



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

October 10, 2024

Case Number: 2024-CZN-833 / 2024-CVC-833 / 2024-CVR-833

Property Address: 1301 East 16th Street, 1503, 1513, and 1517 Columbia Avenue, and 1524 Dr. A. J. Brown Avenue (Approximate Addresses)

Location: Center Township, Council District #13

Petitioner: Design and Build Corporation, by Jennifer Milliken and Timothy Ochs

Current Zoning: D-8

Request: Rezoning of 1.03 acres from the D-8 District to the SU-2 District to provide for educational uses.

Vacation of the first east-west alley south of 16th Street, being 15 feet in width, beginning at the west right-of-way line of Dr. A. J. Brown Avenue, west 180.72 feet, to the northwest right-of-way line of the first north-south alley west of Dr. A. J. Brown Avenue, and a vacation of the first north-south alley right-of-way west of Dr. A. J. Brown Avenue, being 15 feet in width, beginning at the northwest right-of-way line of the first east-west alley west of Dr. A. J. Brown Avenue, south 190.40 to the north right-of-way line of Interstate 70, with a waiver of the assessment of benefits.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a 29.2-foot-tall gymnasium (maximum height of 25 feet within a transitional yard), and a front transitional yard setback of 7.9 feet along Dr. A. J. Brown Avenue (minimum 10-foot transitional yard).

Current Land Use: School, undeveloped land, and vacant building with parking area.

Staff Recommendations: Approval of the rezoning, vacation, and height variance requests. Denial of the setback variance.

Staff Reviewer: Marleny Iraheta, Senior Planner

PETITION HISTORY

This petition was continued from the September 26, 2024 hearing to the October 10, 2024 hearing to allow for additional time to meet the mailed notice requirements.

STAFF RECOMMENDATION

Staff recommends approval of the rezoning and vacation requests.

Staff recommends approval of the height variance 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 final site plan shall be submitted for Administrative Approval to show the relocation of the building and to address staff's parking concerns.
2. Final building elevations shall be submitted for Administrative Approval and review by the City Architect.

Staff **recommends denial of the setback variance**, which will be withdrawn by the petitioner.

RECOMMENDED MOTION: That the Hearing Examiner finds that the proposed vacation is in the public interest; that a hearing upon the assessment of benefits be waived; and that the Hearing Examiner confirms and ratifies the adoption of Declaratory Resolution 2024-CVC-833; subject to the rights of public utilities under IC 36-7-3-16.

PETITION OVERVIEW

LAND USE

The 1.03-acre site to be rezoned falls within the Ingram Fletcher's 2nd Addition Subdivision along with the rest of the southern two thirds of the site. The northern third of the school campus falls within the S A Fletcher Jr's Subdivision.

The site is surrounded to the north by commercial uses, zoned, C-5, to the east by a church and associated parking lot, zoned, C-5 and D-8, to the south by Interstate 70, zoned D-8, and to the west by a variety of commercial, religious, and residential uses, zoned C-5 and D-8.

REZONING

This request would rezone 1.03-acre from the D-8 district to the SU-2 district.

The D-8 district is intended for a variety of housing formats, with a mix of small-scale multi-unit building types. This district can be used as a part of new mixed-use areas, or for infill situations in established urban areas, including medium and high-density residential recommendations of the Comprehensive Plan, and the Traditional Neighborhood, City Neighborhood, and Village or Urban Mixed-Use Typologies of the Land Use Pattern Book.

The SU-2 district permits schools with associated uses.

VARIANCE

The request would allow for the gymnasium height of 29.2 feet to exceed the maximum 25-foot height limitation along a transitional yard and would have allowed the location of the gymnasium to be within the required 10-foot transitional yard.

The petitioner has confirmed that they will meet the 10-foot east transitional yard along Dr. A. J. Brown Avenue so this variance will need to be withdrawn.



VACATION

This vacation petition would vacate the first east-west alley south of 16th Street from the west right-of-way line of Dr. A. J. Brown Avenue to the northwest right-of-way line of the first north-south alley west of Dr. A. J. Brown Avenue.

It would also vacate the first north-south alley right-of-way west of Dr. A. J. Brown Avenue beginning at the northwest right-of-way line of the first east-west alley west of Dr. A. J. Brown Avenue, south to the north right-of-way line of Interstate 70.

The request would permit adjacent properties to the north, west and east of the alleys to be combined for school use. The vacated alley space would be combined with the adjacent parcels to develop a gymnasium and surface parking lot.

Historic aerial photography suggests that no functional alley has ever existed in the east-west alley right-of-way. The north-south alley was likely utilized, but there is no evidence that it was ever improved.

After evaluation of the above considerations, staff finds that the vacation **would be in the public interest** and recommends the vacation petition be **approved**.

ASSESSMENT OF BENEFITS

The petitioner has requested a waiver of the Assessment of benefits. As indicated by Staff's photograph of the alleys right-of-way, the alleys are currently unimproved. Because of the lack of improvements, Staff supports the waiver of the assessment of benefits.

