

## STAFF REPORT

### Department of Metropolitan Development Division of Planning Current Planning Section

**Case Number:** 2022-CZN-861 / 2022-CVR-861 (Amended)  
**Address:** 4016 East 82nd Street (*Approximate Addresses*)  
**Location:** Washington Township, Council District #3  
**Petitioner:** Edward Rose Properties, Inc., by Joseph D. Calderon  
**Request:** Rezoning of 9.805 acres from the C-S (FW)(FF) district to C-S (FW)(FF) district to provide for a 300-unit multi-family development with a Modification of Commitments related to 89-Z-208, as amended by 94-Z-103 and 2011-CZN-800, to amend Commitment #4 to add multi-family uses as a permitted use to Parcel D of Area B.

Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a lot with zero-feet of street frontage (50 feet required), with a maximum setback greater than 85 feet from 82<sup>nd</sup> Street (maximum 85-foot setback permitted), with a maximum building height of 55 feet (maximum 45 feet permitted) and encroachment into the 100-foot stream protection corridor.

### **RECOMMENDATIONS**

Staff **recommends approval** of the rezoning 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:

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.

Staff **recommends approval** of the variance requests related to the street frontage, setback and building height. Staff **recommends denial** of the variance request for encroachment into the stream protection corridor.

### **SUMMARY OF ISSUES**

The following issues were considered in formulating the recommendation:

#### **LAND USE ISSUES**

- ◇ This 9.805-acre site, zoned C-S (FW)(FF), is developed with a currently vacant commercial building and associated parking. It is surrounded by multi-family dwellings to the north, zoned C-S; commercial uses to the south, zoned C-4; the White River to the east, zoned C-S; and commercial uses to the west, zoned C-S.

(Continued)

## **STAFF REPORT 2022- CZN-861 / 2022-CVR-861 (Continued)**

- ◇ This site was included in a 64-acre site rezoning in 1989 (89-Z-208) to the C-S classification. That rezoning case established four distinct commercial areas that provided for all C-1 uses, C-4 uses, restaurants, health clubs, indoor theater, hotel, apartment hotel, motor hotel, motel and commercial sales and services, including retail, primarily for service to office uses within this area and to employees, guests and visitors to such office uses.
- ◇ Petition 94-Z-103 amended the terms of 89-Z-208 to allow for all C-1, C-3 and C-4 uses.

### **REZONING**

- ◇ The request would rezone the site from the C-S (FW)(FF) district to the C-S (FW)(FF) classification to provide for a 300-unit multi-family development and to modify commitments related to 89-Z-208, as amended by 94-Z-103 and 2011-CZN-800, to amend Commitment #4 to add multi-family uses as a permitted use to Parcel D of "Area B."
- ◇ "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 Comprehensive Plan recommends Regional Commercial typology. "The Regional Commercial typology provides for general commercial and office uses that serve a significant portion of the county rather than just the surrounding neighborhoods. Uses are usually in large freestanding buildings or integrated centers. Typical examples include shopping malls, strip shopping centers, department stores, and home improvement centers."
- ◇ 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. Below are the relevant policies related to this request:

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## **STAFF REPORT 2022- CZN-861 / 2022-CVR-861 (Continued)**

### *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.

*Large-Scale Multi-Family Housing (defined as single or multiple buildings each with five or more legally-complete dwelling units in a development of more than two acres and at a height greater than 40 feet )*

- Should be within a one-half-mile distance (using streets, sidewalks, and/or off-street paths) of a school, playground, library, public greenway, or similar publicly accessible recreational or cultural amenity that is available at no cost to the user.
- Must be located within one-half mile of a bus or rapid transit using sidewalks or off-street paths.
- Should be oriented towards the street with a pedestrian connection from the front door(s) to the sidewalk. Driveways/parking areas do not qualify as a pedestrian connection.

- ◇ Large-scale multi-family housing is a removed use in environmentally sensitive areas.

