

Agenda
GOSHEN BOARD OF ZONING APPEALS
Tuesday, August 22, 2023, 4:00 P.M.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

- I. Roll Call
- II. Approval of Minutes from 7/25/23
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record
- IV. Postponements/Withdrawals – any person having business to come before the Board may request postponement or withdrawal at this time.
- V. **Use & Developmental Variances**– public hearing items
 - 23-19DV** – Humberto Esquivel Ruiz & Jessica Esquivel request developmental variances to allow a front building setback of 14’ along 2nd Street where 25’ is required for an approximately 280 Sf pergola, a front building setback of 5’ along 2nd Street where 25’ is required for an approximately 80 Sf shed, and building coverage of 40% where a maximum of 35% is permitted for the addition of the pergola and shed. The subject property is generally located at 302 Queen Street and is zoned Residential R-2 District.
 - 23-06UV & 23-20DV** – John & Lois Nafziger request a use variance to allow the expansion of a non-conforming duplex use where two-family dwellings are a conditional use in the R-1S and B-2 districts and a permitted use in the R-2, R-3, and PUD districts, and a developmental variance to allow a 5’ rear (north) setback where 25’ is required for the addition of an approximately 328 Sf garage. The subject property is generally located at 1807 Mayflower Place and is zoned Residential R-1 District.
 - 23-21DV** – SCF RC Funding IV LLC, Pride Properties, LLC and Yoder, Ainlay, Ulmer, & Buckingham, LLP request developmental variances to amend variance 13-25DV by removing 1524 Bashor Road (tax parcel 20-11-08-203-002.000-015) from the legal description/variance and adding a smaller tax parcel (20-11-08-203-068.000-015), and to allow 0’ side yard setbacks for two existing driveways for the separation of two properties that have been part of the same zoning lot. The subject property is generally located at 1713 Elkhart Road and is zoned Commercial B-3 District.
- VI. Audience Items
- VII. Staff/Board Items
 - 6-month extension request for 22-25DV, 2411 E Kercher Road, from 8/23/23 to 2/23/24
- VIII. Adjournment

Minutes - Goshen Board of Zoning Appeals
Tuesday, July 25, 2023, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

I. The meeting was called to order with the following members present: Bethany Campbell, Tom Holtzinger, Hesston Lauver, Lee Rohn, and Michael Potuck. Also present were City Planner Rhonda Yoder, and Assistant City Attorney James Kolbus.

II. Approval of Minutes from 6/27/23: Potuck/Rohn 5-0

III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Rohn/Lauver 5-0

IV. Postponements/Withdrawals - None

V. Developmental Variances – public hearing items

23-18DV – Pride Properties, LLC, Andy Morrison, and Fritz Engineering Services request developmental variances to allow a 30' front building setback along Bashor Road where 35' is required, a 20' front parking and driving aisle setback along Bashor Road where 35' is required and a 0' rear (east) driving aisle setback where 10' is required for a shared access drive, a 10' front parking and driving aisle setback along Elkhart Road where 35' is required, a 30' parking and driving aisle setback along Bashor Road where 35' is required, and a 6' rear (east) parking setback where 10' is required, and the variance to be valid for one year, for the development of a new automobile service (oil change) facility. The subject property is generally located at 1715 Elkhart Road and is zoned Commercial B-3 District.

Staff Report

Ms. Yoder explained this request is to redevelop two tax parcels as a single site for an oil change facility with an approximate 1,080 sf building and two drive-thru service bays. Because of the complexity of this request, information is also included in the staff report about the east parcel. She explained that the east parcel was included in a site plan and variance for the adjacent car wash property, making it part of the same zoning lot as the car wash. Ownership of the car wash property was recently transferred, but the east parcel was not included in the transfer and will now be developed as part of the corner property. She went on to say the east parcel also includes a driving aisle which is connected to the vacuum area of the car wash, which is an exit only at this time and the east parcel also includes the stormwater retention area serving the car wash property. She noted at the time the staff report was prepared, easements for the shared access and stormwater had not been received, but they were provided to staff on July 19th, so based on that she will have one proposed change to the conditions.

Ms. Yoder pointed out the corner parcel is fairly small and most uses will require a number of variances for development. Staff recommends approval of this request, but only if a number of conditions are included. She highlighted some of the more important conditions, including the following, and noted conditions should be met prior to a zoning clearance being signed:

- A copy of the recorded access easement should be provided to Staff and those have been provided, so condition #6 should now read "Easements shall be shown on all site plans." She explained that the easements have been received, but they still need to be reviewed as part of the site plan process.
- An INDOT permit or written authorization to proceed without a permit should be provided to staff.
- Developmental variances shall be approved amending 13-15DV, so the east tax parcel is removed from the car wash site. The variance for the car wash site has not been submitted yet, but it will need BZA approval.
- The two tax parcels on the property will need to be combined into one tax parcel.
- The packet contains information regarding the Engineering Department's concerns related to a number of traffic related issues and for this reason, Staff recommends a traffic study be completed and submitted to the City for review. She noted this would be required prior to the Technical Review submittal.

Petitioner Presentation:

Andrew Morrison, 4351 Chase Circle, Zionsville, IN, spoke on behalf of the petitioner. He stated he and his partner

operate *Take 5 Oil Change* which is a 10 minute drive-thru oil change facility. The focus is on oil changes, and any additional services are generally limited to air filters, wiper blades, and perhaps an occasional coolant exchange. He provided a packet to Board members (*Exhibit 23-18DV-1*), noting that the Engineering Department has expressed concerns about traffic, and additional material is included in the packets regarding traffic. He pointed out a strong store does an average of approximately 40 oil changes per day, with business hours from 7:00 am to 7:00 pm Mon-Sat and 10:00 am to 5:00 pm on Sunday. He stated their studies indicate during one peak hour of operation, the number of vehicles entering and exiting a site is approximately 8 or 9 vehicles. His handout described existing locations, similar in size or larger than Goshen and commented that stacking and available parking is adequate for the sites. He referred to Appendix A in the handout which is the preliminary site plan for the Goshen location and next to that is the plan that shows the proposed access easement on the northeast corner of the property, as well as the proposed drainage easement on the southeast corner of the property.

Mr. Holtzinger asked if they are willing to have a traffic study done.

Mr. Morrison stated they are willing to do whatever the City needs them to do. He went on to say a full traffic study is a comprehensive process and what they generally do is provide a trip generation report.

Audience Comments:

Dustin Sailor, Director of Public Works & Utilities, spoke to the petition. He stated in regards to the recommended traffic study, US33 is a state highway so INDOT will evaluate that access point. He went on to say our concern is the access on Bashor Road. He pointed out that the driveway is shown as approximately 19' and an internal review shows that the driveway is not wide enough to handle both ingress and egress, especially since it's the primary exit for the neighboring Northern Pride Carwash. He also pointed out there is a left turn lane there for Beaver Lane creating a conflict point. He explained if there was no access onto Bashor Road, we probably wouldn't request a traffic study. We need to know what the traffic movement is and that it's safe. He questioned if this property should be a right out scenario for both properties.

Mr. Holtzinger asked if Bashor Road is where the City wants the study.

Mr. Sailor stated that's what the City is concerned about, but INDOT might require something totally different.

Mr. Rohn asked if the traffic information that was provided by the petitioner for other locations is sufficient for here.

Mr. Sailor stated that a brief look at the handout that was provided for previous locations, shows they have one point of primary access which he noted would be fine for US33. In this case we're also looking for a traffic conflict analysis to determine if we have an existing or potential problem along Bashor Road. He pointed out that currently this is an exit only, but there's nothing in the new plan. He has concerns for what this means for Bashor Road. He went on to say people will be slowing down to turn into the drive and their modeling shows that the driveway will need to be quite a bit larger to allow vehicles to come in and to handle trash trucks and fire apparatus.

Larry Stewart, 1105 E Northshore Drive, Syracuse, also spoke to the petition. He stated he sold the car wash property, but owns the property being discussed today. He stated there is only one exit lane going out from the carwash to Bashor Road and although it's an exit only at this time, it's meant to be an entrance/exit. He feels this proposal is a perfect fit and will clean up that corner.

Petitioner Rebuttal

Mr. Morrison stated he understands that ingress and egress along Bashor Road is a concern. He explained the site plan shows the existing drive to remain and wasn't aware of concerns until today, but noted they may be able to widen it. He asked if this might be another solution.

