

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840
Address: 5436 Brookville Road (Approximate Addresses)
Location: Warren Township, Council District #12
Petitioner: Baldeep Baidwan, by David Kingen and Emily Duncan
Request: Rezoning of 1.60 acres from the C-3 district to the C-S district to provide for a truck retail and repair facility with related parking and limited C-4 uses.
Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for loading bays in the front yard (not permitted).
Vacation of the first northwest-southeast alley north of Brookville Road, being fifteen feet in width, from the southwest corner of Lot 40 in Witz and Spannuth's Addition, as recorded in Plat Book 16, Page 6 in the Office of the Marion County Recorder, southeast 210.40 feet to the northeast corner of Lot 5 in said subdivision, with a waiver of the Assessment of Benefits.

April 13, 2023

This is the seventh hearing for this petition. This petition was continued from the July 28, 2022 hearing to the August 25, 2022 hearing, from the August 25, 2022 hearing to the October 27, 2022 hearing, from the October 27, 2022 hearing to the December 15, 2022 hearing, from the December 15, 2022 hearing to the February 9, 2023 hearing, and from the February 9, 2023 hearing to the April 13, 2023 hearing.

The petitioner provided an amended variance request, and an amended site plan shown in the body of this report. The site plan includes a 20-foot front south setback, a 20-foot east side setback, a 25-foot west side setback, and a 30-foot north rear setback. The amended site plan would have the proposed L-shaped building placed at the west and rear of the site to provide a buffer between the residential uses. This would orient the loading bays to Brookville Road and the access drive to the east, which requires the amended variance. The surface parking would also be in the front yard. The proposed landscape plan would include a mound and evergreen trees in the front yard and a bio-retention area in the rear yard.

Staff continues to **recommend denial** of these petitions.

February 9, 2023

The petitioner and a registered neighborhood organization provided a written request for continuance from the February 9, 2023 hearing to the April 13, 2023 hearing to allow for additional time to meet with neighborhood organizations and to provide revised plans.

(Continued)

2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 STAFF REPORT (Continued)

December 15, 2022

This petition was continued for cause at the request of the petitioner from the October 27, 2022 hearing to the December 15, 2022 hearing so the petitioner would be able to attend the hearing and to provide for plan revisions. An amended site plan was received, including parking areas with the required minimum number of parking spaces and required setbacks. The proposed building size was reduced. The variance portion of the request may be withdrawn.

Staff continues to recommend **denial of the rezoning and vacation requests**.

October 27, 2022

This petition was continued for cause at the request of the petitioner from the August 25, 2022 hearing to the October 27, 2022 hearing to allow time for plan revisions. An amended site plan was received, reducing the building size and increasing the number of parking spaces. The site plan now meets the minimum required parking per ordinance section 744-402. The variance request as proposed may be withdrawn.

However, staff would note that the current site plan does not meet the 10-foot front setback for parking in the front yard. This petition should either be continued to December 1, 2022 with notice for an amended variance, or the petitioner may commit to administrative approval of a compliant site plan. Additionally, the C-S development statement should be revised to reflect the revised site plan, prior to the hearing.

Staff continues to recommend **denial of the rezoning and vacation requests**.

August 25, 2022

This petition was continued for cause at the request of the petitioner from the July 28, 2022 hearing to the August 25, 2022 hearing for a possible amendment. No new information has been received. Staff continues to recommend denial of these requests.

July 28, 2022

RECOMMENDATIONS

Staff recommends **denial of the rezoning** petition.

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

RECOMMENDED MOTION (denial): That the Hearing Examiner find that the proposed vacation is not in the public interest; and that the Hearing Examiner deny Declaratory Resolution 2022-CVC-840.

(Continued)

2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 STAFF REPORT (Continued)

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

- ◇ The subject site is zoned C-3 and consists of two vacant parcels.
- ◇ This petition would rezone this property to the C-S district. This request would permit fifteen parking spaces where thirty-two spaces are required. This request would vacate the alley separating these parcels to allow these sites to be developed as one lot.

REZONING

- ◇ This petition would rezone this site from the C-3 district to the C-S district to permit truck or heavy vehicle repair and sales, and limited C-4 uses. The comprehensive plan recommends light industrial uses.
- ◇ Staff recommends denial of the rezoning. The light industrial recommendation removes heavy commercial uses where adjacent to a dwelling district. North and west of this site is zoned D-5 or developed with single-family uses. The use proposed would not be appropriate for this location.
- ◇ Additionally, the proposed use is C-7 or I-3 permitted use. The required transitional yards in those districts are much larger because of the intense nature of the district. The C-S classification only requires a ten-foot transitional yard. Ten feet would not be an adequate distance to buffer the proposed intense use from the adjacent dwelling uses. Because the C-S district does not require adequate transitional yards for the proposed intense use, staff would suggest the C-S should not be utilized for the proposed use/location.

VARIANCE

- ◇ This request would provide for a surface parking lot with fifteen parking spaces where thirty-two spaces are required. The ordinance requirement for parking for truck and heavy vehicle repair uses requires two parking spaces per service bay, plus one space for 250 square feet of sales and display area. The use proposes eleven service bays and 2,400 square feet of sales area.
- ◇ Staff recommends denial of the variance. It is counter-intuitive to permit a vehicle-oriented use that does not provide the minimum parking for that use. Staff would also suggest that if the site cannot provide adequate parking for the use, the site is an inappropriate location.

