



AGENDA

March 20, 2023

**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): 2331 403 9608
Meeting password: YMd2qgcEW36**

**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: 23314039608@mishawaka.webex.com

1. Call to Order
2. Pledge of Allegiance lead by the Cub Scouts
3. Roll Call
4. Approval of the Minutes of the Regular Meeting of March 06, 2023
5. Petitions, Communications, Remonstrance and Memorial

A letter from the Board of Zoning Appeals regarding their recommendations from their March 14th meeting.

A letter from the City Plan Commission regarding their recommendations from their March 14th meeting.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. No. 2023-11	PUD Amendment to allow Drive-Thru Restaurant (Scooter's Coffee) - NW corner of 12 th Street/Harrison Road & Capital Avenue
P.O. No. 2023-12	Mishawaka Sewage Works Bond

8. Resolutions

R2023-04	Use Variance to allow Educational, Social & Faith Support Services in R-2 Residential Zone Property - 702 E. 12 th Street.
R2023-05	Use Variance to allow Microblading inside existing salon - 3607 Grape Road

9. Ordinances on Second Reading

P.O. No. 2023-10	Amending the Municipal Code Personnel Policies - Call to Active Military Duty (Assigned to Personnel Committee)
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10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

13. Adjournment -

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook page, <https://www.facebook.com/cityofmishawaka/> and on the Michiana Access TV Facebook page, <https://www.facebook.com/MichianaAccessTV>

If technology is needed to present, please advise the Clerk's Office by 4:00pm the Friday before the meeting by emailing: dblock@mishawaka.in.gov or calling 574-258-1616.

Council Packet Link:

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

March 6, 2023

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the New Mishawaka City Hall and via telephone on Monday, March 6, 2023 at 7:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

Members attending virtually do so by WebEx. Public that attend can participate by WebEx or observe meetings by YouTube or Facebook live. The Council meetings are also streamed live on Michiana Access on Comcast/AT&T U-verse Channel 99.

Clerk Block called the roll.

Roll Call.

Present: Mr. Hazen (P), Mr. Bellovich (P), Mr. Mammolenti (A), Mr. Banicki (P), Mr. Emmons (A), Mrs. DeMaegd (P), Mr. Compton (P), Mrs. Voelker (E), Mr. Hixenbaugh (P)
P: Present E: Electronically Participating A: Absent

Others Present: Clerk Block, Mike Trippel, Council Attorney

Minutes for the Regular Meetings of February 20, 2023 were approved as received from the Clerk's Office.

Clerk Block read the following appeals and petition by title.

Appeal No. 2023-04 Use Variance to allow Educational, Social & Faith Support Services in R-2 Residential Zoned Property – 702 E. 12th Street

Appeal No. 2023-06 Use Variance to allow Microblading inside existing salon – 3607 Grape Road

Petition No. 2023-04 PUD Amendment to allow Drive-Thru Restaurant (Scooter's Coffee) – NW corner of 12th Street/Harrison Road & Capital Avenue

Clerk Block also opened the public hearing on **VACATION V2023-01**. Pursuant to Indiana law, they moved into the public hearing on the proposed vacation.

Terry Lang, Wightman Office, spoke in favor of **VACATION V2023-01** and was representing the petitioner. Mr. Lang stated the petition before them was for a small section, triangle shaped part of Taylor Street that was never constructed. Mr. Lang stated a year ago, they had a petition

for annexation for a property located on both sides of Arthur Street and this was at the corner of Arthur and Grape Road. Mr. Lang stated that piece was what they were petitioning to vacate and it would help incorporate the area residential lots on the north side of Arthur Street and that was the reason for the petition.

The public hearing was closed on the proposed right-of-way vacation, subject to further consideration under ordinances on second reading.

Clerk Block read the proposed ordinances by title and assigned committee.

PROPOSED ORDINANCE NO. 2023-10

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA AMENDING
TITLE III, CHAPTER 34 OF THE
MISHAWAKA MUNICIPAL CODE
Amending the Municipal Code Personnel Policies – Call to Active Military Duty
(Assigned to Personnel Committee)**

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

PROPOSED ORDINANCE NO. 2023-06

**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.**

**Rezoning from I-2 Heavy Industrial & R-1 Single Family Residential to C-4 Automobile
Oriented Commercial for Auto Sale & Associated Vehicle Prep – Vacant Land SE corner
of N. Merrifield Ave. & Jefferson Blvd.**

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried. Clerk Block polled the council on the committee report.

The vote took place at 7:06PM. **Motion carried by unanimous roll call vote (summary: Yes = 6).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 7-0.

Terry Lang, Wightman Office, spoke in favor of **PROPOSED ORDINANCE NO. 2023-06** and represented the petitioner. Mr. Lang stated years ago, there was a building on the property that sold miscellaneous items there and stored them there years ago that was torn down and had been vacant for quite some time. Mr. Lang stated the petition before them was to rezone all of it to an

automobile business and associated type of uses that went along with it. Mr. Lang stated the owner of the property had the property located immediately to the north of it at the northeast corner and looked to get additional display area for vehicles and put up a future new building on the site also. Mr. Lang stated it was an expansion of an existing business in that area and it all was automobile associated along that stretch from Cedar at Jordan to this operation. Mr. Lang stated they were asking for nothing more than what was already in the neighborhood there.

Mr. Compton asked the auto shop and sales to the north owned the property as well and wanted to expand their business across the street. Mr. Lang stated that was correct.

Mrs. Voelker asked if there would be anything beyond auto sales going on there. Mr. Lang stated the use of the property would be for basically detailing vehicles they had on site and then putting them for sale which was exactly what they were doing on the property to the north. Mr. Lang stated they had expanded as much as they could and when this property became available, it was a perfect fit to stay right in the area and continue their operation there. Mrs. Voelker asked if they were talking strictly auto sales and not a body shop or repair shop. Mr. Lang stated it was going to be minor type of repair things and when they took vehicles in and detail them, minor repairs were made when necessary but they were not talking complete body repairs. Mr. Lang stated it would be minor items that would be necessary for detailing the vehicles to make them for sale.

Mr. Banicki stated to the north, they did complete auto repair for the general public pushing that type of work all over television and social media. Mr. Banicki stated if they would be doing the same type of work on the south side as they did on the north side, then they would in fact be doing complete auto repair. Mr. Lang stated they did tune ups, auto things in the light that would be necessary. Mr. Lang stated they bought and sold vehicles all of the time and when he was visiting with them, he saw vehicles coming in, getting detailed and put up for display. Mr. Lang stated it was a combination of all of the items and that was why they were asking for the auto associated uses. Mr. Banicki stated most car lots, when they bought a car that had dings and dents and things like that, they were in fact doing body type of repairs and so that could actually happen on that property as well. Mr. Lang stated as minor details, yes. Mr. Banicki stated it was not detailing. Mr. Lang stated he looked at it as detailing but he did not what it was called and was not in the auto business, but he got dings on his car before and took his other car down to the body shop and minor detailing is what he called it. Mr. Banicki stated detailing would be cleaning carpets, windows, and freshening up the inside, but when you had to grind on paint and stuff like that, that would be a little more in depth than just detailing. Mr. Lang stated he considered that detailing and would be no different than the operation at the Jordan lot where he bought his vehicle and they also brought vehicles in, traded them, detailed them, fixed dings and dents if there were any and put them up for sale. Mr. Banicki stated he believed Jordan had their own body shop on site. Mr. Lang stated they had another one for the new car stuff to the north but they also had their stuff that they did in the body building there in the southeast corner. Mr. Banicki asked if they would have oil separators and things like that. Mr. Lang stated they would be required for that and that was mandatory from the city engineering offices. Mr. Banicki stated just to the south of that were some of the nicer homes that they had been building up and that

was why they cleaned that corner to freshen it up and make it look nice. Mr. Lang stated he was preaching to the choir because that was one of the projects he did about 20 years ago so he was very familiar with it. Mr. Banicki asked if any of the close proximity neighbors had been warned that this was a possibility of coming. Mr. Lang stated this was the first hearing right here for the rezoning portion. Mr. Banicki how big the lot they were proposing was. Mr. Lang stated the property was 150 foot deep and 600 some feet long and it was the north half of the lot and it went from Merrifield down to the Reggio parking lot.

Mr. Hazen asked if the parking lot was considered industrial he believed he put in there especially with the building. Mr. Lang stated the building that was there was zoned industrial and one of the lots at the far east end of this petition was zoned residential and there must have been a home there, but he did not remember homes being between that plotted building and Reggio's but there must have been one in that lot in the past. Mr. Hazen stated the east boundary was described as I-2 heavy industrial, former Reggio's restaurant. Mr. Lang stated there was a parking lot on the west side of Reggio's and the west line of the parking lot was their east line for the project.

Mr. Hixenbaugh stated he was inclined to support this and thought it was great that business was booming, he wanted to expand and make use of that corner but he worried a little bit about the owner, particularly with the four way stop there, and his personnel encouraging people to not cross at the corner but cross at the middle of Jefferson and he envisioned some problems coming of that, but that would not be a council issue that would be a Police Department issue and other departments of the city's issue. Mr. Lang stated he would inform him that he should stress to his employees and potential clients to cross at the corner. Mr. Hixenbaugh stated he knew for sure people did not necessarily cross at the corner because he had been one of those people to not cross at the corner in the past, but it was just different with the proximity there.

Mr. Hazen asked a question to Mr. Prince directly that if he remembered from the past correctly that there was a large sewer line under the concrete on this property and there was concern about some development over that line and asked if that still existed or got taken out. Ken Prince, Director of Planning and Community Development, stated he was not aware of the sewer issue but he could look quickly look at the engineering comments if there was. Mr. Prince stated it would be unusual that a sewer would be traversing a property that small and if it did it would probably go north south and then parking could go over that easement and it would just be restricting of not putting a building over it.

Question was called for at 7:19PM for **PROPOSED ORDINANCE NO. 2023-06 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5831.**

PROPOSED ORDINANCE NO. 2023-07

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.

Right-of-Way Vacation for unimproved Taylor St. at NW corner of Arthur & Grape Rd. – E. of 410 Arthur St.

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried. Clerk Block polled the council on the committee report.

The vote took place at 7:20PM. **Motion carried by unanimous roll call vote (summary: Yes = 6).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 7-0.

Terry Lang, Wightman Office, spoke in favor of PROPOSED ORDINANCE NO. 2023-07. Mr. Lang stated he had nothing additional to add, with regard to what was said on the matter near the beginning of the meeting but he did remember when Mr. Hazen was asking about the storm sewer that that was located on Merrifield Avenue father to the south of Stanley Street.

Question was called for at 7:22PM for **PROPOSED ORDINANCE NO. 2023-06 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5832.**

PROPOSED ORDINANCE NO. 2023-08

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.

PUD Amendment to expand area of previously approved permitted use for a Regional Recreational Facility – Part of Lots 2 & 4 of Juday Creek Business Park Sub

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried. Clerk Block polled the council on the committee report.

The vote took place at 7:23PM. **Motion carried by unanimous roll call vote (summary: Yes = 6).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 7-0.

Ken Prince, Director of Planning and Community Development, spoke in favor of **PROPOSED ORDINANCE NO. 2023-08**. Mr. Prince stated this was for the Mishawaka Fieldhouse project and the project was getting ready to have their final site plan approved and there were a number of incidental changes that needed to be amended to have that clean transition from what was envisioned. Mr. Prince stated he said that because when they originally acquired the project, there were three holes they were looking to reconfigure at the Juday Creek Golf Course and they added property to that so where they originally changed the zoning, the property back toward the golf course all fell under that regional recreation facility so the front portion adjacent to Veterans Parkway was needed to be added into that overall parcel. Mr. Prince stated the parcel he was talking about was now a little over 49 acres for the property and he went over the amendments that were being requested. Mr. Prince stated the first was regarding the use and they wanted to limit the use of the property only to the regional recreation facility. Mr. Prince stated the property in the front would have allowed multiple uses to occur on it and they essentially did not want the developer, without permission, to be able to divide the property and do out lots in front of it. Mr. Prince stated this was strictly meant for the development of the regional recreation facility and that was one of the protections they had as part of the development agreement and one of the commitments they made to the previous landowner that they would restrict them because they were looking for those spinoff uses to occur on the adjacent property and not on the property it was intended for, being the regional recreation facility. Mr. Prince stated the regional recreation was planned to be expanded in phases. Mr. Prince stated another amendment was the signage and they did not have the scale right for the banners so they would add banners that were permitted and in terms of the architecture, they added insulated metal panels and on a building this size, this was just an oversight on the original PUD and there was no way to build a building of this size without using a significant amount of insulated metal panels, at least not in a cost effective manner. Mr. Prince stated regarding the landscaping, one of the concerns they were hearing from the neighbors on multiple occasions was the potential impact of visibility and they thought it would make sense to have 20 foot of the required landscape buffer to provide a natural buffer between the golf course and then ultimately the views of the neighborhood subdivision by providing that no mow area. Mr. Prince stated this also, in his opinion, helped protect the drainage areas that were immediately adjacent to property providing more of a filter area for any drainage going through there. Mr. Prince noted that there may be an additional amendment that would be coming at a later date even though it was not before them that evening and they asked specifically for the developer, Card Associates Architecture, to review anything that needed to be cleared up as part of this and two of the elements that were missing with one being the building height with the limitation being 60 feet and they thought they would be at 65 feet for the overall height and they would probably ask for 70 feet in case there was an incidental change. Mr. Prince stated the other amendment would be parking and so they were proposing 720 spaces and based on the square footage on the size of the building, they would need well over 800 parking spaces to meet the ordinance requirement and they did not want them to build more parking that wasn't necessary to serve the facility so that may also come before the council. Mr. Prince was happy to answer any questions.

Mr. Hixenbaugh asked Mr. Prince if there were any other updates that he could share with them regarding the construction timeline and where they currently were with that. Mr. Prince stated they would be breaking ground in the next few months, barring the weather and they were looking to be operating between the summer and fall of 2024. Mr. Prince stated the building was huge and would go up relatively quickly.

Question was called for at 7:30PM for **PROPOSED ORDINANCE NO. 2023-08** Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5833.**

PROPOSED ORDINANCE NO. 2023-09

AN ORDINANCE AMENDING CHAPTER 34 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS “THE FIRE PREVENTION AND PROTECTION ORDINANCE” OF THE CITY OF MISHAWAKA, INDIANA.

Amending Fire Prevention & Protection Ordinance

Mr. Compton reported the Committee of Public Health & Safety recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried. Clerk Block polled the council on the committee report.

The vote took place at 7:31PM. **Motion carried by unanimous roll call vote (summary: Yes = 6).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 7-0.

Chief Bryon Woodward, Fire Chief Mishawaka Fire Department, spoke in favor of **PROPOSED ORDINANCE NO. 2023-09**. Chief Woodward stated they were certainly in favor of this ordinance and changing the Municipal Code and adding a third party service would allow them to better help their businesses, stay protected and help them to inspect the businesses. Chief Woodward stated they understood that with their further discussions previously, there soon could be some potential downstream costs that would be passed on local vendors and business owners. Chief Woodward stated one thing they discussed about, with there being some accountability to it, was that there would be audits done every year with whatever company they decided to go with and they wanted to be transparent about everything they did. Chief Woodward stated that way they would have the ability to hold whatever company they chose accountable and if they felt they were going the wrong way, they would not have to keep them along. Chief Woodward stated with the amount of businesses they had, the amount of systems they had and the lack of reporting they received, it made the job difficult and this would a lot of staff without adding any personnel. Chief Woodward thanked the council.