PROCEDURE

Neither the Division of Planning nor the Plat committee, Hearing Examiner or Metropolitan Development Commission determines 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 land owner owns to the center of the street or highway subject only to an easement for the public for 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. In this instance, the abutting properties are all owned by the same property owner.



GENERAL DESCRIPTION:

Vacation of the first east-west alley south of 16th Street, being 15 feet in width, beginning at the west right-of-way line of Dr. A. J. Brown Avenue, west 180.72 feet, to the northwest right-of-way line of the first north-south alley west of Dr. A. J. Brown Avenue, and a vacation of the first north-south alley right-of-way west of Dr. A. J. Brown Avenue, being 15 feet in width, beginning at the northwest right-of-way line of the first east-west alley west of Dr. A. J. Brown Avenue, south 190.40 to the north right-of-way line of Interstate 70, with a waiver of the assessment of benefits.

UTILITIES AND AGENCY REPORT

Telephone:	No answer, retain easement, if requested
CEG, Gas:	No answer, retain easement, if requested
CEG, Wastewater:	No answer, retain easement, if requested
CEG, Water:	No answer, retain easement, if requested
Power:	No answer, retain easement, if requested
Cable:	No answer, retain easement, if requested
DPR:	No interest or easements
DPW, TS:	No answer, retain easement, if requested

STAFF ANALYSIS

Staff is supportive of the rezoning to the SU-2 district since it would allow for the development of a school gymnasium and associated parking lot that would align with the community commercial development recommendation of the Comprehensive Plan.

Staff is supportive of the height variance since the building will be relocated west to be outside of the required 10-foot transitional yard. With the school being three stories tall, it is unlikely that the gymnasium would exceed the exiting height of the school.

Lastly, Staff is supportive of the alley vacations and the assessment of benefits requests because it would be in the best interest of the public to have the unimproved alleys be utilized for a school gymnasium use with additional parking on site.

The approximate 370-foot-long alleys are not used by the public for access purposes and currently dead end at the Interstate 70 right-of-way to the south and a previously vacated alley to the west.

Staff recommends approval of the requests except for the transitional yard setback variance that the petitioner intends to withdraw.

Staff's approval recommendation is not subject to the submitted site plan since there are concerns with the parking spaces shown along Dr. A. J. Brown Avenue and with the exit only drive on the east end of the proposed parking lot. Instead, staff's approval shall be subject to a final site plan and building elevations to be submitted for Administrative Approval.



GENERAL INFORMATION

Existing Zoning	D-8	
Existing Land Use	School, undeveloped land, and vacant building with parking area.	
Comprehensive Plan	Community Commercial and Traditional Neighborhood	
Surrounding Context	<u>Zoning</u>	<u>Land Use</u>
	North:	C-5 Commercial
	South:	D-8 I-70
	East:	C-5 / D-8 Church
	West:	C-5 / D-8 Church / Commercial and Residential
Thoroughfare Plan		
Dr A J Brown Avenue	Local Street	48-foot proposed right-of-way and 57.5-foot existing right-of-way.
16 th Street	Primary Arterial Street	78-foot proposed right-of-way and 61-foot existing right-of-way.
Columbia Avenue	Local Street	48-foot proposed right-of-way and 62-foot existing right-of-way.
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	August 21, 2024	
Site Plan (Amended)	N/A	
Elevations	August 21, 2024	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	August 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)

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book (2019) recommends traditional neighborhood development for the playground area and community commercial development for the remainder of the site.
- The Traditional Neighborhood typology includes a full spectrum of housing types, ranging from single family homes to large-scale multifamily housing. The development pattern of this typology should be compact and well-connected, with access to individual parcels by an alley when practical. Building form should promote the social connectivity of the neighborhood, with clearly defined public, semi-public, and private spaces. Infill development should continue the existing visual pattern, rhythm, or orientation of surrounding buildings when possible. A wide range of neighborhood serving businesses, institutions, and amenities should be present. Ideally, most daily needs are within walking distance. This typology usually has a residential density of 5 to 15 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park.
- **Conditions for All Land Use Types**
 - All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
 - All development should include sidewalks along the street frontage.
 - In master-planned developments, block lengths of less than 500 feet, or pedestrian cut-throughs for longer blocks, are encouraged.
- **Small-Scale Schools, Places of Worship, Neighborhood-Serving Institutions/Infrastructure, and Other Places of Assembly**
 - Should be located along an arterial or collector street.
 - If proposed within one-half mile along an adjoining street of an existing or approved residential development, then connecting, continuous pedestrian infrastructure between the proposed site and the residential development (sidewalk, greenway, or off-street path) should be in place or provided.
 - Schools should not be within 1000 feet of a highway, freeway, or expressway.
- **Large-Scale Schools, Places of Worship, Community-Serving Institutions/Infrastructure, and Other Places of Assembly**
 - Should be located along an arterial or collector street. Large-Scale schools should only be located along arterial streets.
 - If proposed within one-half mile along an adjoining street of an existing or approved residential development, then connecting, continuous pedestrian infrastructure between the proposed site and the residential development (sidewalk, greenway, or off-street path) should be in place or provided.
 - Schools should not be within 1000 feet of a highway, freeway, or expressway.
 - Should be located within one-half mile of a bus or rapid transit stop.
 - In predominantly platted, single-family neighborhoods, site should be at least as wide as it is deep.
 - Should be in harmony with the surrounding neighborhoods and site and screen their parking, service, and emergency vehicle areas to buffer surrounding residential uses.

