

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-UV1-007
Address: 1034 South Tremont Street (approximate address)
Location: Wayne Township, Council District #16
Zoning: D-5
Petitioner: Abel Solares and Reina Alfaro, by Sarah Walters
Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a commercial contractor and the parking of up to eight commercial vehicles (not permitted), a 48.5-foot wide parking area in the front yard with a zero-foot south side yard setback and an eight-foot tall perimeter fence (parking area in front yard limited to 30-foot wide, seven-foot side yard setback required, maximum 3.5-foot tall fence permitted within the front yard and maximum six-foot tall fence permitted in side and rear yards) and deficient living materials and landscaping (60% of required landscaped areas must be covered by living materials, minimum landscaping required).

RECOMMENDATIONS

Staff **recommends denial** of this request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

EXISTING ZONING AND LAND USE

D-5	Compact	Residential (Single-family dwelling)
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SURROUNDING ZONING AND LAND USE

North	D-5	Residential (Single-family dwelling)
South	D-5	Residential (Single-family dwelling)
East	D-5	Residential (Single-family dwelling)
West	D-5	Residential (Single-family dwelling)

COMPREHENSIVE PLAN

The Comprehensive Plan recommends 3.5 to 5 residential units per acre development.

- ◇ The 0.38-acre subject site is located mid-block of a residential neighborhood and surrounded by appropriately developed single-family dwellings in every direction.

(Continued)

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- ◇ A variance was issued in 1987 for a garage measuring greater than the principal living space with a condition that the garage would be utilized for residential purposes only. This condition was specifically added to prevent commercial usage of the site in the future due to the size of the garage.
- ◇ This condition proves that the site was never intended to be used for commercial purposes and should remain residentially used.

VARIANCE OF USE

- ◇ The grant of the request would permit a commercial contractor and the parking of up to eight commercial vehicles in the D-5 district.
- ◇ The D-5 district is intended for medium and large-lot housing formats, primarily for detached houses, but may incorporate small-scale multi-unit building types in strategic locations. This district can be used for new, walkable suburban neighborhoods or for infill situation in established urban areas, including both low density and medium density residential recommendations of the Comprehensive Plan, and the Suburban Neighborhood and Traditional Neighborhood Typologies of the Land Use Pattern Book
- ◇ The use would be classified as a Commercial and Building Contractor, which is defined as an “establishment or activity that supplies materials and labor to fulfill work at a remote site and that work is typically a building trade or activity associated with the construction or maintenance of a physical building or structure. This definition includes uses such as contractors for awning; building/construction; carpentry work; concrete; decorating; demolition; electrical; excavation; extermination/disinfection; fence; flooring; home remodeling; masonry/stonework/tile/setting; painting; pest control; plastering/drywall; plumbing; roofing; septic system; sheet metal; siding; sign; storm door; window; construction companies, contractors, lumber yards; swimming pool installation and services; home remodeling companies; heating; air conditioning; landscaping; lawn services; tree services; and water softener services. This definition may include accessory offices for operation of the contracting business but does not include retail sales of goods to the public.
- ◇ Commercial and Building Contractors are only permitted in the C-7 district or any industrial district since it is classified as a heavy commercial service in Table 743-1: Use Table.
- ◇ Commercial or industrial uses, when located on accurately zoned properties, require transitional yards to buffer such intense uses from protected districts which include dwellings and schools. In this instance, the proposed use would not be required to provide such buffer areas since the D-5 district is intended to be utilized for a variety of housing types. Therefore, the site provides insufficient screening to the surrounding dwellings, which staff finds concerning.
- ◇ Although the commercial vehicles may be fenced at the rear of the site, staff has concerns that the business could potentially expand with the additional storage of commercial vehicles based on the availability of land that is covered with gravel and fenced in at the rear of the site.