(Continued)

2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 STAFF REPORT (Continued)

VACATION

- ◇ The subject site includes the right-of-way for Alley 475 South, a platted alley that has never been improved. However, the alley to the west is improved, and the prior user on this property did pave this area for vehicle access. Overhead power lines are also existing within this platted alley. Therefore, staff would not support the vacation.

GENERAL INFORMATION

EXISTING ZONING, CONTEXT AREA, AND LAND USE

C-3	Compact	Undeveloped
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SURROUNDING ZONING AND LAND USE

North	D-5	Undeveloped
South	I-4	Industrial
East	D-5 / C-7	Commercial
West	C-3	Residential

COMPREHENSIVE LAND USE PLAN Light Industrial

THOROUGHFARE PLAN Brookville Road is classified in the Official Thoroughfare Plan for Marion County, Indiana as a Primary Collector, with an 80-foot existing and an 88-foot proposed right-of-way.

DEVELOPMENT PLAN (C-S)	File-dated June 23, 2022
DEVELOPMENT PLAN (C-S) (Amended)	File-dated November 3, 2022
FINDINGS OF FACT	File-dated June 23, 2022
SITE PLAN	File-dated June 23, 2022
SITE PLAN (AMENDED)	File-dated October 18, 2022
SITE PLAN (2 nd AMENDED)	File-dated March 14, 2023
VACATION SURVEY	File-dated June 23, 2022
COMMITMENTS	File-dated October 22, 2022

ZONING HISTORY – SITE

87-V1-29, 5436 Brookville Road, variance to provide for a gas station canopy with a 1.5-foot setback in the C-3 district, **approved**.

89-HOV-103, 5346 Brookville Road, variance to provide for a pricing sign on the canopy within the required 70-foot setback from the street centerline in the C-3 district, **approved**.

(Continued)

2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 STAFF REPORT (Continued)

ZONING HISTORY – VICINITY

2020-PLT-090, 5565 Brookville Road, Approval of a Subdivision Plat, to be known as Indianapolis Central Logistics Park, dividing 89.66 acres into three lots.

2002-ZON-139, 5424 Brookville Road, rezoning from the D-5 district to the C-5 classification, **denied**.

2000-SE1-005, 5402 Brookville Road, special exception to provide for the construction of a wheelchair lift addition for a religious use in the D-5 district, **withdrawn**.

2000-ZON-043, 5402 Brookville Road, rezoning from the D-5 district to the SU-1 classification, **approved**.

96-VAC-15, 5460 Brookville Road, vacation of a portion of the first north-south alley west of South Ritter Avenue, being approximately 15 feet in width, from the north right-of-way line of Brookville Road, extending approximately 310 feet northward, to the south right-of-way line of Greenfield Avenue, **approved**.

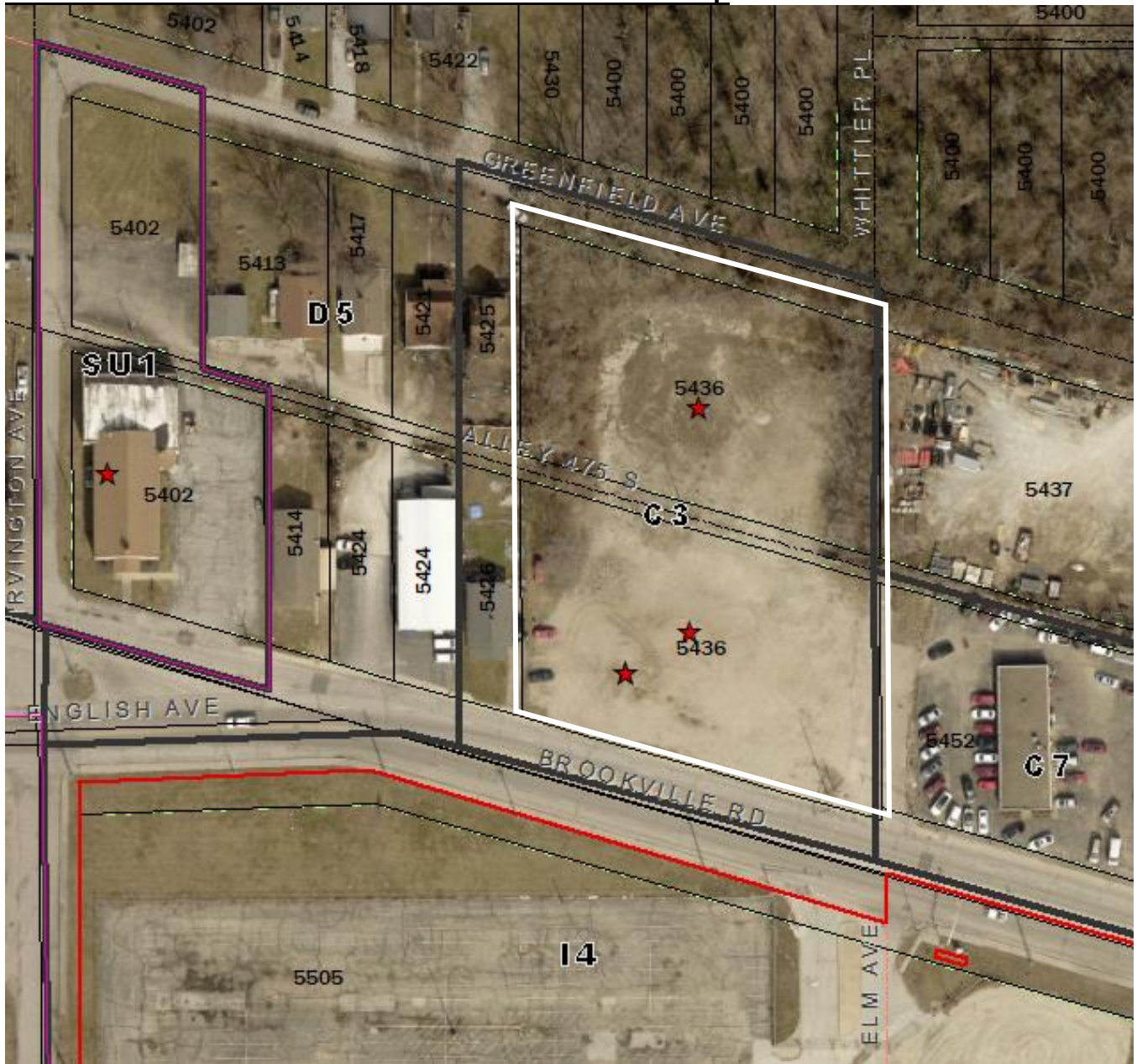
88-UV1-79, 450 South Ritter Road, variance to provide for an office expansion for a construction contractor in the C-5 district, **approved**.