- 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.
- **Conditions for All Land Use Types**
 - All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
 - All development should include sidewalks along the street frontage.
- **Small-Scale Schools, Places of Worship, Neighborhood-Serving Institutions/Infrastructure, and Other Places of Assembly**
 - If proposed within one-half mile along an adjoining street of an existing or approved residential development, then connecting, continuous pedestrian infrastructure between the proposed site and the residential development (sidewalk, greenway, or off-street path) should be in place or provided.
 - Schools should not be within 1000 feet of a highway, freeway, or expressway.
- **Large-Scale Schools, Places of Worship, Community-Serving Institutions/Infrastructure, and Other Places of Assembly**
 - Only recommended as adaptive reuse.
 - Only recommended if the use contributes to the economic viability of the district/if the use generates a customer base for commercial uses.
 - If proposed within one-half mile along an adjoining street of an existing or approved residential development, then connecting, continuous pedestrian infrastructure between the proposed site and the residential development (sidewalk, greenway, or off-street path) should be in place or provided.
 - Schools should not be within 1000 feet of a highway, freeway, or expressway.

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)

- Not Applicable to the Site.

ZONING HISTORY

Zoning History – Site

2019-CZN-857 / 2019-CVC-857; 1301 East 16th Street; 1513 and 1517 Columbia Avenue (subject site), Rezoning of 3.33 acres from the D-8 and C-5 districts to the SU-2 district and Vacation of the east-west alley, being 15 feet wide, of the northwest corner of Lots 108 of Ingram Fletcher's Second Addition as recorded in Plat Book Three, Page 127 in the Office of the Recorder of Marion County, being the east right-of-way line of Columbia Avenue, to a point 165.73 feet to the east to the northeast corner of said lot, being the west right-of-way line of the first north-south alley east of Columbia Avenue and west of Dr. AJ Brown Avenue, with a waiver of the assessment of benefits, **approved**.

Zoning History – Vicinity

2021-HOV-018; 1520 Columbia Avenue (west of the site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for two lots, with 28 feet of street frontage and lot width, with two single-family dwellings, with a three-foot north side setbacks, with 8.75 feet between dwellings (1520), and with a garage (1520) with a three-foot south side setback (30-foot lot street frontage and lot width, four-foot side setbacks and 10-foot separation required), **approved**.

2017-DV2-032A; 1324 East 16th Street (north of the site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building, with less transparency than required on the east, south and north elevations (40% required for any façade within 50 feet of a local, collector or arterial street), **approved**.

2017-DV2-032B; 1324 East 16th Street (north of the site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building, with less transparency than required on the east, south and north elevations (40% required for any façade within 50 feet of a local, collector or arterial street), **approved**

2006-HOV-022; 1236 East 16th Street (north of the site), Variance of development standards of the Commercial Zoning Ordinance to provide for the renovation of an existing 2-story building and a 532 square feet third story addition resulting in an eight inch encroachment into the public right-of-way (buildings and structures not permitted within the right-of-way), and to legally establish the building encroaching fully into the required clear site triangle (not permitted), and to legally establish eight parking spaces within the required front yard (not permitted), **approved**.

2006-ZON-084; 1608 Columbia Avenue (north of the site), Rezoning of 0.123 acre, from the C-5 District, to the D-8 classification to provide for the construction of a single-family dwelling, **approved**.

91-UV1-73; 1502 Columbia Avenue (west of the site), Variance of use to provide for a restaurant / variety store, **dismissed**.



Department of Metropolitan Development
Division of Planning
Current Planning

91-V1-150; 1502 Columbia Street (west of the site), Variance of use of the Dwelling District Zoning Ordinance to permit a restaurant and variety store and a variance of development standards of the Sign Regulations of Marion County to permit a sign in excess of one square foot, **granted**.