(Continued)

STAFF REPORT 2023-UV1-007 (Continued)

VARIANCE OF USE FINDINGS OF FACT

- ◇ Staff finds that the grant would be injurious to the general welfare of the community since a commercial operation would attract additional traffic and unnecessary noise from the commercial vehicles on site.
- ◇ The use and value of the area adjacent to the property included in the variance would be adversely affected by the development of this proposed commercial use in the area by decreasing the desirability of the area for potential residents, largely due to the location of a heavy commercial use in a well-established residential area.
- ◇ The need for the variance does not arise from a condition peculiar to the property in question because it is developed residentially and could continue to be used as such without the need for a variance.
- ◇ The strict application of the terms of the zoning ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is sought because the site is appropriately developed and zoned residentially.
- ◇ Lastly, the proposed use would not align with the 3.5 to 5 residential units per acre development recommendation of the Comprehensive Plan. In Staff's opinion, the request would represent a wholly inappropriate deviation from the Plan.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The grant of the request would permit an excessive parking area in the front yard with deficient side setbacks, deficient landscaping and an eight-foot-tall perimeter fence in the D-5 district.
- ◇ The D-5 district limits parking areas in the front yard to a maximum width of 30 feet, requires seven-foot side yard setbacks, and has a requirement for 60% of landscaped areas in the front yard to be covered by living materials.
- ◇ The request is for a zero-foot south side yard setback since the parking area measures 48.5 feet wide and extends up to the southern property line. There is no practical difficulty with the use of the site if the parking area were to be reduced to the 30-foot width required by the Ordinance while also meeting the seven-foot side yard setback requirement.
- ◇ Fences in the dwelling district are limited to 3.5 feet in the front yard and six-feet in the sides and rear yards. Although the request is for an eight-foot-tall perimeter fence, the conclusion of the site visit did not result in the location of an eight-foot-tall fence. Instead, the fence along the rear and side yards appears to measure six-feet tall and the front yard fence appears to measure the 42 inches or 3.5 feet that was noted in the zoning violation VIO22-005247. If this is the case, then the variance for the eight-foot-tall fence height can be withdrawn by the petitioner.
- ◇ Staff would not support an eight-foot-tall fence at this site since taller fences are meant to be more commercial in nature and that would not be appropriate in this walkable residential neighborhood. For these reasons, staff is not supportive of the variance of development standards requests.

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STAFF REPORT 2023-UV1-007 (Continued)

GENERAL INFORMATION

THOROUGHFARE PLAN

Tremont Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 60-foot existing right-of-way and a 48-foot proposed right-of-way.

SITE PLAN

File-dated March 7, 2023.

FINDINGS OF FACT

File-dated March 7, 2023.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

1. VIO22-005455: Failure to obtain a drainage permit for land alteration.
2. VIO22-005247:
 - a. The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Vehicle, regardless of weight, used or designed to be used as fleet vehicles).
 - b. Failure to comply with use-specific standards and zoning district development standards for the D-5 district; (Table 744-404-1 - The parking area in front yards shall not exceed 30 feet in width or 50% of the lot width).
 - c. Failure to comply with use-specific standards and zoning district development standards for the D-5 district; (Table 744-510-2: - Fence height exceeding 42 inches in the front yard with more than 30% opacity...privacy fence).
 - d. Failure to comply with use-specific standards and zoning district development standards for the D-5 district; (744-510.C.3. - Fence post height exceeding 1ft. above the permitted height of the fence).
 - e. Failure to comply with use-specific standards and zoning district development standards for the D-5 district; (744-503.C. - In all areas where landscaping is required, a minimum of 60% of the surface area shall be covered by living materials, rather than gravel, stone, concrete or other non-living materials).
 - f. The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - A construction/roofing contractor is not a permitted use in a D-5 zoning district...Carroll's Roofing).

PREVIOUS CASES

89-V1-7; 1034 South Tremont Street (subject site), Variance of development standards of the Dwelling Districts Zoning Ordinance to provide for construction of a garage in excess of the maximum allowed height and resulting in the accessory space in excess of the principal living space, **granted**.

ZONING HISTORY – VICINITY

2020-DV2-010; 1042 South Tremont Street (south of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a detached garage with a two-foot south side setback on a through lot and to legally establish a two-foot north side setback for the existing single-family dwelling (three-foot side setback required), **denied**.