86-UV3-35, 5478 Brookville Road, variance to permit an adult cabaret limited to live entertainment within 500 feet of a residential district, **denied**.

78-VAC-12, 450 South Ritter Road, vacation of part of Greenfield Avenue between Ritter Avenue and the First Alley west of Ritter Avenue, **approved**.

AR

2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 Aerial Map



2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 C-S Statement

ATTACHMENT "C"

Development Plan and Site Plan to allow:

Uses:

1. Truck Retail and Repair facility with related parking along the east site of the new building and along the east and north sides of the site, per the site plan on file.
2. All C4 Uses except those listed in Attachment "E"

Building:

One (1) new proposed truck repair building (12,075 square feet) in the southwest part of the site, per the site plan on file.

Parking:

Fifteen (15) parking spaces with one (1) reserved for the handicapped, to serve the truck repair shop. Trucks awaiting repair shall be parked on the north part of the site per the site plan on file.

Signs:

Wall signs shall be permitted.

Directional signs shall be permitted

No pole signs or off-site advertising signs shall be permitted or sought for approval on the site.

No off-site advertising signs shall be erected on the site.

Landscaping, screening/ fencing shall be used for buffering:

Install the landscaping per site plan on file.

Security:

Monitored by security cameras

Lighting:

Parking lot lighting may be used on the site, with no light spillage off the site.

Box lighting shall be used and affixed to the new building.

Trash Collection:

All dumpsters shall be behind or to the side of the building and to the north of the buildings; and enclosed and gated so as not to be visible, from any public street.

6/17/22

Metropolitan Development

Jun 23 2022

Division of Planning

2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 C-S Statement (Amended 11.3.22)

ATTACHMENT "C"

Development Plan and Site Plan to allow:

Uses:

1. Truck Retail and Repair facility with related parking along the east site of the new building and along the east and north sides of the site, per the site plan on file.
2. All C4 Uses except those listed in Attachment "E"

Building:

One (1) new proposed truck repair building (9,694 square feet) in the southwest part of the site, per the site plan on file.

Parking:

Twenty-eight (28) parking spaces with one (1) reserved for the handicapped, to serve the truck repair shop. Trucks awaiting repair shall be parked on the north part of the site per the site plan on file.

Signs:

Wall signs shall be permitted.

Directional signs shall be permitted

No pole signs or off-site advertising signs shall be permitted or sought for approval on the site.

No off-site advertising signs shall be erected on the site.

Landscaping, screening/ fencing shall be used for buffering:

Install the landscaping per site plan on file.

Security:

Monitored by security cameras

Lighting:

Parking lot lighting may be used on the site, with no light spillage off the site.

Box lighting shall be used and affixed to the new building.

Trash Collection:

All dumpsters shall be behind or to the side of the building and to the north of the buildings; and enclosed and gated so as not to be visible, from any public street.

