

BOARD OF ZONING APPEALS DIVISION I

September 3, 2024

Case Number: 2024-DV1-027

Property Address: 5101 East Thompson Road (approximate address)

Location: Franklin Township, Council District #24

Petitioner: BET Investments Inc., by Matthew Maple

Current Zoning: C-4

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of two drive-throughs and stacking spaces within the front yard of Thompson Road (not permitted) and without required bypass aisles, deficient compliance with various landscaping standards, and 64 parking spaces accessory to a restaurant use (maximum 25 spaces permitted for proposed square footage).

Current Land Use: Vacant Commercial

Staff Recommendations: Staff recommends **denial** of this petition.

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- The subject site is near the intersection of Thompson Road and Emerson Avenue and is part of the Emerson Plaza multitenant shopping center. The plat petition 2024PLT009 was recently approved along with a waiver of sidewalk placement requirements to split this parcel into four distinct lots to allow for development of individual commercial sites. The legal description and application provided by the applicant indicates these variances would be applicable for Lot 1 (multitenant retail building), Lot 2 (chicken fast-food restaurant chain), and Lot 3 (auto wash facility) while excluded Lot 4 to be developed as a fueling station by a separate ownership group. This petition would also not be applicable for the existing Juicy Seafood restaurant on the corner of Thompson and Emerson.

- Grant of this variance would allow for Lots 1-3 to be developed with deficient landscaping as described below, and would also allow for the drive-through layouts shown within Exhibits for Lots 2 and 3. The original version of the variance language provided to the applicant by staff overstated the proposed parking allowed for Lot 2; although the maximum parking allowed for the square footage of this use is 25 spaces, the proposed amount would be 64 spaces.
- The application provided indicated relevant landscape deficiencies as a reduction in tree plantings along Thompson Road, the height of understory trees along Thompson, screening for the proposed drive-through lane along Thompson, location of plantings within 3 feet of property lines, and a reduction in the required Green Factor for each parcel. Staff also notes a small transitional yard that would be required to the west of Lot 1, and feels that the species variation of trees shown on submitted plans fulfills requirements from 744-503.G.
- The proposed layout of the drive-through units servicing Lots 2 and 3 would also require variance: neither appears to have an exclusive bypass aisle to allow for vehicles to exit the unit, and the Lot 2 layout shows stacking spaces within the front yard along Thompson Road (the definition of 'service unit' for auto washes in 744-406 means that the car wash spaces in the front yard of Emerson would not be subject to the need for variance).
- Staff was not provided with details on the specific tenants utilizing the proposed Lot 1 building or elevation renderings for any of the proposed structures, and any potential non-conformities with the amounts of parking, transparency, or internal connectivity of pedestrian walkways would not be legalized by approval of this variance.
- The property is zoned C-4 to allow for the development of major business groupings and regional-size shopping centers to serve a population ranging from a community or neighborhoods to a major segment of the total metropolitan area. The Comprehensive Plan recommends it for the Regional Commercial working typology to allow for general commercial and offices that serve a significant portion of the county.
- The findings of fact provided by the applicant indicate that the proposed layout would reduce congestion and enhance circulation for vehicles accessing the proposed businesses and that the landscape plans submitted would install attractive plantings that meet the intent of ordinance.
- The presence of overhead power lines complicates placement of ordinance-compliant landscaping along the Thompson Road frontage: the ordinance requires ornamental "understory" trees with a maximum height of 15 feet to be placed in these areas, but the understory trees allowed by-right all have maximum height ranges that exceed 15 feet. Additionally, a utility site is present along the western portion of this frontage that would complicate planting of new trees of any height to serve as screening for the proposed drive-through lane on Lot 2. Given these difficulties, staff would be supportive of a variance for these deficiencies if a commitment were in place to ensure that the height (15 feet) and mature spread (15-25 feet) of the understory trees proposed be maintained by the owner.