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STAFF REPORT 2023-UV1-007 (Continued)

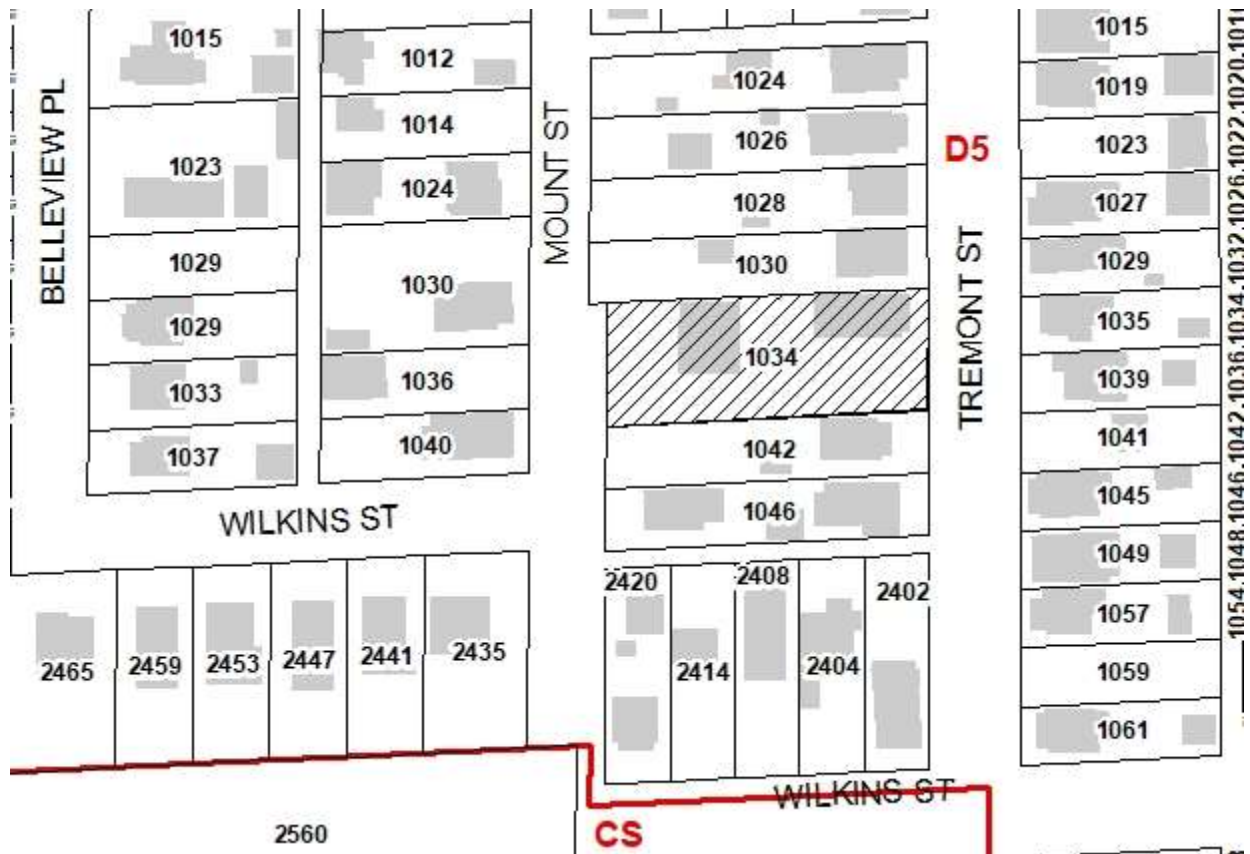
2001-DV3-040; 1016 South Pershing Avenue (northeast of site), Variance of legally establish a 732-square foot single-family dwelling with a two-foot rear yard setback, and an eight by eight-foot mini barn with a 24.5-foot front yard setback, within the established front yard of South Pershing Avenue; and to provide for installation of an 18-foot diameter, above ground swimming pool within the established front yard of South Pershing Avenue, **granted.**