STATEMENT OF COMMITMENTS

**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL**

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

Legal Description: 5436 Brookville Road (See Attached Exhibit "A")

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. Additional signage shall be provided to warn motorists and cyclists on Brookville Road that they are nearing a truck access point at the entrance to this facility.
3. Additional signage shall be provided on Elm Street or the private drive to the parcel north of this truck entrance to the facility that intersecting bike traffic is ahead along the northside of Brookville Road.
4. Hours of operation shall not exceed 7am to 7pm Monday through Saturday with no hours open on Sundays.
5. The only trucks parked on the site are those awaiting service or ready for pick up after being serviced.
 - a. No trucks or trailers, not being serviced, shall be parked on the site for compensation.
6. New trees shall be planted as part of the tree removal mitigation from the rights of way that abut the site of 5436 Brookville Road and 5400 Greenfield Avenue, shall be planted within the perimeter of the Irvington boundaries as determined by the boundaries as shown in the Indianapolis Neighborhood Registration recognized by the Department of Metropolitan Development neighborhood registration website.
 - a. The number of new trees to be replaced, based on the number of mature trees shall be certified by a registered arborist.
 - b. The final tree planting plan shall occur after input is sought from the Irvington Development Organization and the Irvington Community Council.

- c. Such trees shall be planted by 5/31/23.
7. The petitioner shall establish a scholarship program for three high school aged students in the area of mathematics, chemistry, or physics.
 - a. Such students shall be nominated (maximum of ten) and three shall be selected.
 - b. The nominations and persons selected shall reside in Warren Township at the time of their nomination and selection.
 - c. The nominations shall be received by a committee of three (3) members of WTDA, One (1) from ICC and one (1) from IDO and four (4) City-County Councilors of Districts, 14, 17, 18 & 19.
 - d. The nominations shall operate on a deadline of 6/30 of each year and the selection of the three students shall be determined and announced by 7/31/of each year.
 - e. Each selected student shall receive an award of ten thousand dollars (\$10,000) to further their post high school education.
 - f. This scholarship program shall be funded solely by Baldeep Baidwin in an amount not to exceed thirty thousand dollars (\$30,000) annually, with such funding to be available in an account no later than April 30 of each year.
8. If the community/neighborhood of Irvington is designated as a Main Street award winner, a grant of ten thousand dollars (\$10,000) will be provided by Baldeep Baidwin no later than sixty days from the date of the award of the designation by the National Main Street Program.
 - a. The monies provided shall be used at the discretion of the new Board of committee that administers the Main Street program for the neighborhood/community of Irvington, within the City of Indianapolis, Indiana.

Petitioner commits to exclude the following C-4 uses from the subject site:

1. Emergency shelter
2. Greenway
3. Garden as primary use
4. Check cashing or validation service
5. Tattoo parlor
6. Adult entertainment use sales and services
7. Night club or cabaret
8. Firearm sales
9. Fireworks sales on-going
10. Pawn shop

11. Power generating facility
12. Automobile Fueling station
13. Plasma (Blood Center)
14. Liquor store
15. Automobile, motorcycle and light vehicle service or repair
16. Any single-family dwelling or group home
17. Special use methadone clinic or treatment facility
18. Swimming pool or hot tub sales
19. Vending machine or self-service kiosk
20. Any temporary use or outdoor sales or display, portable storage, construction yard, equipment storage, any temporary fireworks sales or outdoor events.

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other person acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A" which is attached hereto and incorporated herein by reference. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition #2022-CZN-840 by the City-County Council changing the zoning classification of the real estate from a C-3 zoning classification to an C-S zoning classification; or
- (b) the adoption of approval petition #___ by the Metropolitan Development Commission;

and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the C-S zoning classification or until such other time as may be specified herein.

These COMMITMENTS may be enforced jointly or severally by:

1. The Metropolitan Development Commission;
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six-hundred-sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the petition who were not petitioners for the rezoning or approval. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various Township Assessors of Marion County which list the current owners of record. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning or approval under the rules in force at the time the commitment was made);
3. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and

The undersigned hereby authorizes the Division of Planning of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of petition #2022-CZN-840.

IN WITNESS WHEREOF, owner has executed this instrument this 21st day of October, 20 22.

Signature: [Signature]
Printed: BALDEEP BAIDNAN
Title / OWNER
Organization
Name: _____

Signature: _____
Printed: _____
Title / _____
Organization
Name: _____

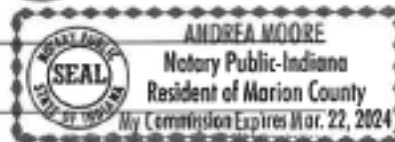
STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared BALDEEP BAIDNAN OWNER (owner(s) name, title & organization name) of the real estate who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this
21st day of OCTOBER, 20 22

[Signature]
Notary Public

Printed Name of Notary Public
My Commission expires: _____
My County of residence: _____



I affirm under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document unless required by law - Emily Duncan

This instrument was prepared by Emily Duncan.

ATTACHMENT "A"

OPEN OCCUPANCY AND EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

- (a.) The owner commits that he shall not discriminate against any person on the basis of race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age United States military service veteran status in the sale, rental, lease or sublease, including negotiations for the sale, rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
- (1) any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
 - (2) any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
 - (3) any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
- (b.) The owner commits that in the development, sale, rental or other disposition of the real estate or any portion thereof, neither he nor any person engaged by him to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment, employed or to be employed in the development, sale, rental or other disposition of the real estate, or portion thereof with respect to hire, tenure, conditions or privileges of employment because of race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age United States military service veteran status.

EXEMPT PERSONS AND EXEMPT ACTIVITIES

An exempt person shall mean the following:

1. With respect to commitments (a) and (b) above:
 - (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
 - (b) any school, educational, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution;
 - (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;
2. With respect to commitment b, a person who employs fewer than six (6) employees within Marion County.