- The landscape plans provided also show plantings less than 3 feet from the property line to the east and no plantings along the approximately 40-foot transitional yard that Lot 1 has along Emerson to the west. Given that the property to the east is a part of the same large commercial center and that the small yard to the west would be comprised of a private access drive with adequate transitional yard landscaping along Lot 3's boundary to the north, staff feels these are both minor deviations from ordinance requirements.
- Green Factor requirements were added to the ordinance in 2016 to ensure that new development sites are more sustainable and integrate landscaping, screening, and buffering while encouraging resilient native plantings and flexibility based on site context. These requirements were also added for aesthetic purposes and to decrease the urban heat island effect. For redevelopment of commercial sites, a minimum Green Factor score of 0.22 is required (calculated based on the amount and concentration of various landscaping elements; see Exhibits below). The proposed value of .0514 (revised up from an original .0463) is less than a quarter of the score required by ordinance, and the lack of current non-pavement development on the property should give optimal flexibility to meet these standards. Staff does not feel a practical difficulty to justify this deviation exists and recommends denial of the variance request.
- Regulations on stacking spaces and drive-through layouts exist to, among other reasons, ensure optimal circulation and egress for motorists while allowing for vibrant and pedestrian-oriented storefronts by reducing the placement of vehicles within front yards. Legalization of a drive-thru without the ability for bypass may create hardship for motorist experiencing personal or vehicular emergencies, and it is unclear why the proposed deviation would create superior circulation for the site. Staff notes that other nearby fast-food restaurants (Dairy Queen to the east and both Wendy's and Hardee's to the north) appear to meet the standards of the ordinance without issue, and adequate evidence to establish practical difficulty has not been provided to justify these deviations. Staff would recommend denial of this variance request.
- In summation, staff recommends denial of this petition due to the extreme gap between required and proposed Green Factor scores and the layout of the proposed drive-throughs. If the petition were to be approved over staff recommendation, it should be subject to a commitment to ensure maintenance of the height of trees along the Thompson Road frontage.

GENERAL INFORMATION

Existing Zoning	C-4	
Existing Land Use	Vacant Commercial	
Comprehensive Plan	Regional Commercial	
Surrounding Context	Zoning	Surrounding Context
	North:	North: Community Commercial
	South:	South: Community Commercial
	East:	East: Regional Commercial
	West:	West: Commercial/Residential
Thoroughfare Plan		
Thompson Road	Primary Arterial	110-foot right-of-way existing and 119-foot right-of-way proposed
Emerson Avenue	Primary Arterial	145-foot right-of-way existing and 112-foot right-of-way proposed
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	07/02/2024	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	07/02/2024	
Findings of Fact	07/02/2024	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Regional Commercial working typology for provide for general commercial and offices that serve a significant portion of the county rather than just the surrounding neighborhoods. Uses are typically in large freestanding buildings or integrated centers and should provide pedestrian connection between buildings.



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

2024PLT009, Approval of a Subdivision plat to be known as BT Indianapolis, dividing 7.527 acres into four lots, with a waiver of the sidewalk requirement, **approved**.

91-UV1-41, variance of use of the Commercial Zoning Ordinance to permit an expansion of a garden shop resulting in 9,370 square feet (200 square feet permitted) and a variance of development standards to permit a reduction in the number of required parking spaces from 409 to 356, **approved**.

ZONING HISTORY –VICINITY

2020DV2053B ; 5255 E Thompson Road (east of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to permit exit stacking spaces in the front yard of Thompson Road (not permitted), **approved**.

95-HOV-23 ; 5095 E Thompson Road (northwest of site), variance of development standards of the Commercial Zoning Ordinance to provide for the construction of a drug store with a drive-through customer service window located on the west side of the building, being 87.92 feet from a residential zoning district (drive-through service units not permitted on the side or rear of a building and not permitted less than 100 feet from a protected district), **approved**.

94-HOV-130 ; 5079 E Thompson Road (west of site), variance of development standards of the Commercial Zoning Ordinance to provide for the construction of a drug store with a drive-through customer service window located on the south side of the building being 49 feet from a residential zoning district (drive-through service units not permitted on the side or rear of a building and not permitted less than 100 feet from a protected district), **approved**.

88-UV2-122 ; 5130 E Thompson Road (north of site), variance of use and development standards of the Commercial Zoning Ordinance to provide for a restaurant drive-through window within 100 feet of a residential district and within the required front yard (seventy-feet required), **denied**.