Ms. Yoder replied Engineering recommends a traffic study to determine the width and how it functions. Because of the nearby left turn lane, it's possible it will need to be right in, right out. The analysis is required to make sure it works properly. She also agreed with Mr. Sailor that it's not just vehicles entering for oil changes, a trash truck will need to access the dumpster onsite, and there needs to be adequate maneuvering for firetrucks. She also pointed out that this site plan is preliminary and if approval is granted, conditions are attached to make sure the analysis is done correctly so we can get a site plan that functions properly.

Mr. Morrison commented that they will be happy to do the study.

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Potuck/Rohn, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 23-18DV with the 11 conditions as listed in the Staff Report, but modifying condition #6 to read “Easements shall be shown on all site plans”. The motion passed unanimously by a vote of 5-0.

VI. Audience Items
None

VII. Staff Board Items
None

VIII. Adjournment: 4:24 pm Potuck/Campbell

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Lee Rohn, Secretary

LOCATION: 302 Queen Street
CASE NUMBER: 23-19DV

DATE: August 22, 2023
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: Humberto Esquivel Ruiz & Jessica Esquivel (owners)

REQUEST: The applicants request developmental variances to allow a front building setback of 14' along 2nd Street where 25' is required for an approximately 280 Sf pergola, a front building setback of 5' along 2nd Street where 25' is required for an approximately 80 Sf shed, and building coverage of 40% where a maximum of 35% is permitted for the addition of the pergola and shed

LOT SIZE: ± 4,550 SF; ±165' of frontage (± 35' on Queen Street & ±130' on 2nd Street); ± 130' of depth

APPLICABLE ZONING: Residential R-2

NOTICES SENT: 49

SPECIAL INFORMATION

PUBLIC UTILITIES: City water and sewer

AREA DEVELOPMENT: Residential

NEIGHBORHOOD: North Goshen

THOROUGHFARES: Queen Street & 2nd Street

TOPOGRAPHY: Ground elevation slightly inclines northward

VARIANCE OF DEVELOPMENTAL STANDARDS

- ◇ Goshen Zoning Ordinance, *Section 4160.3*, Area, Width, and Yard Regulations of the R-2 District
B.1 On residential or cul-de-sac streets, the front yard shall be a minimum distance of 25 feet.
- ◇ Goshen Zoning Ordinance, *Section 4140.4*, Building Coverage of the R-2 District
No building shall hereafter be erected, reconstructed or altered so that more than 35 percent of the area of the lot is covered by a primary residential use or accessory buildings or structures.

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

Mike Luce, owner of 306 Queen Street, called and inquired about the variance. He stated he did not oppose the request so long as it does not interfere with traffic.

ANALYSIS

The subject property is a single-family home located on the southwest corner of the intersection of Queen Street and 2nd Street on the north side of Goshen. Zoning is R-2 and surrounding properties include a mix of residential uses. The property is a narrow lot—approximately 35' by 130' long—typical of the lots on surrounding properties. Improvements to the property include two-story home with an approximate footprint of 1,075 SF and a detached single-stall garage with an approximate footprint of 384 SF. Building coverage is approximately 32%.

The petitioners are proposing to add an approximately 280 SF stand-alone pergola to the middle of the property. The pergola will have a front building setback from the property line along 2nd Street of 14' where a minimum of 25' is required. They are also seeking approval for an approximately 80 SF shed that was added to the property without any apparent approval. Aerial images indicate the shed was added some time between spring 2019 and spring 2021, before the current owners bought the property. The shed currently has a front building setback along 2nd Street of 2', and they are proposing to move it to a distance of 5', which requires a variance because of the

minimum 25' front building setback. With the addition of the pergola and shed, building coverage will be approximately 40% where a maximum of 35% is allowed, so an additional developmental variance is needed.

Approval is warranted. Both the size of the lot and the location of the property along two frontages make it impossible to reasonably develop the property for residential use without the need for developmental variances. At approximately 4,550 SF in area, the property is significantly smaller in size than the current minimum Zoning Ordinance requirement of 7,500 for new single-family lot in the R-2 District. The minimum building setback of 25' along 2nd Street and 5' along the side (west) property leaves only a 5' strip to construct accessory buildings, and that doesn't take into account the front (north) and rear (south) setbacks. The primary buildings on both the subject property and the property to the south (301 W Oakridge) have approximately 1' setbacks from the 2nd Street property lines, illustrating that setback encroachments along this frontage are in keeping with the character of the area.

The request for 40% building coverage is also justified because of the small lot size. The petitioners are requesting 5% coverage above what is permitted, which is reasonable given the constraints of the property and the character of the surrounding properties.

FINDINGS OF FACT

Staff recommends **approval** of developmental variances to allow a front building setback of 14' along 2nd Street where 25' is required for an approximately 280 Sf pergola, a front building setback of 5' along 2nd Street where 25' is required for an approximately 80 Sf shed, and building coverage of 40% where a maximum of 35% is permitted for the addition of the pergola and shed, based on the following:

1. **The approval will not be injurious to the public health, safety, morals and general welfare of the community.** The proposed structures are typical accessory buildings for a residential use and will be set back 5' or more from all property lines, indicating they are unlikely to create any safety issues. *The standard is confirmed.*
2. **The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** The surrounding properties share the same small-lot characteristics as the subject property. The primary buildings on both the subject property and the property to the south (301 W Oakridge) have approximately 1' setbacks from the 2nd Street property lines, illustrating that setback encroachments along this frontage are in keeping with the character of the area. *The standard is confirmed.*
3. **Strict application to the terms of the Zoning Ordinance will result in practical difficulties in the use of the subject property.** At approximately 4,550 SF in area, the subject property is significantly smaller in size than the current minimum Zoning Ordinance requirement of 7,500 for new single-family lot in R-2 District. Without setback relief, the minimum building setback of 25' along 2nd Street and minimum 5' setback along the side (west) property leaves only a 5' strip to construct accessory buildings. *The standard is confirmed.*

With approval, the following conditions shall apply:

1. The variance shall become null and void unless a zoning clearance has been issued and substantial progress has been made within six (6) months of the date of the BZA approval.
2. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
3. An approved zoning clearance form is required.
4. A building permit is required.
5. The unapproved shed shall be moved to the approved 5' front building setback.



From Queen Street looking south along the 2nd Street property line



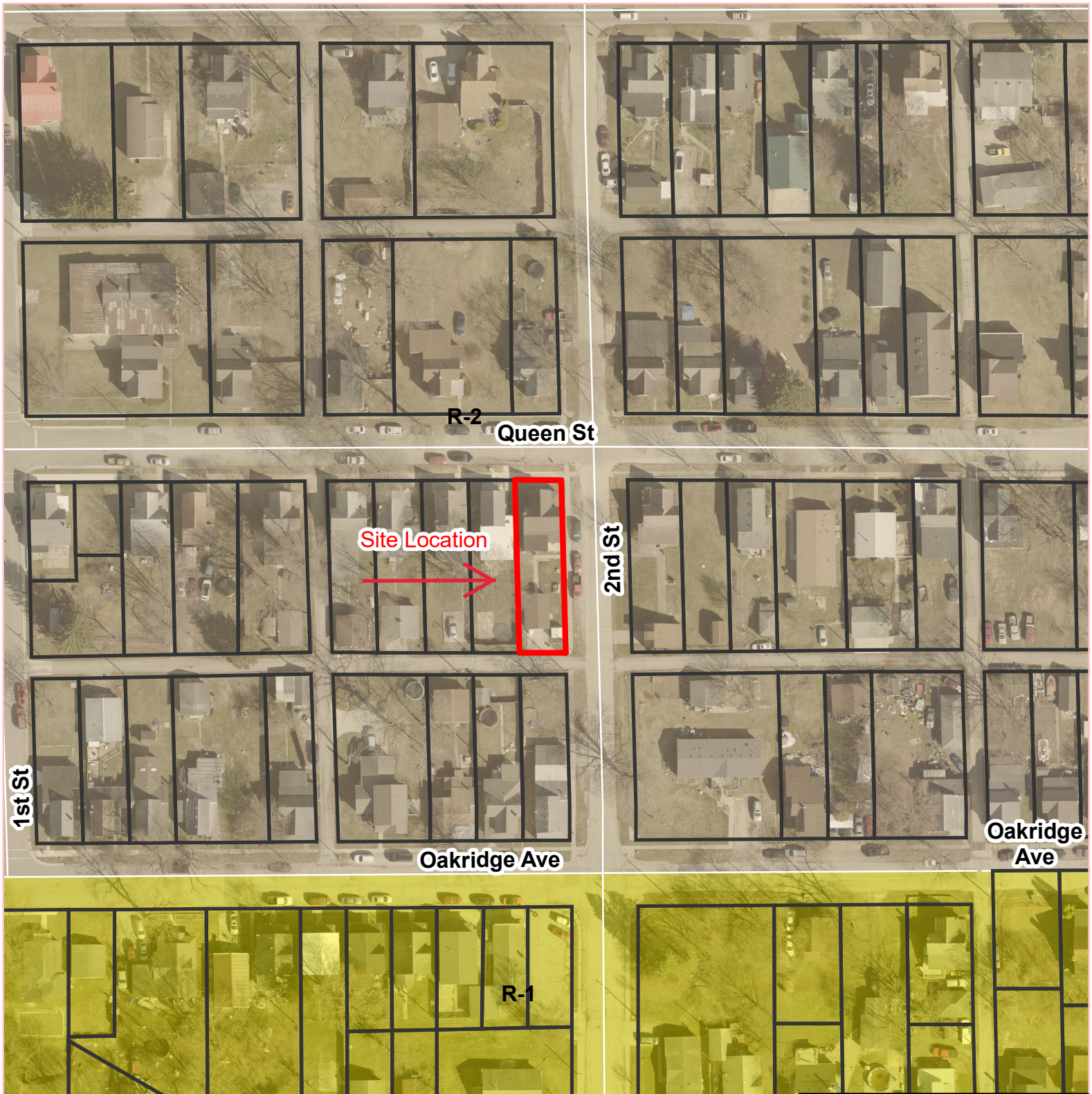
Looking west from 2nd Street at the proposed location of the pergola



