of the site.



Photo of the wooded the subject site looking north from the quadrominiums southeast of the site.



Photo of the quadrominiums southeast of the site looking southeast towards Woodall Drive.