An exempt activity with respect only to commitment (a) shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 Findings of Fact

Petition Number 2022-CVR-840

**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 needs to provide space for for the maneuvering of large trcuks and thus the parking has been placed around the perimeter of the parcel and thus only so much room is available for the auto parking of employees and customers; however from the petitioner's experience for the size of the operation, the parking provided is sufficient.

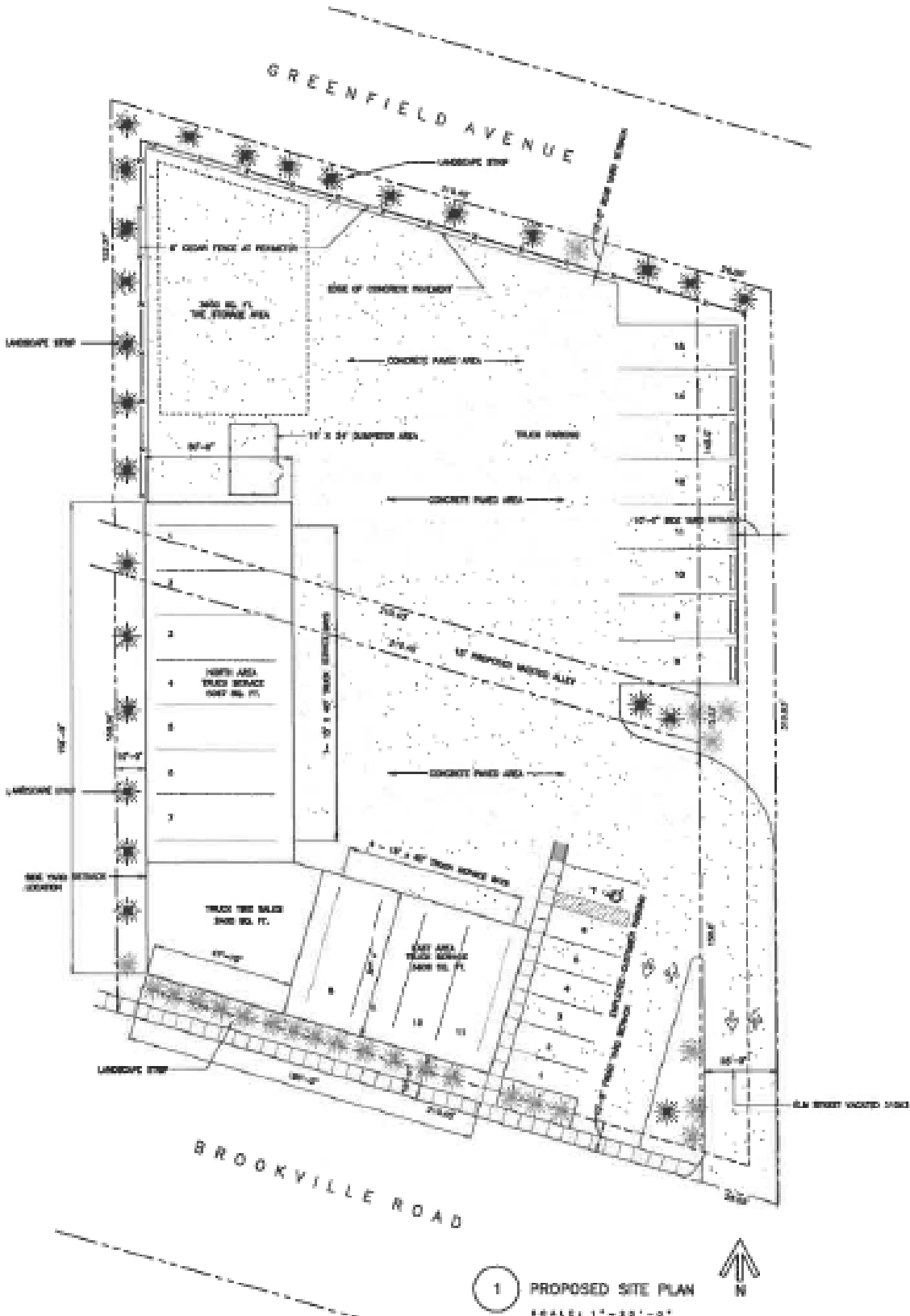
2. THE USE OR VALUE OF THE AREA ADJACENT TO THE PROPERTY INCLUDED IN THE VARIANCE WILL NOT BE AFFECTED IN A SUBSTANTIALLY ADVERSE MANNER BECAUSE:

With the surrounding heavy commercial and industrial uses, parking shall be confined to the subject parcel even allowing for the maneuvering of the large trucks on the site. This new beautiful commercial building developed up close to the street will contribute to the appearance of this commercial corridor and thus shall affect the use and value of the are ain a significant way.