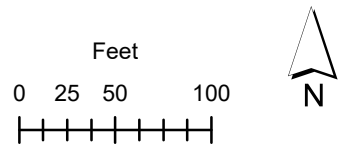
Looking northwest from 2nd Street



Looking north along 2nd Street property line



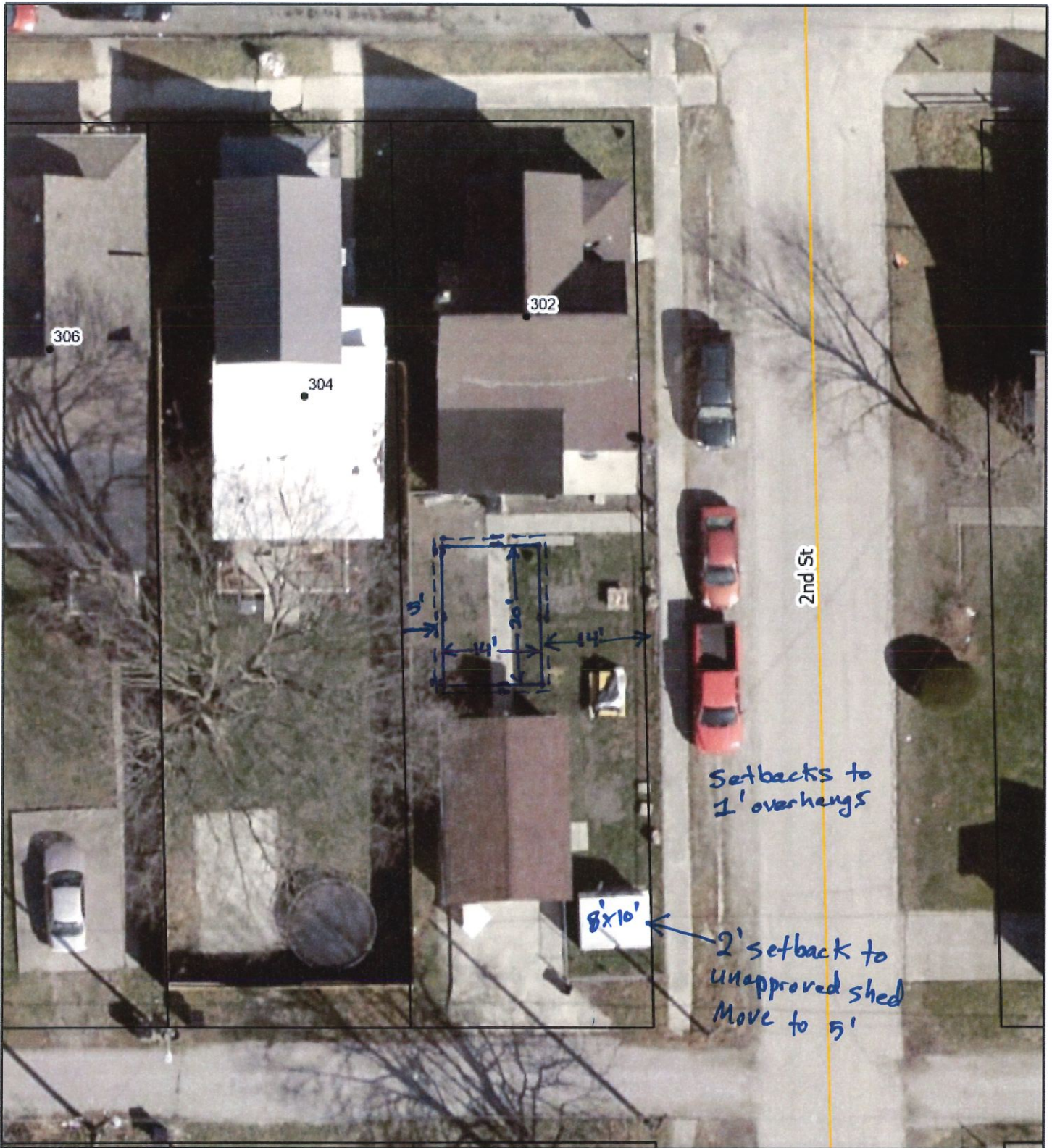
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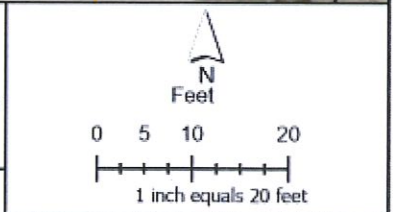
302 Queen St

2021 Aerial
Printed August 2, 2023

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626



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302 Queen Street

2021 Aerial
Printed on 8/1/2023

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

LOCATION: 1807 Mayflower Place
CASE NUMBER: 23-06UV & 23-20DV

DATE: August 22, 2023
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: John & Lois Nafziger (owners)

REQUEST: The applicants request a use variance to allow the expansion of a non-conforming duplex use where two-family dwellings are a conditional use in the R-1S and B-2 districts and a permitted use in the R-2, R-3, and PUD districts, and a developmental variance to allow a 5' rear (north) setback where 25' is required for the addition of an approximately 328 Sf garage

LOT SIZE: ± 0.4 acres; ± 259' of frontage (93' on Westwood Road & 166' on Mayflower Place); ±163' of depth

APPLICABLE ZONING: Residential R-1

NOTICES SENT: 24

SPECIAL INFORMATION

PUBLIC UTILITIES: Connected to City water & sewer

AREA DEVELOPMENT: Residential, commercial

NEIGHBORHOOD: Historic Racemere Peninsula

THOROUGHFARES: Westwood Road & Mayflower Place

TOPOGRAPHY: Level

VARIANCE OF USE STANDARDS

- ◇ Goshen Zoning Ordinance, *Appendix E*, Table of Permitted Uses
Two family dwelling units are listed as a conditional use in the R-1S & B-2 districts & a permitted use in the R-2, R-3, and PUD districts
- ◇ Goshen Zoning Ordinance, *6250.2*, Non-Conforming Uses of Land
B. No such non-conforming use shall be enlarged or increased, or extended to occupy a greater area of land than was occupied at the effected date of this ordinance.
- ◇ Goshen Zoning Ordinance, *Section 4140.3*, Area, Width, and Yard Regulations of the R-1 District
D. Rear Yard. There shall be a rear yard on each lot, the depth of which shall be not less than 25 feet.

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report's delivery and the public hearing.

ANALYSIS

The subject property is a two-family home located on the northwest corner of the intersection of Westwood Road and Mayflower Place in the Historic Racemere Peninsular neighborhood. Zoning is R-1, and surrounding properties include a mix of single family attached and detached uses, with the exception of the hospital, which is located directly to the east across Mayflower Place and zoned Commercial B-3PUD.

The home on the property has an approximate footprint of 1,924 SF with an attached two-stall garage. The main floor of the building is currently owner occupied, and the basement serves as a second dwelling unit. There are numerous small sheds and accessory structures on the property, including a small storage shed and wood storage

structure along the north property line. There is a gravel parking area off the north side of the driveway that has been in place for at least 20 years; a portion of this gravel parking is in the front yard setback off Maylower Place. Planning has no records on how the second basement unit came to be, but the BZA approved a variance (12-06DV) in 2012 to allow the expansion of the non-conforming duplex use for the construction of a sunroom on the west side of the building.