### **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 floodway and floodway fringe of White River.

### **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.

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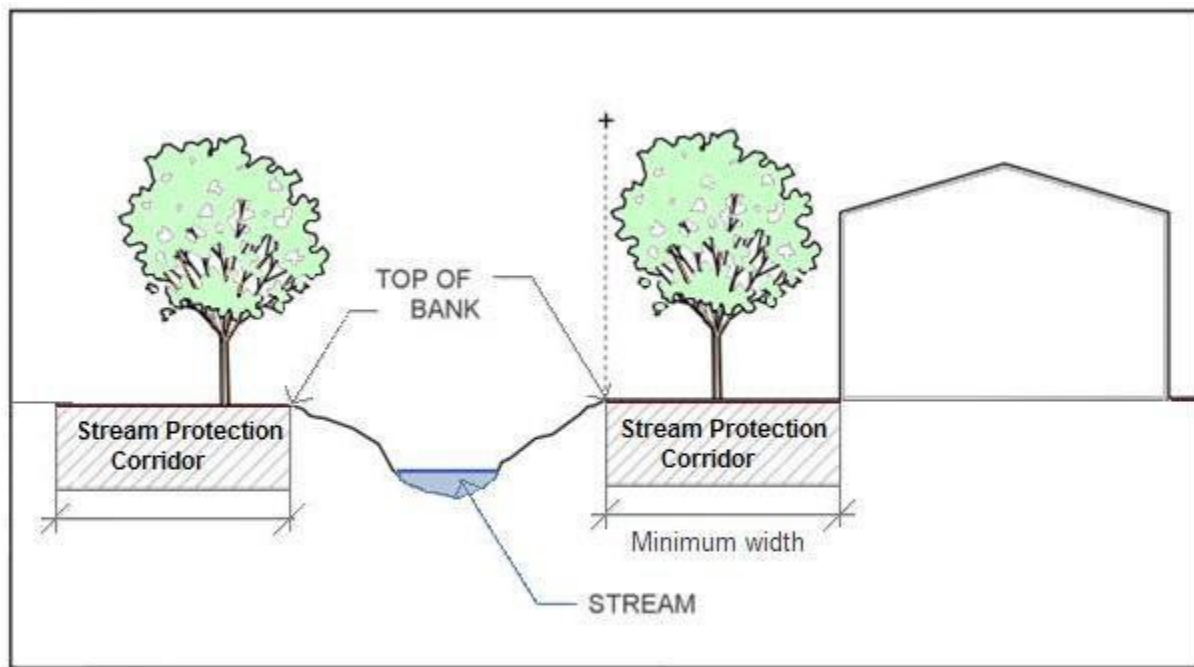
## **STAFF REPORT 2022- CZN-861 / 2022-CVR-861 (Continued)**

- ◇ 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.”
- ◇ 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. Pleasant Run 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.
- ◇ White River forms the eastern boundary of the site and is designated as a Category One stream requiring a 100-foot-wide stream protection corridor on both sides of the stream, 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.

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**Stream Protection Corridor**

### **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.
- ◇ 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

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## **STAFF REPORT 2022- CZN-861 / 2022-CVR-861 (Continued)**

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.

### **C-S Statement**

- ◇ The C-S Statement, file-dated October 6, 2022, states permitted uses would include multi-family dwellings and all C-1 uses and C-4 uses, if the property would not be developed with multi-family dwellings.
- ◇ Accessory uses would include all accessory uses permitted in the D-9 district, if developed with multi-family dwellings and the C-1 or C-4 districts.
- ◇ The development of the site would comply with the development standards of the C-S district, except for a required minimum street frontage, maximum setback, maximum height and stream protection corridor.
- ◇ Signage would be in accordance with that allowed in multi-family development or commercial development, depending upon development of the site. A sign program would be submitted for Administrator Approval prior to the issuance of a sign permit.
- ◇ Final site and development plans would be submitted for Administrator Approval.