94-V2-61; 1101 South Pershing Avenue (southeast of site), Variance of development standards of the Dwelling Districts Zoning Ordinance to legally establish a detached garage being 5.2 feet from Wilkins Street (minimum 25-foot setback required), with a side setback of 3.5 feet (minimum 4-foot setback required) and resulting in an open space of the lot to be 51% (minimum 65% required), **granted.**

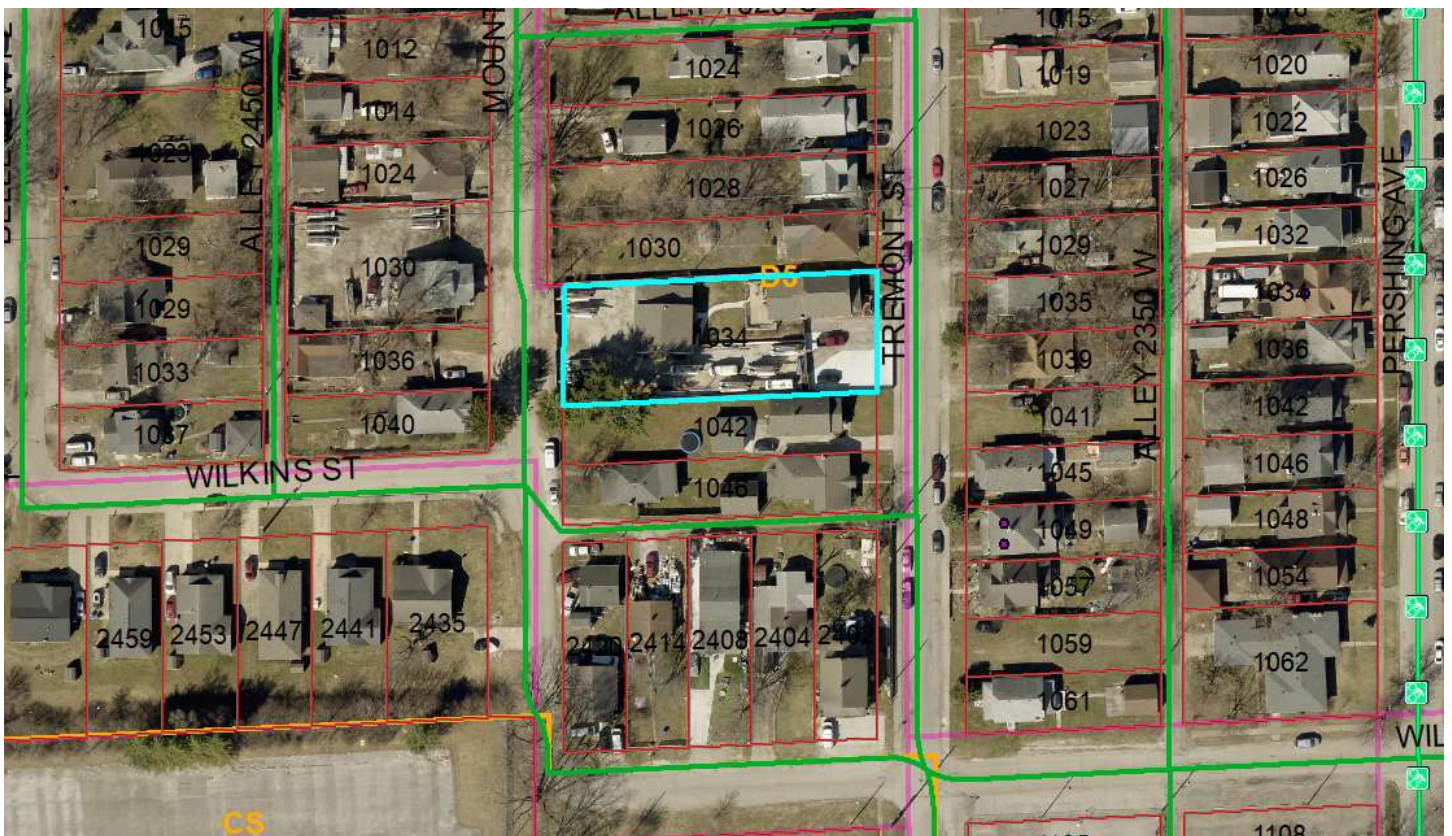
83-UV3-88; 1101 South Tremont Street (southeast of site), Variance of use to provide for the continued use of an existing garage for storage of two church buses in a dwelling district. A temporary variance of five years had expired (78-UV2-69), **granted with conditions.**