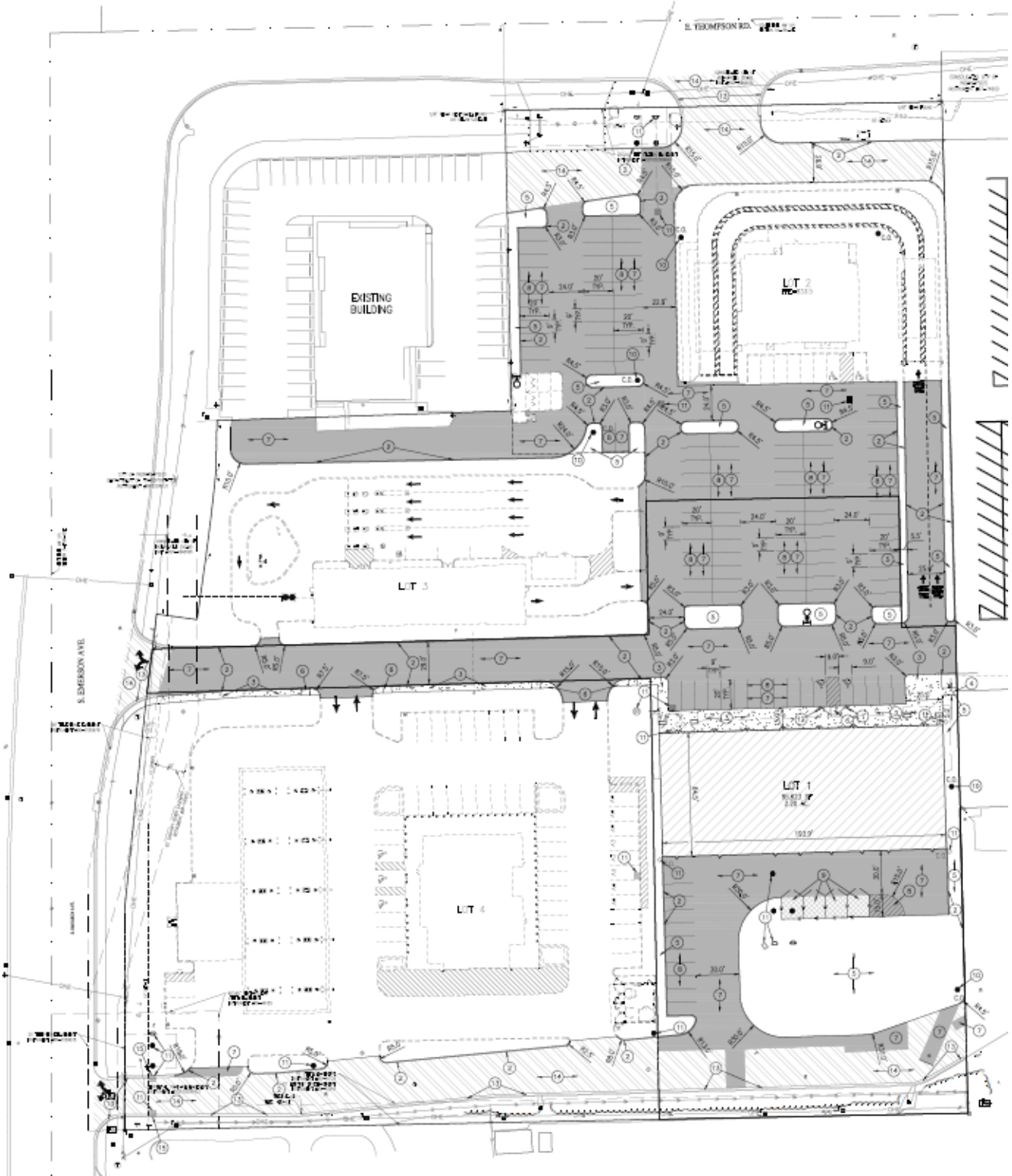
87-UV3-101 ; 4925 S Emerson Avenue (north of site), variance of use of the Commercial Zoning Ordinance to provide for a restaurant with drive-through and carry-out service within 100 feet of a residential zoning district, **withdrawn**.