Mr. Hazen asked that in 6 months to a year he come back before the council and give them an update for this.

Mr. Hixenbaugh thanked Chief Woodward on the work he had done on this as well as Chief Dempler and Corporation Counsel Pat Hinkle and this was a really long and involved process and he knew he had been working on it for a long time, so they appreciated that. Mr. Hixenbaugh thanked him for that commitment to continue to look at it and have dialogue with the council as well. Mr. Hixenbaugh asked Chief Woodward to expand a little bit more on how this was not just good for businesses but really helped the efficiency for fire marshals and Chief Dempler and his group to really get their arms better around this responsibility that they had. Chief Woodward stated one thing they talked about was that businesses were supposed to supply them with their reports after they went through their inspections, which did not happen very often so at least now they would have them when they would have to have them when they walked in the door and a majority of the time that would not get produced right away. Chief Woodward stated using the UP Mall for example, there were many shops there and when you went in there an inspection would normally take 20 to 30 minutes, then you would wait an extra 45 minutes to an hour for a 17, 18, 19 year old employee trying to find a manager, having them then contacting corporate offices to have it fax or emailed down and if that were to happen at every shop there, that would take far too long. Chief Woodward stated they did what they could to now to make them mobile with their tablets to do all of the reporting and deals and now they were privy to the information before going into the store and now the inspections would be quicker. Chief Woodward stated this gave them the ability to get through the mall in a day or two days as opposed to weeks. Chief Woodward stated the other part, as Mr. Banicki said, was that it would also be better for the business owner because it took the responsibility off of them. Chief Woodward stated they had to have that inspection by the third party ever year anyway and once the third party uploaded it to the service they chose, they had access to it, the business owner no longer had to worry about it and they would not have to freak people out when going in and asking for it. Chief Woodward stated in general, this would bring a better product for everybody.

Mrs. DeMaegd stated she looked forward to seeing Chief Woodward back in the future to tell them what a great thing this was. Chief Woodward stated it would take them a couple years to get where they needed to be but he imagined in 6 months they would start to see some improvement even though it would be a slow process. Chief Woodward stated they were not planning on going anywhere any time soon, so they had time and they would make it work.

Mrs. Voelker thanked Chief Woodward for embracing technology and looking for a way to make the work of the police department more efficient and better for the community and she looked forward to seeing the results and believed that it would be great. Chief Woodward thanked Mrs. Voelker and stated this had been a lot of work, 2 years in the making, and it had been done by himself as well as Captain Dempler and Mr. Hinkle and they put in all the time and effort into it and he just said yes and never no to a good idea. Chief Woodward stated all the credit had to go to them and they were putting all of the effort and work in.

Question was called for at 7:38PM for **PROPOSED ORDINANCE NO. 2023-09** Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5834.**

ADJOURNMENT 7:39PM

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

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
Kenneth B. Prince, ASLA, AICP, Executive Director

March 15, 2023

Deborah S. Block, IAMC, MMC

MAR 16 2023

City Clerk
Mishawaka, IN

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
March 14, 2023, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above date at which time the following Use Variance was considered:

APPEAL #23-04 An appeal submitted by Vineyard Church Inc requesting a Use Variance for **702 E Twelfth St**, Mishawaka, Indiana, to allow provide educational, social and faith support services in the R-2 Two Family Residential District.

The Board, with a vote of 4-0, recommended approval.

APPEAL #23-06 An appeal submitted by ALC Holdings requesting a Use Variance for **3607 Grape Road**, Mishawaka, Indiana, to allow microblading as a use inside an existing salon.

The Board, with a vote of 4-0, recommended approval.

Respectfully,

Christa Hill, Senior Planner
Interim Secretary, Board of Zoning Appeals

STAFF REPORT

Location: 702 E Twelfth St

Date: March 14, 2023

Appeal: 23 04

Prepared By: CH

GENERAL INFORMATION

Applicant: The Vineyard Church

Status: Property Owner

Request: Use Variance to allow educational, social and faith support services

Zoning Classification: R-2 Two-Family Residential

Lot Size: 80' x 114' (0.21 acres)

Applicable Regulations: Section 137-42 Board of Zoning Appeals Use Variance
Section 137-187 R-2 Two-Family Residential Uses

SPECIAL INFORMATION

Area Development Pattern: North: R-2 Two-Family Residential (Barbee Creek)
South: R-2 Two-Family Residential & R-3 Multi-Family Residential
(vacant lot owned by The Vineyard Church)
East: R-1 Single Family Residential
West: R-2 Two-Family Residential (Barbee Creek)

Thoroughfare: East Twelfth Street and Michigan Avenue

School District: School City of Mishawaka

Township: Penn

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

Comprehensive Plan: Medium Density Residential (Apartment Complexes & Nursing Facilities)

ANALYSIS

The Appellants are requesting a Use Variance to provide educational, social and faith support services in the R-2 Two Family District. The property was built as a single family home at 702 E Twelfth Street. No one will be residing in the home; it will only provide services.

In November 2021, the Appellants were granted a Use Variance for a mobile medical clinic across the street at 635 W Twelfth St, the vacant lot which was the previous site of the Princess City Apartments. It was approved with a one year limit on the Use Variance, during which time, a site plan for the permanent community center could be developed.

Engineering asked how the Appellant plans to deal with parking. Planning requested a paved parking pad off the alley, when the Twelfth Street project closes the current driveway. The planned Twelfth Street project will allow on street parking, which would be available for anyone driving to visit.

Fire commented this is a change in use and all life safety will need to be added and inspected. This does not affect the Use Variance, but the occupancy of the building.

All other pertinent City departments have reviewed this petition and recommended approval.

RECOMMENDATION

The Planning Staff recommends approval of Appeal #23-04 to provide educational, social and faith support services in the R-2 Two Family District at 702 E Twelfth Street subject to creating a paved parking pad off the alley, when the Twelfth Street project closes the current driveway access to Twelfth Street.

This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because minimal external improvements will be made to the site, and will provide services on a pre-arranged schedule;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the population these services are designed to support reside in the adjacent properties;
3. The need for the variance arises from some condition peculiar to the property in that this use, a social service, is not specifically listed in the ordinance, but similar function, like churches, schools and community centers are;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the Appellant to expand their services which are already established nearby.
5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates apartment complexes and nursing facilities for this area. This provides support services to those apartment complexes.

ATTACHMENTS

Aerial, Photographs, Appeal, Location Map





Front of house from Twelfth Street



Rear yard from Michigan Avenue

DATE: 2/21/2023

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. Vineyard Church Inc. (16219 Jackson Rd. Mishawaka, IN) the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to- wit:

- Lots 8 & 9 of Towles 1st Addition Block 6A - 702 East 12th Street, Mishawaka, IN 46544

2. The above-described real estate presently has a zoning classification of R2 Residential District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (*or proposes to occupy*) the above-described property in the following manner:

Current property use is a rental home owned by the Vineyard Church

4. Appellant desires to (*Explain what is proposed that violates the Ordinance.*)

The Vineyard church will host small group meetings as part of a regular religious daily activity for the residents of the existing neighborhood. This is in conjunction with our current community center activities tied to the Vineyard Church within the Barbee Creek community. Our desire is to host small group and more collaborative activities for the current residents (walking distance) of the Barbee Creek neighborhood. This would continue our mission of assisting the Barbee Creek residents in educational, social and faith needs.

5. The Zoning Ordinance of the City of Mishawaka requires (*Explain ordinance requirements and note Section Number of the Ordinance.*)

Section 137-87 does not allow for the specific proposed use of the property since it is not owned/directly operated by Mishawaka Housing Authority (Barbee Creek), the owner of the adjacent Barbee Creek Village for which the services will be provided..

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.

Strict adherence to the ordinance will not allow for use of the property as intended and described above.

7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community?

This use will not be injurious to the public health, safety, morals or general welfare of the community and our intention is to continue to improve it through our efforts within the community.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *YES OR NO and explain your reason why.*

The use and value of the adjustment properties will not be affected adversely as the intent would be to increase the general welfare of the community.

- (3) Does the need for the variance arise from some condition peculiar to the property involved?

The use variance is needed as the R-2 zoning does not currently permit the proposed use.

- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?

If the variance is not granted, the additional use of the property for small group gathering cannot occur. This would mean that the increased presence of community benefit the Vineyard Church is providing the Barbee Creek community would be limited.

- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?

No – this approval would not interfere substantially with the Mishawaka 2000 comprehensive plan.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Signature of Property Owner/Title Holder

Print Name Here

Steve Huffman



Second Property Owner/Title Holder

Print Name Here

MARK POPE

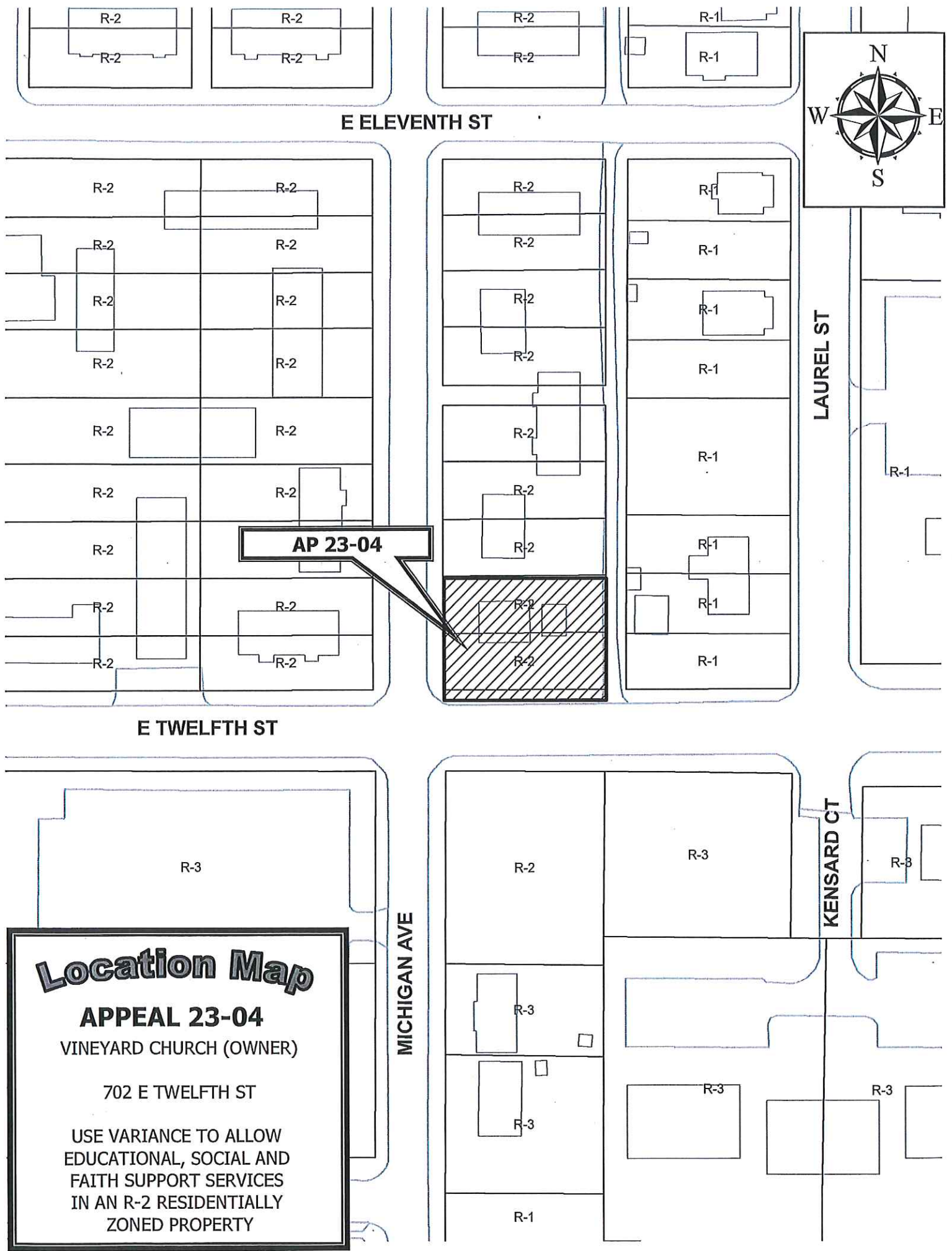
CONTACT PERSON:

Name: Steve Huffman

Address: 16219 Jackson Rd. Mishawaka, IN 46544

Day Phone Number: 574-257-1924

Email: steve@thevineyard.org



E ELEVENTH ST



LAUREL ST

AP 23-04

E TWELFTH ST

MICHIGAN AVE

KENSARD CT

Location Map

APPEAL 23-04

VINEYARD CHURCH (OWNER)

702 E TWELFTH ST

USE VARIANCE TO ALLOW
EDUCATIONAL, SOCIAL AND
FAITH SUPPORT SERVICES
IN AN R-2 RESIDENTIALLY
ZONED PROPERTY

STAFF REPORT

Location: 3607 Grape Road

Date: March 14th, 2023

Appeal: 23 06

Prepared By: SA

GENERAL INFORMATION

Applicant: ALC Holdings LLC/Blush Studio Salon

Status: Property Owner/Tenant

Request: Use Variance to allow microblading/semi-permanent make-up services

Zoning Classification: C-1 General Commercial

Lot Size: 0.85 acres

Applicable Regulations: 137.42 Board of Zoning Appeals (4) Variance of Use

SPECIAL INFORMATION

Area Development Pattern: North: C-4 Auto-Oriented Commercial (A-Plus Auto Service Center)
South: C-1 General Commercial (Hana Yori of Japan)
East: C-4 Auto-Oriented Commercial (Phillips 66)
West: C-2 Shopping Center Commercial

Thoroughfare: Grape Road

School District: Penn-Harris-Madison

Public Utilities: All utilities are available and serve the existing building

Comprehensive Plan: General Commercial

ANALYSIS

The petitioners are requesting a Use Variance to allow for microblading services within the Blush Studio Salon. Microblading is a form of semi-permanent makeup that provides a means to partially or fully camouflage missing eyebrow hair with the appearance of simulated hair using fine deposits of cosmetic tattoo pigments.

In recent years, we have received and approved several requests for microblading.

It should be noted that while microblading is a service that can be found in a spa or beauty salon, it is a form of tattoo and not specifically permitted within the zoning district. The need for a Use Variance arises from the fact that a tattoo establishment is not an approved use within the C-1 zoning district.

All pertinent City departments have reviewed and approved of the request.

RECOMMENDATION (S)

Staff recommends in **favor** of Appeal #23-06 for a Use Variance, to allow microblading services in (Blush Studio Salon). This recommendation is based upon the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the existing business provides similar personal services/salon uses;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because it is included in a large commercial area;
3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit a tattoo establishment, but does allow the salon where the process is taking place, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property, because the nature of the business is similar to that of a salon and should not generate more traffic than any of the existing businesses within the area;
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial.

ATTACHMENTS

Photograph, Aerial, Appeal, Location Map



West facing from Grape Road



Aerial

DATE: December 8, 2022

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

Received

FEB 22 2023

Planning and
Community Development

The undersigned appellant respectfully shows the Board:

1. I, **ALC Holdings**, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

The parcel is legally described as: Lot 46 Degrootes Sub
Commonly known as 3607 Grape Rd.

