

AGENDA

March 01, 2021

CONSISTENT WITH TERMS OF GOVERNOR HOLCOMB'S EXECUTIVE ORDER FACEMASK ARE REQUIRED

Meetings of Standing Committees
Council Conference Room
6:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00PM

WebEx Telephone Number: 1-408-418-9388
Meeting Number (access code): 129 638 6980
Meeting Password: QhzMVJCB366

Livestream #1: <https://www.facebook.com/cityofmishawaka/>
Livestream #2: @MichianaAccessTV on Facebook
Livestream #3: Michiana Access TV
(Comcast and AT&T U-Verse Channel 99)

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

Dial: 1296386980.mishawaka@lync.webex.com

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of the Minutes of the Regular Meeting of February 15, 2021
5. Petitions, Communications, Remonstrance and Memorials

PETITION NO. 2021-02 Penn PUD Amendment to allow an 8' High Anti-Climb Screening Fence to Surround the new Juday Creek Water Treatment Plant - Lot 2 of Juday Creek Business Park - Vacant Land

6. Report of Special Committee

7. Ordinances on First Reading

8. Resolutions

9. Ordinances on Second Reading

P.O. NO. 2021-10 Rezone from C-4 Automobile Oriented Commercial District to C-1 General Commercial District - 1333 Lincoln Way East
(Assigned to Land Use Planning Committee)

P.O.NO. 2021-11 Establishing Mishawaka Redevelopment Authority
(Assigned to Land Use Planning Committee)

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

P.O No. 2021-02 PUD Amendment to allow Fuel Pumps & Convenience Store with parking reduction - 520 Bittersweet - SE. Corner of Bittersweet & Vistula
(Assigned to Land Use Planning Committee)

12. New Business

13. Adjournment - This meeting will be aired Wednesday at 9:00AM on the Public Access Channel

At this time, I know of no other business to come before the Council.
Deborah S. Block, IAMC, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements contact Susan Kile, ADA Coordinator, at (574) 258-1615.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

February 15, 2021

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall and via telephone on Monday, February 15, 2021 at 7:00PM. The meeting was called to order by President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance, followed by a moment of silence to remember the lives lost due to COVID-19.



Roll Call.

Present: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

Others Present: Mike Trippel, Council Attorney and Clerk Block.

Minutes for the Regular Meeting of February 1, 2021 were approved as received from the Clerk's Office.

PETITION #21-01 A petition submitted by RUDRA Twenty Six LLC requesting to rezone 1333 Lincolnway East from C-4 Automobile Oriented Commercial District to C-1 General Commercial District.

The Commission, with a vote of 7-0, recommended approval.

Clerk Block read the following proposed ordinance by title and assigned committee.

PROPOSED ORDINANCE NO. 2021-10

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

**Rezone from C-4 Automobile Oriented Commercial District to C-1 General Commercial District – 1333 Lincoln way East
(Assigned to Land Use Planning Committee)**

Clerk Block announced a request to amend the agenda to allow **PROPOSED ORDINANCE NO. 2021-11** for first reading. Clerk Block stated the council would need to amend their rules to accept it on first reading.

The chair entertained a motion to amend the agenda by **adding PROPOSED ORDINANCE NO. 2021-11** under ordinances on first reading. The motion was moved by Mrs. Voelker and seconded by Mr. Compton and question was called for the motion at 7:05PM.



**Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The motion passed 9-0.**

PROPOSED ORDINANCE NO. 2021-11

**AN ORDINANCE ESTABLISHING THE MISHAWAKA REDEVELOPMENT
AUTHORITY**

(Assigned to Land Use Planning Committee)

Clerk Block read the following resolution by title and opened the public hearing.

RESOLUTION 2021-03

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA SUPPORTING PASSAGE OF SENATE BILL 164, A BILL BEING
CONSIDERED BY THE INDIANA GENERAL ASSEMBLY INCREASING THE
CURRENT ST. JOSEPH COUNTY INNKEEPER'S TAX FROM 6% TO 8% AND
SPELLING OUT HOW THOSE FUNDS SHOULD BE ALLOCATED TO HELP
DEVELOP PRODUCT, ENHANCE TOURISM, STIMULATE ECONOMIC GROWTH,
AND CREATE JOBS IN ST. JOSEPH COUNTY.**

Mr. Hixenbaugh requested Clerk Block read the ordinance in its entirety for the record.

Clerk Block read Resolution No. 2021-03 in its entirety.

Whereas, in 1974, at the request of the community, an innkeepers tax was put into place in St. Joseph county by the Indiana general assembly for the purpose of developing, constructing, and supporting the development of a convention center in downtown South Bend, as well as for the general support of and promotion of tourism throughout St. Joseph county; and

Whereas, since its adoption, the St. Joseph county innkeepers tax has been modified from time to time by the general assembly to meet the changing and evolving needs of the tourism industry and the community in St. Joseph county; and

Whereas, throughout the years, the St. Joseph county hotel-motel tax board which includes appointees of the county's two largest cities, South Bend and Mishawaka, as well as St. Joseph county, has allocated those tax receipts generated by the tax to drive visitor growth and spending, which has in turn stimulated new economic growth, capital investment, and job creation efforts in our communities; and

Whereas, St. Joseph county offers a number of unique offerings well suited for visitors and annually attracts tourists from across the country and around the world to visit those attractions, which includes the University of Notre Dame, the 2nd most visited attraction in the State of Indiana; and

Whereas, according to a study conducted by CERTEC INC. In 2019, the tourism and travel industry contributed \$1.1 billion to St. Joseph county's economy in 2019, with direct expenditures by tourists accounting for \$708.5 million of that total, and increase of 4.7% since 2017; and

Whereas, according to that same CERTEC study, the tourism industry generated over \$266.4 million in tax revenues to government, including \$100.6 million to the state of Indiana, \$54.2 million locally, and \$111.5 million to the federal government; and

Whereas, a total of 11,507 jobs in St. Joseph county resulted from the tourism industry in 2019, with direct spending creating 8,357 of those jobs, one-third of which were in high-wage occupations according to CERTEC; and

Whereas, the tourism-generated jobs provided over \$228.4 million in wages to St. Joseph county workers, up \$28 million from 2017 wages, according to CERTEC; and

Section 1. The Mishawaka Common Council joins the Mayor of the City of Mishawaka in supporting the increase of the St. Joseph County Innkeepers Tax and asks the Indiana General Assembly to approve Senate Bill 164, giving St. Joseph County the ability to adopt additional tools to develop additional product that will spur economic growth, new capital investments, and jobs.

Section 2. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approved by the Mayor.

The public hearing was opened for **RESOLUTION R2021-03**.

Jeff Rea, President and CEO of the South Bend Chamber of Commerce, spoke in favor of **RESOLUTION R2021-03**. Mr. Rea began stating the resolution spelled out many of the key points and he wanted to add a couple of other things. Mr. Rea stated they were most excited about the golfing product in the area. Mr. Rea stated what they had seen spelled in the proposal was the different uses proposed to go along with the tax and the development of a sports complex in the Northeast side of Mishawaka. Mr. Rea stated they believe it will be significant and the resolution was important, because as it advances through the General Assembly that they show support back in the local community and the bill passed the Senate by a vote of 31-15. Mr. Rea stated they were taking similar action with the Mishawaka common council, South Bend council, and the County Council asking them to consider a very similar resolution hoping passage occurs. Mr. Rea stated they thought the support of all of the councils, the support of the Mayors, County Commissioners, Hotel-Motel Tax Board, and the business community would tell a compelling story. Mr. Rea stated this would be paid by visitors and not by folks living in the community locally. Mr. Rea stated this would be a way of them to capture additional dollars to develop product that would stimulate economy and drive the numbers Clerk Block read up and stated he would be happy to answer questions.

Mrs. Voelker asked if he could tell her a little bit about the Tourism Capital Improvement Fund and what he would anticipate the dollar amount would be and also asked if there were examples

of Tourism Capital Improvement Funds in other communities and a little bit about the oversight of the money. Mr. Rea stated 1% is planned for the Tourism Capital Development Fund and in a pre-COVID time frame that is approximately 1 million dollars intended to be a matching grant program. Mr. Rea stated it would be intended to drive tourism nights, so for example, it could be a new sheet of ice in the area to host hockey tournaments or a concert venue where they could hold concerts in the area. Mr. Rea stated they would be overseen by the Hotel-Motel Tax Board and it had not been completely in place, so they only had a concept in place. Mr. Rea stated the frequently asked questions they had received had more information related to that and he would make sure the council had that. Mrs. Voelker asked if this was geared more towards capital. Mr. Rea stated it was, specifically aimed at capital improvements to help drive tourism and hopefully they would have 2 million dollars every year going into tourism capital improvements.

Mr. Bellovich asked how many rooms they had in the City of Mishawaka versus number of rooms in South Bend. Mr. Rea stated there are generally 5,000 in the county and normally Mishawaka would be a third of that. Mr. Bellovich asked what the number of high wage employees they had working in the hospitality industry and what dollar amount is considered high compensation. Mr. Rea stated Rob DeCleene would answer that question.

Mr. Hixenbaugh thanked Mr. Rea for the additional information he provided in support of the resolution and stated in the frequently asked questions document, one of the important points touched on was the understandable concern of raising a tax in the midst of a public health emergency. Mr. Hixenbaugh asked Mr. Rea to touch on that subject for the benefit of the public. Mr. Rea stated the consumers are paying it and they did not think historically it would have a negative impact on their business since, for example, no one is staying in Niles instead of here because Niles does not have the tax. Mr. Rea stated they were open to conversation with some hotels and have quite a few hotels that had signed off already. Mr. Rea stated some hotels had expressed concern about dates and if the hotel industry felt it would need to be January 1st instead of July 1st, there would be a lot of flexibility there. Mr. Rea stated the General Assembly was taking action to enable it to be passed locally so it would not put into effect locally until the St. Joseph County council would adopt it and their preference would be for it to be done shortly after the General Assembly session. Mr. Hixenbaugh asked if this would be passed at the state level and adopted locally, would it would bring them into parity with some of the other larger counties throughout the state. Mr. Rea stated Howard county, being the 17th largest county in the state of Indiana who had a higher rate than they do, would be an example and just because others are higher that would not be the only reason to raise it, but St. Joseph county boasts the 2nd busiest tourist attraction in Indiana. Mr. Rea stated the size, the scale, and the numerous things happening in the area would make them more inductive to tourism than Howard county, for example. Mr. Rea stated they thought they were at a complete disadvantage compared to the other communities, because they did not have the same tools as them and the preference would be to bring it in line, because quite a few counties smaller than St. Joseph County already had this. Mr. Rea stated they were not trying to raise the tax all the way to the top and it was a community decision that would put them on par with many of these counties. Mr. Hixenbaugh stated when reading this, he thought the two major changes were the Tourism Capital Investment Fund and the additional 0.4% that would be geared toward the Mishawaka sports complex and asked Mr. Rea to expand on that. Mr. Rea stated throughout his history working in the city of Mishawaka, they never had anything specifically targeted toward Mishawaka and what the

greatest opportunity they believe would be getting that to 1% would be critical to the formula. Mr. Rea stated this would be really important for the hotels and the sports complex would be aimed for winter months to fill a gap and drive other business in the community. Mr. Rea stated their hope was they had a chance to boost restaurants, retail, and other businesses on the Northside and stimulate the economy by building product that will help keep these establishments busy.

Mrs. Voelker asked in regard to Compton generating revenue if that was inclusive of Notre Dame hockey games or exclusive. Mr. Rea stated that was exclusive and included youth hockey tournaments that happened out there over the years.

Rob DeCleene, executive director of the South Bend Chamber of Commerce, spoke in favor of **RESOLUTION R2021-03**. Mr. DeCleene stated there were just over 5,000 hotel rooms in St. Joseph County. Mr. DeCleene stated it was evenly split almost right down by one-third increments with Mishawaka, South Bend, and the rest of St. Joseph County. Mr. DeCleene stated this number was a lot for St. Joseph County and the construction project at Four Winds Casino would add another 321 rooms along with another 75 rooms under construction in Roseland. Mr. DeCleene stated about two years from now, they would be looking at almost 5,500 rooms. Mr. DeCleene stated in regard to the high wage jobs, they did not have a direct figure and are salary positions and there was a lot of management in that realm with professional sales people, general managers, support managers and others. Mr. DeCleene stated in 2019 pre-pandemic, they had 39,000 hotel room nights as a result of youth sports not affiliated with Notre Dame sports. Mr. DeCleene stated just last year in 2020, they still did over 20,000 sports nights with sports tourism and all of this happened without the sports complex. Mr. DeCleene stated they were very excited about it and it could be a game changer. Mr. DeCleene stated Compton taught them what they can do, because with a facility like that paired with the icebox in downtown South Bend, it brought to the forefront the strategic advantage they had which was location. Mr. DeCleene stated they had everything but Grand Park and Grand Park did not have what they had, in an analogy form. Mr. DeCleene stated this would be hugely impactful to not only Mishawaka hotels, but St. Joseph County as well.

Mayor Wood, spoke in favor of **RESOLUTION R2021-03**. Mayor Wood stated in essence, this resolution supports senate bill 164 and although the bill was not perfect, they were there to support it to benefit Mishawaka and the greater region. Mayor Wood stated it would take them to 1% of the Hotel-Motel Tax and prior to last year, they had received no dedicated funding for that. Mayor Wood stated this dedicated funding source would be big for Mishawaka and it would help them develop an athletic complex and the studies said that Mishawaka would be the spot for it. Mayor Wood stated this was the perfect timing with funding coming in and them being prepared for it. Mayor Wood stated when going to other communities to see what they had done, Mishawaka was very well suited for this and they believed that they had the infrastructure in place to support this. Mayor Wood stated it was uniquely situated close to travel amenities such as the Indiana Toll Road, Capital Avenue, and between Douglas, Cleveland and just east of the Juday Creek Golf Course. Mayor Wood stated it would lead to more economic development and more people coming to Mishawaka. Mayor Wood stated they were in the hole of the doughnut with a great site and they had a great partnership ready to go with Dedicated Funding and they believed this would be huge for the city of Mishawaka along with the greater region. Mayor

Wood stated they were still in the process of studying and were looking to expand it a bit to include things such as ice sheets. Mayor Wood stated it was his goal to break ground in 2021 and they would be pretty close by conclusion of the project. Mayor Wood stated they knew it would be a major driver of 'heads in beds', bringing people in to support this facility and their local economy as well. Mayor Wood stated this would feed the beast, referring to the second or third biggest retail restaurant market anywhere in the state of Indiana. Mayor Wood stated they were ideally set up for this and stated this would be a major economic development project for them.

Mr. Hixenbaugh thanked everyone for their work on this resolution and acknowledged the work of Senator Niezgodski and appreciated his work on behalf of the community to be added to the mix in this legislation.

Question was called for at 7:32PM for **RESOLUTION R2021-03**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The resolution passed 9-0.

Clerk Block read the following proposed ordinance by title and opened the public hearing.