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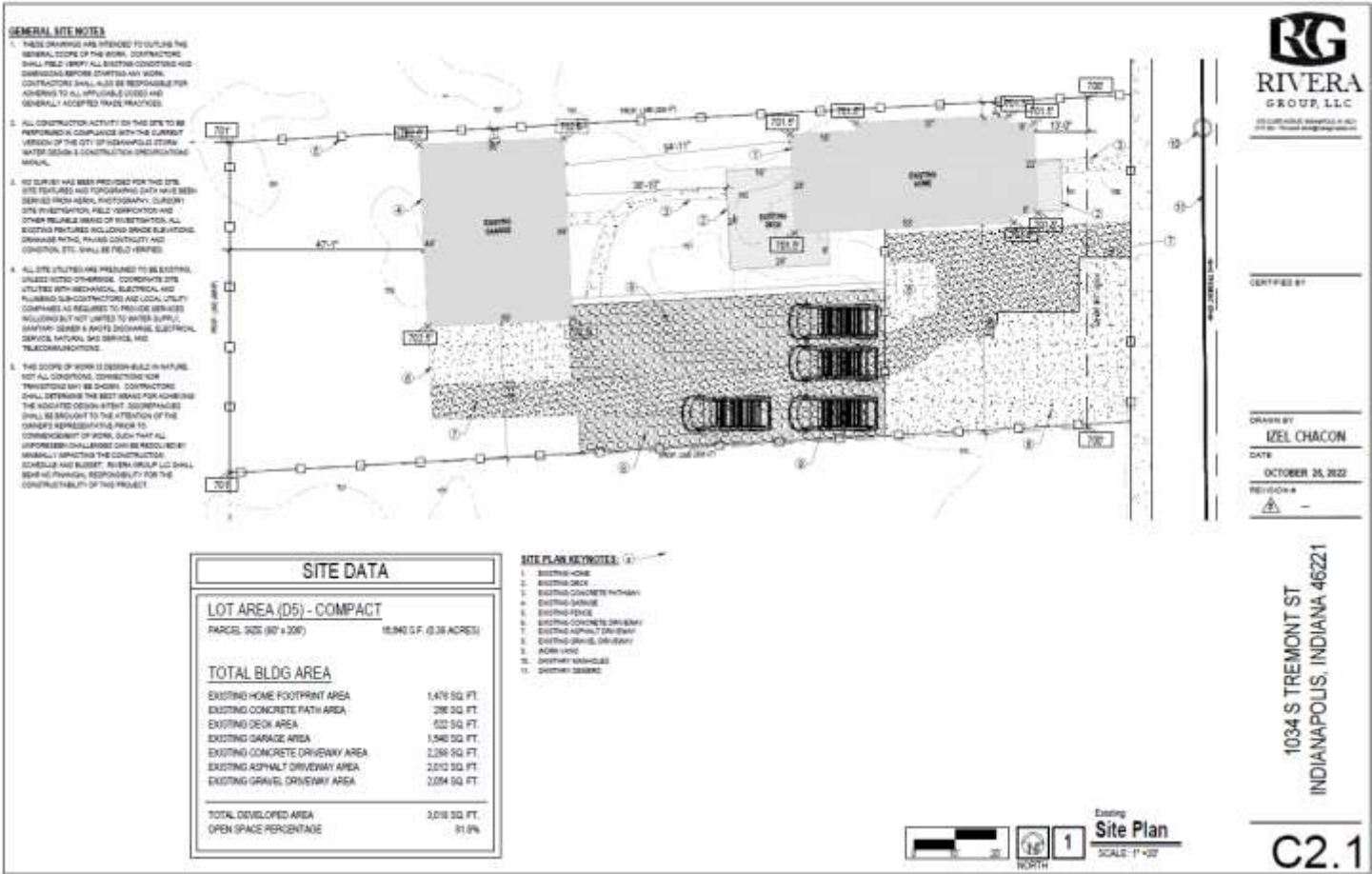
2023-UV1-007; Location Map