EXHIBITS

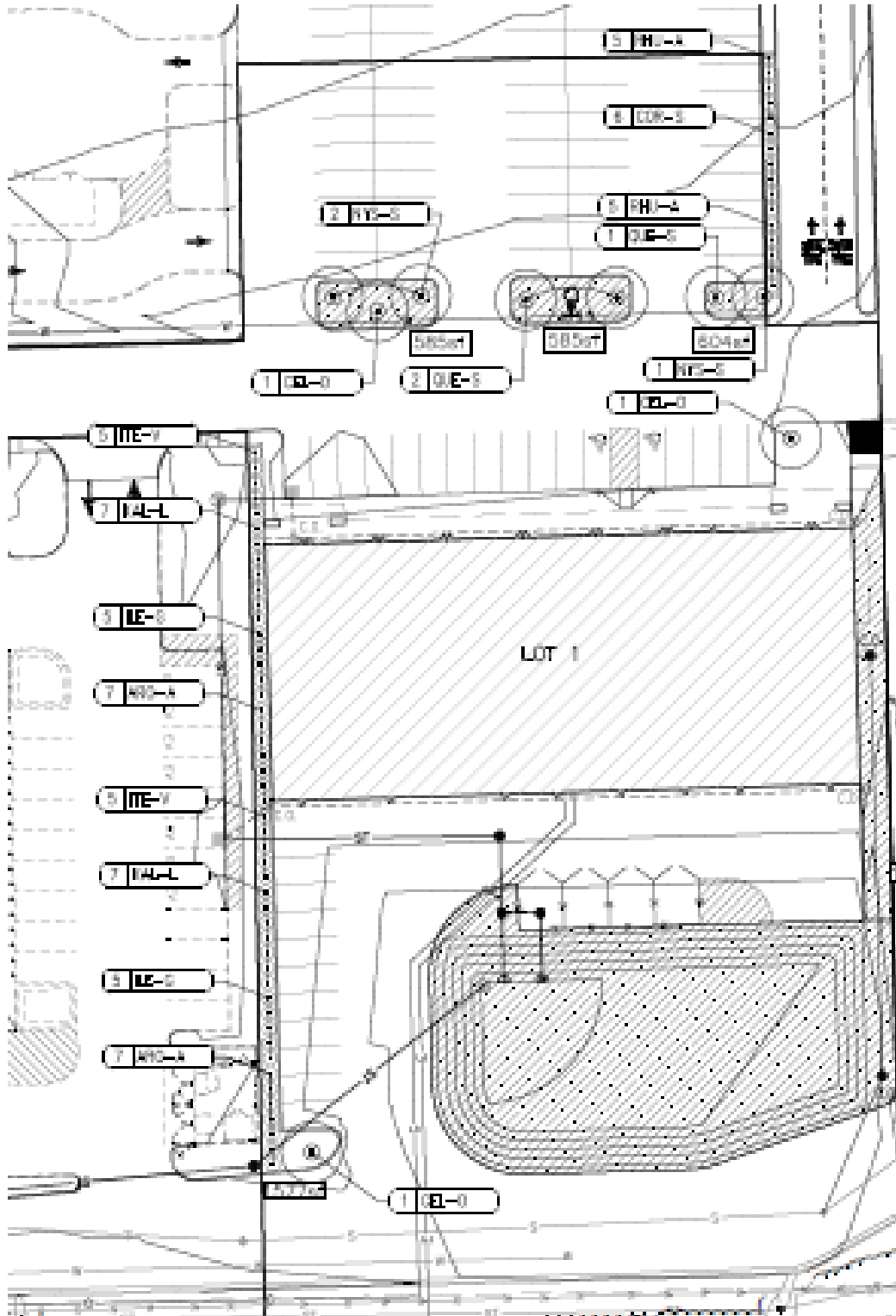
2024DV1027 ; Aerial Map



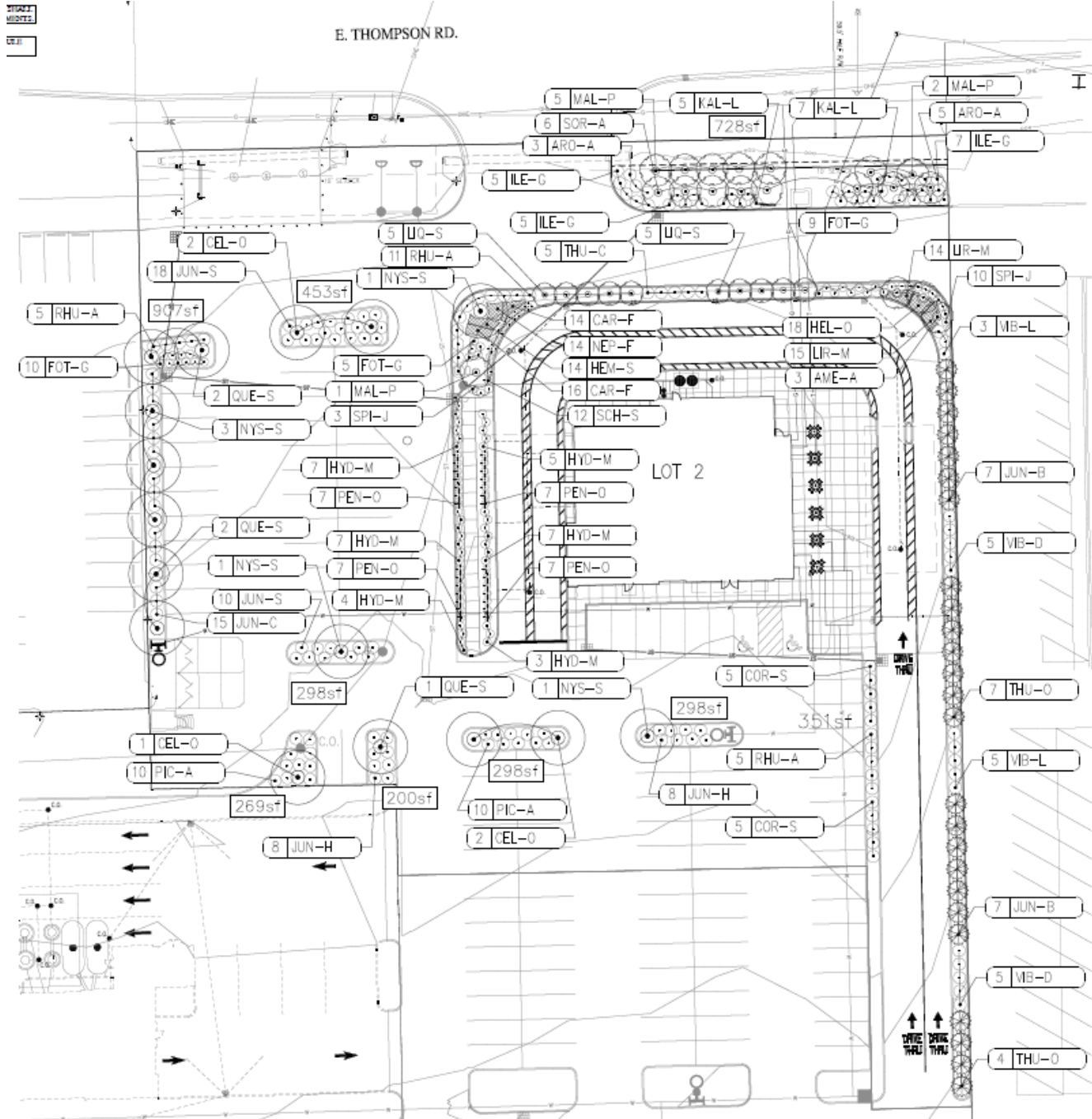
2024DV1027 ; Site Plan



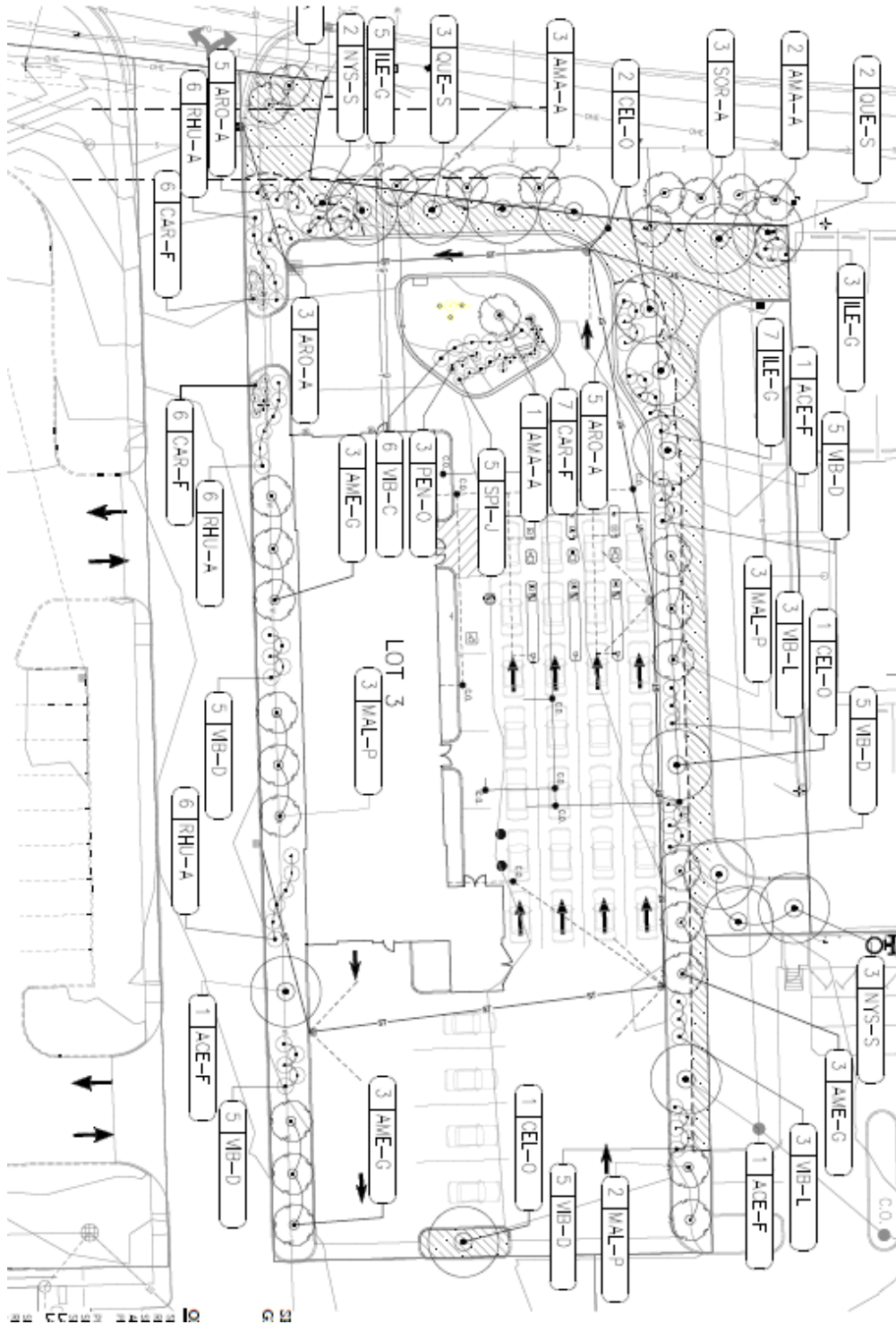
2024DV1027 ; Lot 1 Detail + Landscaping



2024DV1027 ; Lot 2 Detail + Landscaping



2024DV1027 ; Lot 3 Detail + Landscaping



2024DV1027 ; Lots 1-3 Green Factor Calculation

Table 744-509-1: Green Factor Calculation				
Project Name or Address:		BT Indianapolis - Lots 1, 2 and 3		
Column A	Column B	Column C	Column D	Column E
Type of Area or Element	Number of Plants	Measured Area or Area Equivalent in Sq. Ft.	Multiplier	Score
Parcel Size		220,506		
Landscaped areas with uncompacted soil depth less than 24 inches				
Area of lawn, grass pavers, ground covers, or other plants typically less than 3 ft tall at maturity		19,769	0.2	3,954
Large shrubs or ornamental grasses [1]	270	16 sq. ft. per	0.3	1,296
Landscaped areas with uncompacted soil depth of 24 in. or more				
Required Yards with mulch, ground covers, grass pavers, or other plants typically less than 3 ft tall at maturity			1.0	-
Areas other than required yards with mulch, ground covers, grass pavers, or other plants typically less than 3 ft tall at maturity			0.7	-
Large shrubs or ornamental grasses [1]		16 sq. ft. per	0.3	-
Small trees [2]	58	50 sq. ft. per	0.3	870