PROPOSED ORDINANCE NO. 2021-09

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA
RESCINDING RESOLUTION NO. 2010-21 AND RESOLUTION NO. 2012-03
PERTAINING TO PETITIONS OF THE MISHAWAKA BOARD OF ZONING
APPEALS FOR THE PROPERTY LOCATED AT: 1802 WEST SIXTH STREET
Rescinding Resolution NO. 2010-21 and Resolution No. 2012-03 – A Use Variance for the
Property, permitting commercial automotive body repair/maintenance shop – 1802 West
Sixth Street**

Clerk Block stated she had proof from the police officer that took the notice to Piper's and also had proof of a certified return receipt requested. Mr. Hixenbaugh stated the record will reflect that the notice had been delivered.

Mr. Emmons reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee upon a second by Mr. Compton motion carried. A roll call vote was held for the Committee Report.

 **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The Committee Report passed 9-0.

Mike Trippel, Council Attorney, spoke in favor of **PROPOSED ORDINANCE NO. 2021-09**. Mr. Trippel stated he had drafted the appropriate ordinance that would rescind previous actions of the council and the Board of Zoning Appeals approving use variances for the property at 1802 West Sixth Street. Mr. Trippel stated there were various violations regarding written commitments and related pursuant to the previous passages and he would be glad to have Mr.

Hinkle address those specifically. Mr. Trippel concluded stating he would be happy to answer any questions the council had.

Mr. Emmons thanked Mr. Trippel for his work in drafting this proposed ordinance. Mr. Emmons stated it had been a long time coming and he appreciate his work.

Pat Hinkle, Corporation Counsel for the City of Mishawaka, spoke in favor of **PROPOSED ORDINANCE NO. 2021-09**. Mr. Hinkle stated by way of history, the use variance originally issued to Mr. Piper stated he would be allowed to operate a commercial automotive body repair maintenance shop within the I-1 Light Industrial District subject to the following conditions. 'The use variance shall be limited to automotive body repair and automotive maintenance, it is limited to indoors, no outside storage of materials and or vehicle parts will be permitted.' Mr. Hinkle stated there were other conditions regarding landscaping and exterior lighting and #4 was 'All employees shall park within the fenced area on the property and not on the adjacent streets.' Mr. Hinkle continued reading 'Overnight parking in the fenced area lot shall be limited to the temporary staging of cars being worked on. This lot shall not be used for long-term storage of vehicles.' Mr. Hinkle stated there was another condition regarding signage and hours of operation, but those had not been an issue and the conditions he had read off were the issues at hand. Mr. Hinkle stated they filed a lawsuit in St. Joseph County Circuit Court, because there had been repeated violations and continued violations with no effort by the owner to cure the violations. Mr. Hinkle stated the complaint they filed was filed on November 5, 2020 and in the complaint they alleged that the defendant, Mr. Piper and the business itself, were in violation of the use variance by engaging in the following conduct: outside storage of vehicles, materials and or vehicle parts, employees parking on adjacent streets, car repairs outside the enclosed building, using streets and sidewalks for staging or repairing vehicles, and long-term storage of vehicles in the fenced in lot. Mr. Hinkle stated attached to the complaint were a number of citations and correspondence from the city to Mr. Piper asking him to comply with the variance as he had promised to in the past with the council and he had not done any of that. Mr. Hinkle stated the court ordered him to comply by March 4th and if he did not, the court would proceed with the trial scheduled for March 26th. Mr. Hinkle stated if he did comply by March 4th there would be no trial and the compliance would have to be to the satisfaction of Ken Prince, City Planner, as he is a main plaintiff in the case as required to do by statute. Mr. Hinkle stated the ordinance drafted by Mr. Trippel was at the request of Mr. Emmons and thanked Mr. Trippel for doing so. Mr. Hinkle stated he would be happy to answer questions and this was all of the background he had on this issue.

Mrs. Voelker asked if Mr. Piper would be in compliance by the time the court date occurs, if he would be able to continue to operate his business. Mr. Hinkle stated it would have to be by March 4th because March 5th they would have a conference with the judge and the parties would inform the judge whether or not Mr. Piper would be in compliance. Mr. Hinkle stated if Mr. Piper were in compliance at that time, the judge would continue to try him. Mrs. Voelker asked if they rescind the variance that evening and Mr. Piper were to come into compliance by March 4th if he would not have a variance to operate. Mr. Hinkle stated that would be true and presumably he would have to reapply for a variance. Mr. Hinkle stated there was also a purchaser present that evening interested in buying the property and if the variance were rescinded, that purchaser would have to convince the council to reinstate it.

Mr. Emmons thanked Mr. Hinkle for his work on this variance along with Mr. Trippel's work and Mr. Prince's work on the ordinance. Mr. Emmons stated it had been long overdue to correct this situation that had been out of hand with the neighbors complaining and himself getting numerous phone calls and he was glad to say all the problems could come to an end. Mr. Emmons stated Mr. Piper neglected to live up to the variance he fully agreed to when it was signed and disregarded it on a number of occasions and Mr. Emmons did not see anywhere that it was going to be changed. Mr. Emmons stated as of that day, the lot was still packed with cars, cars on the street and he did not see anywhere he had tried to abide by the variance he had and he believed the council needed to take action to rescind it.

Mr. Bellovich asked if Mr. Piper responded to any letter from the administration at any time. Mr. Hinkle stated he had not. Mr. Bellovich asked if they had seen any effort at all to comply with what he was expected to do. Mr. Hinkle stated there was no effort to comply and the only time they received a response was when they filed suit against him and he responded by attending the telephone status conference with the judge. Mr. Hinkle stated Mr. Prince had tried to get Mr. Piper to comply several times and even offered to go out there and walk through the property with Mr. Piper and tell him exactly what it was he needed to do to fix the issues and Mr. Piper never contacted Mr. Prince to set up a time to do that. Mr. Hinkle stated they all had asked to go, including himself, Mr. Prince, and another member of Mr. Prince's staff, to go out and help him. Mr. Hinkle stated at the same time, Code Enforcement had been monitoring him and issuing citations for parking on the sidewalk along with other violations. Mr. Hinkle stated not only had he been violating conditions he agreed to when he received the variance, but he also had been violating Building Code requirements. Mr. Hinkle stated he had only been with the city for a year, but after everything he had read along with all of the documents and after speaking with Mr. Emmons he saw it had been an ongoing problem for years.

Mr. Mammolenti asked if Mr. Hinkle had a number of citations that had been written over the course of the original variance. Mr. Hinkle stated they were attached as an exhibit to the complaint and they had a 26-page exhibit with letters from Mr. Prince along with photographs showing the same vehicles parked in the lot over long periods of time. Mr. Mammolenti apologized and stated he was making a point that a plethora of emails, phone calls, and citations had been issued to that business and asked if that was correct. Mr. Hinkle stated that was true and Mr. VanNevel with Code Enforcement was continuing to cite and some of the later citations were not part of the exhibit, because they occurred after the complaint. Mr. Hinkle stated it went back a pretty long time. Mr. Mammolenti stated he remembered when this was on their table to be voted on originally and he was almost positive every single council member went to the property to speak with Mr. Piper and got a true understanding of what he was promising to do. Mr. Mammolenti stated he had visited his location several times thereafter and spoke with him and had a mutual agreement with Mr. Piper as to what needed to be done and Mr. Mammolenti stated it was a sad situation, because he was a busy mechanic who put out a good product and if he could just follow the rules in the agreement, they would not be in the position they were in. Mr. Mammolenti concluded thanking Mr. Hinkle for his efforts and all of those who were involved.

Mr. Hixenbaugh asked with regard to the ongoing litigation, at any point in time as part of the proceedings had Mr. Piper made any representations to the court that he had remediated any of the shortcomings noted. Mr. Hinkle stated at the last status conference, Mr. Piper told the judge he purchased equipment that would allow him to start moving vehicles, but the weather hit and interfered with his ability to do so. Mr. Hinkle stated the judge seemed encouraged that he would get these things resolved by March 4th so there would not be a hearing held and the judge said he did not want to hold a whole day open for a trial if it were to get resolved. Mr. Hinkle stated he was clear to Mr. Piper that he wanted him to do these things although there was no order. Mr. Hinkle stated he also warned Mr. Piper that he could not represent a corporation and a corporation was one of the defendants in this case. Mr. Hinkle stated Mr. Piper indicated that he did not have the resources to hire a lawyer and it was a mess for the court, the council and the city of Mishawaka. Mr. Hixenbaugh asked if it was correct that the representation made by Mr. Piper to the court was he had begun preparations to address the areas of noncompliance, but there had been no representations that these various issues had been addressed and brought to compliance. Mr. Hinkle stated that was correct. Mr. Hixenbaugh asked, with respect to the current status of the litigation, as he understood it was set for trial. Mr. Hinkle stated that was correct. Mr. Hixenbaugh stated subject to some interactions between the parties to try to confirm if there had been compliance on the part of Mr. Piper and asked if Mr. Hinkle was aware of any orders of the court that preclude the council from taking the action that was suggested by the proposed ordinance in front of them. Mr. Hinkle answered no. Mr. Hixenbaugh asked if Mr. Hinkle were aware of any intangible efforts on the part of Mr. Piper to try to bring the property into compliance with the requirements of the use variance. Mr. Hinkle answered no. Mr. Hixenbaugh thanked Mr. Hinkle.

Johnathan Piper, 222 Borley Street, spoke in opposition to **PROPOSED ORDINANCE NO. 2021-09**. Mr. Piper stated he had no excuses but he had been going through a divorce for three years, everything had been locked down, he couldn't get rid of anything or move anything and they had made progress by moving 5 cars out of there already. Mr. Piper stated he had cleaned out some of the building by taking 6,000 pounds of stuff out of the building. Mr. Piper stated they are moving cars and the snow was hindering them a lot. Mr. Piper stated the buyer for the building was present and he did not want the business the way it was and he just had to get through his divorce to get to the point where he could do something about it. Mr. Piper stated it was just him and he got to March with the judge and they were moving things. Mr. Piper asked if they could let it go until the March date with the judge and see if anything changed, because that's all he had. Mr. Piper stated he could not defend anything going on and they were moving things and did not believe he needed proof to say that. Mr. Piper stated everything was planned in his mind the way it should have been and the way it was talked about and for it to get to his point now he did not have a working crew any longer. Mr. Piper stated he was down to 3 people inside of the shop and had just enough work to maybe keep the business open and that was why he got the buyer to purchase it, so he could become a tenant rather than a landlord. Mr. Piper stated other than that, he did not know what else to say.

Mr. Hazen stated he wished he would have responded back to the city and showed some kind of effort that he was working on it. Mr. Hazen stated it was very frustrating as a businessman to know a man who was trying to save his business had no communication with anyone and came to the council last minute and asked for help. Mr. Hazen stated it was putting the council in a

hard spot. Mr. Piper stated the judge had a date and regardless if he did not comply by that date, he would do what he had to do as well. Mr. Piper stated all it would do was chop his legs out from under him just to get to that point and it would be the same thing at that time. Mr. Piper stated he would have customers and clientele that he would have to finish up and he would not know how to handle that.

Mr. Emmons stated Mr. Piper had been before them a number of times and it had been over 10 years since the variance had been put in to have the auto shop and from day one basically they have had problems. Mr. Emmons stated he had not complied to the variance guidelines that the variance stipulated and after 10 years have put up with a business that did not adhere to the variance and the people in the neighborhood had been upset over him breaking his promises. Mr. Emmons stated Mr. Piper lied to him and he lied to the neighborhood and after Mr. Emmons went around to get the people to support him, Mr. Piper stabbed him in the back. Mr. Emmons asked rhetorically how could he support not accepting the proposed ordinance after he had done nothing to improve the facility. Mr. Emmons stated the proposed ordinance was for the outside, not the inside and it had been that way for 10 years. Mr. Piper interrupted stating he had cleaned the outside too. Mr. Emmons stated he hated to dispute him, but he did not see where that was true. Mr. Piper began to interrupt Mr. Emmons before Mr. Hixenbaugh interceded and stated it would work much better if when one person was speaking, the other allowed them to finished and he promised Mr. Piper they would allow him to say what he wanted to say. Mr. Hixenbaugh asked him to extend that courtesy to Mr. Emmons. Mr. Emmons thanked Mr. Hixenbaugh and continued stating Mr. Piper basically lied to the community on not keeping his word on the variance that they approved for him to have a business in that area. Mr. Emmons reiterated that it had not been over the course of one year, but a number of years and he had cars that had sat there for years and not been moved. Mr. Emmons also stated on top of the violations in the fenced in area; he also violated on street parking by having cars needing repaired parked there and the neighbors of that area had been frustrated, because they couldn't park there. Mr. Emmons concluded stating he would approve the proposed ordinance to cancel the variance. Mr. Piper stated he moved cars and wouldn't be saying he had if he did not. Mr. Piper stated there were way too many cars out there and even if he moved only a couple of them, it would be hard to tell the difference. Mr. Piper stated the cars were not his and the owners of the cars had not been picking up their phones when called. Mr. Piper stated the city could tag them and he could not force people to take care of them themselves. Mr. Piper stated it was not about finding the owners, it was about getting them moved. Mr. Piper stated he was also still trying to do a lot of work and he was way behind. Mr. Piper stated for the last 3 years he knew the cars had not moved, because he could not touch them and it was all marital assets so he could not do anything with them. Mr. Piper stated his ex-wife was 51% owner of the business and his hands were tied to basically do anything. Mr. Piper stated the new owner of the business would only buy it if the variance stuck with the business and that would deplete the sale. Mr. Piper stated it was an abandoned building before he made a business out of it and even though he did not comply with everything, he believed he was a good asset to the community. Mr. Piper stated he could get a petition of all of the people he had helped, because they had done that in the past and he stated he was not a bad guy. Mr. Piper stated he was a worker and he was not a businessman and he did not respond to things because he did not know how to deal with it in the appropriate manner. Mr. Piper stated he called back but he could not do anything at the time but he was present that night

and he was hoping the judge would give him a chance. Mr. Piper stated it had been 10 years so another couple weeks would not make a difference, but it would in his life and in the community.

Mr. Compton asked what the initial zoning of the property was and if they repealed it, what can operate in the building. Mr. Hixenbaugh stated they should wait until Mr. Piper stepped away from the podium and Mr. Prince could step forward to touch on that question. Mr. Hixenbaugh stated it was a good question. Mr. Compton then stated he looked on the map and counted 48 cars on the lot and believed the picture had been taken sometime during the summer given there was no snow on the ground. Mr. Compton stated here they were at the eleventh hour and this was the first he had heard about this and even though Mr. Piper had marital issues among others taking place in his life, he did not communicate with Mr. Hinkle, Code Enforcement, or whoever had cited him for his issues. Mr. Compton stated they were left with not many options and stated his question would be what the property was zoned for and if the variance involved outside storage of vehicles, then his thought was Mr. Piper could operate without it. Mr. Compton stated whether someone else would want to buy the building or not would be a completely different situation. Mr. Piper stated the divorce had been going on for 3 years and that would be at the point where he could not do anything. Mr. Compton stated it came down to communication and to his knowledge, this was his first time hearing about this and possibly was the first time most of the council heard about it as well, to his knowledge. Mr. Compton stated without that communication, they had nowhere to go except to continue down the road to the collision point. Mr. Hixenbaugh followed up Mr. Compton's question stating after reading over the proposed ordinance again, in the second paragraph there was reference made to the underlying zoning of the parcel being I-1 Light Industrial and Mr. Prince could expand upon that.