The petitioners are proposing to add a 328 SF addition to the north side of the home. The addition will expand the existing garage to add a third parking stall, bicycle stall, and a workspace and storage area. The proposed addition will have a rear (north) setback of 5' where a minimum of 25' is required, so a developmental variance is needed. A use variance will also be needed as the addition is considered an expansion of the non-conforming duplex.

Staff recommends approval of this request upon the condition that all sections of gravel off the driveway and in the front yard setback (the first 25' from the Mayflower Place property line) be eliminated and replaced with a vegetative cover. If approved in this manner, the parking area will be brought closer to conformity with the Zoning Ordinance because it will eliminate front yard parking. Such an approval will also mean that the total number of parking spaces on the property remains the same, eliminating any possible ties between the non-conforming duplex use and parking. Because three-stall garages are permitted in the R-1 District, the property will be closer to resembling a single-family use preserving the use and value of adjacent properties.

The reduced setback of 5' along the north property is warranted because there is no other practical location for a garage addition. While the north yard of the property is the rear yard, it abuts the side yard of the adjacent property to the north, functioning more like a side yard; the west yard on the property functions more as a rear yard, and this yard has an approximately 28' building setback.

FINDINGS OF FACT

Staff recommends **approval** of a use variance to allow the expansion of a non-conforming duplex use where two-family dwellings are a conditional use in the R-1S and B-2 districts and a permitted use in the R-2, R-3, and PUD districts, and a developmental variance to allow a 5' rear (north) setback where 25' is required for the addition of an approximately 328 Sf garage, based on the following:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.** The proposed garage will have a 5' setback from the north property line and will be constructed to building code standards. The garage addition will not increase the occupied space of the duplex use. *The standard is confirmed.*
- 2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** Three-stall garages are common on single-family properties. The amount of occupied space for the duplex will not be expanded, and if approved with the recommended conditions, the amount of parking related to the duplex use will not be expanded. *The standard is confirmed.*
- 3. The need for the variance arises from a condition peculiar to the subject property.** The location of the proposed addition is continuous with the existing garage and served by the same driveway. This is an area where there is inadequate room to build an addition without encroaching in the setback. If the approval also includes a stipulation that gravel parking is eliminated in the front yard, there is no effective expansion of the non-conforming use, but rather a reasonable addition to the home. *The standard is confirmed.*
- 4. Strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the subject property.** The location of the proposed addition is continuous with the existing garage and served by the same driveway. This is an area where there is inadequate room to build an addition without encroaching in the setback; there is no other practical location on the property to construct an additional garage space. If the approval also includes a stipulation that gravel parking is eliminated in the front yard, there is no effective expansion of the non-conforming use, but rather a reasonable addition to the home with the same amount of parking. *The standard is confirmed.*
- 5. The approval does not interfere substantially with the Comprehensive Plan.** The outward appearance of the subject property is one which makes it difficult to detect two-family use, and for this reason, the property helps support the Comprehensive Plan's goal of "encouraging compact & connected residential development" (Neighborhoods and Housing 6). *The standard is confirmed.*

With approval, the following conditions shall apply:

1. The variance shall become null and void unless a zoning clearance has been issued and substantial progress has been made within six (6) months of the date of the BZA approval.
2. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
3. An approved zoning clearance form is required.
4. Approval by the Building and Fire Departments is required.
5. All gravel on the north and south sides of the driveway and within the front yard setback (first 25') along Mayflower Place and within the right of way shall be removed and replaced with a vegetative cover.
6. The shed and wood storage structures shall be moved to other portions of property with zoning clearance approval or removed from the property.



From Mayflower drive looking northwest



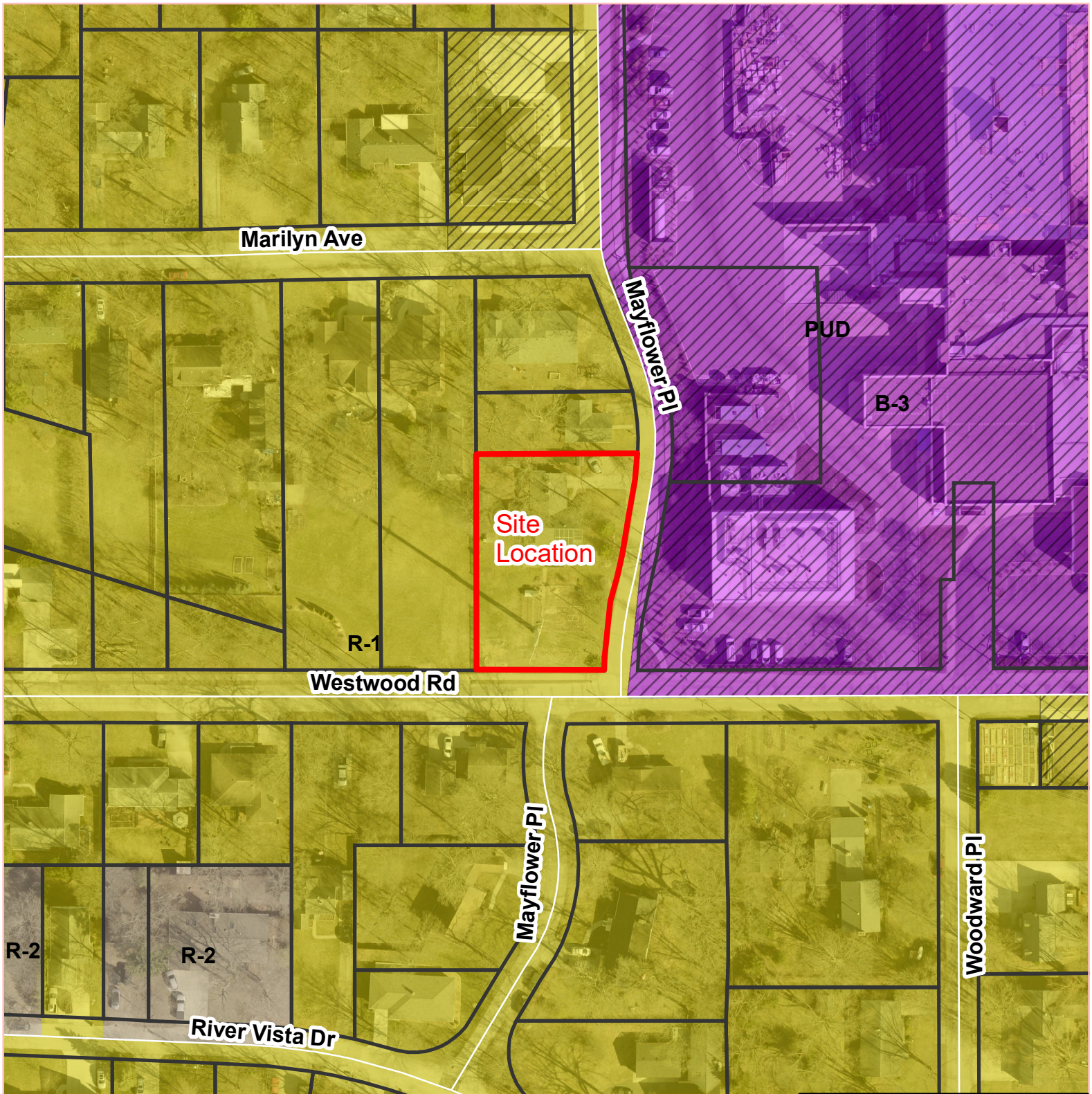
From Mayflower drive looking west along the north property line