### **Preliminary Site Plan**

- ◇ The preliminary site plan, file-dated October 6, 2022, depicts three buildings. The two northern buildings would be L-shaped, with the southern building configured with an amenity space centrally located and surrounded by the structure.
- ◇ Parking would be located on the perimeter of the site, with the larger parking area along the southern portion of the site, abutting the commercial uses.
- ◇ Access to the site would be from a private street that gains access along East 82<sup>nd</sup> Street and opposite Dean Road.

### **Planning Analysis**

- ◇ As proposed the rezoning request would be consistent with the Comprehensive Plan recommendation of regional commercial, except that the environmental sensitive area overlay removes the use of large-scale multi-family dwellings.

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## **STAFF REPORT 2022- CZN-861 / 2022-CVR-861 (Continued)**

- ◇ Staff, however, supports this use because the site has been developed since 1989 as mixed use and multi-family dwellings adjacent to the site to the north. This request would be a reasonable and appropriate expansion of the existing residential uses.
- ◇ Additionally, the Ordinance provisions related to the stream protection corridor could provide some mitigation of the impact of the use in this environmentally sensitive area.
- ◇ Furthermore, the surrounding uses would not be negatively impacted and redevelopment of this commercial site with residential uses would be appropriate because of the apparent challenges of commercial viability in recent years.

### **VARIANCES OF DEVELOPMENT STANDARDS**

- ◇ This request would provide for a lot with zero-feet of street frontage with a maximum setback greater than 85 feet from 82<sup>nd</sup> Street. The Ordinance requires 50 feet of street frontage and limits the setback to 85-feet. These two variances are linked because this request would be redevelopment of an integrated mixed-use site whose site configuration and layout was established many years ago.
- ◇ This 63-acre site was developed prior to the current development standards, which results in a practical difficulty as portions of this site are redeveloped to respond to changes that have occurred during the intervening years. Furthermore, support of these two variances would have minimal impact on the surrounding land uses.
- ◇ This request would provide for a maximum building height of 55 feet, which would be 10 feet above the permitted maximum height of 45 feet. The existing multi-family dwellings to the north are three stories. The proposed multi-family dwellings would be four stories.
- ◇ Staff believes the additional ten feet in height would have minimal impact on the adjacent three-story buildings to the north and the surrounding commercial uses. Furthermore, the proposed buildings would be in proximity of the East 82<sup>nd</sup> Street, a primary arterial, and along a highly traveled and dense commercial corridor. Therefore, taller buildings would be an acceptable deviation from the Ordinance.
- ◇ The request would allow for encroachment into the 100-foot stream protection corridor, which staff does not support. Because more detailed documents have not been submitted, the depth of the encroachment causes concern about the level of impact on this corridor and whether any efforts have been made to mitigate the impact.
- ◇ Staff believes mitigation would be absolutely necessary and at a minimum should include green infrastructure such as rain gardens, bio swales and curbing along the parking areas that would direct water away from White River and into the existing on-site drainage system.

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## **STAFF REPORT 2022- CZN-861 / 2022-CVR-861 (Continued)**

### **GENERAL INFORMATION**

#### EXISTING ZONING AND LAND USE

C-S (FW)(FF)

Commercial building (vacant) / parking

#### SURROUNDING ZONING AND LAND USE

North - C-S

Multi-family dwellings

South - C-4

Commercial uses

East - C-S

White River

West - C-S

Commercial uses

#### COMPREHENSIVE LAND USE PLAN

The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends regional commercial typology.

#### THOROUGHFARE PLAN

This portion of East 82<sup>nd</sup> Street is designated in the Marion County Thoroughfare Plan as a primary arterial with an existing 136-foot right-of-way and a proposed 112-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 (Floodway and 100-year floodplain of White River)

#### C-S STATEMENT

File-dated October 6, 2022

#### SITE PLAN

File-dated October 6, 2022

#### ELEVATIONS

File-dated October 6, 2022

#### FINDINGS OF FACT

File-dated October 6, 2022

### **ZONING HISTORY**

**2011-CZN 800 / 2011-CVR-800; 3810, 3820 and 4106 East 82<sup>nd</sup> Street**, requested rezoning of 13.832 acres from the C-S (FW) (FF) District to the C-S (FW) (FF) classification to provide for C-1 and C-4 uses on the Cinema Parcel and Parcels "F" and "G" and a variance of Variance of Use of the Commercial Zoning Ordinance to provide for an amusement arcade without the grant of a special exception within 500 of protected district, **approved and granted**.