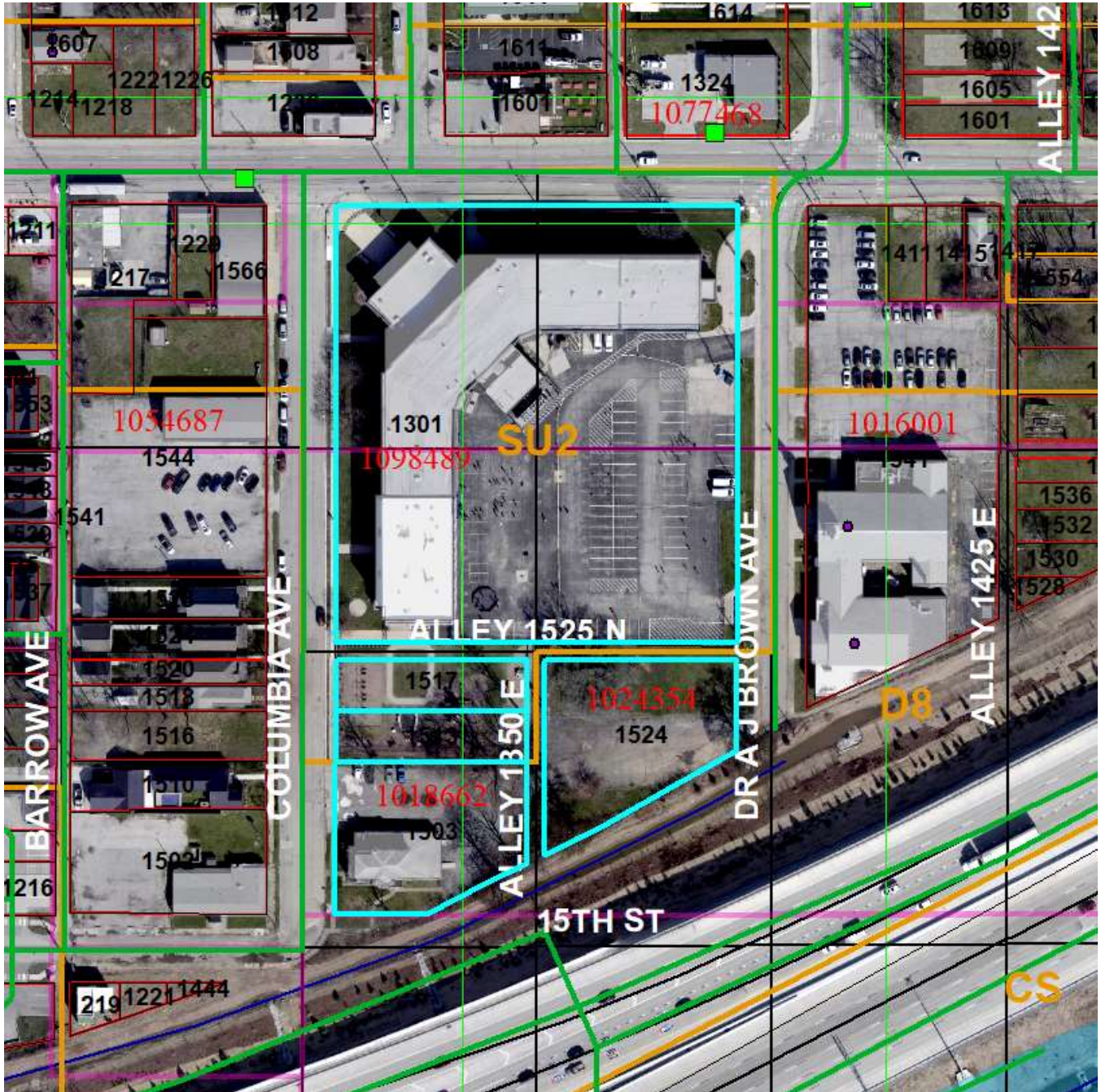
90-V3-18; 1502 Columbia Avenue (west of the site), Variance of use to provide for a restaurant / lounge / variety store, **denied**.