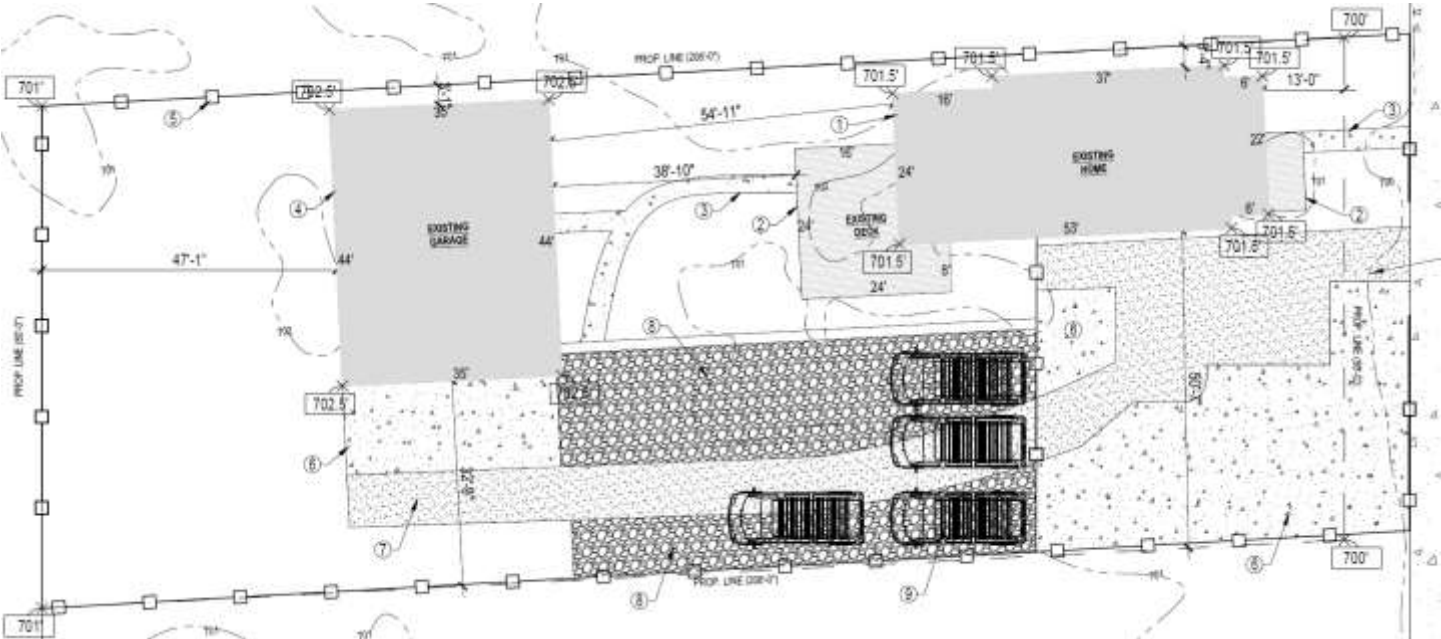
2023-UV1-007; Aerial Map



2023-UV1-007; Site Plan



2023-UV1-007; Site Plan (Close Up)