Mr. Mammolenti thanked Mr. Piper for coming out and giving the council a long overdue explanation. Mr. Mammolenti asked how many of the indoor cars he had been able to move or contact the owner. Mr. Piper stated he contacted the owner of three cars and the rest of them, he had alternative storage so it was not an issue of how many cars he could put but he needed to move them from that property out there so he did not break any laws. Mr. Piper stated he had plenty of storage for the cars to take them out of there and move everything out that did not pertain to the shop. Mr. Mammolenti asked if his ex-wife being 51% owner of the business influenced the sale of the business or if it had been signed off. Mr. Piper stated it had not been signed off and in the court proceedings for the divorce as of January, they left him the building but her name was still on it. Mr. Piper stated she would not contest him moving anything because she had no want to have anything of what's left of the shop. Mr. Mammolenti stated the reason for the question was he had presented that he would sell the business to a person in the audience and he would just be a tenant. Mr. Mammolenti asked if that was correct and Mr. Piper stated it was. Mr. Piper also stated from that point on, he would be a better businessman than he would be and whatever issues would arise he could handle it and Mr. Piper could be a worker.

Brandon Arispe, 19645 Glendale Avenue, spoke in favor of **PROPOSED ORDINANCE NO. 2021-09**. Mr. Arispe began wanting to ask the council a few questions starting with why this had been let go for 10 years before bringing it up. Mr. Arispe stated this gave Mr. Piper the sense that they would not do anything to him so he could slide by and that was probably what he was trying to do. Mr. Arispe stated he was not right and he was wrong, but if you were to break the rules and nothing happened to you why would he not keep breaking the rules. Mr. Arispe stated going

on for 10 years and asked where Code Enforcement was for the last 10 years. Mr. Arispe stated cars on the street was the major issue and stated hypothetically he would be very upset if he were in this situation and had to come home to cars parked in front of his house. Mr. Arispe believed the cars should have been towed and did not think that had happened. Mr. Arispe stated Code Enforcement should have been taking care of the cars. Mr. Arispe asked for clarification on the variance and if it states that 'there was no materials or car parts allowed in the fenced area.' Mr. Hixenbaugh stated that was accurate. Mr. Arispe asked as long as it was not materials or car parts, then physical cars would be okay to be inside the fenced area. Mr. Hixenbaugh stated actually the variance said no outside storage of vehicles, so the entire vehicle along with the sub parts were also subject to the use variance. Mr. Hixenbaugh stated this would be an opportunity for him to make comments and if he wanted to ask the council rhetorical questions it would be up to the council whether they wanted to answer them and perhaps draw in the attorneys, staff and other folks who can answer them. Mr. Hixenbaugh stated it was not an opportunity for Mr. Arispe to interrogate the council but he would allow him to continue and ask his questions. Mr. Arispe stated he was trying to buy the building and as far as Mr. Piper's statement of wanting to be a tenant, that was not going to happen. Mr. Arispe stated Mr. Piper could work for him and he was a good worker. Mr. Arispe stated he had seen him do work for everyone in the city of Mishawaka and he did not believe Mr. Piper never had a reputation of not getting work done. Mr. Arispe again stated he was interested in buying the building and he had the funds available to do so. Mr. Arispe stated he could not buy the building if the variance was rescinded and he wanted to have an auto body shop, because owning a body shop was a staple in his family growing up. Mr. Arispe stated he spoke to Ken Prince and relayed that he was interested in purchasing the building and explained he would make sure everything was in compliance of the variance. Mr. Arispe stated he knew he would have to put a good amount of money into the business because it was not in the greatest of shape. Mr. Arispe stated he would not run a business that he would not feel comfortable bringing his products to. Mr. Arispe stated he would love to have Mr. Piper as a worker but not as a tenant, meaning no disrespect to him. Mr. Arispe stated first and foremost, the cars on the street needed to be taken care of immediately. Mr. Arispe stated he believed Mr. Piper was a good person for the community in Mishawaka and when you heard about getting cars painted you thought about Piper's for a long time. Mr. Arispe stated he had been trying to buy the building for over a year and he had been continuously told by Mr. Piper he could not do that, because of the pending divorce. Mr. Arispe stated he would like to get the process done without an attorney and Mr. Hinkle said he may need an attorney. Mr. Arispe stated he would do what need to be done, it was nothing tough to complete the process, and it was solely about the cars. Mr. Arispe concluded stating Mr. Piper was a good guy, but he dropped the ball on this and he was asking for the opportunity to pick it up a little bit.

Mr. Emmons stated he took offense to Mr. Arispe saying they had done nothing for 10 years and this had been an ongoing situation with Mr. Piper from almost day one after signing the agreement with the variance. Mr. Emmons stated the neighborhood did not want the junk cars sitting out there on the street and it was not a junkyard, but that is what it had become unfortunately. Mr. Emmons stated they had been fighting with Mr. Piper for longer than 10 years and right after Mr. Emmons had been elected to the council, he had run on the situation of Mr. Piper's promise to the neighborhood that he would run a good business, abide by the variances, have no cars or junk outside, no cars parked on the sidewalk or the street and from day one when he had received the variance it went right out the window. Mr. Emmons asked why he would

believe Mr. Arispe because he stated in his comments he would want to keep cars outside and that was not what the neighborhood would want or what the variance stated. Mr. Emmons concluded stating he took offense to Mr. Arispe's comments of them neglecting their duties with Mr. Piper. Mr. Arispe addressed Mr. Emmons stating he did not mean to offend him, but it did not take 10 years to get the meeting that night to rescind it. Mr. Arispe stated in year 2 it could have been rescinded or in year 7 it could have been rescinded but it was not and he was just asking why it was not rescinded then. Mr. Arispe stated he understood it had been a long time and he along with others went to bat for someone who let him down and made him look bad, but at some point during the 10 years it should have come to a head. Mr. Emmons stated they had tried to work with Mr. Piper and Mr. Prince, his staff, and the past attorneys had tried to get Mr. Piper to turn it around so he could have a successful business. Mr. Emmons stated he would not comply, answer reports, answer citations, answer Mr. Prince's office, or answer Mr. Hinkle's office. Mr. Emmons stated it was wrong to say they did nothing for 10 years and they tried to work with him, but it came to a conclusion that they could not. Mr. Emmons stated it was a disrespect to the neighborhood and they wanted to fix it. Mr. Emmons started their police department and Code Enforcement had other things to do than 100% of the time going over and inspecting Mr. Piper's property and they got tired of it. Mr. Emmons stated he was sorry that Mr. Arispe may not get the building, but maybe after they got it cleared away he could come back to the council and they could discuss the situation with him. Mr. Emmons stated right now, they needed to pass the proposed ordinance to cancel the variance Mr. Piper had on the property and it had been a huge nuisance. Mr. Arispe asked if there was any paperwork sent out over the last 10 years or if it had been word of mouth to each other trying to help each other. Mr. Emmons stated there had been paperwork and word of mouth, along with the police going out to the business, Mr. Prince had been out there along with Mr. Hinkle and Mr. Emmons himself and there had been a paper trail for years. Mr. Arispe asked if there had been any type of creative option. Mr. Emmons stated no, right now they needed to get it settled and start anew. Mr. Arispe asked if there were an amount of days they were willing to agree to. Mr. Emmons there will not be because they had given them 10 years. Mr. Hixenbaugh stated he felt they had been re-plowing the same ground over and over and asked Mr. Arispe if he had any other comments he wished to make to the council. Mr. Arispe stated he would like to buy the building and operate the same business under a different name. Mr. Arispe also stated he wanted to be a part of the community and he would do whatever necessary to expedite the process to show the council what he can do before even purchasing the building. Mr. Arispe stated the council had the power to take it away or give it and he didn't want to buy the building just for it to sit there.

Mr. Prince addressed Mr. Compton's question regarding the underlying zoning and any other items he wished to address. Ken Prince, City Planner, stated it was zoned I-1 Light Industrial and if the variance was revoked, auto repair would not be a permitted use so that would have to cease. Mr. Prince stated under the many permitted uses in the I-1 district, auto repair is not one. Mr. Prince stated after hearing the discussion that evening, he stated he agreed with what Mr. Trippel had put together and what Mr. Emmons suggested in terms of revoking the variance, because it was based to protect the neighborhood and the community. Mr. Prince added that if they were to revoke the variance by the ordinance that evening, his fear would be for them to enforce that as a legal mechanism would open up another can of worms. Mr. Prince stated Mr. Hinkle had very capably ushered this through court over a series of months that was now coming down to a court order in March and he would much rather had this weighing over their head in

order to get change on the property and get it cleaned up knowing of the pending court case. Mr. Prince asked if they revoked the ordinance that evening, what would happen in terms of an enforcement action and if that restarted the clock ticking as a result of the action. Mr. Prince stated because now the variance they were trying to get enforcement on was no longer in use because it would be revoked. Mr. Prince stated he would almost rather see the council leave this as a matter pending the outcome of the hearing and then revoke it and that would by default, though they did not deserve another chance to clean up the property, but in that time should they make progress that could be a consideration of the council in the future refraction of the variance. Mr. Prince stated he would answer any questions and he realized it was difficult and it was very important that the outcome was the same at the end, but he was worried of what would happen to the process of how they get there if the council were to move forward that evening.

Mr. Hazen asked if they could amend the proposed ordinance that evening to make it effective the 26th and if that aligned with the court. Mr. Hixenbaugh stated they should let Mr. Trippel weigh in first in particular to Councilman Hazen's suggestion with the amendment. Mr. Hixenbaugh stated he would prefer to see the matter postponed until after the date rather than amend the ordinance so they were able to consider all of the facts at the time and that was his personal opinion. Mr. Trippel stated certainly any amendment as being suggested as reasonable enough for the council's discretion, but his problem was he did not want to apply to much on the litigation because Mr. Hinkle was handling that for the city and he did not want to take any steps that would disrupt his ability to continue the enforcement mechanisms that are put in place with the lawsuit on file. Mr. Trippel stated one of the things Mr. Hinkle could address was if the council was inclined to move forward that evening to rescind, he would have to amend his complaint to add that the council was taking action to descend special use because that would change dynamics in the litigation. Mr. Trippel stated the additional dynamic would not give Mr. Piper the legal right to operate on the property and to some extent it would help the litigation, but how that procedurally would move forward from a timing perspective, he would rather have Mr. Hinkle address that.

Clerk Block stated she was being asked to advise the council members to speak closer to their microphones.

Mr. Hinkle began he received a call today and he did not know who was who in the purchasing process and that concerned him and he had also sent the council a letter with the order and even if they won the trial and if Mr. Piper were ordered to comply with the variance and pay a fine, it would not be over. Mr. Hinkle stated he would have 30 days to appeal and after 30 days if Mr. Piper were not complied they could enforce a judgement and that was the hard part of any lawsuit. Mr. Hinkle stated he would not voluntarily pay any money or comply with the variance and he may even file for bankruptcy, which would stay any efforts made at collection or enforcement. Mr. Hinkle stated if they rely on the lawsuit, they could be looking at another 6-8 months of no compliance and not anything they could do to the lawsuit. Mr. Hinkle stated if the variance were changed, they still would have the enforcement problem but that was more immediate and he would have to do more research on that to determine how long it would take to get that enforced. Mr. Hinkle stated in any event, unless there was corporation and they do what they had not done before, it would still take a while to remedy the situation. Mr. Hinkle stated he knew it was frustrating for the council and it was frustrating for him as well as the Corporation

Counsel for the city. Mr. Hinkle stated the court system relied on people cooperating and they had someone who repeatedly had not cooperated, so even if they did follow through with the trial and got a judgement in their favor, they would still have a judgement to enforce and that would be about worthless. Mr. Hinkle stated the next step then would be getting the sheriff involved and that could take months. Mr. Hinkle stated that's what he was concerned with and the deadline set by the judge was simply a deadline to decide whether or not they would have a trial on March 26th. Mr. Hinkle stated Mr. Piper was not under any order at that point to clean it up and the judge ordered him to do something by then or not do it, but in any event that was the deadline to get off the hook to go to trial on March 26th. Mr. Hinkle stated it would not no matter what happen on March 4th, because that was simply the deadline posed by the court for Mr. Piper to be able to say to the court that he had complied with what Mr. Prince outlined to do and if they could continue or delay the trial. Mr. Hixenbaugh stated he would try to summarize what Mr. Hinkle had just laid out for clarity. Mr. Hixenbaugh began by addressing Mr. Trippel's question and asked what complicating factors would that visit upon Mr. Hinkle as the attorney representing the city and Mr. Prince in the pending litigation. Mr. Hinkle stated Mr. Trippel suggested he could amend the complaint and he had agreed with that. Mr. Hinkle stated but now that the council rescinded the variance, now he is in violation of the variance and zoning ordinance itself. Mr. Hinkle stated he is now violation of the law and specifically the zoning status of the area. Mr. Hixenbaugh asked hypothetically if the council took action to revoke the use variance, litigation would be still pending and they would have to amend the complaint, but at that point in time if there continued to be an auto repair shop that was operated on the site, would it in fact be the case that that element of non-compliance would have to be litigated and then along that same timeframe laid out for the council. Mr. Hinkle answered he would have to amend the complaint to add that in. Mr. Hinkle stated he would first have to file a motion of leave to the court to amend the complaint and add a new count relative to the action the council would take and if the court were to grant him the opportunity to amend the complaint, then that would become an issue tried at the trial. Mr. Hinkle stated that would then delay the original trial date, because the court would have to give Mr. Piper time to answer. Mr. Hixenbaugh asked if he believed it would provide him with any further leverage, with purpose to the litigation, that the potential action of the council to revoke the use variance is pending as opposed to being acted upon that evening. Mr. Hinkle stated it would probably be an advantage to Mr. Piper, because one of the reasons the court valued the property at \$225,000 was because the city had not done anything to rescind the variance. Mr. Hinkle stated Mr. Piper's lawyer argued the city would likely rescind the ordinance and the court stated they had not done it or sent out a notice they would do so (at that time). Mr. Hinkle stated he would have to think about how the potential action to revoke the variance affected him, because it was the same judge in both of Mr. Piper's cases, the divorce case and his business' case. Mr. Hinkle stated it would be another hammer that the judge could order the variance be rescinded and he would not be able to sell it and Mr. Hinkle stated ultimately, Mr. Piper would not have to do anything until an order from the judge is entered. Mr. Hinkle stated Mr. Piper had the hammer over his head at that time. Mr. Hixenbaugh thanked Mr. Hinkle for his answers.