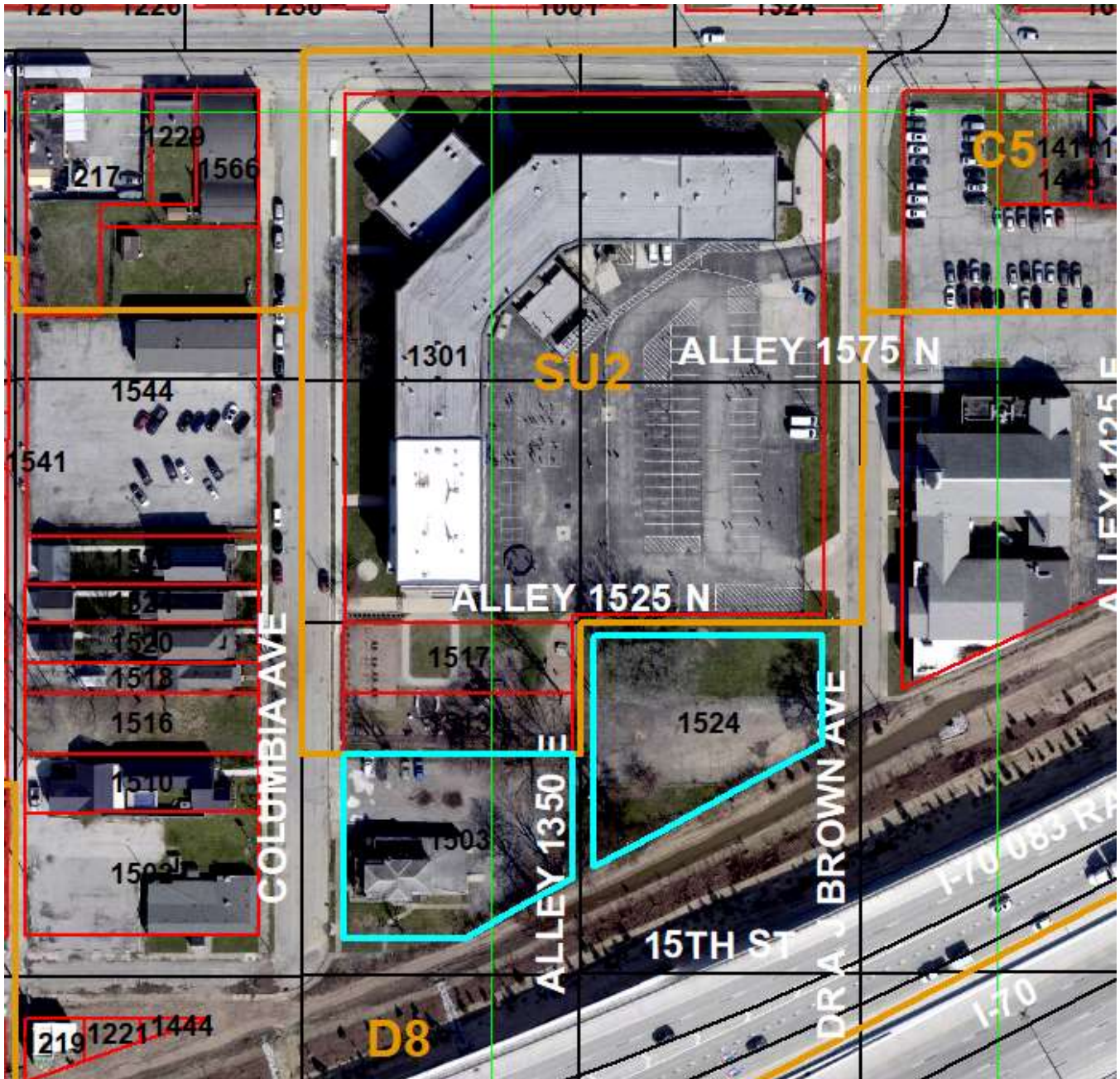
89-Z-194; 1502 Columbia Avenue (southwest of the site), Rezoning of 0.34 acre from the D-8 district to the C-3 classification, **withdrawn**.

84-UV3-40; 1502 Columbia Avenue (west of the site), Variance of use to provide for a motorcycle club, **denied**.

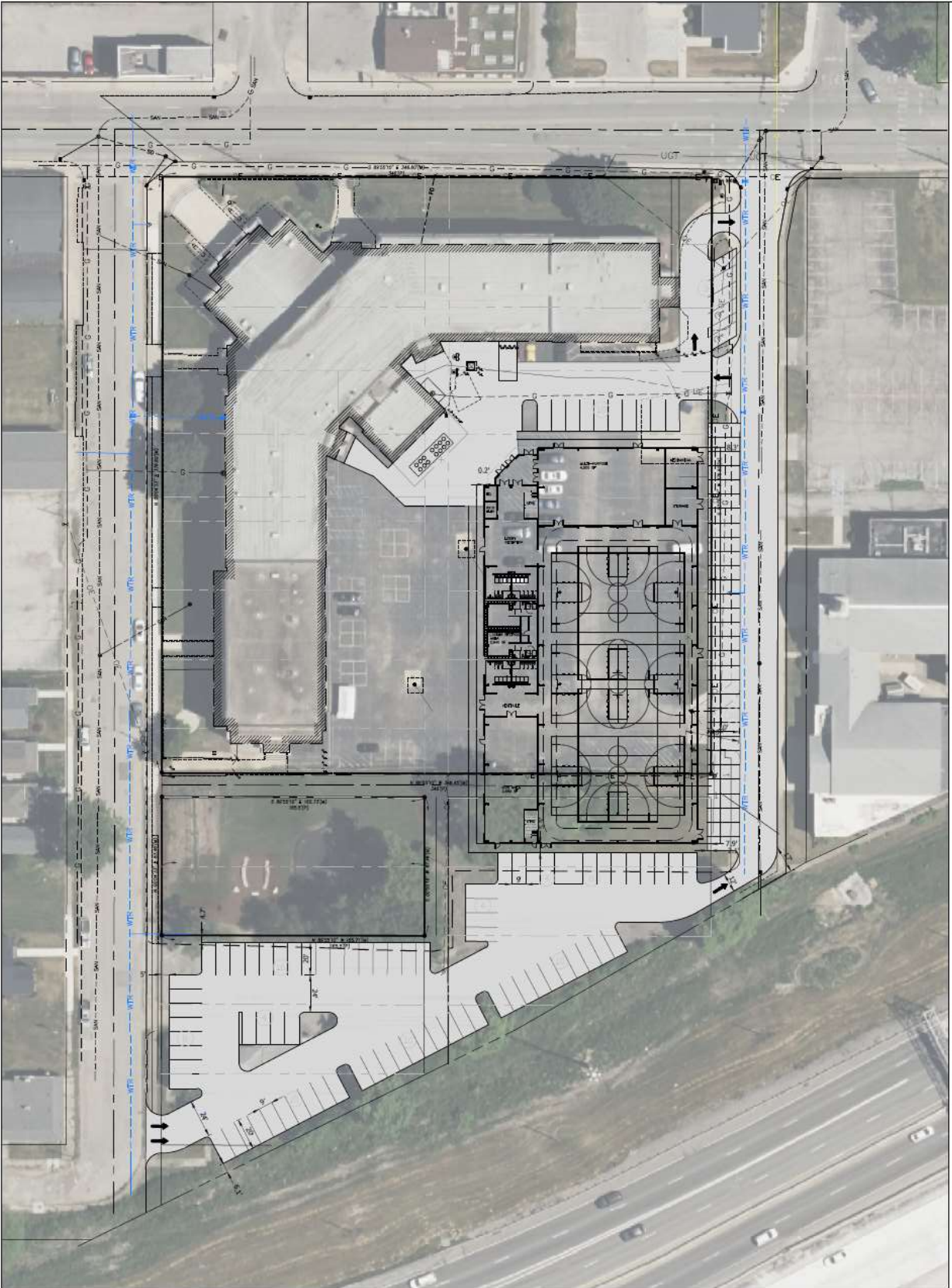
84-VAC-44; 1544 Columbia Avenue (west of the site), Vacation of the 1st alley south of east 16th Street from the west right-of-way line of Columbia Avenue to a point 168 feet west, and/or the east right-of-way line of the 1st alley west of Columbia Avenue, **approved**.