1073 Oliver Avenue • Indianapolis • Indiana • 46221
Phone (317) 328-1704 • Fax (317) 328-1756
admin@riveragroupindy.com

February 24th 2023

RE: 1034 S Tremont Street
Indianapolis IN 46221

Plan of Operation

- Workforce: Include the number of employees or volunteers associated with the business or organization. Do they work onsite? When do they work? How do they get to the site? If they drive, where do they park? What kind of security is used?
No work is ever done at the 1034 S Tremont site. They work Monday- Friday & sometimes Sundays; this does not happen often. Yes, employees drive to the site at 1034 S Tremont and they park their vehicles outside along the street (1 car) & in the rear along the fence (3 cars in the rear). They have security cameras throughout the property.
- Clients and customers: Describe typical customers and clients. Do they come to the site? If so, when and how many? Where do they park?
No, clients do not visit the site at all. Owner visits the clients at their residence or office.
- Processes conducted on site: Explain what is done by the business or organization, onsite and offsite. What happens outside? What safety and security measures are taken?
They are a construction company. They work with siding, trim, soffits, aluminum fascias. NO WORK is ever done at the 1034 S Tremont site. At the job site: They use harnesses when climbing up ladders to complete work. They wear masks & safety glasses for when siding is being cut.
- Materials used: List the types of materials used for the operation. Are any hazardous materials used? Include the applicable safety and security measures.
They do not use any hazardous materials. They use nail guns, store bough siding, trim and fascias.
- Shipping and receiving: How are materials shipped or received? Size of vehicle? What time of day? Frequency?



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admin@riveragroupindy.com

No shipping or delivering of materials is ever done at the site 1034 S Tremont. It is delivered directly to the job site. Not applicable as no deliveries are ever done at the site. Not applicable as no deliveries are ever done at the site. Not applicable as no deliveries are ever done at the site.

- Waste: List the types of waste generated. How is it handled? By whom? Is hazardous waste generated? Is there a recycling program?

Not applicable as no deliveries are ever done at the site.

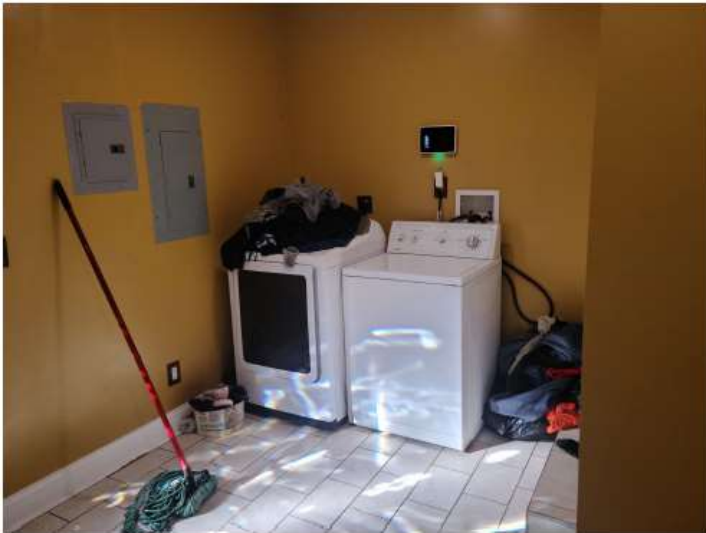
It is not a business, there are people that live in the house. The owner does have a business for siding. However, he does not run an office from the location at 1034 S Tremont. Carroll's Roofing seems to be the old person that used to live there; **they** did run a business from within the premises. They no longer live here as it is now Abel Solares property. There are a total of **8 work vans at the 1034 S Tremont property**, they typically take 4 of them to the job sites. The other 4 remain within the fenced area (they are back-ups in case one breaks down). The employees' vehicles are parked along the S Tremont Street and along the alley by their fence. The owner has 1 brother and 2 nephews living(renting) at the site; they have their own personal vehicles 4 total.

Attached is documentation of what the house looks like from inside:

2023-UV1-007; Petitioner's Photos



2023-UV1-007; Petitioner's Photos (Continued)



2023-UV1-007; Photographs



Photo of the Subject Property: 1034 South Tremont Street



Photo of the Subject Property: 1034 South Tremont Street



Photo of the rear yard.



Photo of the rear yard.



Photo of the existing privacy fence.