Mr. Mammolenti stated he believed the council were all in agreement that the ultimate goal was to get the property cleaned up as quick as possible and asked if that were correct. Mr. Hixenbaugh stated it was. Mr. Mammolenti asked if it would behoove the council to entertain a further discussion with Mr. Arispe because he could potentially clean up the property in 20 days

or so if given the opportunity and Mr. Mammolenti was fearful if the variance was rescinded, Mr. Piper would no longer operate his business and not clean up the premises. Mr. Mammolenti stated they would still be stuck with the same problem and believed perhaps a discussion with Mr. Arispe, barring a purchasing agreement, could be helpful. Mr. Emmons stated it was not Mr. Arispe who was at the meeting that evening. Mr. Mammolenti stated he was referring to the gentleman who came before the council who wanted to buy the business. Mr. Hixenbaugh thanked Mr. Mammolenti.

Mr. Compton made comments stating this had been going on for quite a long time and he did not realize it was over a span of 10 years. Mr. Compton stated he had been hearing about the vehicles in how they could not get moved and the time it took to get leans and he heard Brandon saying he could get them moved and wondered what he could do that did not get done before. Mr. Compton stated he did not see that dragging this on any further would be helpful. Mr. Compton stated he could support delaying this to help the city and Mr. Hinkle and maybe the Piper's but he had not been hearing that that would be helpful either. Mr. Compton stated it took forever to get to this point and the wheels of government, they all knew, could turn very slow and they rely on people doing what they are supposed to do. Mr. Compton stated the civil suit could carry on for a long period of time if parties who are supposed to react to it choose not to and you can't put a person in jail for it, making that threat disappear. Mr. Compton stated he would support the proposed ordinance as it was at that point until he heard something different that would help him understand or explained why he should not.

Mrs. Voelker stated she remembered Mr. Piper coming in front of the council about those very issues and believed it had been when she was first on the council in 2021, but thought it could have been more recent than that. Mrs. Voelker stated this had gone on for many, many years and she was reminded from when Mr. Piper was there before talking about the fact that he did not have title to the cars and couldn't move them, which was years ago. Mrs. Voelker stated to her, this was a problem that had not been solved to that point and she did not feel confident it would be solved. Mrs. Voelker stated after hearing the potential buyer, Brandon, that night, she did not believe the site would be feasible for the type of business being operated there now and given they need outside storage for vehicles, which the variance did not allow. Mrs. Voelker stated she would support the ordinance as written that evening.

Mr. Hixenbaugh added that it was unfortunate they were at that point. Mr. Hixenbaugh stated they all enjoyed the work they did as members of the council, because the Mr. Pipers of the world are exactly the type of people they wanted to help and see thrive in Mishawaka by allowing them to take advantage of a use variance and do the good work they hoped they would do. Mr. Hixenbaugh stated he never had done any business with Mr. Piper, but had casual interactions with him in the past and heard nothing but good things, including that evening, about the work he had done for any number of people they knew. Mr. Hixenbaugh stated the work he did was not the issue, but the unfortunate issue was the business model he adopted did not match up with the commitments made and imbedded in the use variance that he was granted. Mr. Hixenbaugh stated he viewed these are promises to not only the council, but to the community they represent. Mr. Hixenbaugh stated while he might have been inclined to overlook someone who did not keep their promise to him, he struggled with overlooking promises made to the neighbors who lived immediately proximate to the business and to the community in general.

Mr. Hixenbaugh stated Mr. Compton was right when stating they had to operate in a good faith basis and believe people who step to the podium understand what they were agreeing to and intended to commit and live by their promises. Mr. Hixenbaugh stated he would give Mr. Piper the benefit of the doubt and did not believe he conscientiously meant to mislead anyone at any time during the process, but that was irrelevant. Mr. Hixenbaugh stated the facts were that he had not lived up to those commitments and he had intentions to try to bring himself into compliance throughout the process. Mr. Hixenbaugh stated he understood Mr. Piper's comment of this taking him by surprise but that was not true, because this went back to 2010 when these promises were made and all of the conversations, correspondents, and opportunities for Mr. Piper to avail himself of what they typically granted everyone in the community. Mr. Hixenbaugh stated that was the opportunity to tell the council they need help or need some time. Mr. Hixenbaugh stated it was the lack of communication that denied them as a community to give Mr. Piper the break and opportunity to approve what he asked for that evening and that was unfortunate, but what's done was done. Mr. Hixenbaugh stated the sad reality was there were too many code enforcement violations and too many conditions that had not been complied with and as much as Mr. Hixenbaugh as an individual would have liked to give Mr. Piper and the perspective buyers of the property, as a representative of the community he could not in good conscience at that time allow for that. Mr. Hixenbaugh stated he would legitimately be open to Mr. Piper or a new buyer coming forward to the council, start fresh, and make a set of promises to the community they are sure they could keep and also address the problems that already took place in the neighborhood. Mr. Hixenbaugh stated he would be very open to the consideration of that and believed every councilmember would listen to that with an open mind, but it would have to be a real commitment to not having the business model have ripple effects out into their neighborhood and to the larger community that cause people who have invested in their homes to be concerned. Mr. Hixenbaugh stated that would not be fair to them and what caused him a great deal of pause was that anyone who knew that area knew that had been an industrial stretch and he did not think there would be a realistic possibility of someone building a home on that sight. Mr. Hixenbaugh stated even though they did not go through the list of manufacturing uses currently zoned, better be careful what they asked for because if someone else were to pick up property and operated it as a manufacturing concern, they could be trading one set of problems for another. Mr. Hixenbaugh stated they should take pause before considering what they would do that evening. Mr. Hixenbaugh stated because of that element of promise to the community and because of despite Mr. Piper's good faith actions and the desire on the part of another person to step in and live his dream operating there, it was too late. Mr. Hixenbaugh stated he would reluctantly support the ordinance as drafted, but much like Mr. Compton, he would also be open to any thoughts and suggestions the council had.

Question was called for at 8:58PM for **PROPOSED ORDINANCE NO. 2021-09**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. Thus, it becomes **ORDINANCE NO. 5737.**

NEW BUSINESS

Mr. Mammolenti made an announcement that due to a conflict of schedule, the speaker could not attend the monthly neighborhood watch meeting for the Twin Branch area originally set to take place Wednesday, February 17th. Mr. Mammolenti confirmed there would not be a neighborhood watch meeting on that date, but they would have a meeting scheduled for March 17th at 7PM. Mr. Mammolenti stated they had a speaker confirmed and would announce that at a later time.

ADJOURNMENT 8:59PM

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

Gregg A. Hixenbaugh /s/
Gregg A. Hixenbaugh, President



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

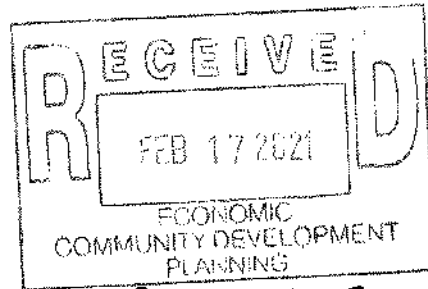
RECEIVED
BUILDING - COMMUNITY DEVELOPMENT - PLANNING
DEBORAH S. BLOCK, MMC

February 17, 2021

FEB 26 2021

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

CITY CLERK
MISHAWAKA, IN



PET 21-02

RE: PETITION FOR PUD AMENDMENT

The undersigned City of Mishawaka Redevelopment Commission respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

See attached.

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for Business & Commercial Uses including golf course, golf maintenance, municipal wellfield and water production facilities and a regional recreational facility. The property is currently vacant agricultural land.

Petitioner(s) desire said real estate to be amended to allow for use of 8' height fence at the municipal wellfield and drinking water production facilities for enhanced public safety and security. This facility will be the primary source of drinking water for the northside of Mishawaka. This 8' height fence will have anti-climb features and will serve as a greater deterrent than a 7' height fence.

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above described parcel of land located in the City of Mishawaka.

Kenneth B. Prince, ASLA, AICP
City Planner

CONTACT PERSON:

Derek J. Spier, AICP
Senior Planner & Economic Development Specialist
City of Mishawaka
600 E. Third Street
Mishawaka, IN 46544
dspier@mishawaka.in.gov

BUILDING • COMMUNITY DEVELOPMENT • PLANNING • ECONOMIC DEVELOPMENT • HISTORIC PRESERVATION

City Hall • 600 East Third Street • Mishawaka IN • 46544-2241
Community Development • Redevelopment • Economic Development Phone: (574) 258-1609 Fax: (574) 968-6999
Planning • Historic Preservation Phone: (574) 258-1625 Fax: (574) 968-6999
E-mail: planning@mishawakacity.com and communitydevelopment@mishawakacity.com

LEGAL DESCRIPTION:

**LOT 2 OF THE JUDAY CREEK BUSINESS PARK AS RECORDED UNDER INSTRUMENT NUMBER 1811362 IN
THE OFFICE OF THE RECORDER OF ST. JOSPEH COUNTY, INDIANA.**



S-2

S-2

PET 21-02

LOCATION OF NEW JUDAY CREEK
WATER TREATMENT FACILITY

Location Map

PET 21-02

CITY OF MISHAWAKA (OWNER)

LOT 2 OF JUDAY CREEK
BUSINESS PARK - VACANT LAND

PENN PUD AMENDMENT TO ALLOW
AN 8' HIGH ANTI-CLIMB SCREENING
FENCE TO SURROUND THE NEW JUDAY
CREEK WATER TREATMENT PLANT

S-2

VETERANS PKWY

DOUGLAS RD

FEB 10 2021

CITY CLERK
MISHAWAKA, IN

1st Reading 2-15-21
2nd Reading
Passed
Failed
Continued To

PETITION 21-01

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2021-10

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

A tract of land 40 feet in width, East and West, taken off of and from the entire West side of Lot numbered Two (2) as shown on the plat of Campbell's Plat to the City of Mishawaka, recorded June 29, 1904, in the Office of the Recorder of St. Joseph County, in Plat Book 8, pages 172-173.

COMMON ADDRESS: 1333 Lincolnway East

which real estate is now classified as C-4 Automobile Oriented Commercial District shall hereafter be within and a part of that District known as C-1 General Commercial District designated in "The Zoning Ordinance of 1966" as amended.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions – The subject property consists of a vacant single-family residential structure with a detached accessory structure and is located near the Lincoln Way East and S. Byrkit Road intersection. Lincoln Way East is a highly travelled corridor providing major east-west access through the City of Mishawaka and South Bend. Adjacent land uses include single-family residences, a restaurant without drive-thru, and a convenience store with fuel pumps to the north; a tobacco retailer and a single-family residence to the east; and single-family residences to the south and west.
2. Character of Buildings – The character of the buildings in the area are predominantly commercial and single-family residential.

Proposed Ordinance No: 2021-10

Ordinance No: _____

3. The most desirable/highest and best use – Because of the property's location and existing commercial zoning, the most desirable use of the property is commercial. Although single-family residential properties are adjacent to the west and south, the high traffic volume along Lincoln Way East makes long term use of the current commercially zoned property undesirable for continued residential purposes. Furthermore, a majority of the adjacent properties are currently zoned for commercial use.
4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area as the existing C-4 Auto Oriented Commercial zoning classification permits commercial use of the property. Landscaping and screening will be required per the C-1 General Commercial District to adequately buffer the proposed use from the adjacent residential properties.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2021, at _____ o'clock ____M.

Presiding Officer
Gregg A. Hixenbaugh

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2021, at _____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2021, at _____ o'clock ____M.

David A. Wood, Mayor

STAFF REPORT

Location: Southwest Corner of Lincoln Way East & S. Byrkit Avenue -
1333 Lincoln Way East

Date: February 9, 2021

Petition: 21- 01

Prepared By: DJS

GENERAL INFORMATION

Applicant: RUDRA Twenty Six LLC / Abonmarche Consultants, Inc.

Status: Property Owner / Site Design Consultant

Request: To rezone from C-4 Auto Oriented Commercial District to C-1 General Commercial District to allow for the construction of a laundromat and commercial office

Zoning Classification: C-4 Auto Oriented Commercial

Lot Size: 0.11 acres (0.23 acres total with the adjacent applicant owned parcel to the east - 1335 Lincoln Way East)

Applicable Regulations: Section 137-300 thru 137-303 / C-1 General Commercial District & Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential (Residential), C-1 General Commercial (Residential & Restaurant / Subway), & C-4 Auto Oriented Commercial (Convenience Store with Fuel Pumps / Lucky Mart - Phillips 66)

South: R-1 Single Family Residential (Residential) & C-1 General Commercial (Residential)

East: C-1 General Commercial District (Tobacco Store / Low Bob's & Residential)

West: R-1 Single Family Residential (Residential)

Thoroughfare: Lincoln Way East & S. Byrkit Avenue

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and will be connected to the site at the expense of the developer.

Comprehensive Plan: General Commercial (Retail Sales & Shopping Centers)

ANALYSIS

The Petitioner, RUDRA Twenty Six LLC, is requesting to rezone a 0.11 acre parcel located at 1333 Lincoln Way East from C-4 Auto Oriented Commercial to C-1 General Commercial to allow for the construction of a

two tenant commercial building. A laundromat and unidentified office use are proposed for the new building.

The parcel to be rezoned (Tax Parcel 016-1035-1466) is occupied by vacant two-story house with a detached garage both built in the early 1920s. In 1962, the property was rezoned to the C-4 Commercial District, but was never utilized for commercial purposes. Prior to 1986, single-family residential use was permitted in many of the city's commercial districts. The property was acquired by the Petitioner in November 2020. An adjacent 0.12 acre parcel at the corner of Lincoln Way East and S. Byrkit Avenue (1335 Lincoln Way East / Tax Parcel 016-1035-1467) was purchased by the Petitioner in May 2020. This property is currently zoned C-1 General Commercial and includes a vacant 2,400 sq. ft. commercial building originally constructed in 1965. The building was most recently occupied by Liberty Tax Service. With the proposed redevelopment of both properties, all existing improvements will be razed.

Although a down zoning is not required for the proposed use, Planning Staff recommended the property be rezoned to a less intensive commercial district to omit automobile-related uses, including but not limited to, automobile sales/service and car washes. Rezoning to the C-1 District will also result in same zoning classification for each of the Petitioner-owned parcels.

Per the preliminary site plan submitted with the rezoning petition, the Petitioner is proposing to construct a one-story 2,000 sq. ft. commercial building, an eight (8) space parking lot, and other required infrastructure (access drives, stormwater drainage system, landscaping, etc.). Access to the new building is proposed via a single drive from S. Byrkit Avenue. Uncontrolled access along the entire Lincoln Way East and S. Byrkit Avenue frontage is currently permitted for the existing commercial building. A single point of access, as proposed, will provide a safer and more efficient means of ingress/egress. Landscaping and screening shall comply with the commercial landscaping and C-1 General Commercial District requirements.

The preliminary site plan shows the intent to comply with the required height, area and developmental regulations for the C-1 General Commercial District. If any variances from these regulations are required, the Board of Zoning Appeals shall be petitioned when the final site plan is submitted.

It should be noted that the site plan includes an additional 500 sq. ft. of building area which is currently not feasible due to the size limitations of the property and the required number of off-street parking spaces. Parking spaces are required at a rate of one (1) space per 1,000 sq. ft. of gross floor area. Thus for a 2,000 sq. ft. building, a total of eight (8) off-street parking spaces must be provided. Staff would consider supporting a developmental variance for a reduction in parking dependent on the anticipated parking demand for the future tenant mix.