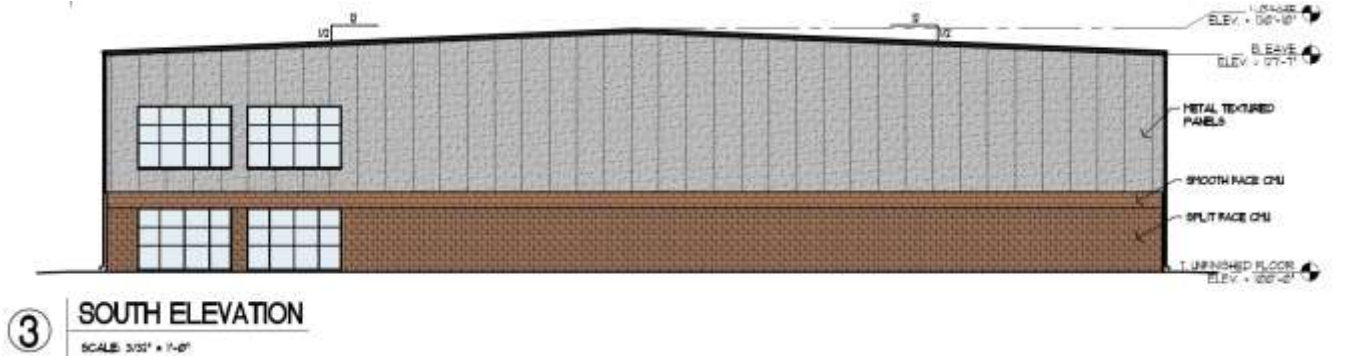
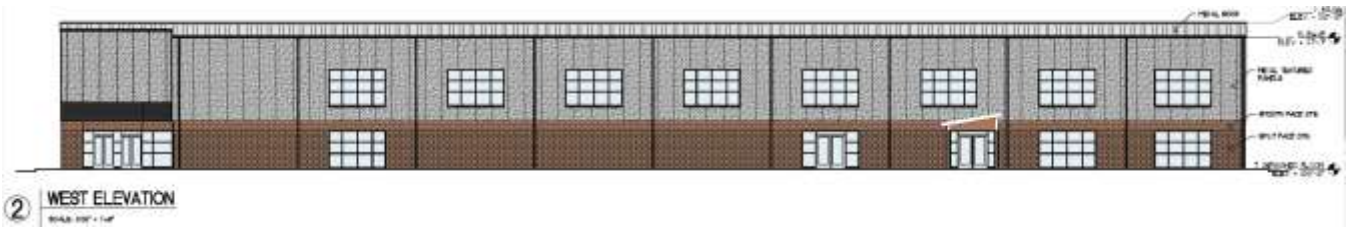
EXHIBITS





Parcels to be rezoned.