Medium trees [3]	0	100 sq. ft. per	0.4	-
Large trees [4]	42	200 sq. ft. per	0.4	3,360
Undisturbed Areas [5]				
Undisturbed areas less than 10,000 sf		2,322	0.8	1,858
Undisturbed contiguous areas 10,000 sf or more		-	1.5	-
Significant Trees over 10 in. DBH preserved	0	250 sq. ft. per	0.5	-
Heritage Tree over 8 in. DBH preserved	0	250 sq. ft. per	0.5	-
Tree Preservation Credits as per Sec. 503.L for preserved Significant or Heritage Trees	0	250 sq. ft. per	0.5	-
Building or Structural Features				
Permeable paving for walkways, parking lots, etc		-	1.2	-
Photocatalytic pavement or building exterior		-	1.5	-
White roof area		-	0.1	-
Vegetated walls - area of wall covered		-	0.7	-
Infiltration areas, underground chambers or surface, such as sand filters		-	1.5	-
Green roofs				
Area of green roof with less than 2 in. but not more than 4 in. growing depth		-	1.2	-
Area of green roof with over 4 in. growing depth		-	1.4	-
Off-site improvements				
Tree credit to the Tree Fund [6]		100 sq. ft. per	0.4	-
Bonuses applied to factors above				
Bioretention areas such as rain gardens, stormwater planters, and bioretention swales		-	1.5	-
Landscaping that consists entirely of drought-tolerant or native species, as defined by the Administrator		-	0.4	-
Landscaped areas where at least 50% of annual irrigation needs are met through the use of harvested rainwater or grey water		-	0.2	-