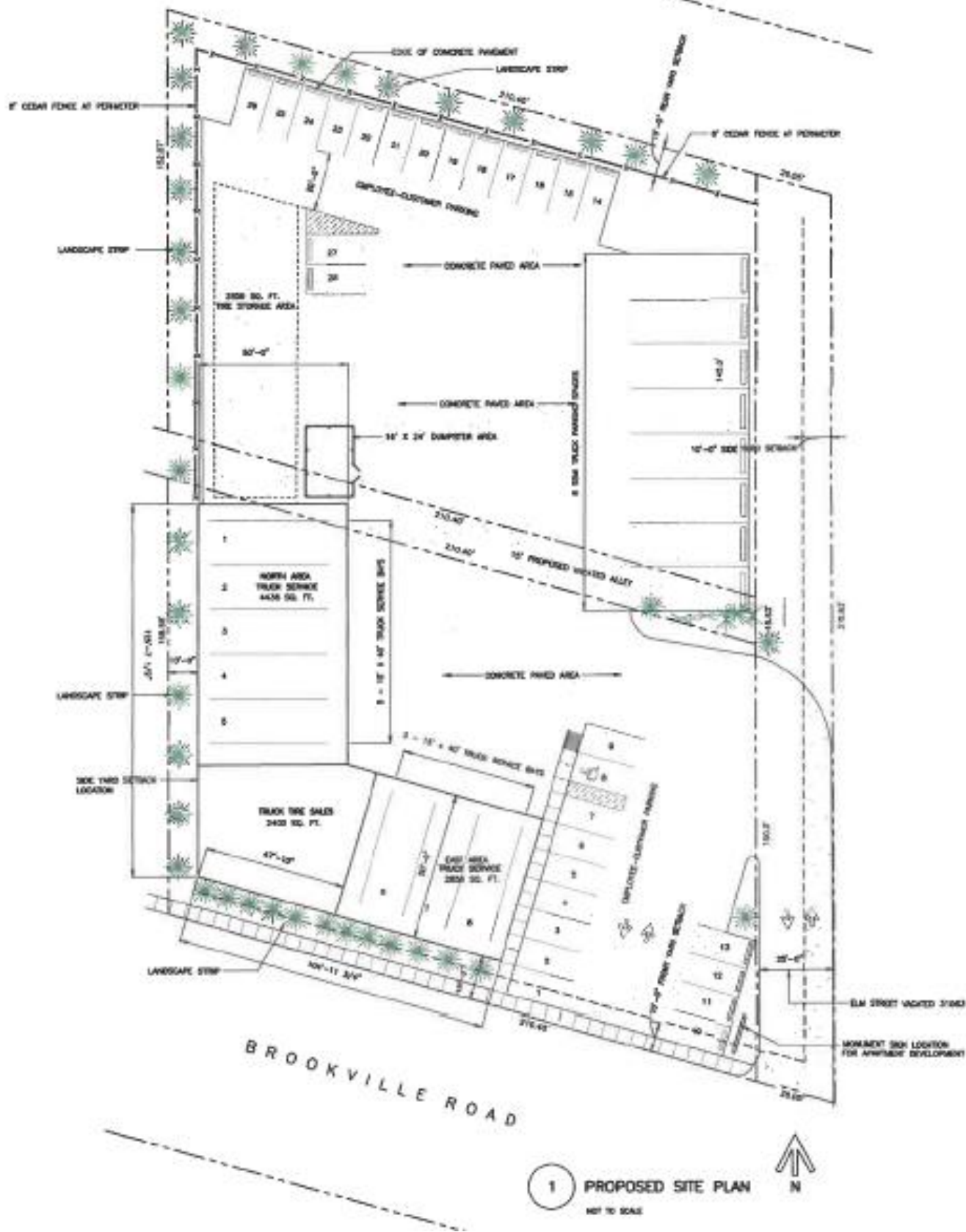
3. THE STRICT APPLICATION OF THE TERMS OF THE ZONING ORDINANCE WILL RESULT IN PRACTICAL DIFFICULTIES IN THE USE OF THE PROPERTY BECAUSE:

The required parking for the anticipated activity on this site given the petitioner experiercer with similar uses on sites fairly similar to this parcel shall be adequate if not plentiful..