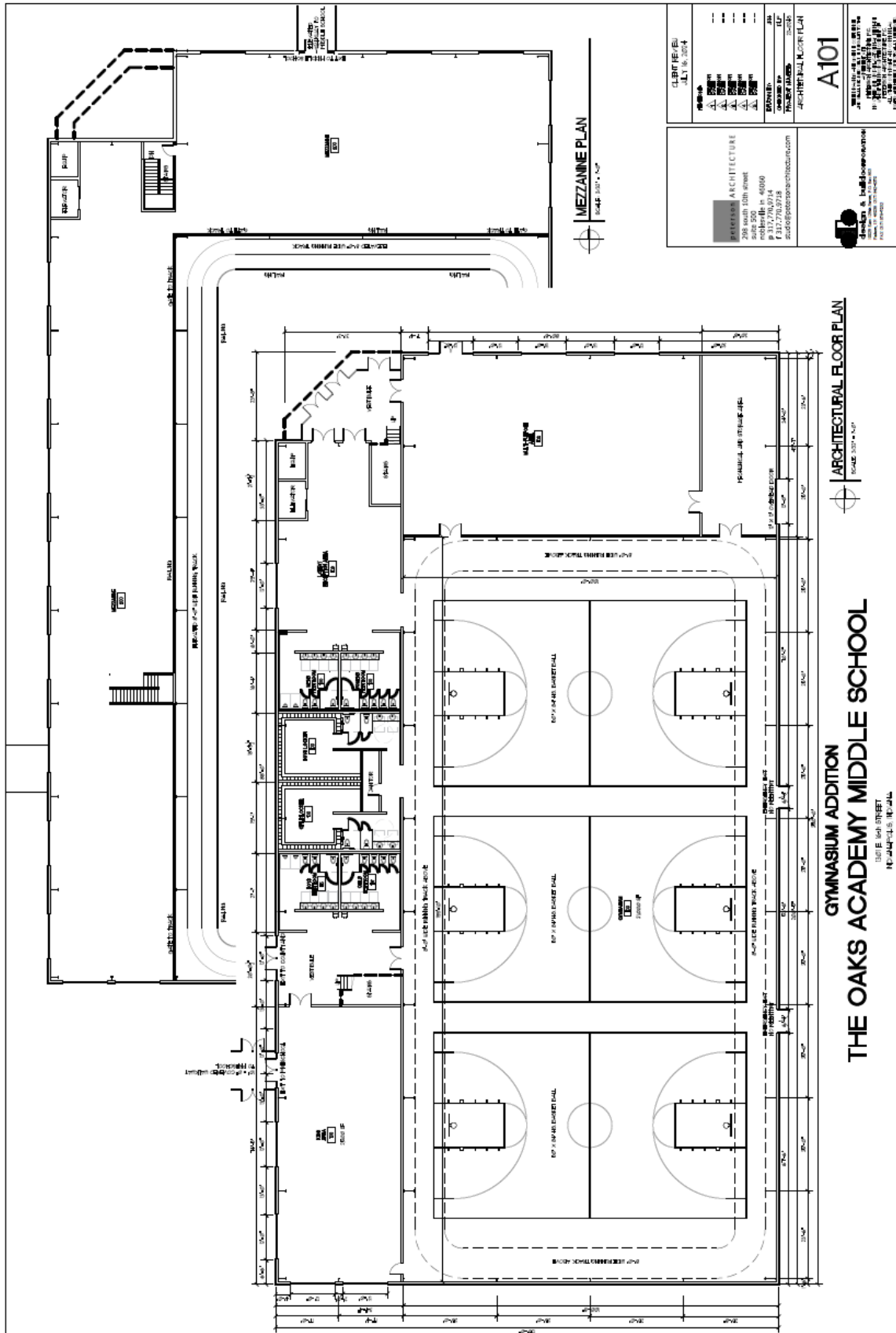


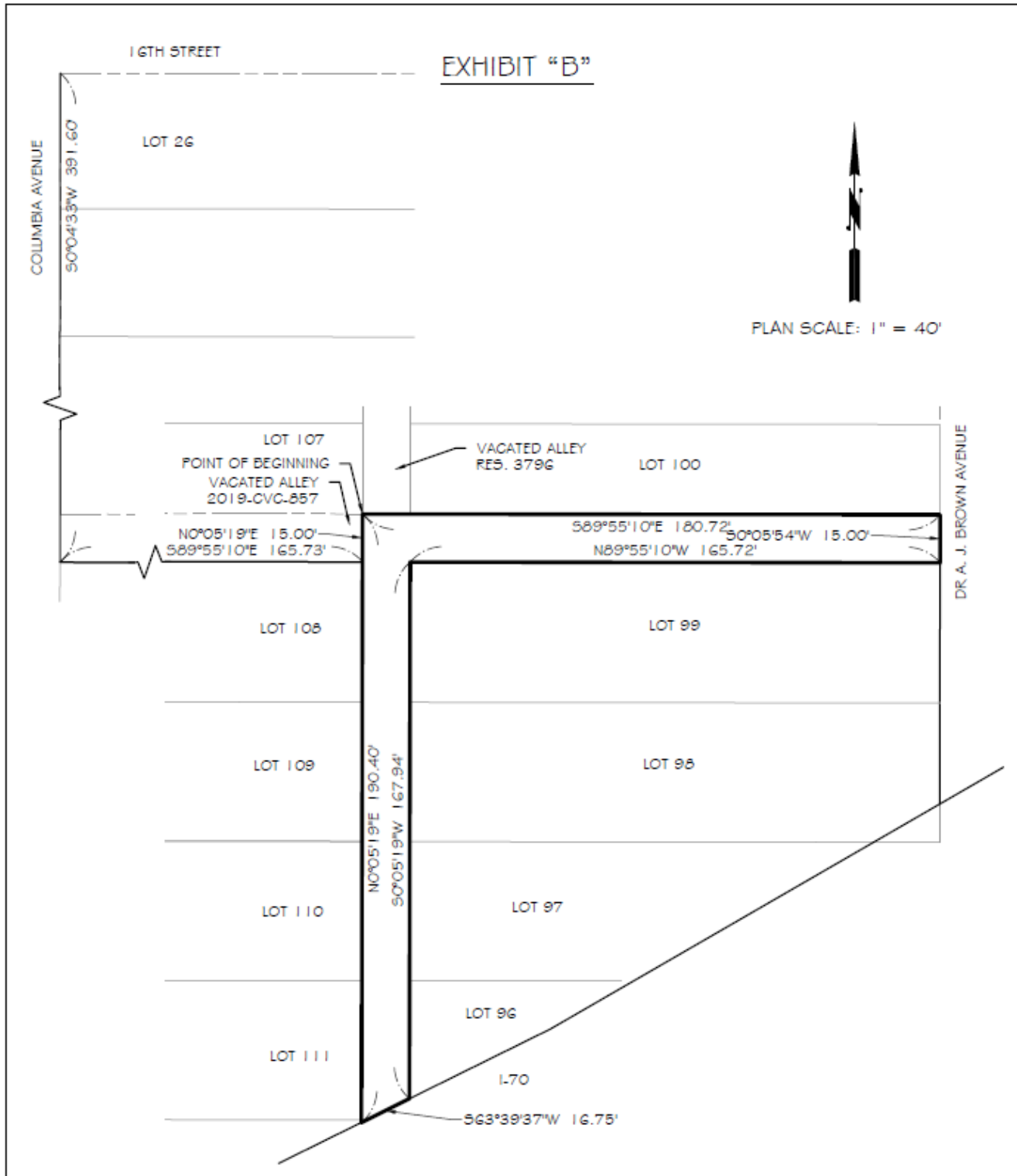


⑤ REAR VIEW RENDERING



⑥ MAIN ENTRANCE RENDERING





**ROGER WARD
 ENGINEERING
 INCORPORATED**

6555 CARROLLTON AVENUE
 Indianapolis, IN 46220
 (317) 251-1738 (Fax) 251-1923

PROJECT NAME: OAKS ACADEMY
 PLAN SCALE: 1" = 40'
 DATE: 06-06-2024
 DESCRIPTION: ALLEY VACATION EXHIBIT "B"



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division I
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 requested height is of similar height as the two adjacent buildings, The Oaks Academy school building and the New Bethel Missionary Baptist Church. Moreover the gymnasium will be of an overall similar scale as these buildings. The gymnasium will be primarily visible to the those buildings only, and slightly visible to traffic traveling west on 16th Street. Because Dr. A.J. Brown Avenue dead-ends at I-70, the only pedestrians who might see the gym are those who are going to the school or church. The facades are made more pedestrian-friendly with a masonry base and contrasting masonry border, with textured metal panels being used above pedestrian height.

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 school is a popular member of the neighborhood, and a gymnasium will only strengthen the quality and appeal of the school. The school and gym will primarily be used during daytime hours from Fall to Spring, while the church is primary used on weekend and evening hours. The height and scale of the gym are similar to the school and church, as described above. The gym will have little visibility from surrounding neighbors or traffic, and the facades are made more pedestrian-friendly with a masonry base and metal panels above.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