2. The above-described real estate presently has a zoning classification of C-1 General Commercial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies the above-described property in the following manner: Describe salon services that will be provided. -Permanent Makeup/Cosmetic Tattooing category. I use specially formulated pigments, not tattoo inks, to implant color into the skin with needles.
4. Appellant desires to add microblading service to already existing hair salon that resides in the complex. Describe microblading.
-The pigments are designed to slowly fade over time so that they remain natural looking instead of bold like a traditional tattoo. All Permanent Makeup services are a two step process. You have one session done and then a perfecting session in 6-8 weeks after that.
5. The Zoning Ordinance of the City of Mishawaka equates microblading to tattooing, which is not a permitted use by right in any district.
6. The strict adherence to the ordinance requirements creates an unusual hardship because it doesn't list microblading as a use in any zoning area.
7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community?

No it will not be injurious to the public health, safety, morals or general welfare of the community. training and licenses.

-I was certified in microblading by Michiana Microblading in 2020. In 2021 I was certified in pixel eyeliner by Brow Tricks. In 2022 I was certified by Brow Kingdom in LiFt Saline Tattoo Removal and Fine Line Studio for Tiny Tattoos. I was certified in 2023 by Brow Tricks for Lip Blush.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?
The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the business will be located in a building that is surrounded by various commercial uses.
- (3) Does the need for the variance arise from some condition peculiar to the property involved?
Yes, the need for the variance arises from some condition peculiar to the property involved. The current zoning does not permit microblading, but does allow the salon where the process is taking place, thus requiring the use variance for the proposed use.
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?
Yes, this constitutes as an unnecessary hardship because the current zoning does not permit microblading, but does allow the salon where the process is taking place.
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
No this approval will not interfere substantially with the Mishawaka 2000 Comprehensive plan. This is a personal/cosmetic service similar to the hair/beauty salon that currently resides in the complex.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Suellen Reese

Print Name Here -

Print Name Here

CONTACT PERSON:

Name: Suellen Reese

Address: 3607 Grape rd Mishawaka , In 46545

Day Phone Number: 574-607-5060

Fax Number:

Email: Blushstudiosalonllc@gmail.com



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
Kenneth B. Prince, ASLA, AICP, Executive Director

March 15, 2023

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
March 14, 2023, Public Hearing
Certification of Proposed Ordinances

Deborah S. Block, MMC, NMC

MARCH 16 2023

City Clerk
Mishawaka, IN

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed ordinances were considered:

PETITION #23-04 A petition submitted by 1635 Ironwood LLC requesting to amend the Northwest 12th & Capital Planned Unit Development to add drive thru restaurant as a permitted use.

The Commission, with a vote of 8-0, recommended approval subject to the attached conditions.

Pursuant to I.C. 36-7-4-605 the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed ordinances regarding the above matters.

Respectfully,

Christa Hill, Senior Planner
Interim Secretary, Mishawaka Plan Commission

STAFF REPORTLocation: Northwest Corner of Capital Avenue & E. 12th Street

Date: March 14, 2023

Petition: 23- 04

Prepared By: DJS

GENERAL INFORMATION

Applicant: 1635 Ironwood, LLC / Scooter's Coffee / Abomarche Consultants, Inc.

Status: Property Owner / Contingent Developer & Owner / Site Design Consultant

Request: Amend the NW 12th and Capital Planned Unit Development to allow all C-1 General Commercial permitted uses, one (1) restaurant with drive through facilities only, and multi-tenant commercial buildings

Zoning Classification: S-2 Planned Unit Development District / Permitted for an office and retail developmental containing a financial institution

Lot Size: Approximately 4.76 acres excluded the right-of-way

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District (Ord. 4440) & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-3 Multi-Family Residential (Multi-Family Residential / Eastgate Apartments)
South: S-2 Planned Unit Development (Convenience Store with Filling Station and Car Wash & Stand-Alone ATM / Charlie's Phillips 66 & 1st Source Bank)
East: R-3 Multi-Family Residential (Multi-Family Residential / Eastgate Apartments & Vacant / INDOT Owned) & C-1 General Commercial (Vacant / INDOT Owned)
West: R-3 Multi-Family Residential (Multi-Family Residential / Lake Side Apartments)

Thoroughfare: E. 12th Street

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and/or will be extended to/throughout the site at the expense of the owner and/or developer

Comprehensive Plan: Medium Density Residential

ANALYSIS

The applicants, 1635 Ironwood, LLC (current owner), and Scooters Coffee (contingent developer/owner), are requesting to amend the Northwest 12th and Capital Planned Unit Development (PUD) to allow all C-1 General Commercial permitted uses, one (1) restaurant with drive through facilities only, and multi-tenant

commercial buildings. A virtual pre-application meeting, which was attended by the contingent developer, various representatives, and City Staff, was held in mid-January to discuss the proposed amendment prior to filing. After review of the preliminary site plan, Planning Staff recommended and drafted several development regulations and conditions to be placed on the property. These regulations and conditions were reviewed by the applicant's site design consultant prior to filing and were included in the petition. Minor amendments to the regulations were made to allow multi-tenant commercial buildings as a permitted use, further clarify the required parking space ratios for the entire PUD, provide additional screening for the adjacent apartment complex to the north and west, and require ingress-egress easements to permit cross access within the PUD and access to the adjoining INDOT parcels to the east.

The PUD, located at the northwest corner of E. 12th Street and Capital Avenue, is bound by multi-family residential apartment complexes to the north and west; a convenience store with fuel pumps and car wash, and stand-alone ATM to the south; and vacant INDOT-owned property to the east.

The current PUD regulations applicable to the property, which were approved in 2003 (Petition 03-34/Ordinance #4794), limited permitted uses to "office and retail development containing a financial institution". Other than establishing these general permitted uses, there were no additional development regulations or conditions placed on the property.

The 4.76 acre area within the PUD boundary is currently vacant property with a large approximate 0.7 acre pond in the far northwest corner. The property has remained undeveloped since the PUD was approved nearly twenty years ago.

The applicant is proposing to develop a Scooters Coffee drive-thru within the far eastern part of the PUD. The 1.02 acre area to be purchased by the contingent owner is approximately 135' (E-W) x 330' (N-S). A future two lot plat will be required to establish the lot to split it off from the current 4.76 acre parent parcel and dedicated any required easements.

Per the preliminary site plan, the building will be approximately 660 sq. ft. circled by an access drive and drive-thru lane. Access to the Scooters lot will be provided from E. 12th Street via a shared common access drive. This drive, which will be constructed as a part of the Scooters development, shall be dedicated and recorded within an ingress-egress easement on the subdivision plat. Additional ingress-egress easements will be required within the Scooters lot to provide for cross access to the INDOT-owned properties to the east. Pavement for the access drives to the east shall be installed up to the property line. Although currently government owned, there appears to be adequate land within these parcels for a potential future commercial lot. Access to the entire PUD will be limited to the one curb cut where generally shown on the preliminary site plan. The access will allow for unrestricted turning movements to and from E. 12th Street. Travel lanes and pavement markings within E. 12th Street may have to be modified, and if required, are subject to review and approval by the Engineering Department. While the site plan includes several other commercial buildings and parking areas, the initial development will only consist of the future Scooters lot and the common access drive.

Based on 15 parking spaces per 1,000 sq. ft. of gross floor area, which is the applicable ratio for the C-7 Auto-Oriented Restaurant Commercial use, a total of ten (10) parking spaces would be required for the 660 sq. ft. building. The preliminary site plan shows a total of nine (9) parking spaces will be provided, including one (1) ADA compliant space. The one space reduction is reflected in the PUD regulations and conditions of approval. Minimal parking is required for the proposed use since it is a drive-thru only operation with no dine-in space. Parking is only needed for the employees and occasional visitor.

Landscaping is required per the minimum landscaping and screening regulations for commercial property (Section 137-815) and as identified in the PUD regulations and conditions of approval. Additional landscaping and screening required includes a 6' high opaque fence and 15' wide landscaped buffer along the north and west property line and along the southeast edge of the pond. The screening fence and landscape buffer is not required along the east property where adjacent to the multi-family residential apartment property.

The C-7 district design review regulations require that a minimum of 2/3 of each building façade visible from the public right-of-way or private collector road serving multiple properties be constructed with appropriate architectural materials. At this property, this requirement is applicable to all façades except

for the northern façade. Appropriate materials include natural brick, stone or other similar material; glass; exterior insulation and finish systems (EIFS); decorative concrete block or similar masonry units; painted/stained lap wood siding; and other high quality materials as deemed appropriate by the Plan Commission. The proposed building materials for Scooters include Hardie Plank lap siding, a Hardie Reveal panel system, and Hardie board trim exclusive of all windows and doors. Planning Staff supports the use of these fiber cement-based high quality materials regularly used in commercial construction. The proposed gray and black colors with red canopies will meet the color requirements.

Similar to when the original Planned Unit Development 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 Planned Unit Development 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.

The Engineering, Building, and Fire Departments have reviewed and approved the request without comment.

The Electric Department commented that an electric service plan needs to be submitted for review and approval, and utility easement provided, if necessary. This comment is applicable to the future subdivision plat and Final Site Plan and not specific to the proposed zoning amendment.

The Water Department commented that the property is within the Virgil 10-year time of travel wellhead protection area. This comment is applicable to the future Final Site Plan and not specific to the proposed zoning amendment.

RECOMMENDATION

Staff recommends **approval** to amend the Northwest 12th and Capital Planned Unit Development (PUD) to allow all C-1 General Commercial permitted uses, one (1) restaurant with drive through facilities only, and multi-tenant commercial buildings.

This recommendation includes the following conditions of approval:

Uses:

1. Permitted uses shall be limited to uses identified in the C-1 General Commercial District including one (1) restaurant with drive through facilities only.
2. Multi-tenant commercial buildings shall be permitted.
3. Off-premise signs/billboards shall be prohibited.

Parking Spaces, Access, and Pavement Setbacks

1. Parking spaces for the one (1) restaurant with drive through facilities only shall be provided at a ratio of 13 spaces per 1,000 sq. ft. of gross floor area.
2. Parking spaces for multi-tenant commercial buildings exceeding more than two (2) tenants shall comply with the required ratios per the C-2 Shopping Center Commercial District.
3. Ingress-egress easements shall be provided on all future subdivision plats to permit cross access throughout the PUD and allow access to the adjacent parcels to the east. Such easements shall be reviewed and approved as directed by the City Planner.
4. A 0' pavement setback shall be permitted along the east property line to accommodate the required access drives to be constructed to the property line. All other pavement setbacks for each individual lot shall comply with the C-1 General Commercial District.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout the site shall be applicant/developer's cost and expense.

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed on the site shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. An opaque six-foot high fence shall be provided along the north and west property lines and along the southeast edge of the pond. The fence shall be installed with the development of each individual lot. The fence is not required along the north and west property lines where adjacent to an existing pond.
2. A 15' wide landscape buffer shall be provided between the property and the adjacent residentially zoned property to the north and west and along the southeast edge of the pond. The landscape buffer shall be planted with a continuous evergreen screen combined with required plantings as identified in minimum landscaping and screening regulations (Section 137-815). Minimum size of the evergreen plantings at the time of planting shall be 6 foot in height. The buffer shall be provided with the development of each individual lot.
3. All other landscaping shall comply with the minimum landscaping and screening regulations for commercial property (Section 137-815).

Signage:

1. All signage shall comply with the height and display area requirements for the C-1 General Commercial District, including but not limited to, all freestanding and directional signs.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. Shielding of lighting shall be required in the areas to the rear of buildings adjacent to (in sight of) residential areas.
2. A photometric lighting plan shall be submitted as part of the final site plan. Lighting shall not exceed one-half footcandles as measured along property lines abutting residentially zoned property.

Architectural Requirements:

1. Building materials for the proposed restaurant with drive through facilities shall be permitted to utilize fiber cement board, including HardiePlank CedarMill Lap Siding and a Hardie Reveal Panel System, as an appropriate exterior building material. Building colors shall comply with the C-1 General Commercial District.

Other:

1. All other developmental standards not identified shall comply with the height, area, and development regulations of the C-1 General Commercial District.

This recommendation is based upon the following findings of fact:

1. Existing Conditions – The subject property is currently a vacant parcel of land located at the northwest corner of E. 12th Street and Capital Avenue. These roads are highly to moderately travelled corridors providing major north-south access, and to a lesser extent east-west access, through the City and unincorporated parts of the county. Adjacent uses include multi-family residential apartment complexes to the north and west; a convenience store with fuel pumps and car wash, and stand-alone ATM to the south; and vacant INDOT-owned property to the east.
2. Character of Buildings in Area – The character of buildings within the surrounding area varies, and includes apartment complexes, a single-tenant commercial building, a stand-alone ATM, single-family residential houses, and several industrial buildings to the west along E. 12th Street.
3. The most desirable/highest and best use – The proposed amendment to allow various commercial uses, including a restaurant with drive through facilities only, is not inconsistent with the surrounding existing or permitted land uses. The property is currently zoned for an office and retail development containing a financial institution.
4. Conservation of property values – The proposed zoning should not be injurious to property values in the surrounding area based on the conditions included within this amendment. A solid fence and landscaping is required along a majority of the north and west property line to buffer the adjacent multifamily residential apartment complexes. Currently, commercial uses, including similarly intensive uses than those proposed, are permitted within the PUD being amended.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for medium density residential development as existed to the north and west. However, the presence of existing commercial development to the south and currently permitted commercial uses within the PUD approved in the early 2003, reflect a change in land use patterns in the immediate area.

ATTACHMENTS

Aerial, Photographs, Petition, Site Plan, Floor Plan, Building Elevations & Schematic, Location Map



Aerial Photograph
 NW 12th and Capital Planned Unit Development – Proposed Amendment Area
 Vacant Property currently permitted for commercial use



P1. Looking northeasterly toward the property from the Charlie's Phillips 66 access drive to the south.



P2. Looking northerly toward the west part of the property from the Charlie's Phillips 66 to the south.



P3. Looking northerly toward the east part of the site (proposed Scooters lot) from E. 12th Street.



P4. Looking northwesterly toward the property and Scooters lot from the southwest corner of E. 12th Street & Capital Avenue.

Date: 02/22/23

Honorable Members of the
Common Council

City of Mishawaka, Indiana

and

Mishawaka City Plan Commission

City of Mishawaka, Indiana

PET 23-04
Received

FEB 22 2023

Planning and
Community DevelopmentRE: NW 12th & CAPITAL PUD AMENDMENT
~~Grandview Phase III PUD Amendment~~

The undersigned, Owner, of 1635 IRONWOOD 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:

A part of the Southeast Quarter (¼) of the Southeast Quarter (¼) of Section 14, Township 37 North, Range 3 East, in the City of Mishawaka, St. Joseph County, Indiana more particularly described as follows:

Beginning at a point on the South line of Section 14, 261.50 feet on an assumed bearing of South 89° 48' 39" West of the Southeast corner of said Section 14; thence continuing South 89° 48' 39" West along said South line of Section 14, 624.50 feet; thence North 0° 00' 00" West a distance of 411.72 feet; thence North 89° 48' 09" East, a distance of 624.50 feet; thence South 0° 00' 00" West, a distance of 412.60 feet to the place of beginning.