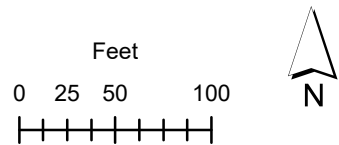
Looking west along north property line



Looking east across north property line



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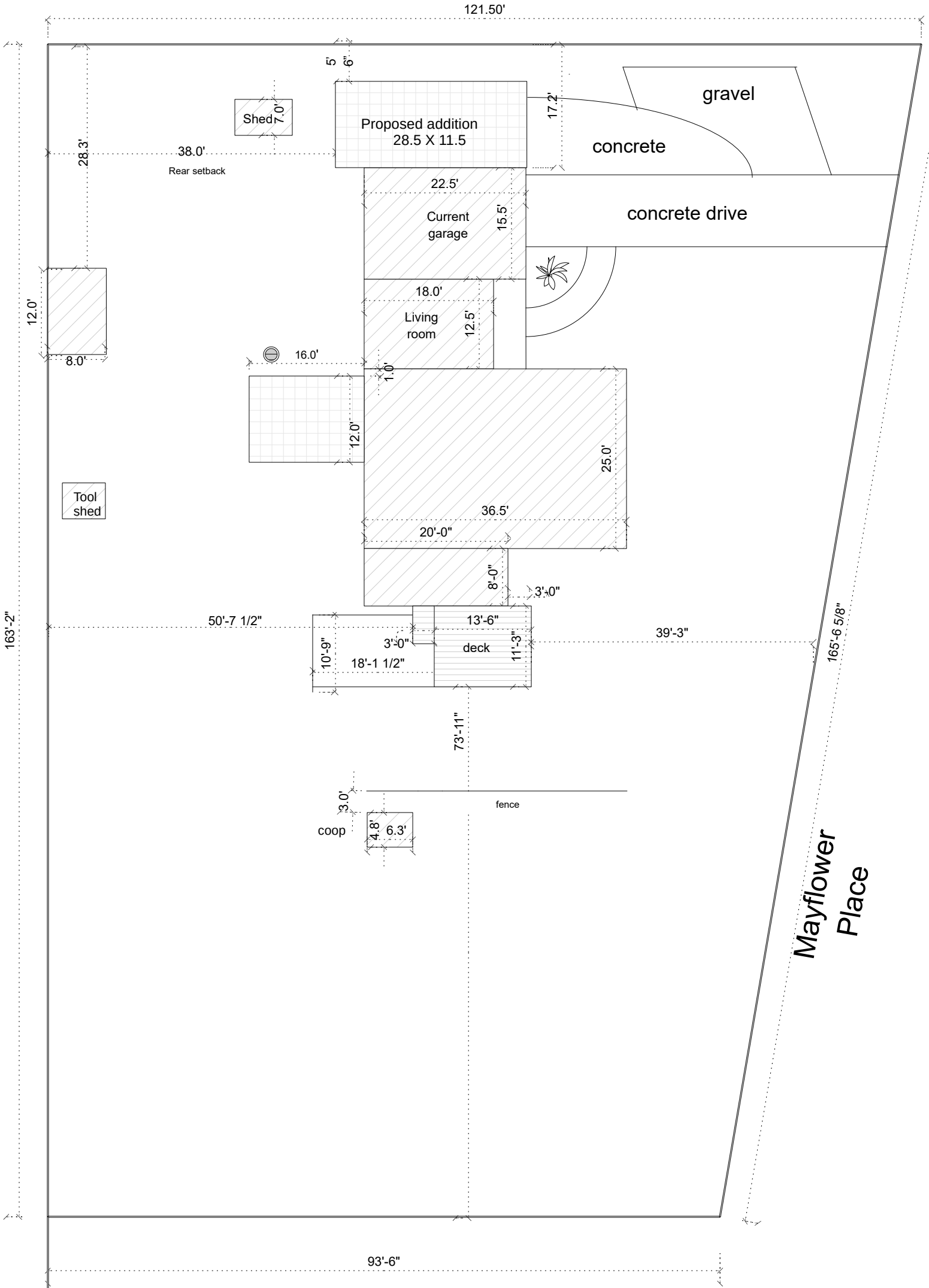
1807 Mayflower Pl

2021 Aerial
Printed August 2, 2023

The City of Goshen
Department of
Planning & Zoning

204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

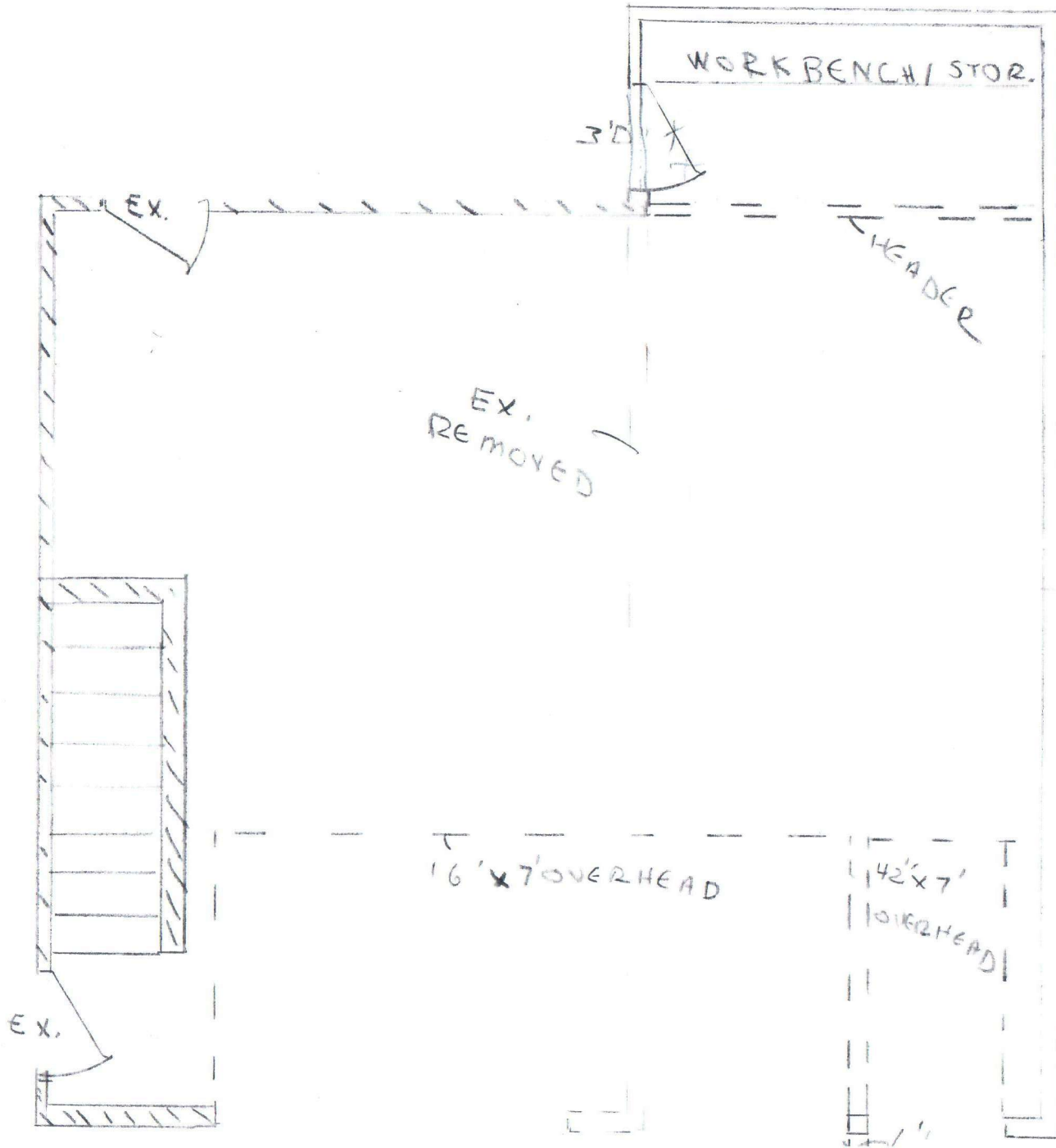
North ↑



Westwood Rd

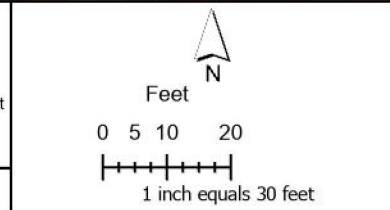
Mayflower Place

180.7 MAYFLOWER PLACE
PROPOSED GARAGE EXT.





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1807 Mayflower Place

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

2021 Aerial
Printed on 8/7/2023

LOCATION: 1713 Elkhart Road
CASE NUMBER: 23-21DV

DATE: August 22, 2023
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: SCF RC Funding IV LLC (owner); Pride Properties, LLC & Yoder, Ainlay, Ulmer, & Buckingham, LLP (agents)

REQUEST: The applicants request developmental variances to amend variance 13-25DV by removing 1524 Bashor Road (tax parcel 20-11-08-203-002.000-015) from the legal description/variance and adding a smaller tax parcel (20-11-08-203-068.000-015), and to allow 0' side yard setbacks for two existing driveways for the separation of two properties that have been part of the same zoning lot

LOT SIZE: ±1.61 acres; ±453' of frontage (±194' on Elkhart Road & ±259' on Bashor Road); depth varies

APPLICABLE ZONING: Commercial B-3

NOTICES SENT: 17

SPECIAL INFORMATION

PUBLIC UTILITIES: City water and sewer

AREA DEVELOPMENT: Commercial

NEIGHBORHOOD: None

THOROUGHFARES: Elkhart Road (U.S. 33) & Bashor Road

TOPOGRAPHY: Level

VARIANCE FROM PAST VARIANCES AND DEVELOPMENTAL STANDARDS

- ◇ Variance 13-15DV, instrument number 2013-23104
- ◇ Goshen Zoning Ordinance, *Section 4210.3*, Area, Width and Yard Regulations of the B-3 District C.3 Accessory buildings in a yard not abutting a street shall not be built closer than five feet from the lot line.