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**STAFF REPORT 2022- CZN-861 / 2022-CVR-861 (Continued)**

**94-Z-103 / 94-CSE1; 3850 East 82<sup>nd</sup> Street (includes subject site)**, the rezoning of 40.369 acres, being in the C-S district, to the C-S classification to reduce the maximum square footage of offices from 329,000 to 253,445 in order to accommodate a family entertainment center (previously not a permitted use in "Area B" as described in petition 89-Z-208) and a special exception of the commercial Zoning Ordinance to permit a family entertainment center, **approved and granted**.

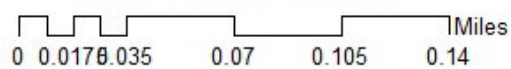
**89-Z-208; 3850 East 82<sup>nd</sup> Street (includes subject site)**, requested rezoning of 63.85 acres, being in the A-2 to C-S to provide for a commercial mixed-use commercial development, including retail commercial on the southern portion of the site and office development for the northern portion of the site, **approved**.

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4016 East 82nd Street





## **C-S Development Statement**

### **Introduction:**

Petitioner, Edward Rose Properties, Inc., seeks to rezone approximately 9.8 acres of property commonly known as 4016 East 82<sup>nd</sup> Street (the "Subject Property") as shown on the Concept Plan in order to develop the Subject Property with a multi-family residential complex containing approximately 300 Units.

### **Zoning:**

The Subject Property is currently zoned C-S, as more particularly set forth in the City of Indianapolis Consolidated Zoning and Subdivision Ordinance ("Zoning Ordinance"). The current C-S zoning permits indoor recreation and entertainment by virtue of case 2011-CZN-800.

### **Permitted Uses:**

Proposed Permitted Primary Uses of the Subject Property as described and defined in Chapter 743, Art II, Table 743-1 in the Zoning Ordinance shall be as follows:

- 1) Multi-family Dwellings
- 2) All C-1 and C-4 uses (as permitted as of 10/6/22, if the Subject Property is not developed for Multi-Family uses)

### **Accessory Uses:**

Permitted Accessory Uses of the Subject Property shall include all accessory uses permitted in the D-9 zoning district, if developed as a multi-family development, and the C-1 or C-4 zoning district, depending on the underlying commercial use of the Subject Property. For example, if the Subject Property is developed with a C-1 underlying use, then C-1 accessory use standards shall apply. If developed with a C-4 underlying use, then C-4 accessory use standards shall apply.

### **Development Standards:**

Petitioner hereby incorporates the Lot and Building Dimensions for properties in the C-S zoning district set forth in Chapter 744; Art. II, Section 01.C, Table 744-201-3 of the Zoning Ordinance; however, Petitioner is seeking a variance of minimum street frontage, maximum setback and maximum height requirements.

Landscaping for the multi-family development or commercial development, as the case might be, shall meet the requirements of Chapter 744, Art. V of the Zoning Ordinance.

### **Signs:**

The following sign types shall be permitted on the Subject Property:

Monument, Marquee, Blade, Wall, Incidental, Temporary, and Other Signs as would otherwise be permitted in a multi-family zoning district, if developed for multi-family use, or as would be otherwise be permitted in a commercial zoning district, if developed for commercial use.

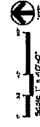
All signs shall be submitted as part of a sign program to be submitted for Administrator's Approval prior to obtaining a sign permit.

### **Final Site and Development Plan:**

Final site and development plans shall be consistent with the standards set forth in this C-S Statement, and shall be submitted for Administrator's Approval prior to applying for an Improvement Location Permit.