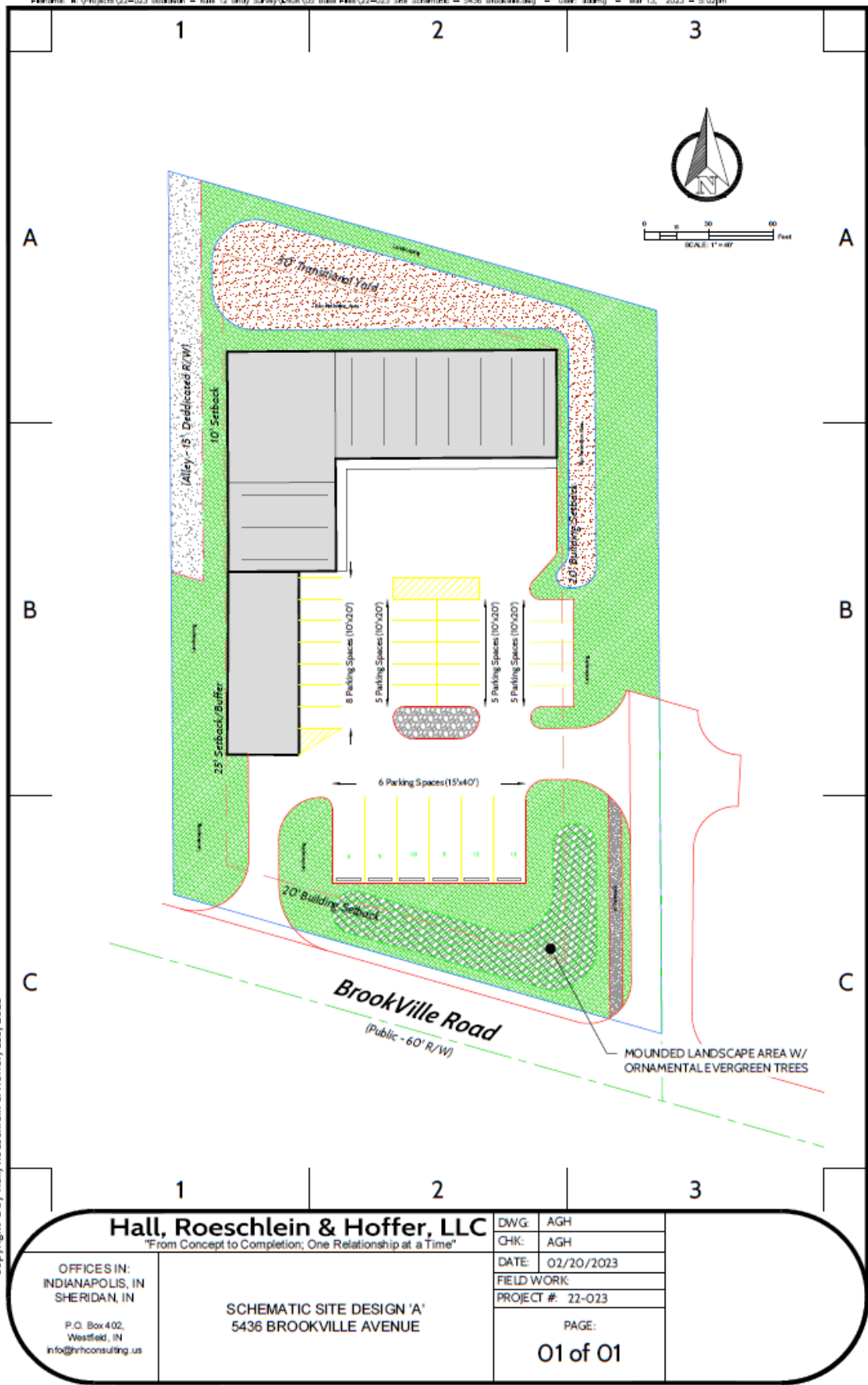
2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 Site Plan



2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 Site Plan (Amended 10.18.22)