COMMON ADDRESS: Northwest Corner of Capital Avenue and 12th Street, Mishawaka

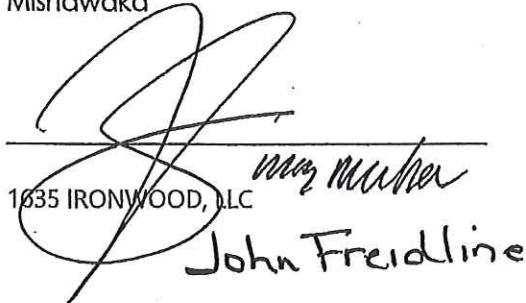
Petitioner owns one hundred percent (100%) of the above-described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for office and retail development containing a financial institution uses.

Petitioner desires said real estate to be amended as follows:

1. Additional Use:

1. To allow for the 1 Restaurant drive through Facility.
2. Allow for the proposed building materials presented by Scooters Coffee (See Attached Elevations)
 - Hardie Board Siding / and Hardie Reveal Panel materials.
 - Glazing as presented
 - No brick or stone Façade treatment.
3. Landscaping to follow the C-1 Commercial Zoning requirements.
4. Screening fence to be 6' in height.
5. Signage as presented in the building package will be acceptable with appropriate height and size requirements per C1-General Commercial Standards.
6. See Conditions of approval for remaining conformance regulations.

WHEREFORE, the petitioner respectfully requests that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, and appropriate ordinance be enacted amending the PUD of the above-described parcel of land located in the City of Mishawaka


1635 IRONWOOD, LLC
John Freidline

CONTACT PERSON

Steve Ruby
Abonmarche Consultants
315 W. Jefferson Blvd.
South Bend, IN 46601
(574) 538-2201
sruby@abonmarche.com



Conditions of Approval

Northwest E. 12th Street & Capital Avenue PUD Amendment

Uses:

1. Permitted uses shall be limited to uses identified in the C-1 General Commercial District including one (1) restaurant with drive through facilities only.
2. Off-premise signs/billboards shall be prohibited.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout the site shall be applicant/developer's cost and expense.

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed on the site shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. An opaque six-foot high fence shall be provided along the entire northern property line. The fence shall be installed with the development of each individual lot. The fence is not required where adjacent to an existing pond.
2. A 15' wide landscape buffer shall be provided between the property and the adjacent residentially zoned property to the north. The landscape buffer shall be planted with a continuous evergreen screen combined with required plantings as identified in minimum landscaping and screening regulations (Section 137-815). Minimum size of the evergreen plantings at the time of planting shall be 6 foot in height. The buffer shall be provided with the development of each individual lot.
3. All other landscaping shall comply with the minimum landscaping and screening regulations for commercial property (Section 137-815).

Signage:

1. All signage shall comply with the height and display area requirements for the C-1 General Commercial District, including but not limited to, all freestanding and directional signs.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. Shielding of lighting shall be required in the areas to the rear of buildings adjacent to (in sight of) residential areas.
2. A photometric lighting plan shall be submitted as part of the final site plan. Lighting shall not exceed one-half footcandles as measured along property lines abutting residentially zoned property.

Architectural Requirements:

1. Building materials for the proposed restaurant with drive through facilities shall be permitted to utilize fiber cement board, including HardiePlank CedarMill Lap Siding and a Hardie Reveal Panel System, as an appropriate exterior building material. Building colors shall comply with the C-1 General Commercial District.

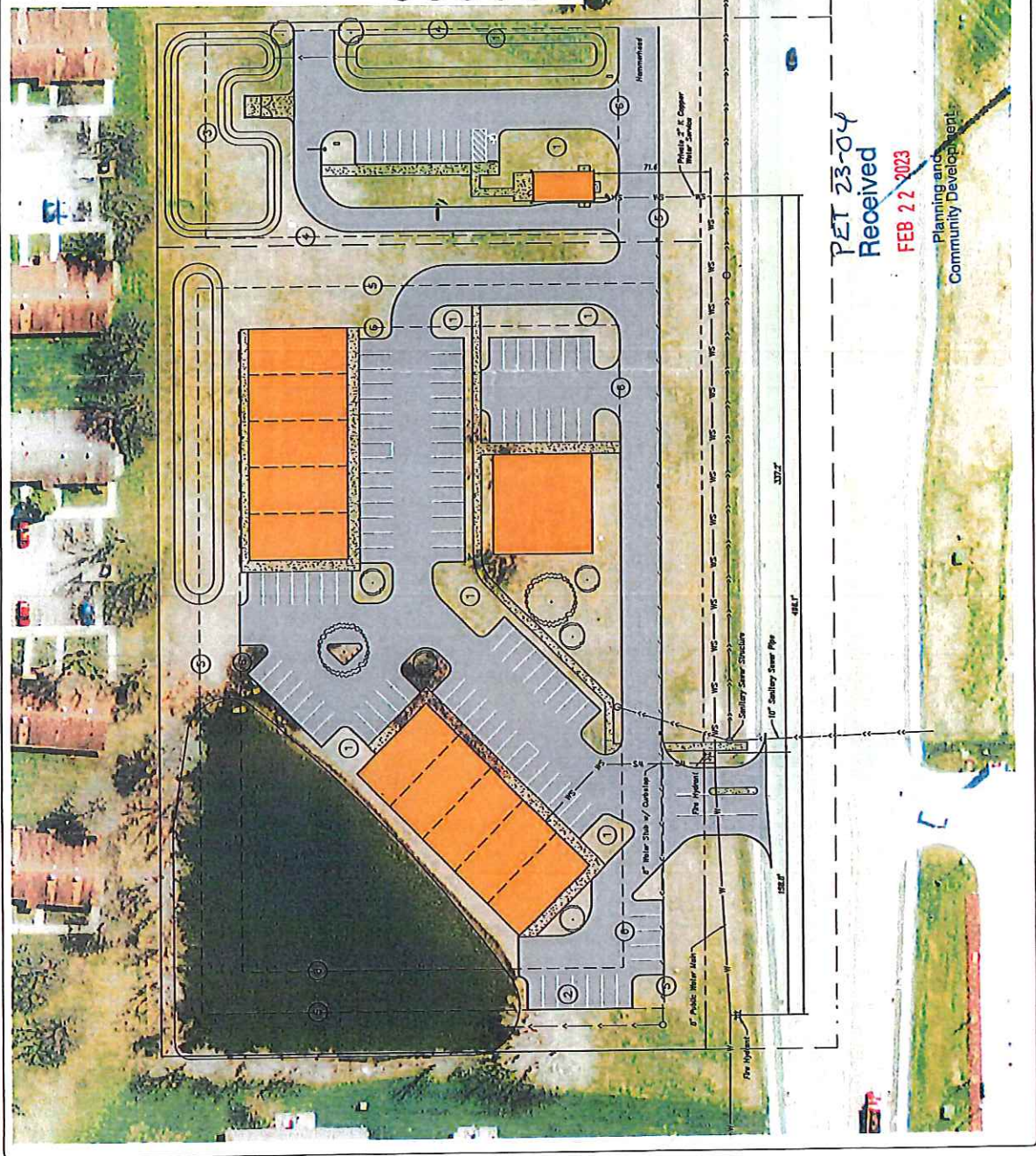
Other:

1. All other developmental standards not identified shall comply with the height, area, and development regulations of the C-1 General Commercial District.

Drainage Calculation
 Based on 100-year 24-hour storm
 Rainfall Intensity = 0.234
 Gross Site = 4.76 acres
 Building and Pavement = 2.66 acres
 Open Space = 2.10 acres
 Weighted Coefficient = $\frac{(2.66 \times 1) + (2.10 \times 0.3)}{4.76}$
 = 0.691

Q = ACI
 = $(4.76)(0.691)(.234)$
 = 0.770
 @ 24-hour storm = 1.53 acre-feet
 = 66,528 CF retention space required

- Notes**
- 1 Areas to be Landscaped
 - 2 Loading and employee parking area
 - 3 30' rear yard setback
 - 4 5' side yard setback
 - 5 25' parking/paving setback from property line
 - 6 50' building setback from property line



PET 23-04
Received
FEB 22 2023
 Planning and
 Community Development



PROJECT ADDRESS:
STREET
CITY, STATE, ZIP

REVISIONS:

TITLE:
DIMENSION
FLOOR PLAN

KIOSK PROTOTYPE
4.1 PROTOTYPE
MAY 2022

DATE: XX/XX/2022
PROJECT NO.
22XXXX

☒ PERMIT/BID SUBMITTAL
☐ CONSTRUCTION ISSUE

A1.0

GENERAL NOTES

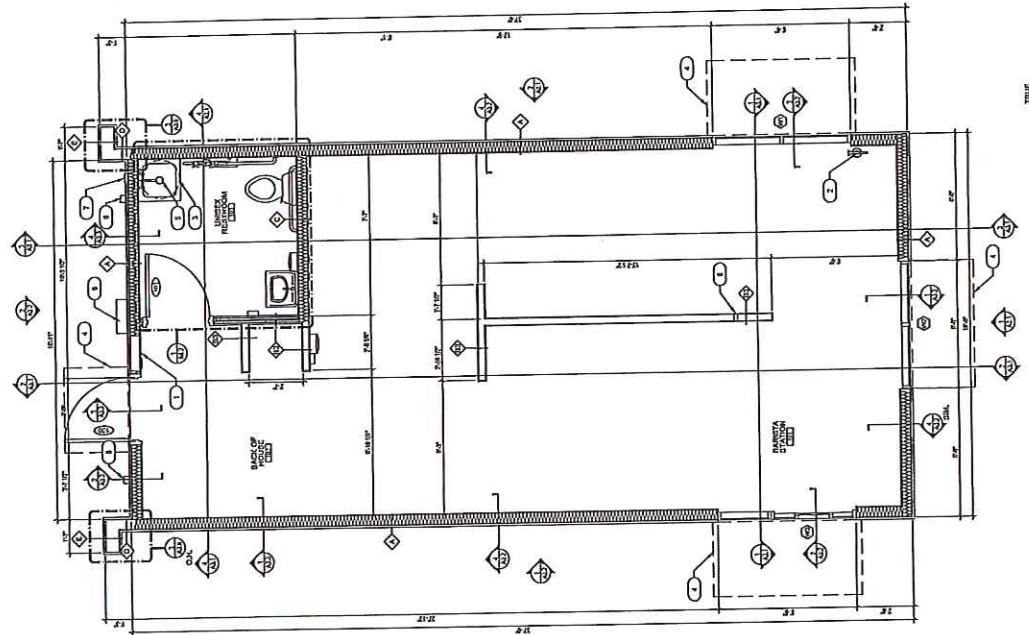
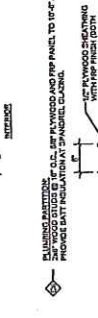
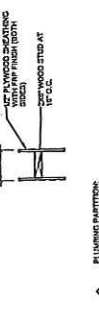
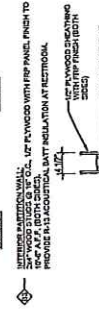
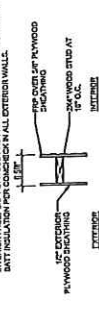
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KEYNOTES - FLOOR PLAN

1. NEW ELECTRICAL PANEL, SEE ELECTRICAL DRAWINGS
2. 200 AMP, 240 VOLT, 3 PHASE, 4 WIRE, 3 LINE, 1 NEUTRAL, 1 GROUND
3. 100 AMP, 240 VOLT, 3 PHASE, 4 WIRE, 3 LINE, 1 NEUTRAL, 1 GROUND
4. WATER HEATER ABOVE, SEE PLUMBING DRAWINGS
5. WATER OF CANSKY ABOVE BY OTHERS
6. MOP SINK, SEE PLUMBING DRAWINGS
7. NEW 7/8" MFL DOWNSPOUT.
8. NEW 7/8" MFL PLUMBING DRAWINGS
9. HOSE BIBB, SEE PLUMBING DRAWINGS
10. CONDUIT CHASE IN WALL FOR NITRO, REF. 5A22
11. MOP, HOP, ETC. - COORDINATE FINAL LOCATION TO INCLUDE LOCATION DOES NOT

WALL LEGEND

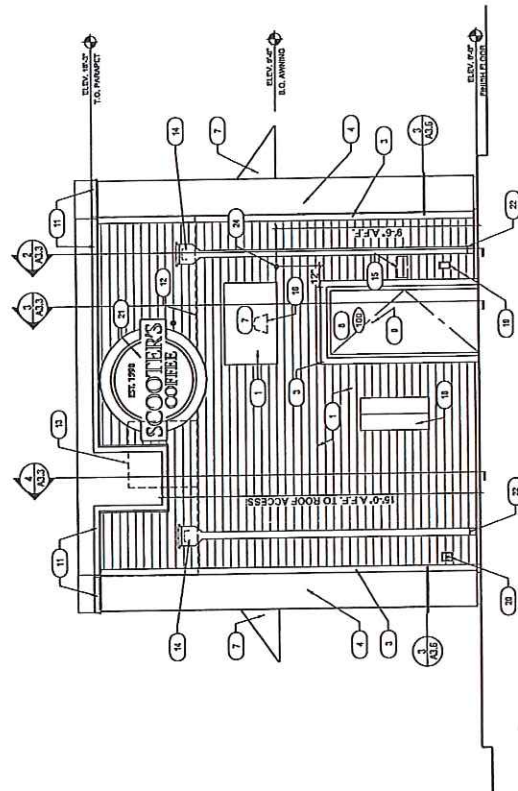
- FRAMING CONSTRUCTION NOTE:
ALL DIMENSIONS ARE TO FACE OF STUD, TYP.