With this petition, the property owner is only seeking to rezone one of the two parcels proposed for redevelopment. If approved, a detailed final site plan shall be submitted for Staff review and Plan Commission approval prior to construction. The final site plan shall address storm drainage, grading, utilities, landscaping, soil erosion control, and all other required improvements pertinent to the proposed development.

Since the property is currently zoned for commercial use and located along the highly travelled Lincoln Way East corridor, Planning Staff supports the request for rezoning. The proposed two tenant commercial building is not out of character, and with the required landscaping and screening, is compatible with the existing adjacent land uses. The proposed use is also consistent with the historical uses and recommended use per the comprehensive plan.

The Building, Fire, Electric, and Water Departments have reviewed and approved the rezoning request providing no additional comments.

The Engineering Department had no comments related to the rezoning petition but provided the following comments to be addressed with the final site plan:

1. Remove the proposed on-street parking spots as it appears the parking space requirement can be met on-site.
2. Provide sidewalk connectivity to the site from Lincoln Way East and S. Byrkit Avenue.

3. Stormwater management shall be handled on site for a 100 year, 24 hour storm event.
4. Utilize S. Byrkit Avenue sanitary sewer lateral and abandon the Lincoln Way East lateral.

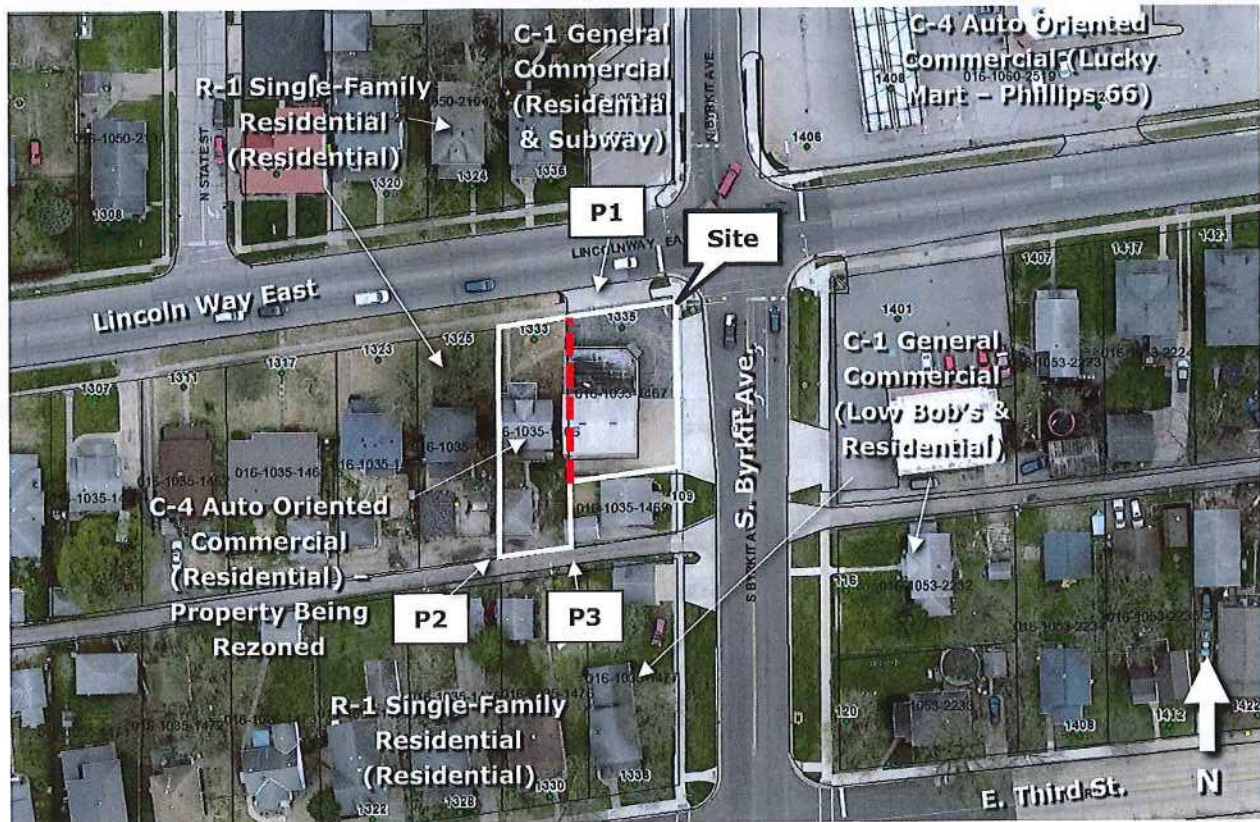
RECOMMENDATION

Staff recommends in **favor** of rezoning Petition 21-01 to rezone a 0.11 acre parcel at 1333 Lincoln Way East from C-4 Auto Oriented Commercial to the C-1 General Commercial to allow for the construction of a two tenant commercial building. This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject property consists of a vacant single-family residential structure with a detached accessory structure and is located near the Lincoln Way East and S. Byrkit Road intersection. Lincoln Way East is a highly travelled corridor providing major east-west access through the City of Mishawaka and South Bend. Adjacent land uses include single-family residences, a restaurant without drive-thru, and a convenience store with fuel pumps to the north; a tobacco retailer and a single-family residence to the east; and single-family residences to the south and west.
2. Character of Buildings – The character of the buildings in the area are predominantly commercial and single-family residential.
3. The most desirable/highest and best use – Because of the property's location and existing commercial zoning, the most desirable use of the property is commercial. Although single-family residential properties are adjacent to the west and south, the high traffic volume along Lincoln Way East makes long term use of the current commercially zoned property undesirable for continued residential purposes. Furthermore, a majority of the adjacent properties are currently zoned for commercial use.
4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area as the existing C-4 Auto Oriented Commercial zoning classification permits commercial use of the property. Landscaping and screening will be required per the C-1 General Commercial District to adequately buffer the proposed use from the adjacent residential properties.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs, Petition, Preliminary (Feasibility – Option C) Site Plan, Location Map



Aerial Photograph

Existing Single Family Residence (1333 Lincoln Way East) & Adjacent Vacant Commercial Building (1335 Lincoln Way East) – Both Owned by the Petitioner



P1. Looking southerly toward the site from Lincoln Way East.



P2. Looking northeasterly toward the existing house and detached garage from the alley to the south.



P3. Looking northerly toward the existing house and detached garage from the alley to the south.

January 22, 2021

Honorable Members of the Common Council
City of Mishawaka, Indiana,
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RECEIVED
DEBORAH S. BLOCK, MMC

JAN 27 2021

CITY CLERK
MISHAWAKA, IN

RE: PETITION TO REZONE

The undersigned **RUDRA Twenty Six LLC** respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

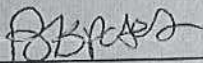
Legal Description Attached

Petitioner owns one hundred (100%) percent of the above described parcel of land which carries a zoning classification of **C-4 Auto-Oriented Commercial District**. Said property is currently in use as a residential property.

Petitioner desires said real estate to be rezoned to **C-1 General Commercial District**.

Petitioner further states that they intend to utilize said land for:
Construction of a laundromat and commercial office use.

Wherefore, the petitioner prays and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.



Signature of Property Owner

Signature of Property Owner

BHARATKUMAR-K. PATEL

Printed Name

Printed Name

CONTACT PERSON:

Michael J Huber, Abonmarche Consultants
315 W. Jefferson Blvd.
South Bend, IN 46601
574.347.4610
mhuber@abonamrche.com



1333 E LINCOLNWAY AVE
LEGAL DESCRIPTION

A tract of land 40 feet in width, East and West, taken off of and from the entire West side of Lot numbered Two(2) as shown on the plat of Campbell's Plat to the City of Mishawaka, recorded June 29, 1904, in the Office of the Recorder of St. Joseph County, Indiana, in Plat Book 8, pages 172-173.

IN 933 - LINCOLN WAY

40'

60'

10' PARKING SETBACK

25' BUILDING SETBACK

RETAIL AND
OFFICE SPACE

2,000 SQ.FT.
SINGLE STORY

5' SIDE YARD PARKING & BUILDING SETBACK

10' SIDE YARD SETBACK

10' REAR YARD SETBACK

5' PARKING SETBACK

25' BUILDING SETBACK

10' PARKING SETBACK

POSSIBLE
PARKING
SPACE

43'

28'

POSSIBLE
PARKING
SPACE

BYRKIT AVENUE

016-1035-1469

ALLEY

RECEIVED
JAN 20 2021

ECONOMIC
COMMUNITY DEVELOPMENT

NOTE:
THIS PLAN IS PROVIDE FOR CONCEPTUAL PURPOSES
ONLY. THIS PLAN HAS BEEN PREPARED WITHOUT THE
USE OF A SURVEY AND SHALL NOT BE CONSIDERED
ACCURATE UNTIL A SURVEY IS PROVIDED.

BILITY PLAN - OPTION C

= 20'-0"



NORTH

ZONING ANALYSIS (MISHAWAKA, INDIANA)

ZONING DISTRICT: C1 – COMMERCIAL DISTRICT
PROPERTY TO THE SOUTH C1

SETBACKS:

FRONT YARD & BUILDING	25 FT
SIDE YARD & BUILDING	
INTERIOR	5 FT
CORNER	25 FT
REAR YARD & BUILDING	10 FT (10% OF LOT)

FLOOR AREA RATIO:

MAX. REQUIRED	1.2
PROPOSED	0.25 (SITE – .23 ACRES / 10,019 SF)

MAX. BUILDING HEIGHT: 48 FT (3 STORIES)

PARKING: 4 SPACES PER 1,000 SF
180 SF MIN. (9' X 20')

SETBACK: 5' TYP.
10' AGAINST PUBLIC ROW

BUILDING CODE REVIEW (2014 INDIANA BUILDING CODE)

DESCRIPTION:	1 STORY RETAIL + PROFESSIONAL OFFICE
CLASSIFICATION:	USE GROUP B - BUSINESS
CONST. TYPE:	TYPE V-B NO AUTO SPRINKLER SYSTEM

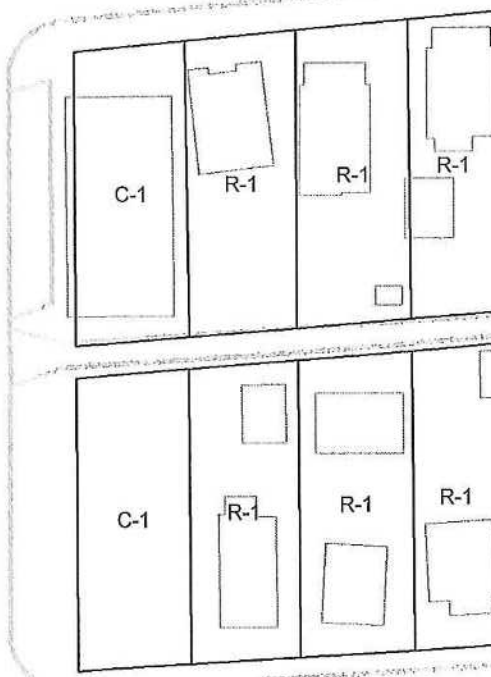
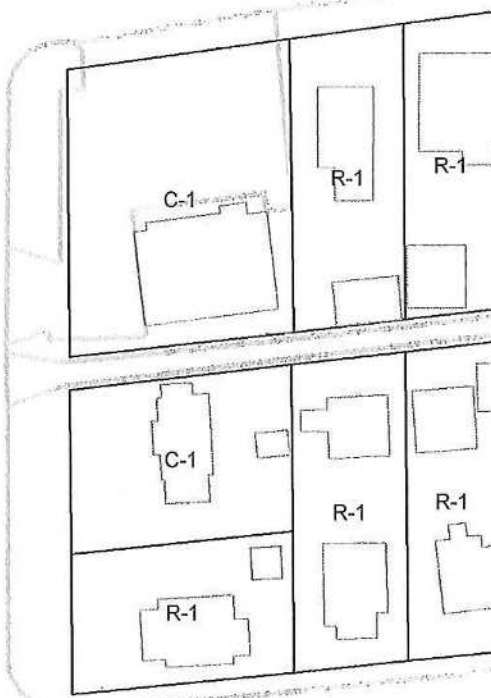
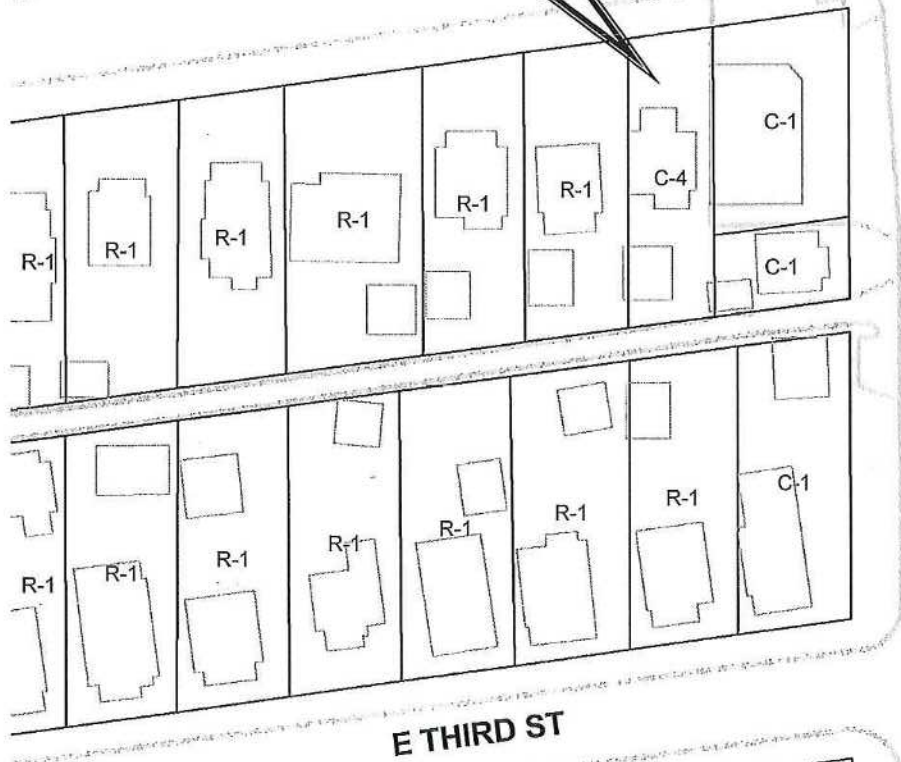
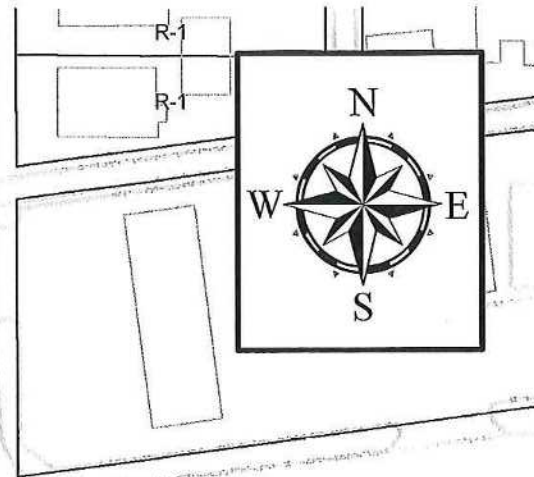
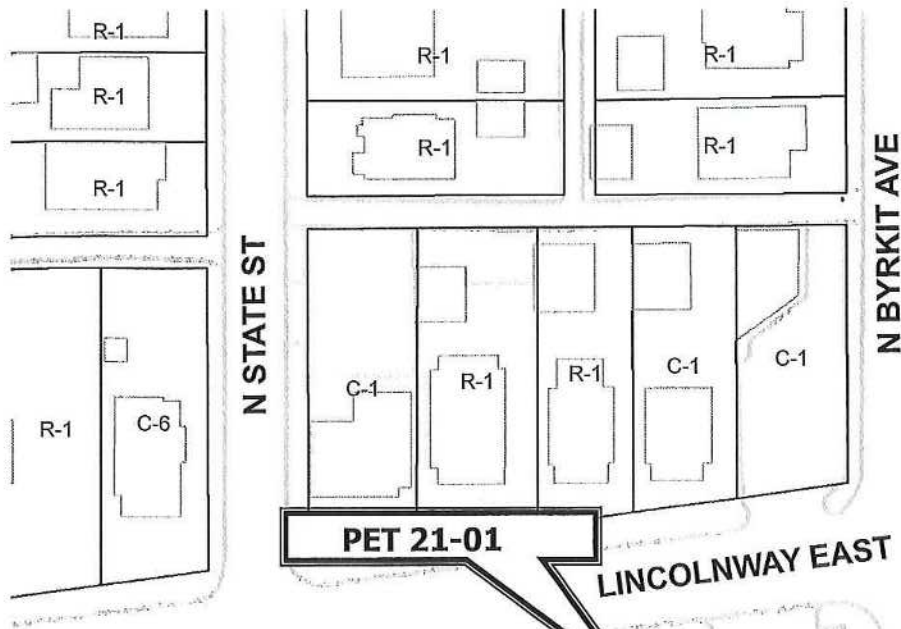
BUILDING AREA