Landscaping visible to passersby (adjoining & up to 85 ft depth)		-	0.1	-
Landscaping to be maintained in food cultivation		-	0.2	-
Landscape area utilizing structural soil		-	0.4	-
Total Green Factor Score				0.0514



2024DV1027 ; Findings of Fact

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

The proposed improvements will create a safe and efficient traffic flow throughout the site and surrounding parking areas and adjacent streets. The proposed design has been configured to utilize the best available points of access to the drive-thru to minimize traffic effects that would be transferred to the adjoining streets. Positioning the drive-thru in the side and front yards allows the majority of the stacking to occur away from the front, and reducing congestion in the higher traffic areas adjacent to the entrances. The alignment also keeps a separation of traffic from the guest parking to enhance circulation. The landscaping improvements that are proposed will not be injurious to the public and will only be a benefit to reduce the existing impervious areas.

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 proposed site plan would work in conjunction with the surrounding commercial areas. These variances would not alter the character, but but would allow these lots to be developed and safely account for traffic. The landscaping that is being added will only enhance the area and the adjacent properties.

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

The proposed site plan has been configured to help create safe and efficient traffic flow throughout the site and the surrounding roadways and existing parking lot. The proposed drive-thru variances would allow the petitioner to best utilize the site to maximize circulation and minimize traffic congestion. The Landscaping requirements do not fit will with redevelopment and create practical difficulties with modifying an entirely impervious existing space into a developable area that meets all of the standards. The proposed landscaping variances would allow for the intent of the ordinances to achieved with the greenspace that is being added to the development lots.

2024DV1027 ; Photographs



Photo 1: Lot 2 Building Site + Overhead Power Lines from Thompson to North



Photo 2: Lot 1 Building Site + Vacant Building (to be removed)

2024DV1027 ; Photographs (continued)



Photo 3: Lot 3 Building Site from Emerson to West



Photo 4: Adjacent Property to East (August 2018)

2024DV1027 ; Photographs (continued)



Photo 5: Adjacent Property to North



Photo 6: Adjacent Property to West