1 DIMENSION FLOOR PLAN

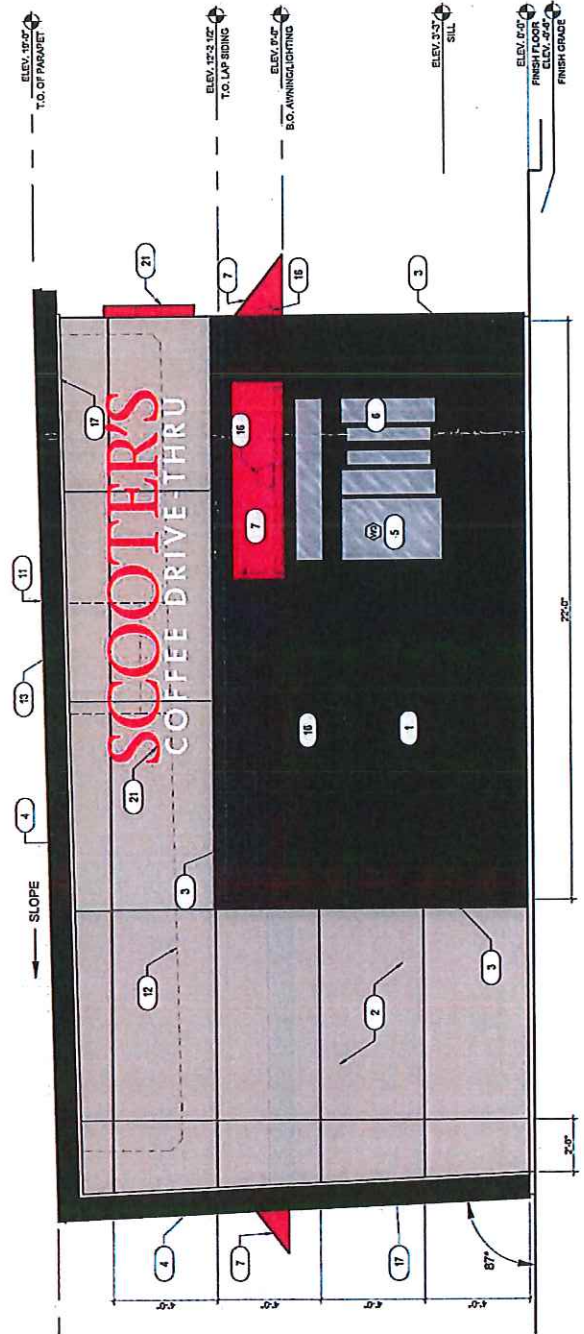
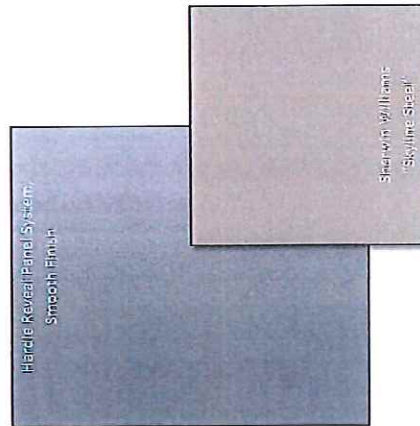
DET 23-04
Received
FEB 22 2023
Planning and
Community Development

EXTERIOR ELEVATIONS



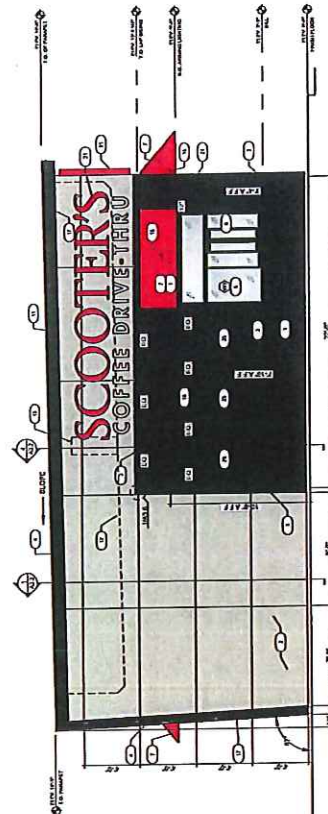
FINISH LEGEND		
Exterior Finish	HardiePlank H210 CedarMill Lap Siding (6.25" Width)	Painted to match Sherwin Williams "Inkwell" SW 6992, Eggshell Finish
Exterior Finish	Hardie Reveal Panel System W210, Smooth Finish	Painted to match Sherwin Williams "Skyline Steel" SW 1015
Exterior Finish	3.5" HardieTrim	Painted to match Sherwin Williams "Inkwell" SW 6992, Eggshell Finish
Window Frames	Dark Bronze Aluminum	
Door Frames	Insulated Hollow Metal Door and Frame	Painted to match Sherwin Williams "Inkwell" SW 6992, Eggshell Finish
Exterior Accents	Black 20 Gauge Metal	

Scooter's Coffee

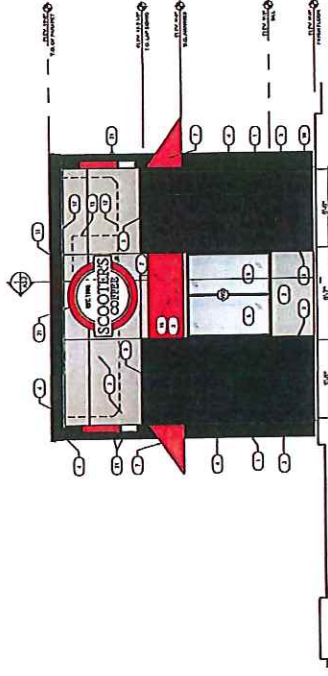


KEYNOTES

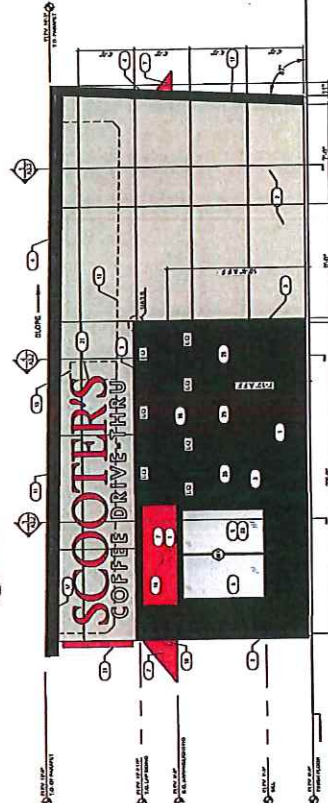
1. MARQUE PLANK Kiosk CAP BEHIND CROWNELL 8"X4" WILLIAMS EMBROID INVINCL CROWNELL FINISH
2. MARQUE Kiosk PANEL SYSTEM KIOS - SMOOTH WITH PLANK Kiosk METAL SHEET AS 1/4" COLOR 2W WITH PLANK Kiosk METAL
3. 1/4" MARQUE Kiosk SEE MARQUE DETAIL SHEET AS 1/4" CROWNELL FINISH WILLIAMS EMBROID INVINCL
4. CROWNELL FINISH
5. INSULATED DARK BRONZE ALUMINUM WINDOWS WITH DUAL PANE TEMPERED GLASS
6. CROWNELL 16048 WINDOW - COLOR DARK BRONZE
7. AWNING BY OTHERS - COLOR RED
8. INSULATED HOLLOW METAL DOOR AND FRAME - CROWNELL FINISH
9. WIDE ANGLE Kiosk HOLE, BY DOOR MANUFACTURER
10. NOT USED
11. 22 GAUGE METAL PLANK Kiosk CAP
12. LINE OF ROOF BEYOND
13. AIR CONDENSER, SEE MECHANICAL DRAWINGS
14. MARQUE Kiosk AND COMPENSATE, SEE DETAIL
15. MARQUE Kiosk BY SEE BLACK
16. WALL MOUNTED LIGHT FIXTURE, SEE ELECTRICAL DRAWINGS
17. LED LIGHT BAND, SEE ELECTRICAL DRAWINGS
18. SEE PANEL, SEE ELECTRICAL DRAWINGS
19. ELECTRICAL OUTLETS, SEE ELECTRICAL DRAWINGS
20. HOLE IN METAL, SEE PLUMBING DRAWINGS
21. PROPOSED SIGNAGE BY OTHERS, UNDER EXISTING PLANK
22. SEE DETAIL, COMPENSATE TO UNDERGROUND PIPING, NEW CIVIL
23. SPANSEL GLASS
24. NEW SECURITY CAMERA
25. CUSTOMER PROPOSED SIGN PANELS, PANELS TO BE MOUNTED TO KIOSK BY OTHERS (WHEN PROVIDED IN DRAWINGS AND FASTENERS NON-CORROSIVE)



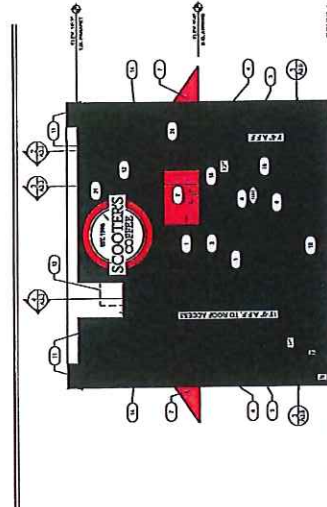
1 EXTERIOR ELEVATIONS
SCALE: 1/8" = 1'-0"



2 EXTERIOR ELEVATIONS
SCALE: 1/8" = 1'-0"

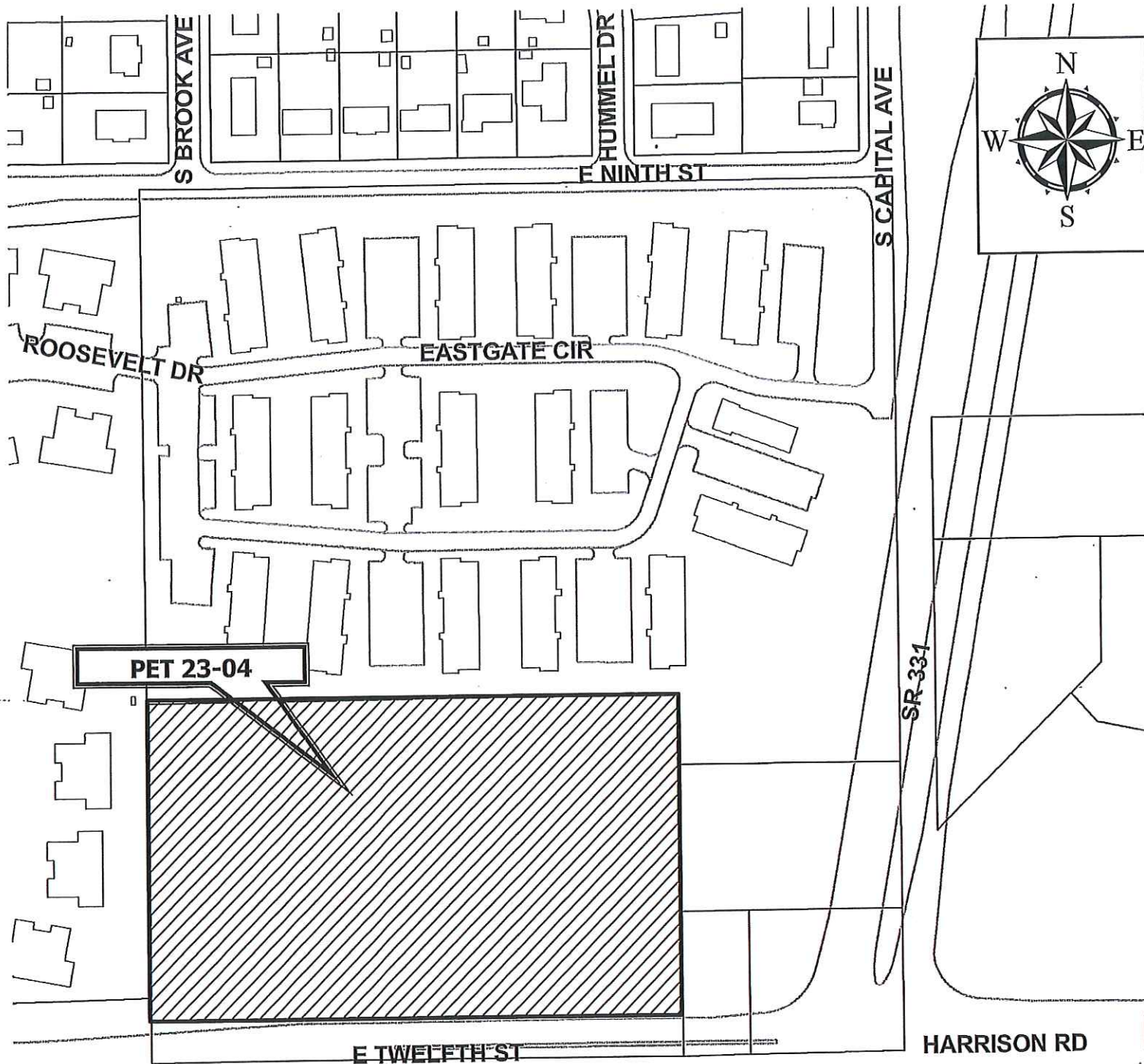


3 EXTERIOR ELEVATIONS
SCALE: 1/8" = 1'-0"



4 EXTERIOR ELEVATIONS
SCALE: 1/8" = 1'-0"





Location Map

PETITION 23-04

1635 IRONWOOD LLC (OWNER)

NORTHWEST CORNER OF
12TH ST/HARRISON RD &
CAPTIAL AVENUE

PUD AMENDMENT TO ALLOW
DRIVE THRU RESTAURANT
(SCOOTER'S COFFEE)

1st Reading

2nd Reading

Passed

Failed

Continued 19

PETITION 23-04

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2023-11

ORDINANCE NO. _____

Deborah S. Block, MMC, MMC

MAR 16 2023

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, Harris Township, St. Joseph County, State of Indiana, to-wit:

A part of the Southeast Quarter (¼) of the Southeast Quarter (¼) of Section 14, Township 37 North, Range 3 East, in the City of Mishawaka, St. Joseph County, Indiana more particularly described as follows:

Beginning at a point on the South line of Section 14, 261.50 feet on an assumed bearing of South 89° 48' 39" West of the Southeast corner of said Section 14; thence continuing South 89° 48' 39" West along said South line of Section 14, 624.50 feet; thence North 0° 00' 00" West a distance of 411.72 feet; thence North 89° 48' 09" East, a distance of 624.50 feet; thence South 0° 00' 00" West, a distance of 412.60 feet to the place of beginning.

COMMON ADDRESS: Vacant Property to the northwest corner of 12th Street and Capital Avenue.

which real estate is now classified as S-2 Planned Unit Development shall hereafter be amended as follows:

Uses:

1. Permitted uses shall be limited to uses identified in the C-1 General Commercial District including one (1) restaurant with drive through facilities only.
2. Multi-tenant commercial buildings shall be permitted.
3. Off-premise signs/billboards shall be prohibited.

Parking Spaces, Access, and Pavement Setbacks

Proposed Ordinance No: _____

Ordinance No: _____

1. Parking spaces for the one (1) restaurant with drive through facilities only shall be provided at a ratio of 13 spaces per 1,000 sq. ft. of gross floor area.
2. Parking spaces for multi-tenant commercial buildings exceeding more than two (2) tenants shall comply with the required ratios per the C-2 Shopping Center Commercial District.
3. Ingress-egress easements shall be provided on all future subdivision plats to permit cross access throughout the PUD and allow access to the adjacent parcels to the east. Such easements shall be reviewed and approved as directed by the City Planner.
4. A 0' pavement setback shall be permitted along the east property line to accommodate the required access drives to be constructed to the property line. All other pavement setbacks for each individual lot shall comply with the C-1 General Commercial District.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout the site shall be applicant/developer's cost and expense.

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed on the site shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. An opaque six-foot high fence shall be provided along the north and west property lines and along the southeast edge of the pond. The fence shall be installed with the development of each individual lot. The fence is not required along the north and west property lines where adjacent to an existing pond.
2. A 15' wide landscape buffer shall be provided between the property and the adjacent residentially zoned property to the north and west and along the southeast edge of the pond. The landscape buffer shall be planted with a continuous evergreen screen combined with required plantings as identified in minimum landscaping and screening regulations (Section 137-815). Minimum size of the evergreen plantings at the time of planting shall be 6 foot in height. The buffer shall be provided with the development of each individual lot.
3. All other landscaping shall comply with the minimum landscaping and screening regulations for commercial property (Section 137-815).

Signage:

1. All signage shall comply with the height and display area requirements for the C-1 General Commercial District, including but not limited to, all freestanding and directional signs.

Proposed Ordinance No: _____

Ordinance No: _____

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. Shielding of lighting shall be required in the areas to the rear of buildings adjacent to (in sight of) residential areas.
2. A photometric lighting plan shall be submitted as part of the final site plan. Lighting shall not exceed one-half footcandles as measured along property lines abutting residentially zoned property.

Architectural Requirements:

1. Building materials for the proposed restaurant with drive through facilities shall be permitted to utilize fiber cement board, including HardiePlank Cedar Mill Lap Siding and a Hardie Reveal Panel System, as an appropriate exterior building material. Building colors shall comply with the C-1 General Commercial District.