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report's delivery and the public hearing.

ANALYSIS

The subject property is a carwash with frontage on Elkhart Road and Bashor Road. It includes multiple tax parcels and street addresses, but uses 1713 Elkhart Road as its primary address. Improvements include approximately 15,300 SF of building space for mechanized and self-serve car washing, and paved areas for parking, maneuvering, and vacuuming.

Numerous variances have been approved for this property. The most recent variance (13-15DV) approved reduced setbacks along the north side of the property. The variance approval included a commitment form that was recorded, and the commitment form detailed the tax parcels, addressees, and legal description included in the site at that time. All parcels listed on the variance and included in the 2013 site plan were considered one zoning lot. The addresses and corresponding tax parcels listed as part of the variance were as follows:

1713 Elkhart Road	20-11-08-203-004.000-015 20-11-08-203-011.000-015 20-11-08-203-054.000-015 20-11-08-203-067.000-015
1520 Bashor Road	20-11-08-203-055.000-015
1524 Bashor Road	20-11-08-203-002.000-015

Recently, the majority of the carwash property was transferred to a new owner with the exception of the tax parcel associated with 1524 Bashor Road. This parcel (20-11-08-203-002.000-015) was retained so that it could be transferred separately for a different development; in July of this year, the BZA approved developmental variances (23-18DV) for setback relief for an oil change that included this parcel. Approval of 23-18DV included the condition that the address, parcel, and legal description in question be removed by the 2013 variance. This application serves as the request to amend the 2013 variance in such a manner.

This request also includes adding a small newly created parcel (20-11-08-203-068.000-015) that was formerly part of the 1524 Bashor Road parcel so that a driveway from the car wash building to the vacuum area can be retained as part of the car wash. That driveway will have a 0' side yard setback where 5' is required, so it needs approval of a developmental variance. Similarly, the shared access drive that leads to an exit on Bashor Road also needs a 0' side yard setback where it connects to the drive on the 1524 Bashor Road property.

Approval is warranted based on the following:

- Easements have been recorded for the shared access drive and a drainage area that will serve both properties
- There is no new development with the proposed request. The two driveways needing setback relief are existing, so there is no apparent threat to public health or safety. Planning is unaware of any issues the driveways on the long-established car wash have created for the general public.
- Deficiencies created by the removal of the parcel in question from the car wash property can be ameliorated by variance. Approval of the proposed oil change at 1715 Elkhart Road in July of this year, which included 11 conditions, exemplifies this point.

FINDINGS OF FACT

Staff recommends **approval** of the developmental variances to amend variance 13-25DV by removing 1524 Bashor Road (tax parcel 20-11-08-203-002.000-015) from the legal description/variance and adding a smaller tax parcel (20-11-08-203-068.000-015), and to allow 0' side yard setbacks for two existing driveways for the separation of two properties that have been part of the same zoning lot, based on the following:

1. **The approval will not be injurious to the public health, safety, morals and general welfare of the community.** There is no new development with the proposed request. The two driveways needing setback relief are existing, so there is no apparent threat to public health or safety. *The standard is confirmed.*
2. **The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** The proposed setbacks are for existing driveways that will not be expanded or reoriented, so no impact to the use and value of adjacent properties is anticipated. The proposed request will support development of the adjacent property at 1715 Elkhart Road, benefiting its use and value. *The standard is confirmed.*
3. **Strict application to the terms of the Zoning Ordinance will result in practical difficulties in the use of the subject property.** The driveways in question are existing and easements for access and drainage are in place to allow the property separation. *The standard is confirmed.*

With approval, the following conditions shall apply:

1. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.

2. The BZA approval shall be effective when the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and when all conditions of approval have been met.

If approved, the following Commitments shall apply:

1. If the variance is not implemented and expires, this Commitment automatically terminates as well, and the Zoning Administrator may execute and record a Termination of Commitment on behalf of the City of Goshen Board of Zoning Appeals.
2. This variance replaces variance 13-15DV, document number 2013-23104.
3. The 0-foot parking/driving aisle setback shall be approved only for the 50 foot area adjacent to Bashor Road, as shown on the revised site plan dated 6/17/13.



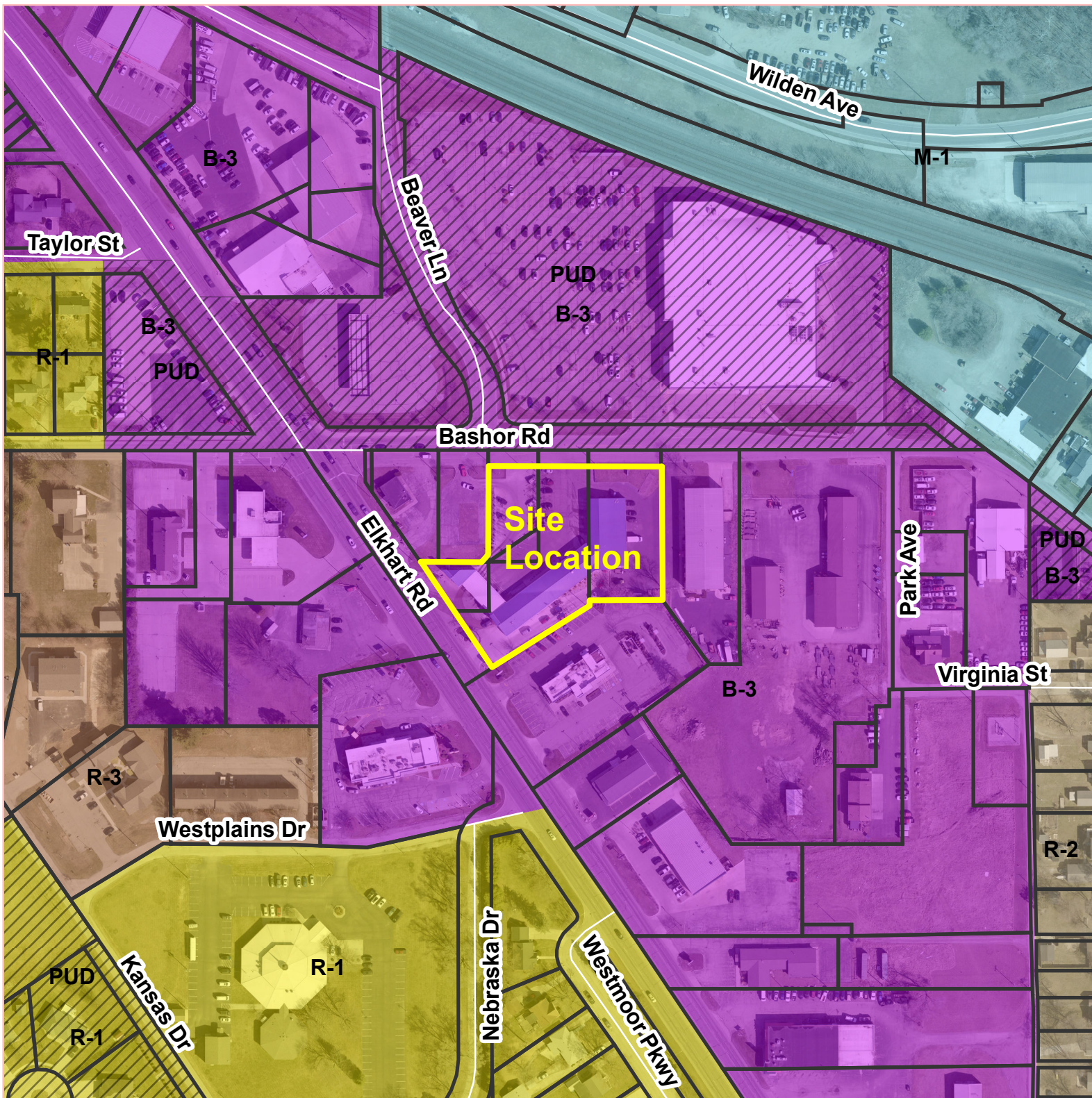
Looking south across Bashor Road at the parcel in question