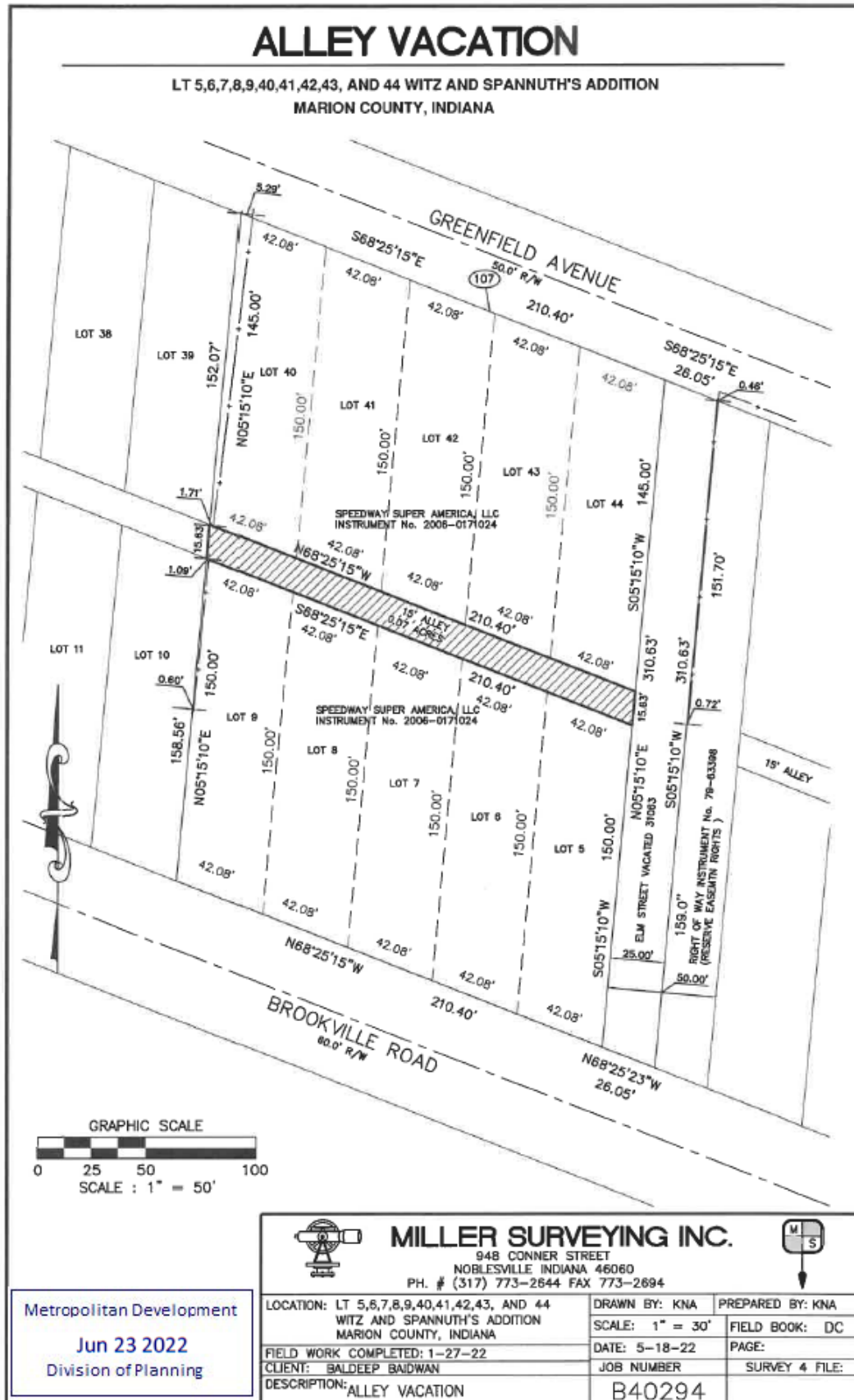


2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 Site Plan (Amended 3.14.23)



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2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 Vacation Survey



Metropolitan Development
Jun 23 2022
Division of Planning

2022-CZN-840 / 2022-CVR-840 / 2022-CVC-840 Site Photos



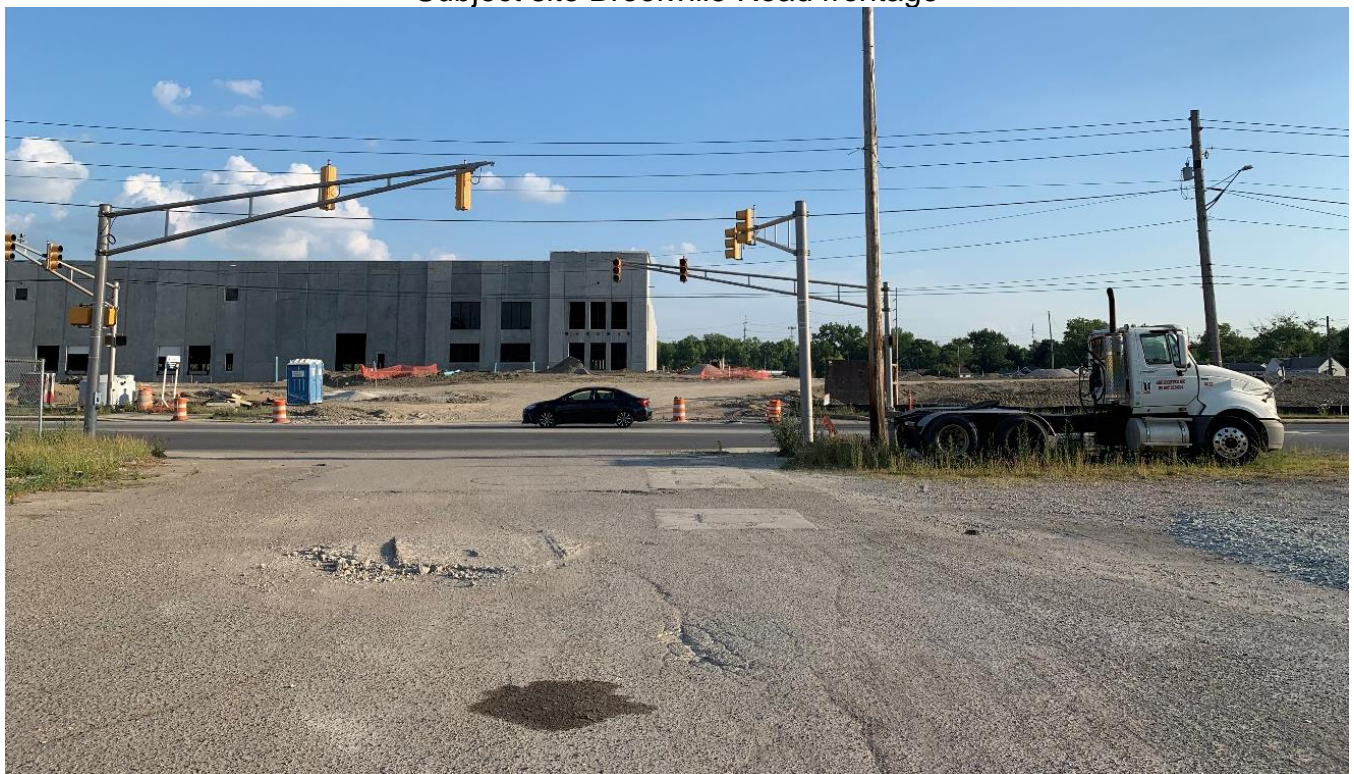
Subject site Brookville Road frontage



Subject site, alley location



Subject site Brookville Road frontage



Existing site access and south of site