Other:

1. All other developmental standards not identified shall comply with the height, area, and development regulations of the C-1 General Commercial District.

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

1. Existing Conditions – The subject property is currently a vacant parcel of land located at the northwest corner of E. 12th Street and Capital Avenue. These roads are highly to moderately travelled corridors providing major north-south access, and to a lesser extent east-west access, through the City and unincorporated parts of the county. Adjacent uses include multi-family residential apartment complexes to the north and west; a convenience store with fuel pumps and car wash, and stand-alone ATM to the south; and vacant INDOT-owned property to the east.
2. Character of Buildings in Area – The character of buildings within the surrounding area varies, and includes apartment complexes, a single-tenant commercial building, a stand-alone ATM, single-family residential houses, and several industrial buildings to the west along E. 12th Street.
3. The most desirable/highest and best use – The proposed amendment to allow various commercial uses, including a restaurant with drive through facilities only, is not inconsistent with the surrounding existing or permitted land uses. The property is currently zoned for an office and retail development containing a financial institution.
4. Conservation of property values – The proposed zoning should not be injurious to property values in the surrounding area based on the conditions included within this amendment. A solid fence and landscaping is required along a majority of the north and west property line to buffer the adjacent multifamily residential apartment

Proposed Ordinance No: _____

Ordinance No: _____

complexes. Currently, commercial uses, including similarly intensive uses than those proposed, are permitted within the PUD being amended.

5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for medium density residential development as existed to the north and west. However, the presence of existing commercial development to the south and currently permitted commercial uses within the PUD approved in the early 2003, reflect a change in land use patterns in the immediate area.

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 _____, 2023, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock ____M.

David A. Wood, Mayor

STAFF REPORTLocation: Northwest Corner of Capital Avenue & E. 12th Street

Date: March 14, 2023

Petition: 23- 04

Prepared By: DJS

GENERAL INFORMATION

Applicant: 1635 Ironwood, LLC / Scooter's Coffee / Abomarche Consultants, Inc.

Status: Property Owner / Contingent Developer & Owner / Site Design Consultant

Request: Amend the NW 12th and Capital Planned Unit Development to allow all C-1 General Commercial permitted uses, one (1) restaurant with drive through facilities only, and multi-tenant commercial buildings

Zoning Classification: S-2 Planned Unit Development District / Permitted for an office and retail developmental containing a financial institution

Lot Size: Approximately 4.76 acres excluded the right-of-way

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District (Ord. 4440) & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-3 Multi-Family Residential (Multi-Family Residential / Eastgate Apartments)
South: S-2 Planned Unit Development (Convenience Store with Filling Station and Car Wash & Stand-Alone ATM / Charlie's Phillips 66 & 1st Source Bank)
East: R-3 Multi-Family Residential (Multi-Family Residential / Eastgate Apartments & Vacant / INDOT Owned) & C-1 General Commercial (Vacant / INDOT Owned)
West: R-3 Multi-Family Residential (Multi-Family Residential / Lake Side Apartments)

Thoroughfare: E. 12th Street

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and/or will be extended to/throughout the site at the expense of the owner and/or developer

Comprehensive Plan: Medium Density Residential

ANALYSIS

The applicants, 1635 Ironwood, LLC (current owner), and Scooters Coffee (contingent developer/owner), are requesting to amend the Northwest 12th and Capital Planned Unit Development (PUD) to allow all C-1 General Commercial permitted uses, one (1) restaurant with drive through facilities only, and multi-tenant

commercial buildings. A virtual pre-application meeting, which was attended by the contingent developer, various representatives, and City Staff, was held in mid-January to discuss the proposed amendment prior to filing. After review of the preliminary site plan, Planning Staff recommended and drafted several development regulations and conditions to be placed on the property. These regulations and conditions were reviewed by the applicant's site design consultant prior to filing and were included in the petition. Minor amendments to the regulations were made to allow multi-tenant commercial buildings as a permitted use, further clarify the required parking space ratios for the entire PUD, provide additional screening for the adjacent apartment complex to the north and west, and require ingress-egress easements to permit cross access within the PUD and access to the adjoining INDOT parcels to the east.

The PUD, located at the northwest corner of E. 12th Street and Capital Avenue, is bound by multi-family residential apartment complexes to the north and west; a convenience store with fuel pumps and car wash, and stand-alone ATM to the south; and vacant INDOT-owned property to the east.

The current PUD regulations applicable to the property, which were approved in 2003 (Petition 03-34/Ordinance #4794), limited permitted uses to "office and retail development containing a financial institution". Other than establishing these general permitted uses, there were no additional development regulations or conditions placed on the property.

The 4.76 acre area within the PUD boundary is currently vacant property with a large approximate 0.7 acre pond in the far northwest corner. The property has remained undeveloped since the PUD was approved nearly twenty years ago.

The applicant is proposing to develop a Scooters Coffee drive-thru within the far eastern part of the PUD. The 1.02 acre area to be purchased by the contingent owner is approximately 135' (E-W) x 330' (N-S). A future two lot plat will be required to establish the lot to split it off from the current 4.76 acre parent parcel and dedicated any required easements.

Per the preliminary site plan, the building will be approximately 660 sq. ft. circled by an access drive and drive-thru lane. Access to the Scooters lot will be provided from E. 12th Street via a shared common access drive. This drive, which will be constructed as a part of the Scooters development, shall be dedicated and recorded within an ingress-egress easement on the subdivision plat. Additional ingress-egress easements will be required within the Scooters lot to provide for cross access to the INDOT-owned properties to the east. Pavement for the access drives to the east shall be installed up to the property line. Although currently government owned, there appears to be adequate land within these parcels for a potential future commercial lot. Access to the entire PUD will be limited to the one curb cut where generally shown on the preliminary site plan. The access will allow for unrestricted turning movements to and from E. 12th Street. Travel lanes and pavement markings within E. 12th Street may have to be modified, and if required, are subject to review and approval by the Engineering Department. While the site plan includes several other commercial buildings and parking areas, the initial development will only consist of the future Scooters lot and the common access drive.

Based on 15 parking spaces per 1,000 sq. ft. of gross floor area, which is the applicable ratio for the C-7 Auto-Oriented Restaurant Commercial use, a total of ten (10) parking spaces would be required for the 660 sq. ft. building. The preliminary site plan shows a total of nine (9) parking spaces will be provided, including one (1) ADA compliant space. The one space reduction is reflected in the PUD regulations and conditions of approval. Minimal parking is required for the proposed use since it is a drive-thru only operation with no dine-in space. Parking is only needed for the employees and occasional visitor.

Landscaping is required per the minimum landscaping and screening regulations for commercial property (Section 137-815) and as identified in the PUD regulations and conditions of approval. Additional landscaping and screening required includes a 6' high opaque fence and 15' wide landscaped buffer along the north and west property line and along the southeast edge of the pond. The screening fence and landscape buffer is not required along the east property where adjacent to the multi-family residential apartment property.

The C-7 district design review regulations require that a minimum of 2/3 of each building façade visible from the public right-of-way or private collector road serving multiple properties be constructed with appropriate architectural materials. At this property, this requirement is applicable to all façades except

for the northern façade. Appropriate materials include natural brick, stone or other similar material; glass; exterior insulation and finish systems (EIFS); decorative concrete block or similar masonry units; painted/stained lap wood siding; and other high quality materials as deemed appropriate by the Plan Commission. The proposed building materials for Scooters include Hardie Plank lap siding, a Hardie Reveal panel system, and Hardie board trim exclusive of all windows and doors. Planning Staff supports the use of these fiber cement-based high quality materials regularly used in commercial construction. The proposed gray and black colors with red canopies will meet the color requirements.

Similar to when the original Planned Unit Development 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 Planned Unit Development 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.

The Engineering, Building, and Fire Departments have reviewed and approved the request without comment.

The Electric Department commented that an electric service plan needs to be submitted for review and approval, and utility easement provided, if necessary. This comment is applicable to the future subdivision plat and Final Site Plan and not specific to the proposed zoning amendment.

The Water Department commented that the property is within the Virgil 10-year time of travel wellhead protection area. This comment is applicable to the future Final Site Plan and not specific to the proposed zoning amendment.

RECOMMENDATION

Staff recommends **approval** to amend the Northwest 12th and Capital Planned Unit Development (PUD) to allow all C-1 General Commercial permitted uses, one (1) restaurant with drive through facilities only, and multi-tenant commercial buildings.

This recommendation includes the following conditions of approval:

Uses:

1. Permitted uses shall be limited to uses identified in the C-1 General Commercial District including one (1) restaurant with drive through facilities only.
2. Multi-tenant commercial buildings shall be permitted.
3. Off-premise signs/billboards shall be prohibited.

Parking Spaces, Access, and Pavement Setbacks

1. Parking spaces for the one (1) restaurant with drive through facilities only shall be provided at a ratio of 13 spaces per 1,000 sq. ft. of gross floor area.
2. Parking spaces for multi-tenant commercial buildings exceeding more than two (2) tenants shall comply with the required ratios per the C-2 Shopping Center Commercial District.
3. Ingress-egress easements shall be provided on all future subdivision plats to permit cross access throughout the PUD and allow access to the adjacent parcels to the east. Such easements shall be reviewed and approved as directed by the City Planner.
4. A 0' pavement setback shall be permitted along the east property line to accommodate the required access drives to be constructed to the property line. All other pavement setbacks for each individual lot shall comply with the C-1 General Commercial District.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout the site shall be applicant/developer's cost and expense.

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed on the site shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. An opaque six-foot high fence shall be provided along the north and west property lines and along the southeast edge of the pond. The fence shall be installed with the development of each individual lot. The fence is not required along the north and west property lines where adjacent to an existing pond.
2. A 15' wide landscape buffer shall be provided between the property and the adjacent residentially zoned property to the north and west and along the southeast edge of the pond. The landscape buffer shall be planted with a continuous evergreen screen combined with required plantings as identified in minimum landscaping and screening regulations (Section 137-815). Minimum size of the evergreen plantings at the time of planting shall be 6 foot in height. The buffer shall be provided with the development of each individual lot.
3. All other landscaping shall comply with the minimum landscaping and screening regulations for commercial property (Section 137-815).

Signage:

1. All signage shall comply with the height and display area requirements for the C-1 General Commercial District, including but not limited to, all freestanding and directional signs.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. Shielding of lighting shall be required in the areas to the rear of buildings adjacent to (in sight of) residential areas.
2. A photometric lighting plan shall be submitted as part of the final site plan. Lighting shall not exceed one-half footcandles as measured along property lines abutting residentially zoned property.

Architectural Requirements:

1. Building materials for the proposed restaurant with drive through facilities shall be permitted to utilize fiber cement board, including HardiePlank CedarMill Lap Siding and a Hardie Reveal Panel System, as an appropriate exterior building material. Building colors shall comply with the C-1 General Commercial District.

Other:

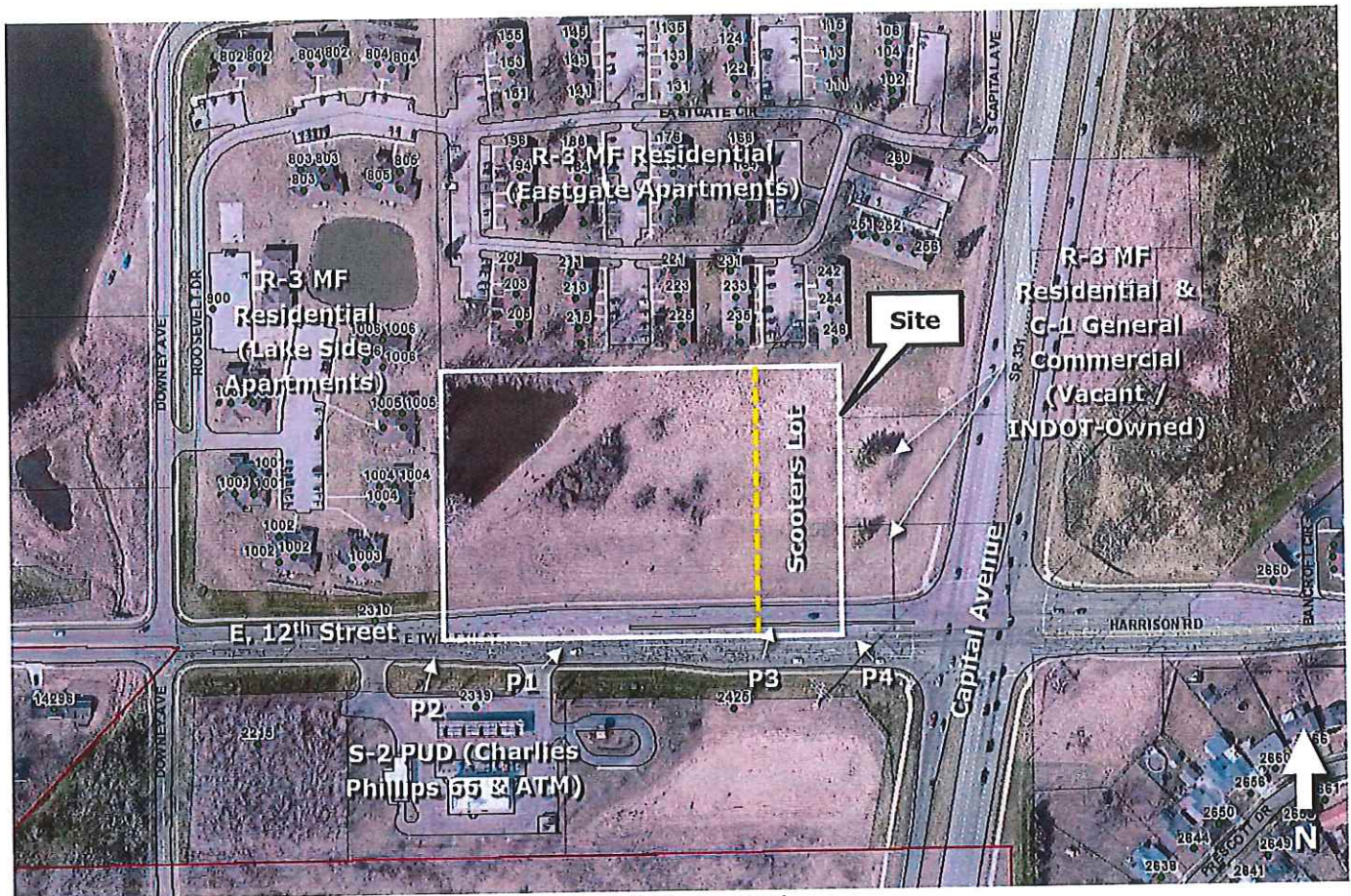
1. All other developmental standards not identified shall comply with the height, area, and development regulations of the C-1 General Commercial District.