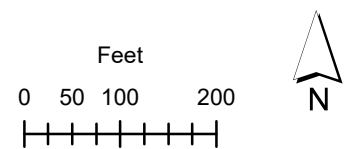
From Bashor Road looking south down the line where the properties will be separated



Looking east from vacuum area at shared access where a 0' side yard is proposed



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1713 Elkhart Rd

2021 Aerial
Printed August 2, 2023

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

NARRATIVE SUMMARY OF PRIDE PROPERTIES, LLC AND SCF RC FUNDING IV, LLC FOR ZONING APPROVALS FOR PROPERTY AT 1524 AND 1520 BASHOR ROAD, GOSHEN, IN

Pride Properties, LLC (“Pride Properties”) and Tsunami Car Wash Intermediate Holdco, LLC, a Delaware limited liability company (“Tsunami”) were involved in a real estate transaction in November 2022 for the purchase and sale of the Pride’s Express Car Wash generally located at 1713 Elkhart Road, Goshen, IN (the “Car Wash”). Pride Properties retained the real estate at the corner of US 33 and Bashor Road (1715 Elkhart Road and 1524 Bashor Road, Goshen). Tsunami uses the ingress/egress access on 1524 Bashor Road for its car wash business; therefore, as part of the Car Wash transaction, Pride Properties granted Tsunami an ingress/egress easement for continued use of the ingress/egress driveway across 1524 Bashor Road. Additionally, the Car Wash uses a driveway to access its vacuum area. The driveway to the vacuum area was partially located on the southeast corner of 1524 Bashor Road. Pride Properties conveyed the small triangle piece to Tsunami as part of the Car Wash transaction so that such driveway was part of the parcels owned by the Car Wash buyer. Both driveways (ingress/egress on 1524 Bashor Road and access drive to vacuum area) have been in place for years, but due to the transfer of the Car Wash property to Tsunami, setback variances for such are now needed. Finally, 1524 Bashor Road is part of variance 13-15DV, recorded with the Elkhart County Recorder’s Office on September 18, 2013 as Instrument No. 2013-23104. Such ordinance relates to a variance for a parking setback. Since 1524 Bashor Road is no longer part of the real estate in the Car Wash operation, the parties desire to amend such variance by removing 1524 Bashor Road.

As part of the financing for the transaction, Tsunami placed the Car Wash real estate with a sale lease back provider by the name of SCF RC Funding IV, LLC (“SC Funding”). Tsunami operates the Car Wash pursuant to a lease with SC Funding.

Technical approvals needed for this matter to be presented to the Goshen Board of Zoning Appeals are as follows:

- 1) The parties request a developmental variance to allow a zero-foot side-yard setback for both 1524 Bashor Road and 1520 Bashor Road for the existing ingress egress drive as shown on Exhibit A attached hereto and made a part hereof.

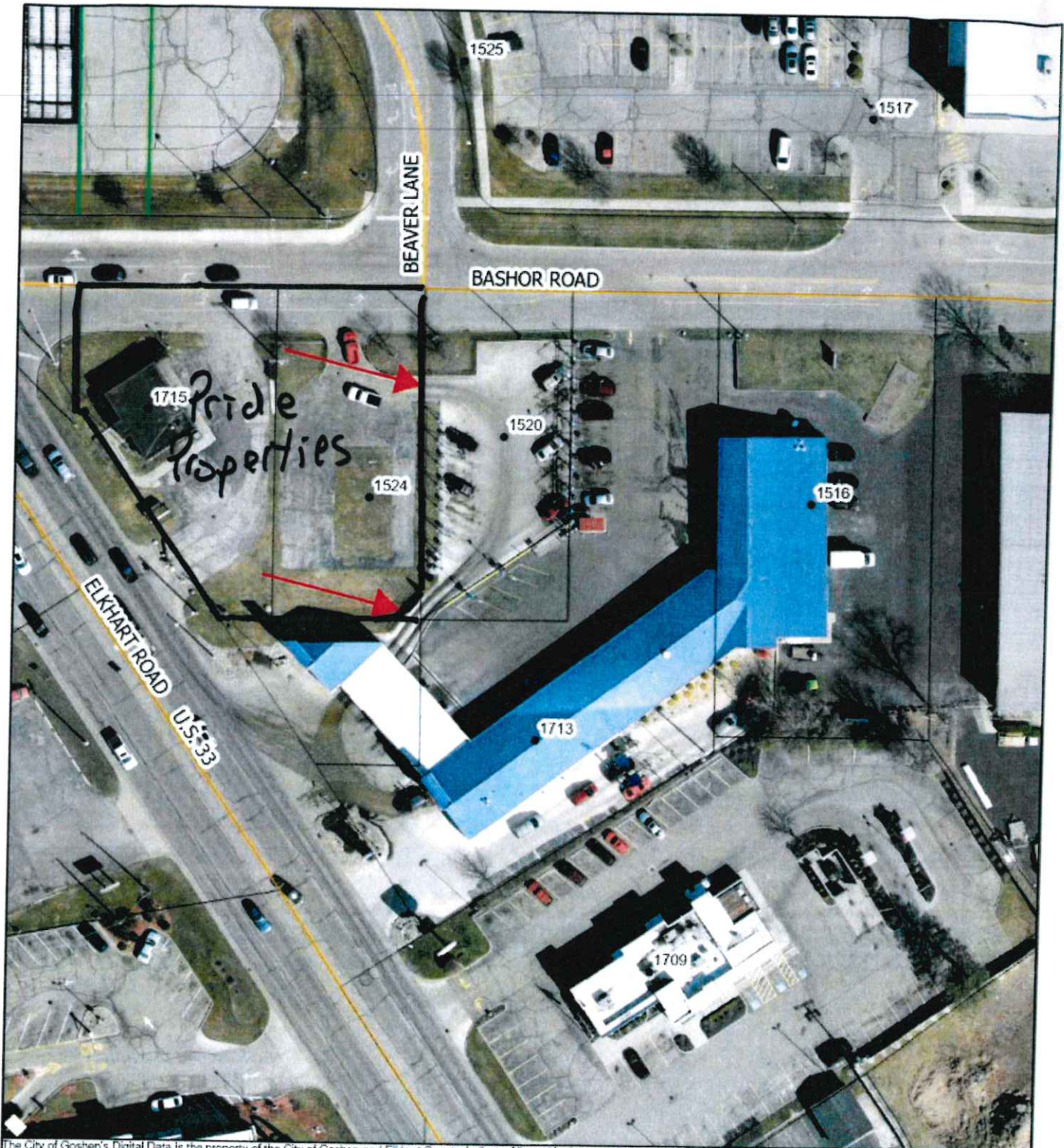
2) The parties request a developmental variance to allow a zero-foot side-yard setback for 1520 Bashor Road related to the driveway on the Car Wash property used to access the vacuum area, which drive is also shown on Exhibit A attached hereto and made a part hereof.

3) The parties request a developmental variance to amend variance 13-15DV to change the legal description of the property by removing 1524 Bashor Road (ID 20-11-08-203-002.000-015) from such variance. A copy of the variance is attached as Exhibit B and made a part hereof.

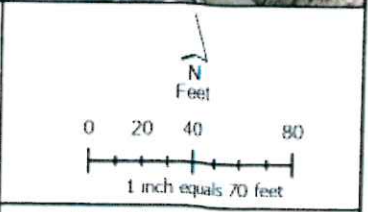
The driveways in question have been in existence and used in their current manner for years. However, the division of ownership in 1524 Bashor Road and 1520 Bashor Road created some technical violations that the City has requested the parties to address. Additionally, since 1524 Bashor Road is no longer part of the car wash business operation, the City has requested the parties amend the variance related to the car wash to remove such parcel from the variance. This Narrative Summary is part of, and is to be combined with, formal signed Petitions on City of Goshen required forms, relative to the requested variances and other endeavors herein referenced.