ALLOWED:	9,000 SF
PROPOSED:	2,500 SF

**NOTE: 500 ADDITIONAL
SQ. FT. POSSIBLE IF
TWO OFF-SITE
PARKING SPACES
ALLOWED ON BYRKIT
STREET**

**DUMPSTER
ENCLOSURE**





Location Map

PET 21-01

RUDRA TWENTY SIX LLC (OWNERS)

1333 LINCOLNWAY EAST

REZONE FROM
C-4 AUTOMOBILE ORIENTED
COMMERCIAL DISTRICT TO
C-1 GENERAL COMMERCIAL
DISTRICT

1st Reading 2-15-21
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH'S BLOCK, MMC

FEB 12 2021

CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2021-11

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING THE
MISHAWAKA REDEVELOPMENT AUTHORITY

WHEREAS, Indiana Code 36-7-14.5 (the "Act") authorizes the Common Council (the "Common Council") of the City of Mishawaka, Indiana (the "City") to create a redevelopment authority as a separate body corporate and politic and as an instrumentality of the City to exercise any power granted under the Act; and

WHEREAS, the Common Council has previously enacted an ordinance establishing a department of redevelopment pursuant to Indiana Code 36-7-14, governed by the Mishawaka Redevelopment Commission (the "Redevelopment Commission"), to afford maximum opportunity for rehabilitation, redevelopment or economic development of areas within the Mishawaka Redevelopment District, the boundaries of which are coterminous with the City; and

WHEREAS, the Common Council now finds that it will be in the best interests of the City to create an instrumentality of the City under the Act as a separate body corporate and politic to finance local public improvements for lease to the Redevelopment Commission.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Mishawaka, Indiana that:

1. Creation. The Common Council hereby creates a redevelopment authority under the Act, to be known as the Mishawaka Redevelopment Authority (the "Redevelopment Authority"), as a separate body corporate and politic and as an instrumentality of the City, which is subject to the same laws, rules and ordinances of a general nature that apply to all other authorities and departments of the City, including an audit by the Indiana State Board of Accounts under Indiana Code 5-11, the public meetings law under Indiana Code 5-14-1.5, and the public records law under Indiana Code 5-14-3.

2. Purposes. The Authority is organized for the following purposes, as provided under Section 11 of the Act:

a. financing, constructing, and leasing local public improvements to the Redevelopment Commission;

b. financing and constructing additional improvements to local public improvements owned by the Redevelopment Authority and leasing them to the Redevelopment Commission;

c. acquiring all or a portion of one or more local public improvements from the Redevelopment Commission by purchase or lease and leasing these local public improvements back to the Redevelopment Commission, with any additional improvements

that may be made to them;

d. acquiring all or a portion of one or more local public improvements from the Redevelopment Commission by purchase or lease to fund or refund indebtedness incurred on account of those local public improvements to enable the Redevelopment Commission to make a savings in debt service or lease rental obligations or to obtain relief from covenants that the Redevelopment Commission considers to be unduly burdensome; and

e. any other purposes permitted by the Act, including the issuance of bonds to finance local public improvements.

3. Board of Directors. The Authority shall be governed by a board (the "Board") consisting of three (3) members, each of whom shall be a resident of the City appointed by the Mayor of the City. Each member is entitled to serve a three (3) year term and may be reappointed to subsequent terms. A Board member may not receive a salary, and no profit or money of the Authority inures to the benefit of a Board member.

4. Meetings. Each year, the Board shall hold an annual organizational meeting to elect a president, vice president, and secretary-treasurer. These officers serve from the date of their election and until their successors are elected and qualified. A majority of the members constitutes a quorum. Special meetings may be called by the president of the Board or any two (2) members of the Board.

5. Reports. Before April 1 of each year, the secretary-treasurer shall report annually to the Board. By April 15th of each year, the Board shall submit a report to the Common Council of the City and the Indiana Department of Local Government Finance in the form and manner required under the Act.

6. Duration; Effective Date. This Ordinance shall be in full force and effect, until its repeal by ordinance, from and after its adoption by the Common Council and approval by the Mayor of the City in the manner provided by law.

PASSED by the Common Council of the City of Mishawaka, Indiana on this day of February, 2021, at o'clock, .m.

Gregg A. Hixenbaugh
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC
City Clerk

PRESENTED BY ME, to the Mayor on this ____ day of February, 2021, at _____ o'clock,
____.m.

Deborah S. Block, IAMC, MMC
City Clerk

APPROVED BY ME this ____ day of February, 2021, at _____ o'clock, ____m.

David A. Wood
Mayor

1st Reading 1-18-21
2nd Reading
Passed
Failed
Continued To

PETITION 20-25

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2021-02

ORDINANCE NO. _____

RECEIVED
DEBORAH S. BLOCK, MMC
JAN 14 2020
CITY CLERK
MISHAWAKA, IN

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 4 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 7; THENCE SOUTH 89°57'01" EAST, A DISTANCE OF 80 FEET TO AN IRON STAKE ON THE EAST RIGHT-OF-WAY LINE OF BITTERSWEET ROAD; THENCE NORTH 00°04'11" EAST ALONG THE EAST LINE OF SAID BITTERSWEET ROAD, A DISTANCE OF 271.45 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING NORTH 00°04'11" EAST ALONG THE EAST LINE OF SAID BITTERSWEET ROAD, A DISTANCE OF 195.66 FEET TO A POINT ON THE SOUTHERLY LINE OF VISTULA ROAD; THENCE NORTH 69°50'11" EAST ALONG THE SOUTHERLY LINE OF SAID VISTULA ROAD, A DISTANCE OF 191.84 FEET; THENCE SOUTH 00°04'11" WEST, A DISTANCE OF 261.95 FEET; THENCE NORTH 89°57'01" WEST, A DISTANCE OF 180.00 FEET TO THE POINT OF BEGINNING. CONTAINING 0.95 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

COMMON ADDRESS: 520 Bittersweet Road

which real estate is now classified as S-2 Planned Unit Development District shall hereafter be amended to allow an existing multi-tenant commercial building to be partially redeveloped for a proposed convenience store with fuel pumps subject to the following conditions:

1. Permitted uses shall be amended to include a convenience store with fuel pumps. C-2 Shopping Center Commercial uses shall continue to be permitted.
2. A minimum of twenty-four (24) parking spaces shall be provided.

Proposed Ordinance No: 2021-02

Ordinance No: _____

3. A minimum 15' parking setback shall be provided along Bittersweet Road.
4. A 5' high steel or aluminum picket fence with an adjacent 36" minimum height solid hedgerow shall be provided along the east property line.
5. Freestanding off-premise signs shall not be permitted.
6. Except as noted above, the site shall comply with all other C-10 Filling Station/Car Wash area, height, and development regulations.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions – The property is currently developed with a 7,108 sq. ft. multi-tenant commercial building subject to the C-2 Shopping Center Commercial uses. Adjacent uses include a medical clinic to the north, an apartment complex to the east and south, and single-family houses and a church/school to the west. The Bittersweet Road corridor includes many commercial buildings and uses south of the St. Joseph River.
2. Character of Buildings in Area – The character of the buildings along the Bittersweet Road corridor vary and include single-family houses, single and multi-tenant commercial/retail buildings, a fueling station, a car wash, and a multi-family residential apartment complex.
3. The Most Desirable/Highest and Best Use – Due to the property's location along a primarily commercial corridor, the most desirable use of the property is for continued commercial use. The proposed use will be compatible with the existing adjacent land uses.
4. Conservation of Property Values – The proposed zoning will not be injurious to property values in the surrounding area. The property is currently zoned for C-2 Shopping Center commercial uses.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for medium density residential development as currently exists to the east and south. The presence of existing commercial development along Bittersweet Road has profoundly changed the character of the area since the early 1990's.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2021, at _____ o'clock ____M.

Presiding Officer

Proposed Ordinance No: 2021-02

Ordinance No: _____

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2021,
at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2021, at
_____ o'clock _____.M.

David A. Wood, Mayor

STAFF REPORT

Location: 520 Bittersweet Road – SW Corner of Bittersweet Rd. & Vistula Rd. Date: January 12, 2021

Petition: 20- 25

Prepared By: DJS

GENERAL INFORMATION

Applicant: Family Video Movie Club Inc. / Danch, Harner & Associates, Inc.

Status: Property Owner / Site Design Consultant

Request: Amend part of the Bercado Planned Unit Development (PUD) to allow a convenience store with fuel pumps, from the required C-2 Commercial District development standards to the C-10 Commercial Development standards, and to allow a reduction in the required number of parking spaces for the existing building

Zoning Classification: S-2 Planned Unit Development (Permitted Uses on the portion of the PUD to be amended include C-2 shopping center commercial uses subject to the C-2 development regulations)

Lot Size: 0.95 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Medical Clinic / Beacon Medical Group Schwartz-Wiekamp)
South: S-2 Planned Unit Development (Multi-Family Residential / Reflections Apartment Complex)
East: S-2 Planned Unit Development (Multi-Family Residential / Reflections Apartment Complex)
West: R-1 Single Family Residential (Residential & Church and School / Queen of Peace)

Thoroughfare: Bittersweet Road & Vistula Road

School District: Penn-Harris-Madison School Corporation

Township: Penn

Public Utilities: All utilities are available and currently serve the site.

Comprehensive Plan: Medium Density Residential

ANALYSIS

The petitioner, Family Video Movie Club Inc., is requesting to amend a part of the Bercado Planned Unit Development to allow an existing multi-tenant commercial building to be partially redeveloped for a proposed convenience store with fuel pumps. The request also proposes the C-10 Filling Station / Car

Wash development regulations be applicable except for the parking requirements. The C-10 District is the only zoning classification that permits filling stations. After review of the preliminary site plan, Staff is requesting that other development conditions be placed on the property. These conditions have been included in the staff recommendation.

The property, located at the southeast corner of Bittersweet Road and Vistula Road, is bound by a medical clinic to the north, a multi-family residential apartment complex to the east and south, and single family houses and a church/school to the west.

The current PUD regulations applicable to the property, which were approved in 1991 (Petition 91-19/Ord. 3495), permit only C-2 Shopping Center Commercial District uses subject to the C-2 District development regulations. The PUD amendment will allow the proposed convenience store with fuels pumps in addition to the previously approved uses.

The property is developed with a multi-tenant one-story commercial building. The northern part of the building is currently vacant and proposed to be occupied by a convenience store with fuel pumps. The vacant tenant space was formerly a Family Video. The southern part of the building is currently occupied with a Little Caesar's carry-out restaurant.

Per the preliminary site plan submitted with the PUD amendment, the existing improvements on the property will remain largely unchanged except for the expansion of the parking area to accommodate the proposed four (4) fuel pumps and canopy. The increase in pavement may require additional stormwater storage be provided on-site.

Access to the site will be maintained as is with one access from Bittersweet Road via a private drive (Honeysuckle Lane) to the south and one access to Vistula Road to the north. The private drive also provides a common access to the adjacent Reflections Apartment complex.

Based on 5.5 parking spaces per 1,000 sq. ft. of gross floor area, which is the applicable ratio for the C-10 District, a total of thirty-nine (39) parking spaces are required for the 7,108 sq. ft. building. The petitioner is requesting a reduction from the current forty-four (44) parking spaces to twenty-four (24) parking spaces. An existing row of parking along Bittersweet Road is proposed to be removed to accommodate the fuel pumps and canopy. The parking area will also be expanded approximately 12.5' to the west to provide adequate space for vehicular circulation through the property and to allow access to the fuel pumps.

The C-10 development regulations require a 10' minimum parking setback from the public right-of-way. Planning Staff requested a minimum 15' parking setback be maintained along Bittersweet Road to allow adequate space for the required landscaping. A 15' setback would also align with the existing pavement setbacks for other commercial properties on the east side of Bittersweet Road to the south (PNC Bank & Martin's - Bittersweet Plaza). The current setback for the existing parking area is approximately 29'. The preliminary site plan shows a parking setback of 16.9'.

The canopy above the fuel pumps is required to be setback a minimum of 20' from any exterior lot line and shall not exceed 35' in height. The preliminary site plan shows the canopy will be setback approximately 27' from Bittersweet Road. The height is not indicated, but a note is included on the plan that states it shall not exceed 35' in height.

The landscaping, conceptually shown, shall comply with the commercial landscaping and screening requirements. Due to the expansion of the parking lot, it appears a minimum of six (6) mature deciduous overstory trees along Bittersweet Road will have to be removed. New trees compliant with the required number and spacing must be planted to replace any removed trees. A 36" minimum height (18" at planting) hedgerow shall also be provided along both Bittersweet Road and Vistula Road. Hedgerows along both roads are shown on the preliminary site plan. A 5' high steel or aluminum picket fence with an adjacent 36" minimum height (18" at planting) hedgerow shall also be provided along the east property line behind the building to screen the adjacent apartment complex. A more detailed landscape plan shall be submitted with the final site plan, and is subject to review and approval by the Planning Staff.