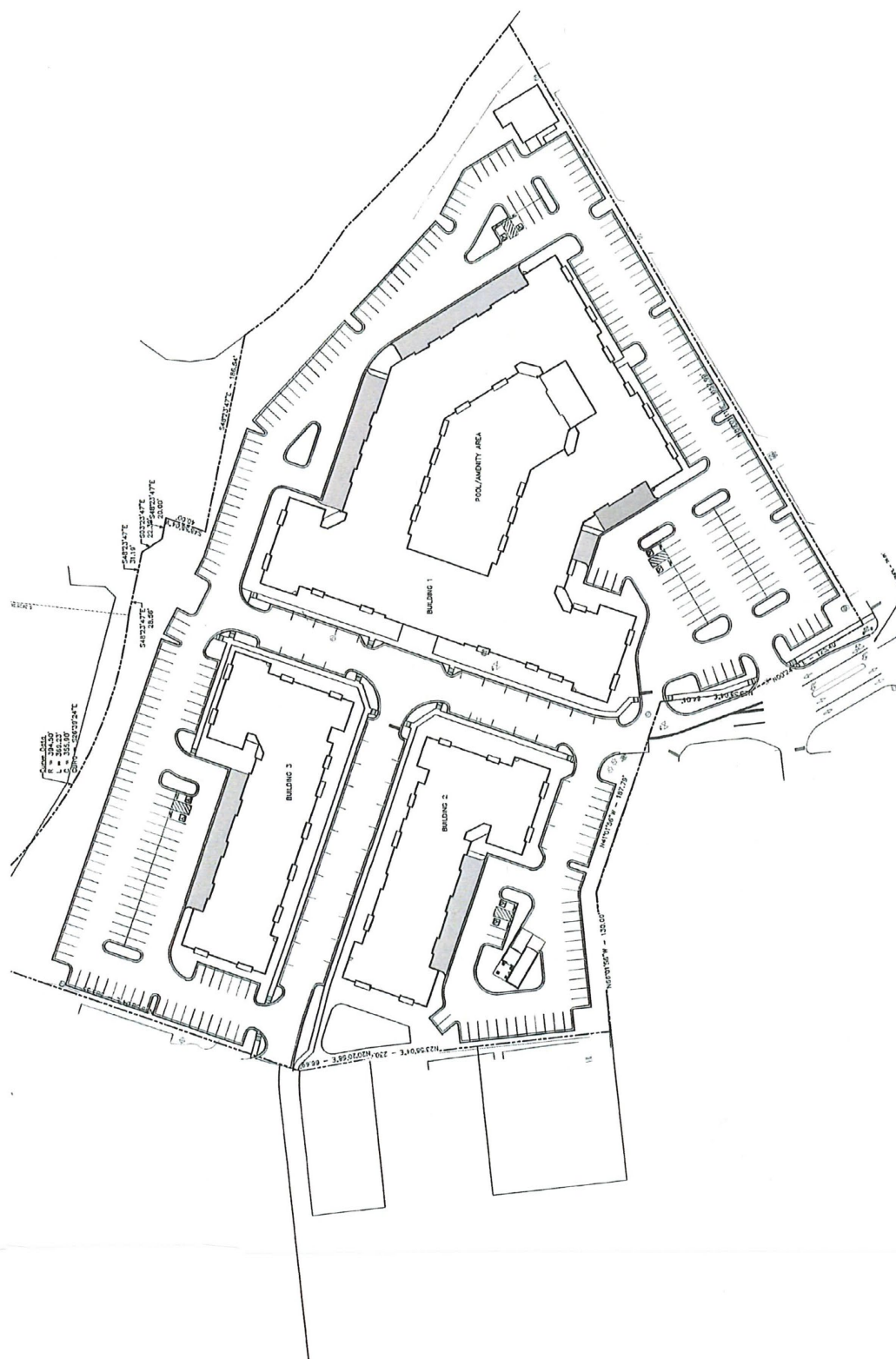


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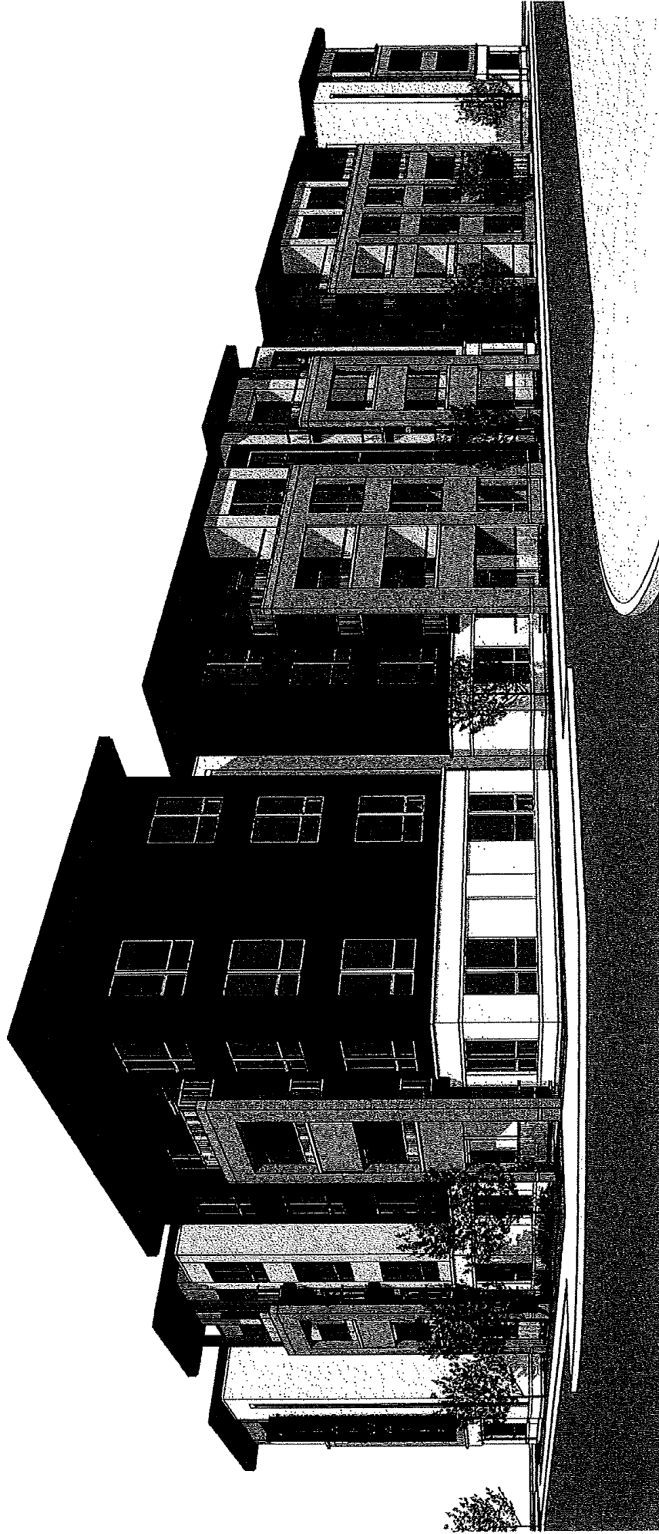
Preliminary Site Plan  
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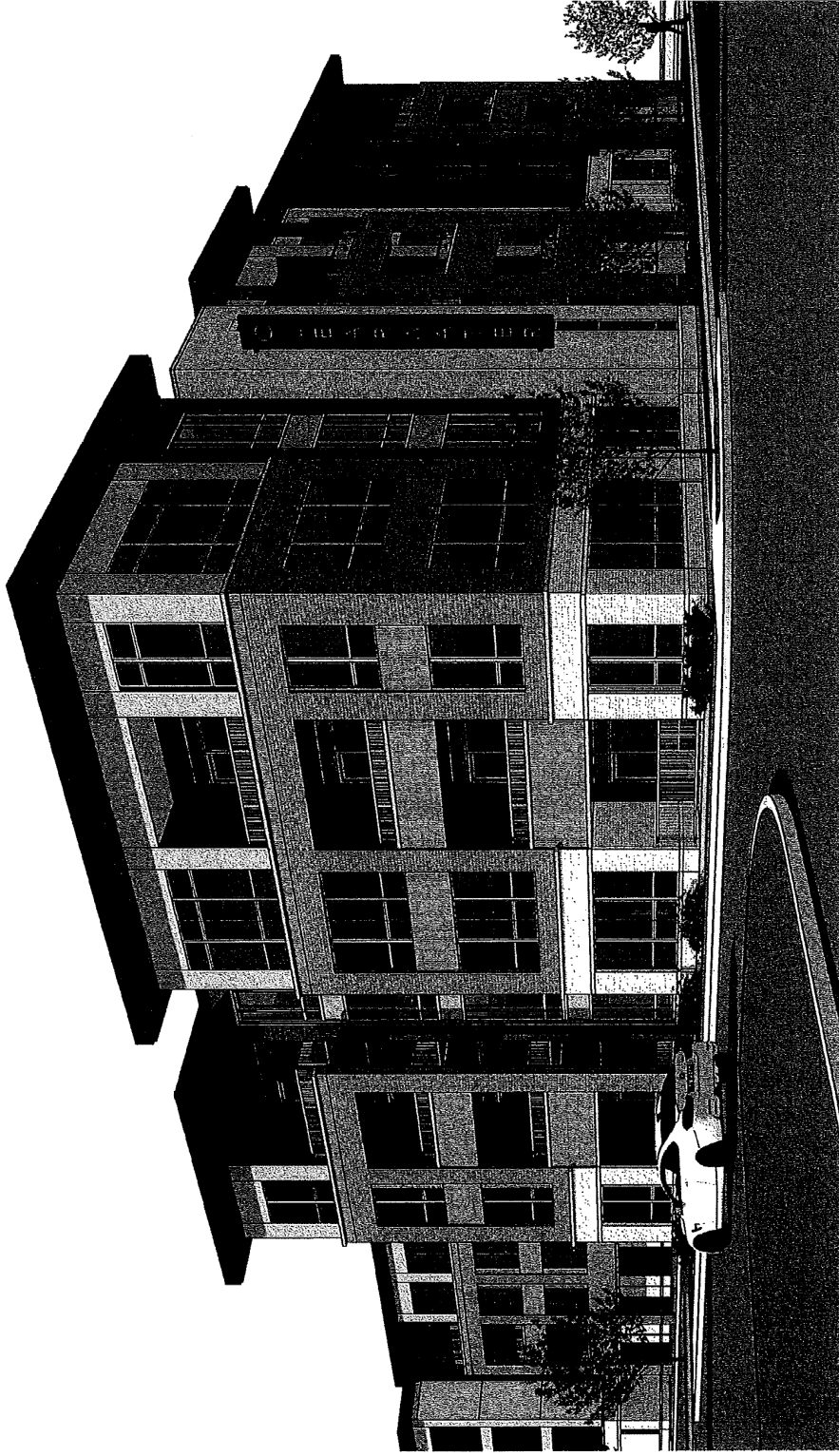




# Preliminary Site Plan









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:

the site has previously been developed, there is legal access to the property, and the buildings are located in a manner such that they will not overwhelm the site.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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 site has previously been developed, traffic to the site will largely flow opposite of traffic visiting the adjacent retail uses, and the height of the buildings will not unreasonably inhibit visibility to adjoining properties.

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\_\_\_\_\_

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

the site was previously developed with access to the subject property via private access drives and before the current version of the Ordinance, and the proposed height is less than is currently permitted under the C-4 zoning classification which is permitted under the current C-S zoning.

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**DECISION**

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

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23883082.1





View looking north along access drive



View looking southwest along access drive





View looking north along access drive along western boundary of site



View of site looking east





View of south building façade looking northeast



View of site looking northeast along White River





View of southeast corner of the site



View from southern portion of site looking south





View from site looking west along southern boundary



View from site looking southwest





View of northern portion of site along White River looking northeast



View from northern portion of site along White River looking northeast



View of northern portion of site along White River looking southeast