Pride Properties, LLC and

SCF RC Funding IV, LLC/ Tsunami Car Wash Intermediate Holdco, LLC,



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1713 Elkhart Road

Exhibit *A*

2021 Aerial
Printed on 1/17/2023

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street Goshen, Indiana 46528
Phone 574-534-3600 Fax 574-533-8626



Remove

Result Letter/Commitment
Case #: 13-15DV

Date: July 23, 2013

Grantor:
Pride Properties, LLC
PO Box 1048
Goshen, IN 46527-1048

Grantee:
City of Goshen Board of Zoning Appeals
204 E Jefferson Street, Suite 4
Goshen, IN 46528

The following shall be referred to as "the Real Estate":

Common Address: 1713 Elkhart Road, ~~1524 Bashor Road~~, 1520 Bashor Road, 1516 Bashor Road

Current Tax Code #: ~~20-11-08-203-002.000-015~~; 20-11-08-203-055.000-015; 20-11-08-203-054.000-015; 20-11-08-203-067.000-015; 20-11-08-203-004.000-015; 20-11-08-203-011.000-015 Add parcel 20-11-08-203-068.000-015

Legal Description: See Attachment A Alter legal description as needed

The request for a developmental variance to permit a 20 foot setback where 35 feet is required for a proposed driveway and a 0 foot setback where 35 feet is required for a parking and detailing area, both located on the north side of the property, with frontage along Bashor Road for the Real Estate, zoned Commercial B-3 District, was heard at the meeting of the City of Goshen Board of Zoning Appeals on July 23, 2013, and was acted upon as follows:

DENIED APPROVED TABLED WITHDRAWN

When the Board's action is one of approval, the authorization is granted contingent upon any conditions and commitments placed on the petition by the Board. Deviation from said conditions and commitments may result in the City of Goshen Board of Zoning Appeals rescinding the approval or permit.

The Grantor, jointly and severally, agree to abide by these conditions:

1. The variance shall become null and void unless a Building permit has been issued and substantial progress has been made within six (6) months of the date of approval.
2. Deviation from the requirements and conditions of the variance automatically cancels and terminates the approval or permit.
3. The BZA approval shall be effective when the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and when all conditions of approval have been met.
4. No zoning clearance form will be issued until the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and until all conditions of approval have been met.
5. Site plan approval by Goshen City Engineering is required for site drainage, post construction, site utilities and right-of-way access, as applicable, before a zoning clearance/building permit is issued
6. Street trees shall be planted in accordance with Section 5000.2 "Streetside Landscaping" of the Goshen Zoning Ordinance.

The Grantor, jointly and severally, agree to abide by these commitments concerning the use and/or development of the Real Estate:

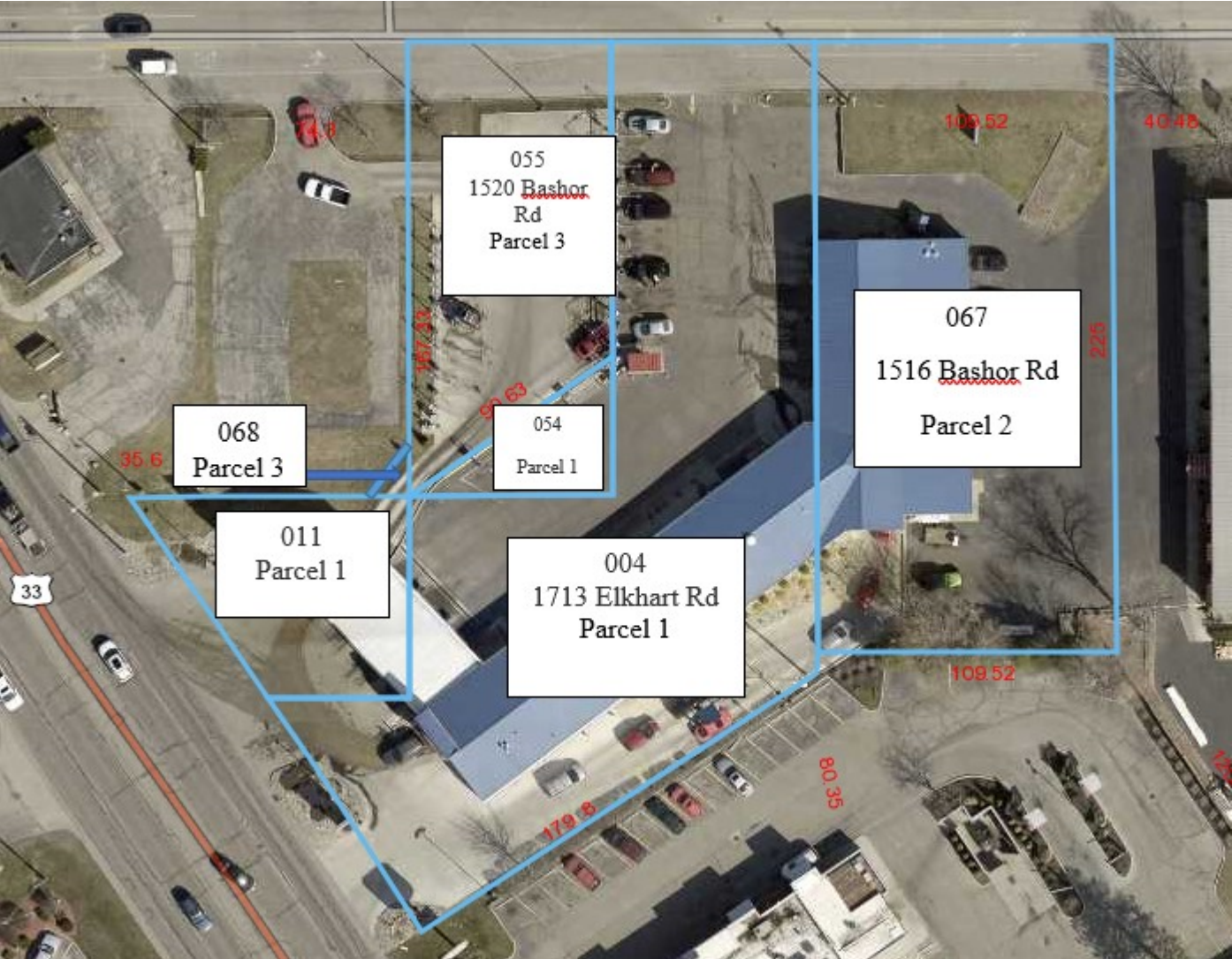
1. The 0 foot parking/driving aisle setback shall be approved only for the 50 foot area adjacent to Bashor Road, as shown on the revised site plan dated 6/17/13.

Further, the Grantor, jointly and severally, agree to the following concerning the procedures associated with maintenance and enforcement of this Commitment:

1. That this Commitment shall be recorded in the Elkhart County Recorder's Office.
2. That the Grantor shall give notice of this Commitment, whether recorded or unrecorded, to any-subsequent owner and/or any other person or persons acquiring an interest in any portion of the Real Estate.
3. That any subsequent owner and/or any other person or persons acquiring an interest in any portion of the Real Estate shall be bound by the terms of this Commitment even if it is unrecorded.

Exhibit B

Parcels to be included in car wash property



Deegan, Rossa

From: Debra Hughes <debra.hughes@sam.biz>
Sent: Thursday, August 3, 2023 1:17 PM
To: Deegan, Rossa
Cc: Lipscomb, Lori; Kermit Kropf(kropfkermit@outlook.com)
Subject: RE: 2411 E Kercher - variance 6 month extension request

Hello Rossa:

Thank you for your email. Please request a six month extension for the BZA variance approval for this project.

Plan revisions were submitted on July 17 for City Technical review.

Please let me know if you have any questions or need any additional information. Thank you again for your assistance with this matter.

Best regards,

Debra Hughes, P.E.

Senior Professional Engineer
Member, American Society of Civil Engineers
Member, National Society of Professional Engineers

SAM Companies

2810 Dexter Drive
Elkhart, Indiana 46514
(574) 266-1010 Office
(574) 622-1904 Direct
(574) 333-6328 Cell
Email: debra.hughes@sam.biz

From: Deegan, Rossa <rossadeegan@goshencity.com>
Sent: Thursday, August 3, 2023 1:13 PM
To: Debra Hughes <debra.hughes@sam.biz>
Cc: Lipscomb, Lori <lorilipscomb@goshencity.com>
Subject: 2411 E Kercher - variance expiration

Hi Debra,

The variance approved for 2411 E Kercher (Kropf Building Addition) will expire on August 23, 2023, which is one year from the date of its original approval. If the zoning clearance is issued for the project before August 23, it will not expire. In looking at the status of the revisions you recently submitted for the project, it appears Planning and Stormwater have reviewed and determined they are sufficient, while Engineering and Fire have not yet reviewed. I do not know what the outcome of their review will be, but if further revisions are needed, the variance will likely expire.

The safest choice at this time appears to be to request a six-month variance extension at the BZA meeting this August 22. There is no application or fee for this request, and staff can make it on your behalf. I can do so if you respond to this email requesting as such.

Sincerely,

Rossa Deegan, AICP
Assistant Planning & Zoning Administrator
City of Goshen
204 E Jefferson St, Suite 4
Goshen, IN 46528
rossadeegan@goshencity.com
574-534-3505

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