Similar to when the prior Planned Unit Development amendment was approved, the petitioner is only proposing to establish, or in this case, amend the permitted uses and basic development requirements of the planned unit development. If approved, a detailed final site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

All pertinent City Departments have reviewed and approved the PUD amendment request.

The Engineering Department provided the following comments that shall be addressed with the final site plan:

1. If any food will be prepared or served in the convenience store, a grease interceptor shall be required. (750 gallon minimum)
2. Assuming the existing drainage system is infiltration, measures shall be considered to prevent fuel spills from entering the system and contaminating soils.

The Building Department commented that permit(s) will be required.

The Fire Department commented that they should be informed when the project starts prior to installation of the underground fuel tanks.

RECOMMENDATION

Staff recommends **approval** of Petition 20-25 to amend part of the Bercado Planned Unit Development (PUD) to allow a convenience store with fuel pumps, from the required C-2 Commercial District development standards to the C-10 Commercial Development standards, and to allow a reduction in the required number of parking spaces for the existing building subject to the following conditions:

1. Permitted uses shall be amended to include a convenience store with fuel pumps. C-2 Shopping Center Commercial uses shall continue to be permitted.
2. A minimum of twenty-four (24) parking spaces shall be provided.
3. A minimum 15' parking setback shall be provided along Bittersweet Road.
4. A 5' high steel or aluminum picket fence with an adjacent 36" minimum height solid hedgerow shall be provided along the east property line.
5. Freestanding off-premise signs shall not be permitted.
6. Except as noted above, the site shall comply with all other C-10 Filling Station / Car Wash area, height, and development regulations.

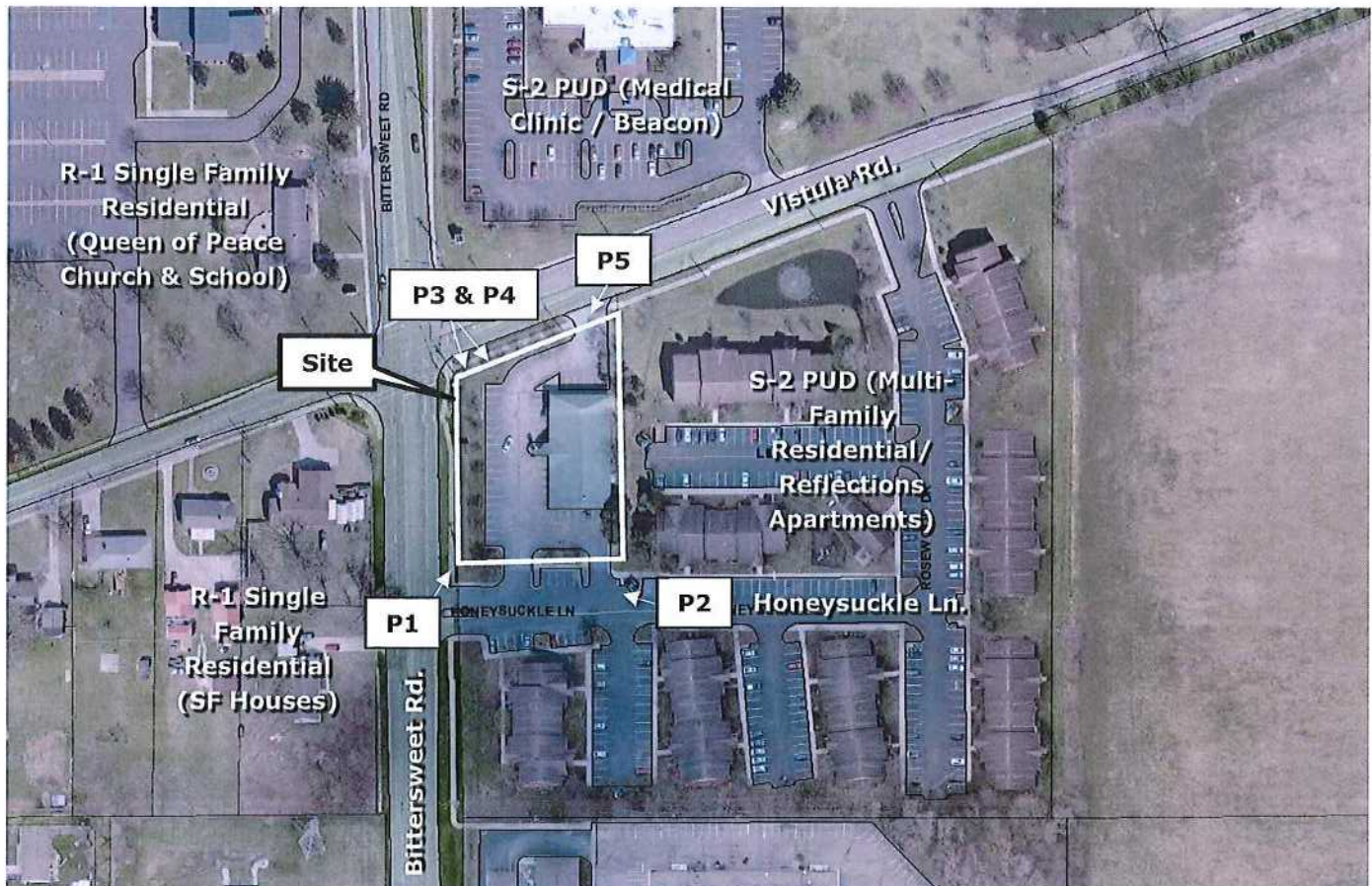
The recommendation is based on the following findings of fact:

1. Existing Conditions – The property is currently developed with a 7,108 sq. ft. multi-tenant commercial building subject to the C-2 Shopping Center Commercial uses. Adjacent uses include a medical clinic to the north, an apartment complex to the east and south, and single family houses and a church/school to the west. The Bittersweet Road corridor includes many commercial buildings and uses south of the St. Joseph River.
2. Character of Buildings in Area – The character of the buildings along the Bittersweet Road corridor vary and include single-family houses, single and multi-tenant commercial/retail buildings, a fueling station, a car wash, and a multi-family residential apartment complex.
3. The Most Desirable/Highest and Best Use – Due to the property's location along a primarily commercial corridor, the most desirable use of the property is for continued commercial use. The proposed use will be compatible with the existing adjacent land uses.
4. Conservation of Property Values – The proposed zoning will not be injurious to property values in the surrounding area. The property is currently zoned for C-2 Shopping Center commercial uses.

5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for medium density residential development as currently exists to the east and south. The presence of existing commercial development along Bittersweet Road has profoundly changed the character of the area since the early 1990's.

ATTACHMENTS

Photographs, Petition, Amended Preliminary PUD Plan, Location Map



Aerial Photograph
Existing Multi-Tenant Commercial Building – 520 Bittersweet Road
Part of the Bercado Planned Unit Development



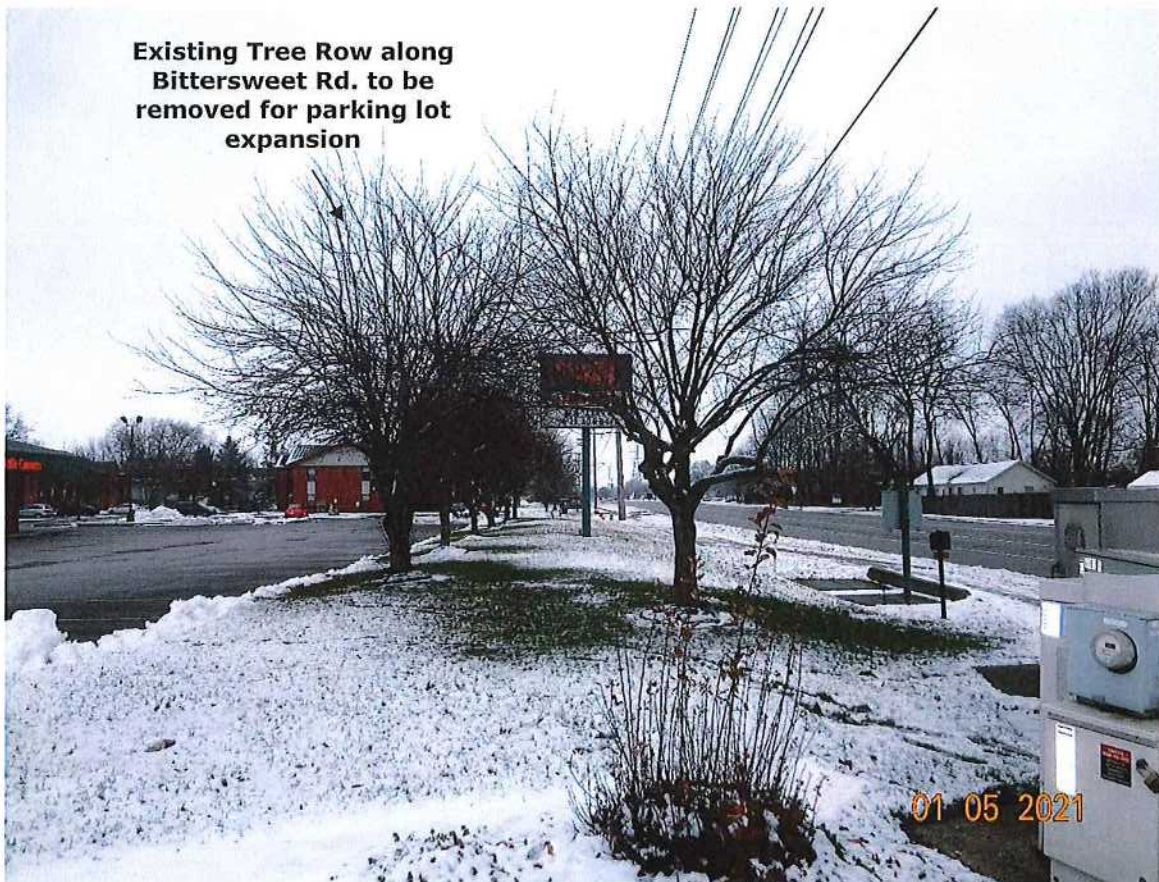
P1. Looking northeasterly toward the property from the Bittersweet Road & Honeysuckle Lane intersection.



P2. Looking westerly along the existing access drive (Honeysuckle Ln) to the south.

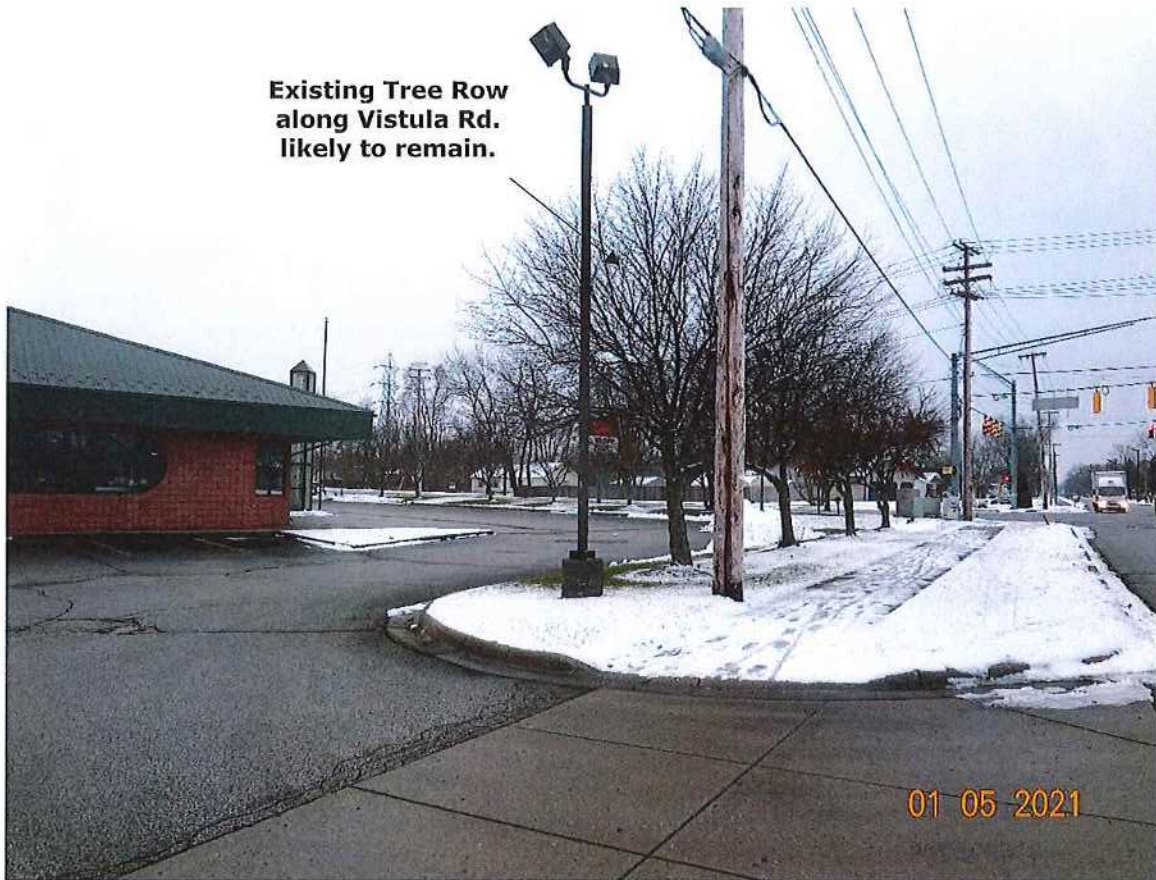


P3. Looking southeasterly toward the property from Bittersweet Road & Vistula Road intersection.



Existing Tree Row along Bittersweet Rd. to be removed for parking lot expansion

P4. Looking southerly from the northwest corner of the property.



**Existing Tree Row
along Vistula Rd.
likely to remain.**

P5. Looking southwesterly toward the property from the existing access point along Vistula Road.

RECEIVED
DEBORAH S. BLOCK, MMC

DEC 30 2020

PET 20-25

DATE: DECEMBER 23, 2020
TO THE: CITY CLERK
MISHAWAKA, IN



HONORABLE MEMBERS OF THE COMMON COUNCIL
CITY OF MISHAWAKA, INDIANA

RE: PETITION FOR AN AMENDED PUD (BERCADO FARMS PUD):

THE UNDERSIGNED FOR, FAMILY VIDEO MOVIE CLUB, INC., RESPECTFULLY SHOW THAT THEY ARE THE OWNERS OF THE FOLLOWING DESCRIBED PROPERTY IN THE CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA:

PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 4 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 7; THENCE SOUTH 89°57'01" EAST, A DISTANCE OF 80 FEET TO AN IRON STAKE ON THE EAST RIGHT-OF-WAY LINE OF BITTERSWEET ROAD; THENCE NORTH 00°04'11" EAST ALONG THE EAST LINE OF SAID BITTERSWEET ROAD, A DISTANCE OF 271.45 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING NORTH 00°04'11" EAST ALONG THE EAST LINE OF SAID BITTERSWEET ROAD, A DISTANCE OF 195.66 FEET TO A POINT ON THE SOUTHERLY LINE OF VISTULA ROAD; THENCE NORTH 69°50'11" EAST ALONG THE SOUTHERLY LINE OF SAID VISTULA ROAD, A DISTANCE OF 191.84 FEET; THENCE SOUTH 00°04'11" WEST, A DISTANCE OF 261.95 FEET; THENCE NORTH 89°57'01" WEST, A DISTANCE OF 180.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.95 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

THE ABOVE-DESCRIBED PARCEL OF LAND IS PRESENTLY ZONED "S-2" PLANNED UNIT DEVELOPMENT DISTRICT AND CONSISTS OF AN EXISTING VACANT RETAIL STORE AND A CARRY-OUT RESTAURANT.