A gymnasium requires high ceilings in order to accomodate sports such as basketball as well as overhead equipment. This gym is even taller since it will include a mezzanine level around the perimeter. The mezzanine will accommodate an indoor track. This design is necessary because of the relatively small size of the school campus, which is only 4.42 acres.



**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:

It will allow for the expansion of the grounds of a popular middle school and, together with abutting properties, provide enough space for the school to construct a gymnasium.

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 ____



Photo of the school at 1301 East 16th Street looking southeast.



Photo of the school at 1301 East 16th Street looking southwest.



Photo of the commercial businesses north of the school



Photo of 1503 and 1517 Columbia Avenue developed with a playground.



Photo of 1503 Columbia Avenue to be rezoned.



Photo of 1503 Columbia Avenue to be rezoned.



Photo of the southern property boundary at 1503 Columbia Avenue looking east.



Photo of Columbia Avenue looking north and commercial and residential uses to the west.



Photo of residential uses to the west of the site.



Photo of commercial and religious uses to the west.



Photo of the church and associated parking east of the site.



Photo of the proposed location of the gymnasium at 1301 East 16th Street looking south.



Photo of the southern property boundary at 1524 Dr A J Brown Avenue.



Photo of 1524 Dr A J Brown Avenue looking west where the surface parking lot will be located.



Photo of the proposed location of the gymnasium at 1301 East 16th Street looking north.



Photo of the east to west alley to be vacated.



Northern half of the north to south alley to be vacated.



Northern half of the north to south alley to be vacated.



Photo of the church east of the site.