This recommendation is based upon the following findings of fact:

1. Existing Conditions – The subject property is currently a vacant parcel of land located at the northwest corner of E. 12th Street and Capital Avenue. These roads are highly to moderately travelled corridors providing major north-south access, and to a lesser extent east-west access, through the City and unincorporated parts of the county. Adjacent uses include multi-family residential apartment complexes to the north and west; a convenience store with fuel pumps and car wash, and stand-alone ATM to the south; and vacant INDOT-owned property to the east.
2. Character of Buildings in Area – The character of buildings within the surrounding area varies, and includes apartment complexes, a single-tenant commercial building, a stand-alone ATM, single-family residential houses, and several industrial buildings to the west along E. 12th Street.
3. The most desirable/highest and best use – The proposed amendment to allow various commercial uses, including a restaurant with drive through facilities only, is not inconsistent with the surrounding existing or permitted land uses. The property is currently zoned for an office and retail development containing a financial institution.
4. Conservation of property values – The proposed zoning should not be injurious to property values in the surrounding area based on the conditions included within this amendment. A solid fence and landscaping is required along a majority of the north and west property line to buffer the adjacent multifamily residential apartment complexes. Currently, commercial uses, including similarly intensive uses than those proposed, are permitted within the PUD being amended.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for medium density residential development as existed to the north and west. However, the presence of existing commercial development to the south and currently permitted commercial uses within the PUD approved in the early 2003, reflect a change in land use patterns in the immediate area.

ATTACHMENTS

Aerial, Photographs, Petition, Site Plan, Floor Plan, Building Elevations & Schematic, Location Map



Aerial Photograph
 NW 12th and Capital Planned Unit Development – Proposed Amendment Area
 Vacant Property currently permitted for commercial use



P1. Looking northeasterly toward the property from the Charlie's Phillips 66 access drive to the south.



P2. Looking northerly toward the west part of the property from the Charlie's Phillips 66 to the south.



P3. Looking northerly toward the east part of the site (proposed Scooters lot) from E. 12th Street.



P4. Looking northwesterly toward the property and Scooters lot from the southwest corner of E. 12th Street & Capital Avenue.

Date: 02/22/23

Honorable Members of the
Common Council

City of Mishawaka, Indiana

and

Mishawaka City Plan Commission

City of Mishawaka, Indiana

PET 23-04
Received

FEB 22 2023

Planning and
Community DevelopmentRE: NW 12TH & CAPITAL PUD AMENDMENT
~~Grandview Phase III PUD Amendment~~

The undersigned, Owner, of 1635 IRONWOOD 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:

A part of the Southeast Quarter (1/4) of the Southeast Quarter (1/4) of Section 14, Township 37 North, Range 3 East, in the City of Mishawaka, St. Joseph County, Indiana more particularly described as follows:

Beginning at a point on the South line of Section 14, 261.50 feet on an assumed bearing of South 89° 48' 39" West of the Southeast corner of said Section 14; thence continuing South 89° 48' 39" West along said South line of Section 14, 624.50 feet; thence North 0° 00' 00" West a distance of 411.72 feet; thence North 89° 48' 09" East, a distance of 624.50 feet; thence South 0° 00' 00" West, a distance of 412.60 feet to the place of beginning.

COMMON ADDRESS: Northwest Corner of Capital Avenue and 12th Street, Mishawaka

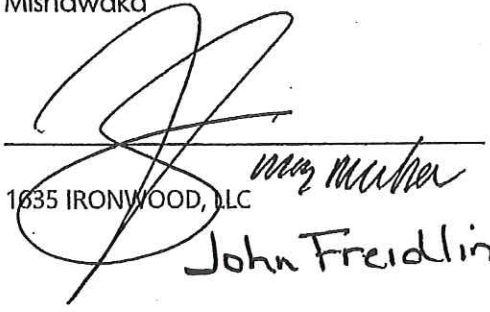
Petitioner owns one hundred percent (100%) of the above-described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for office and retail development containing a financial institution uses.

Petitioner desires said real estate to be amended as follows:

1. Additional Use:

1. To allow for the 1 Restaurant drive through Facility.
2. Allow for the proposed building materials presented by Scooters Coffee (See Attached Elevations)
 - Hardie Board Siding / and Hardie Reveal Panel materials.
 - Glazing as presented
 - No brick or stone Façade treatment.
3. Landscaping to follow the C-1 Commercial Zoning requirements.
4. Screening fence to be 6' in height.
5. Signage as presented in the building package will be acceptable with appropriate height and size requirements per C1-General Commercial Standards.
6. See Conditions of approval for remaining conformance regulations.

WHEREFORE, the petitioner respectfully requests that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, and appropriate ordinance be enacted amending the PUD of the above-described parcel of land located in the City of Mishawaka


1635 IRONWOOD, LLC

John Freidline

CONTACT PERSON

Steve Ruby
Abonmarche Consultants
315 W. Jefferson Blvd.
South Bend, IN 46601
(574) 538-2201
sruby@abonmarche.com



Conditions of Approval

Northwest E. 12th Street & Capital Avenue PUD Amendment

Uses:

1. Permitted uses shall be limited to uses identified in the C-1 General Commercial District including one (1) restaurant with drive through facilities only.
2. Off-premise signs/billboards shall be prohibited.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout the site shall be applicant/developer's cost and expense.

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed on the site shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. An opaque six-foot high fence shall be provided along the entire northern property line. The fence shall be installed with the development of each individual lot. The fence is not required where adjacent to an existing pond.
2. A 15' wide landscape buffer shall be provided between the property and the adjacent residentially zoned property to the north. The landscape buffer shall be planted with a continuous evergreen screen combined with required plantings as identified in minimum landscaping and screening regulations (Section 137-815). Minimum size of the evergreen plantings at the time of planting shall be 6 foot in height. The buffer shall be provided with the development of each individual lot.
3. All other landscaping shall comply with the minimum landscaping and screening regulations for commercial property (Section 137-815).

Signage:

1. All signage shall comply with the height and display area requirements for the C-1 General Commercial District, including but not limited to, all freestanding and directional signs.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. Shielding of lighting shall be required in the areas to the rear of buildings adjacent to (in sight of) residential areas.
2. A photometric lighting plan shall be submitted as part of the final site plan. Lighting shall not exceed one-half footcandles as measured along property lines abutting residentially zoned property.

Architectural Requirements:

1. Building materials for the proposed restaurant with drive through facilities shall be permitted to utilize fiber cement board, including HardiePlank CedarMill Lap Siding and a Hardie Reveal Panel System, as an appropriate exterior building material. Building colors shall comply with the C-1 General Commercial District.

Other:

1. All other developmental standards not identified shall comply with the height, area, and development regulations of the C-1 General Commercial District.

ABONMARCHÉ
 11111 Highway 401
 Suite 100
 Mississauga, ON L4W 4Y6
 Tel: (905) 876-1111
 Fax: (905) 876-1112
 Email: info@abonmarche.com

SCOOTERS COFFEE
 12TH STREET & CAPITAL
 MISSISSAUGA, ONTARIO

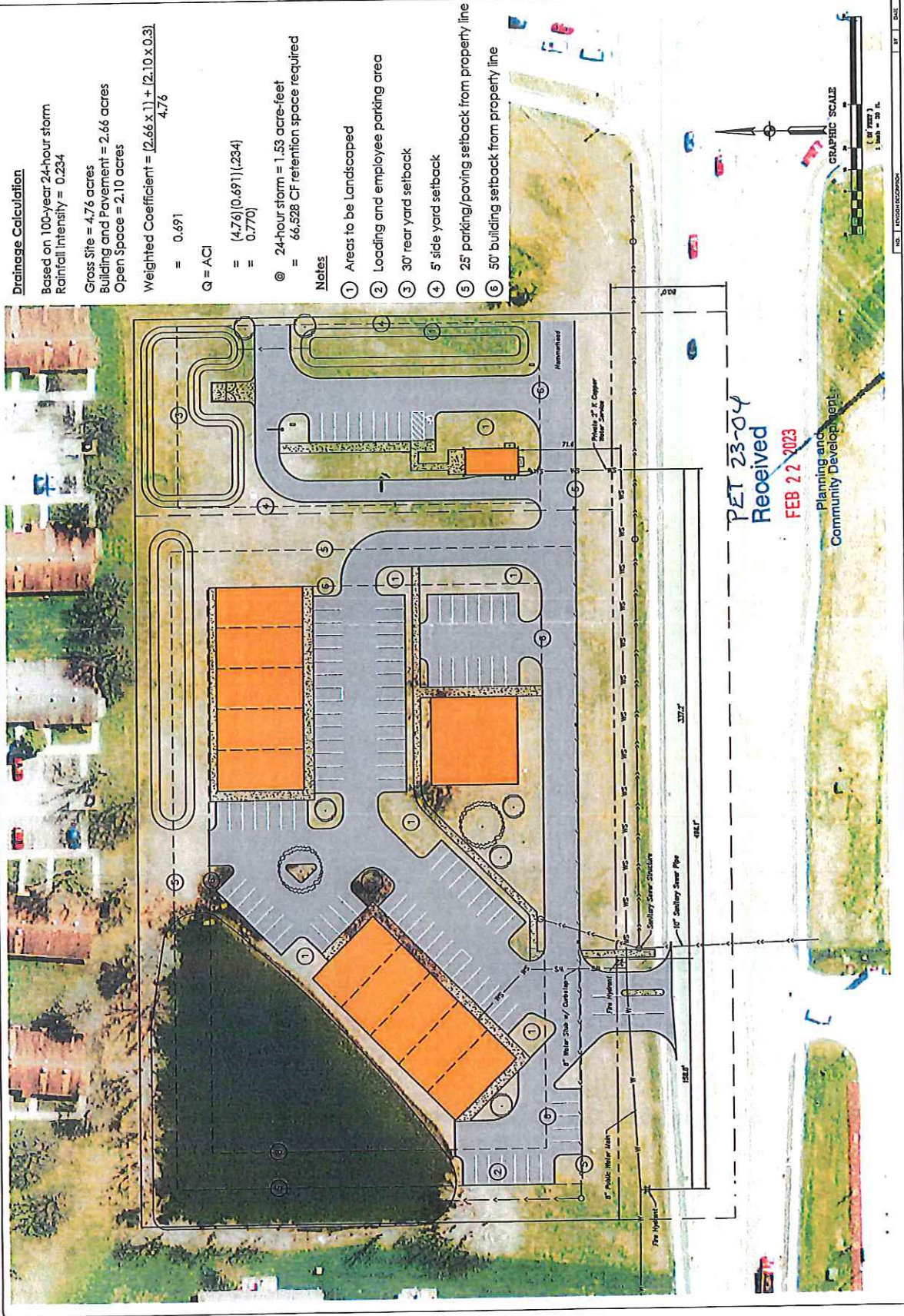
CONCEPTUAL SITE PLAN

DATE: 2/15/2023
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO: 22-1930
 SHEET NO: 1 of 1

Drainage Calculation
 Based on 100-year 24-hour storm
 Rainfall Intensity = 0.234
 Gross Site = 4.76 acres
 Building and Pavement = 2.66 acres
 Open Space = 2.10 acres
 Weighted Coefficient = $\frac{[2.66 \times 1] + [2.10 \times 0.3]}{4.76}$
 = 0.691
 $Q = ACI$
 = $(4.76)(0.691)(0.234)$
 = 0.770
 @ 24-hour storm = 1.53 acre-feet
 = 66,528 CF retention space required

Notes

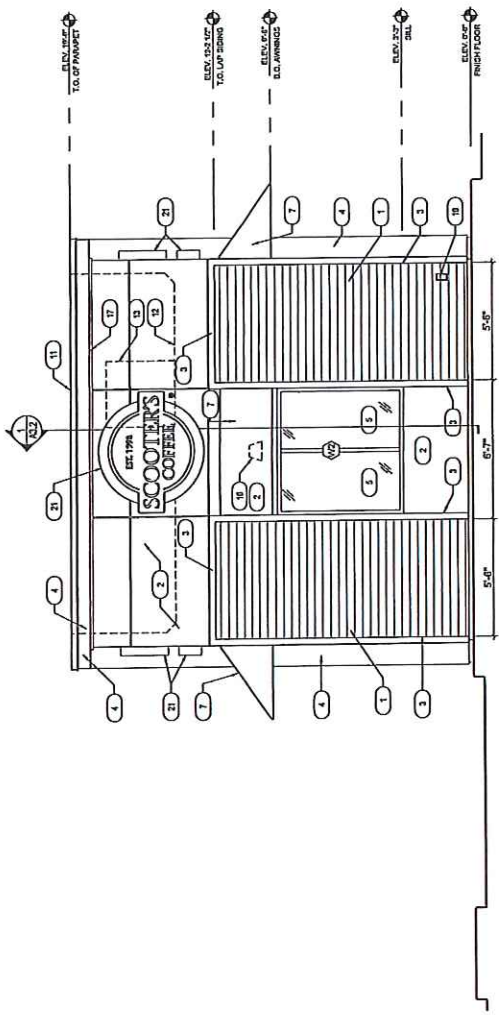
- ① Areas to be Landscaped
- ② Loading and employee parking area
- ③ 30' rear yard setback
- ④ 5' side yard setback
- ⑤ 25' parking/paving setback from property line
- ⑥ 50' building setback from property line



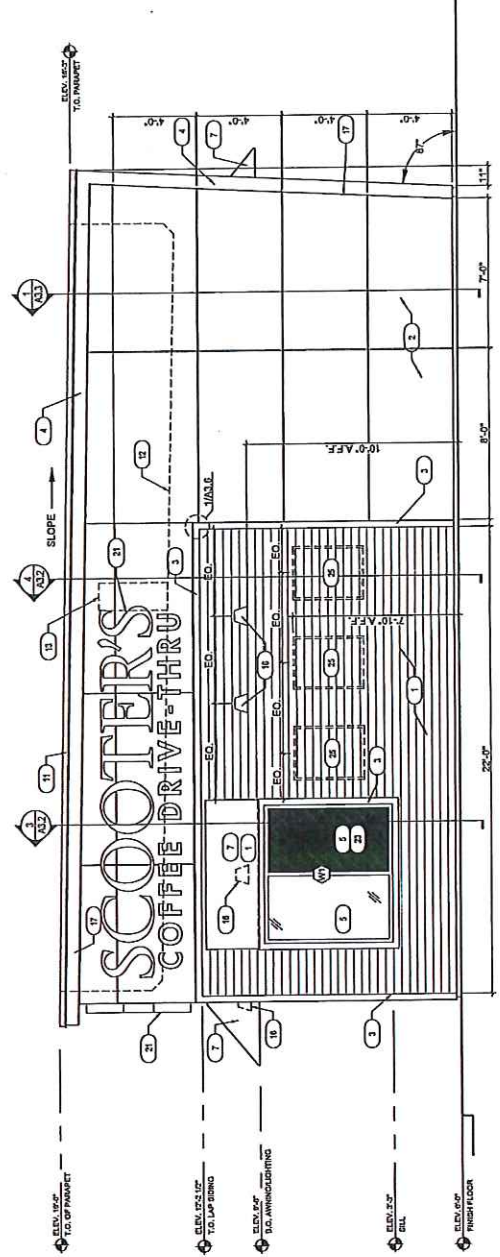
PET 23-04
 Received
 FEB 22 2023
 Planning and
 Community Development

KEYNOTES

- HARDIE PLANKS LAP SIDING CEDAR SHAKESLAP SHINGLES. SEE HARDIE DETAIL SHEET.
- ASBESTOS REMOVAL AND ABATEMENT. SEE HARDIE DETAIL SHEET.
- 3" X 6" WOOD TRIM. SEE HARDIE DETAIL SHEET.
- HARDIE BOARD TRIM. SEE HARDIE DETAIL SHEET.
- INSULATED DARK BRONZE ALUMINUM WINDOWS WITH DUAL PANE TEMPERED GLASS.
- QUICKCURE 4000 WINDOW. COLOR: DARK BRONZE.
- AWNING BY OTHERS - COLOR: RED.
- INSULATED HOLLOW METAL DOOR AND FRAME - COLOR: SHERWIN WILLIAMS HUNTER HARBOR. SEE HARDIE DETAIL SHEET.
- WIDE ANGLE PREP HOLE BY DOOR MANUFACTURER.
- NOT USED.
- 22 GAUGE METAL HANGAR CAP.
- LINE OF ROOF SLOPE.
- AIR CONDENSER. SEE MECHANICAL DRAWINGS.
- ROOF SCOPES AND DOWNPOUT. SEE DETAIL B4.3.
- WALLBOX BY GE BLACK.
- WALL MOUNTED LIGHT FIXTURE. SEE ELECTRICAL DRAWINGS.
- LED LIGHT RING. SEE ELECTRICAL DRAWINGS.
- LED PANEL. SEE ELECTRICAL DRAWINGS.
- ELECTRICAL OUTLET. SEE ELECTRICAL DRAWINGS.
- HOSE BIBB. SEE PLUMBING DRAWINGS.
- PROPOSED DOWNPOUT BY OTHERS UNDER SEPARATE PERMIT.
- CONNECT DOWNPOUTS TO UNDERGROUND PIPING. REF. CIVIL.
- PANORAMIC GLASS.
- NEW SECURITY CAMERA.
- CUSTOMER PROVIDED SIGN PANELS. PANELS TO BE MOUNTED TO FACIA BY OTHERS. SEE HARDIE DETAIL SHEET FOR MOUNTING LOCATION USING PROPER KNOCKOUT AND DISTANCE FROM CORNERS.