THE PETITIONER DESIRES TO AMEND THE EXISTING PLANNED UNIT DEVELOPMENT FOR SAID REAL ESTATE TO BE ALLOWED THE FOLLOWING:

- A. TO AMEND PUD TO ALLOW FUEL PUMPS AND CONVENIENCE STORE (C-10 COMMERCIAL USE);
- B. TO AMEND PUD TO ALLOW A REDUCTION FROM THE REQUIRED MINIMUM THIRTY-NINE (39) PARKING SPACES (I.E., 5.5 SPACES PER 1,000

SQ.FT. OF GROSS FLOOR AREA FOR C-10 COMMERCIAL USES) TO A MINMIUM OF TWENTY-FOUR (24) SPACES FOR THE EXISTING BUILDING;
C. TO AMEND THE PUD FROM THE REQUIRED C-2 ZONING CLASSIFICATION DEVELOPMENTAL STANDARDS TO THE C-10 COMMERCIAL DEVELOPMENT STANDARDS WITH THE ABOVE STATED EXCEPTIONS.

WHEREFORE, THE PETITIONER PRAYS AND RESPECTFULLY REQUEST THAT THE COMMON COUNCIL OF THE CITY OF MISHAWAKA REFER THIS MATTER TO THE MISHAWAKA CITY PLAN COMMISSION AND THAT AFTER HEARING, AN APPROPRIATE ORDINANCE BE ENACTED THE REZONING THE ABOVE DESCRIBED

CONTACT PERSON:

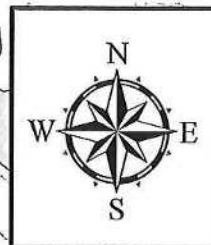
DANCH, HARNER & ASSOCIATES, INC.
1643 COMMERCE DRIVE
SOUTH BEND, INDIANA 46628
(574) 234-4003

OWNERS SIGNATURE OR THEIR ATTORNEY:

KA Morgan

FOR FAMILY VIDEO MOVIE CLUB, INC.
1022 ADAMS STREET
SPRINGFIELD IL. 62703-1028

PHONE NUMBER 847. 904. 9000



RIVERSEDGE DR

BITTERSWEET RD

PET 20-25

VISTULA RD

LILAC DR

ROSEWOOD DR

HONEYSUCKLE LN

Location Map

PET 20-25

FAMILY VIDEO MOVIE CLUB INC
520 BITTERSWEET
SE CORNER OF
BITTERSWEET AND VISTULA

PUD AMENDMENT TO ALLOW
FUEL PUMPS AND
CONVENIENCE STORE
WITH A PARKING REDUCTION



WWW.KRIEGDEVALT.COM

February 15, 2021

George C. Lepeniotis
Direct Dial: (574) 485-2008
E-mail: glepeniotis@kdlegal.com

SENT BY EMAIL ONLY

rboston@mishawaka.in.gov
gahixenbaugh@mishawaka.in.gov

City of Mishawaka Common Council
Council Chambers – 1st Floor
600 E. Third Street
Mishawaka, IN 46544

RECEIVED
DEBORAH S. BLOCK, MMC

FEB 15 2021

CITY CLERK
MISHAWAKA, IN

Re: Proposed Ordinance #2021-02 – 520 Bittersweet Road

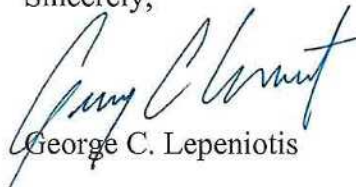
To Whom It May Concern:

I write to you today in regard to proposed Ordinance #2021-02 regarding a PUD amendment to allow fuel pumps and convenience store with parking reduction at 520 Bittersweet Road on the southeast corner of Bittersweet and Vistula. I represent the applicant and potential developer of the site into a fuel station and convenience store.

Please consider this letter my client's formal request for the second reading and hearing for the proposed PUD amendment to be added to the agenda for the March 1, 2021 meeting. We understand that per City guidelines we must have this second hearing within ninety (90) days of the date of the Planning Commission's approval which occurred on January 12, 2021.

Please acknowledge your receipt of this letter and confirmation of this request to be added to the agenda at your convenience.

Sincerely,



George C. Lepeniotis

GCL/mlk



WWW.KRIEGDEVAULT.COM

January 22, 2021

George C. Lepeniotis
Direct Dial: (574) 485-2008
E-mail: glepeniotis@kdlegal.com

SENT BY EMAIL ONLY

rboston@mishawaka.in.gov
gahixenbaugh@mishawaka.in.gov

City of Mishawaka Common Council
Council Chambers – 1st Floor
600 E. Third Street
Mishawaka, IN 46544

RECEIVED
DEBORAH S. BLOCK, MMC

JAN 25 2021

CITY CLERK
MISHAWAKA, IN

Re: Proposed Ordinance #2021-02 – 520 Bittersweet Road

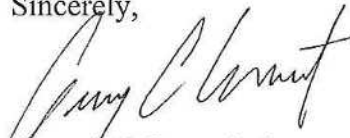
To Whom It May Concern:

I write to you today in regard to proposed Ordinance #2021-02 regarding a PUD amendment to allow fuel pumps and convenience store with parking reduction at 520 Bittersweet Road on the southeast corner of Bittersweet and Vistula. I represent the applicant and potential developer of the site into a fuel station and convenience store.

Please consider this letter my client's formal request to postpone the second reading and hearing for the proposed PUD amendment to allow us more time to properly prepare for that hearing. We understand that per City guidelines we must have the second hearing within ninety (90) days of the date of the Planning Commission's approval which occurred on January 12, 2021. I will follow up with you in writing to request a formal date for that second hearing within that time frame.

Please acknowledge your receipt of this letter and confirmation of this postponement at your convenience.

Sincerely,



George C. Lepeniotis

GCL/mlk

LEGAL DESCRIPTION:

PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 NORTH, RANGE 4 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 7; THENCE SOUTH 89°57'01" EAST, A DISTANCE OF 80 FEET TO AN IRON STAKE ON THE EAST RIGHT-OF-WAY LINE OF SAID BITTERSWEET ROAD; THENCE NORTH 0°04'11" EAST ALONG THE EAST LINE OF SAID BITTERSWEET ROAD, A DISTANCE OF 271.45 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING NORTH 0°04'11" EAST ALONG THE EAST LINE OF SAID BITTERSWEET ROAD, A DISTANCE OF 195.66 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID VISTULA ROAD; THENCE NORTH 69°50'11" FEET, THENCE SOUTH 0°04'11" WEST, A DISTANCE OF 261.95 FEET; THENCE NORTH 89°57'01" WEST, A DISTANCE OF 180.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.95 ACRES MORE OR LESS, SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD

TABULATED DATA:

- 1) ACREAGE OF PARCEL0.95 ± ACRES
- ZONING/USE: EXISTING.....S-2 PUD/COMMERCIAL RETAIL
- PROPOSED.....S-2 PUD/FUEL PUMPS & CONVENIENCE STORE
- 2) PARKING RATIO REQUIRED BY ORDINANCE:.....(35) SPACE FOR 1,000 SF
- A. C-10 COMMERCIAL DISTRICT.....39 PARKING SPACES
- TOTAL NUMBER OF SPACES REQUIRED FOR (7,108 SF).....24 PARKING SPACES (PER AMENDMENT)
- 3) PROPOSED PARCEL TO BE SERVICED BY MUNICIPAL SEWER AND WATER.
- 4) DRAINAGE WILL MEET REQUIREMENTS OF CITY OF MISHAWAKA ENGINEERING.
- 5) CONTACT: DANCH, HARNER & ASSOCIATES, INC.
- 1643 COMMERCE DRIVE
- SOUTH BEND, INDIANA 46628
- 574-234-4003
- 6) DEVELOPMENT WILL MEET REQUIREMENTS OF CITY OF MISHAWAKA ZONING ORDINANCES AND APPLICABLE PUD STANDARDS.
- 7) PROPOSED CANOPY WILL WILL BE A MAXIMUM OF 35-FT IN HEIGHT.

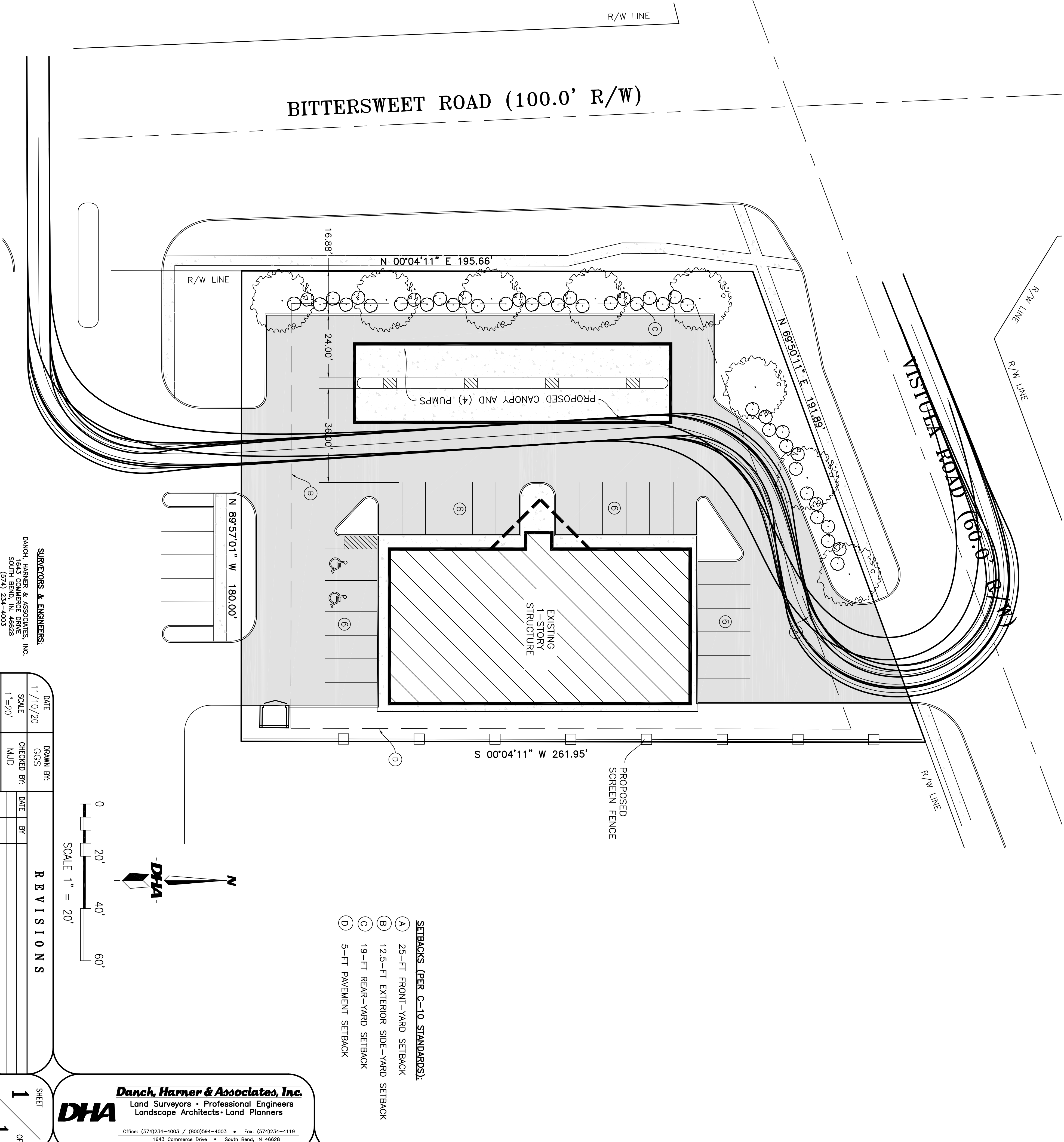
REZONING REQUEST

- 1) TO AMEND PUD TO ALLOW FUEL PUMPS AND CONVENIENCE STORE.
- 2) TO AMEND PUD FROM THE REQUIRED MINIMUM (39) PARKING SPACES TO ALLOW A MINIMUM (24) PARKING SPACES.
- 3) TO AMEND PUD FROM THE C-2 ZONING CLASSIFICATION DEVELOPMENTAL STANDARDS TO THE C-10 ZONING CLASSIFICATION DEVELOPMENTAL STANDARDS.

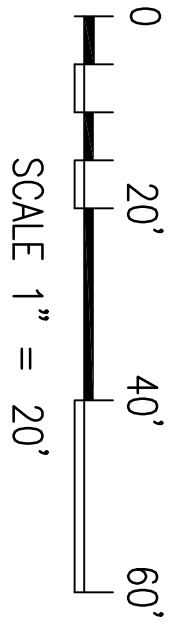
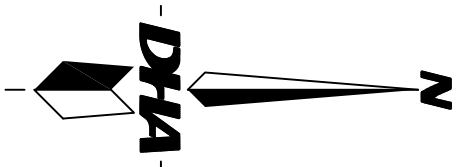


AERIAL PHOTOGRAPHY
N.A.S.

PRELIMINARY AMENDED PUD SITE PLAN
PART OF THE SOUTHEAST QUARTER OF SECTION 7 TOWNSHIP 37 NORTH, RANGE 4 EAST,
PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA



- SETBACKS (PER C-10 STANDARDS):
- A 25-FT FRONT-YARD SETBACK
 - B 12.5-FT EXTERIOR SIDE-YARD SETBACK
 - C 19-FT REAR-YARD SETBACK
 - D 5-FT PAVEMENT SETBACK



REVISIONS

DATE	DRAWN BY:	DATE	BY
11/10/20	GCS		
SCALE	CHECKED BY:	DATE	BY
1"=20'	MJD		
FILE #	PROJ. MGR:		
200233	MJD		

SURVEYORS & ENGINEERS:
DANCH, HARNER & ASSOCIATES, INC.
SOUTH BEND, IN 46628
(574) 234-4003
ATTN: MICHAEL DANCH



Danch, Harner & Associates, Inc.
Land Surveyors • Professional Engineers
Landscape Architects • Land Planners

Office: (574)234-4003 / (800)594-4003 • Fax: (574)234-4119
1643 Commerce Drive • South Bend, IN 46628