1 FRONT EXTERIOR ELEVATIONS
SCALE: 3/8" = 1'-0"



2 SIDE EXTERIOR ELEVATIONS
SCALE: 3/8" = 1'-0"

KEYNOTES

1. HANGAR PLANKS LAY USING CEDAR MILL LAMP. SEE HANGAR DETAIL SHEET.
2. HANGAR SHOWN WITH 1/2" RADIUS CORNER. SEE HANGAR DETAIL SHEET.
3. 1/2" HANGAR TRIM. SEE HANGAR DETAIL SHEET.
4. HANGAR SHOWN WITH 1/2" RADIUS CORNER. SEE HANGAR DETAIL SHEET.
5. HANGAR SHOWN WITH 1/2" RADIUS CORNER. SEE HANGAR DETAIL SHEET.
6. HANGAR SHOWN WITH 1/2" RADIUS CORNER. SEE HANGAR DETAIL SHEET.
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22. HANGAR SHOWN WITH 1/2" RADIUS CORNER. SEE HANGAR DETAIL SHEET.
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24. HANGAR SHOWN WITH 1/2" RADIUS CORNER. SEE HANGAR DETAIL SHEET.
25. HANGAR SHOWN WITH 1/2" RADIUS CORNER. SEE HANGAR DETAIL SHEET.

PROJECT ADDRESS:
STREET
CITY, STATE, ZIP

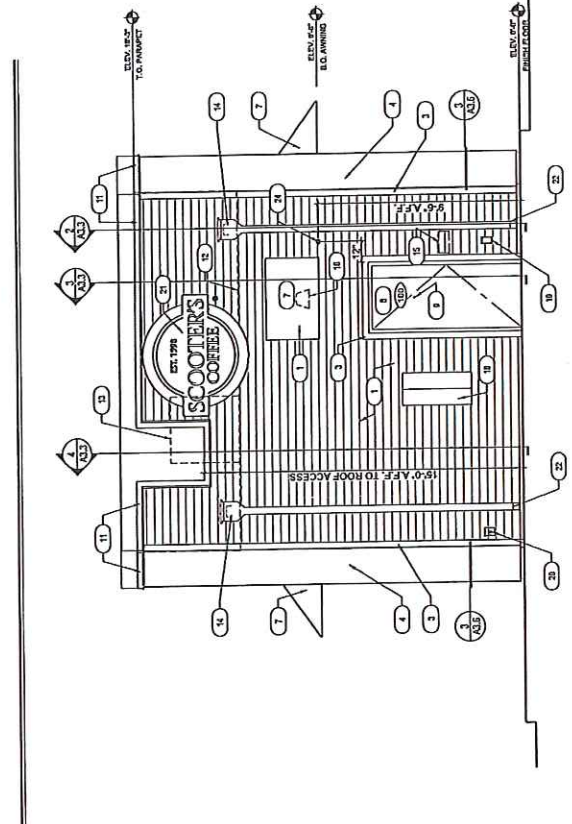
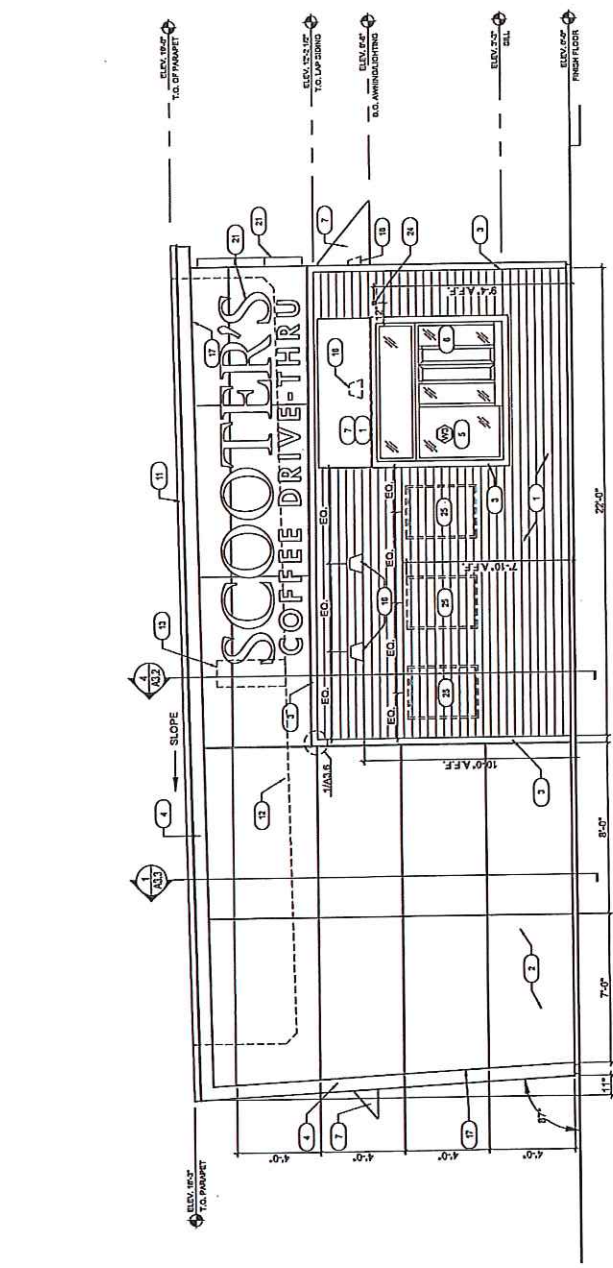
REVISIONS:

TITLE:
EXTERIOR
ELEVATIONS

MOCK PROTOTYPE:
MAY 2022
DATE:
PROJECT NO.
220000

☒ PERMIT SUBMITTAL
☐ CONSTRUCTION ISSUE

SHEET NO.
A2.2

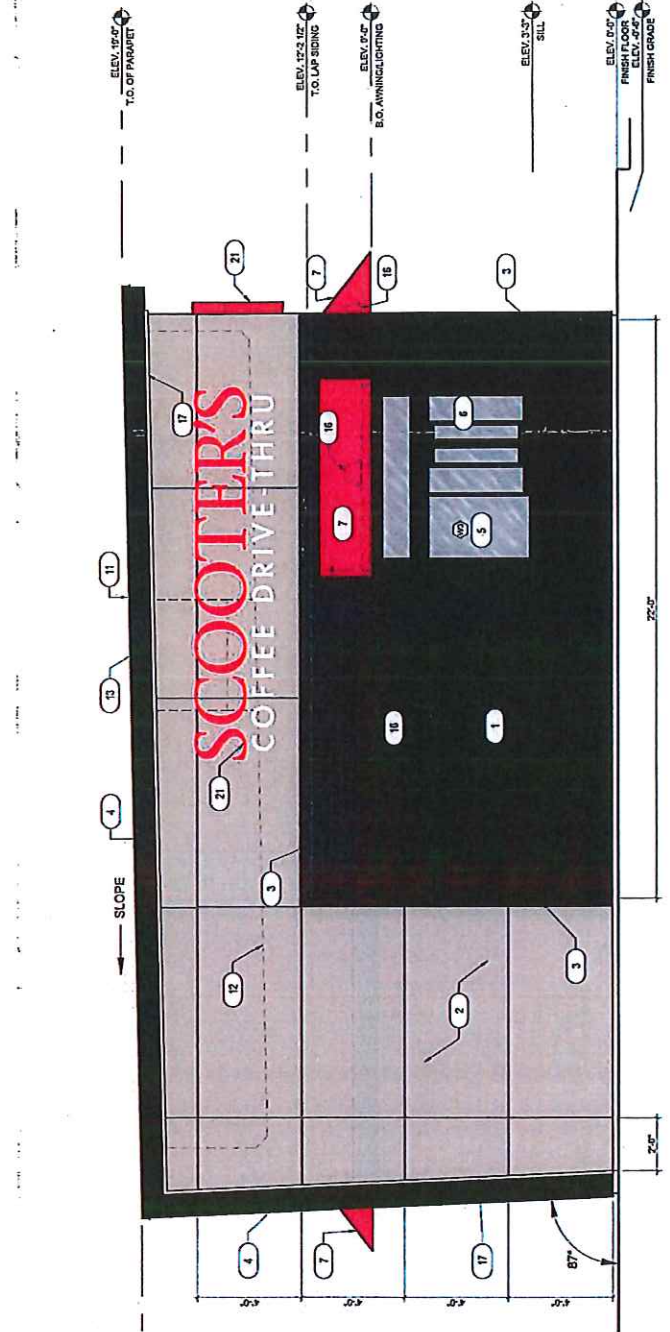
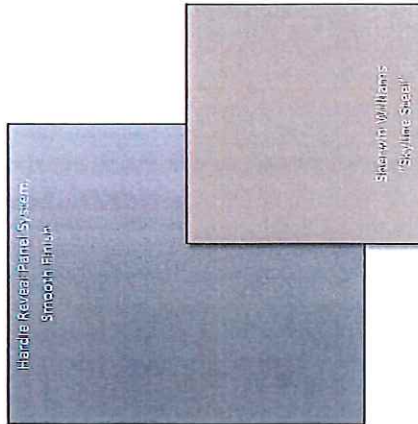


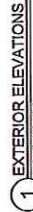
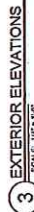


TWENTY FIVE YEARS
15974 N. 77th ST., STE. 100
SCOTTSDALE AZ 85260

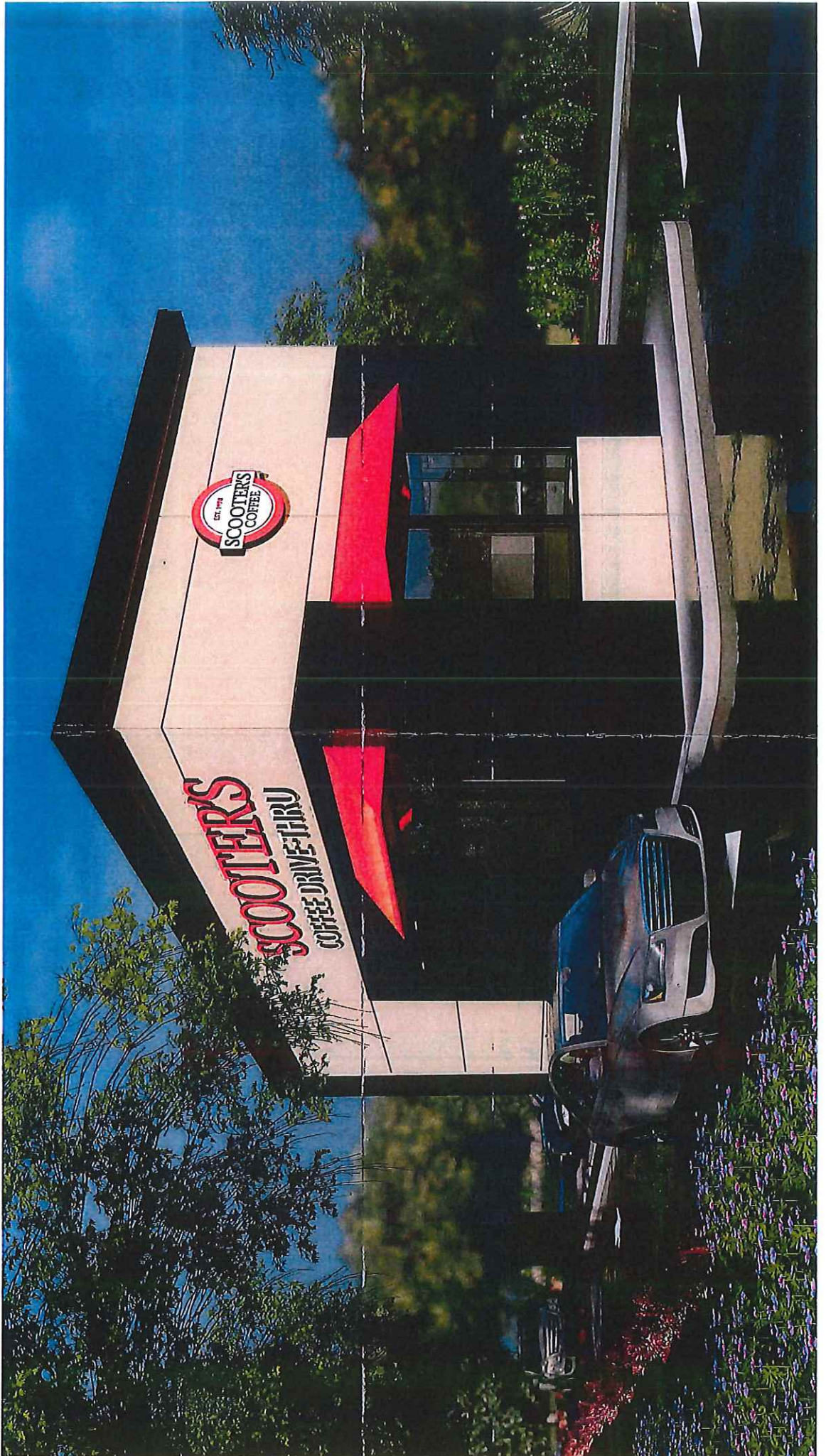
FINISH LEGEND	
Exterior Finish	HardiePlank HZ10 CedarMill Lap Siding (6.25" Width) Painted to match Sherwin Williams "Inkwell" SW 6992, Eggshell Finish
Exterior Finish	Hardie Reveal Panel System WZ10 Smooth Finish Painted to match Sherwin Williams "Skyline Steel" SW 1015
Exterior Finish	3.5" HardieTrim Painted to match Sherwin Williams "Inkwell" SW 6992, Eggshell Finish
Window Frames	Dark Bronze Aluminum
Door Frames	Insulated Hollow Metal Door and Frame Painted to match Sherwin Williams "Inkwell" SW 6992, Eggshell Finish
Exterior Accents	Black 20 Gauge Metal

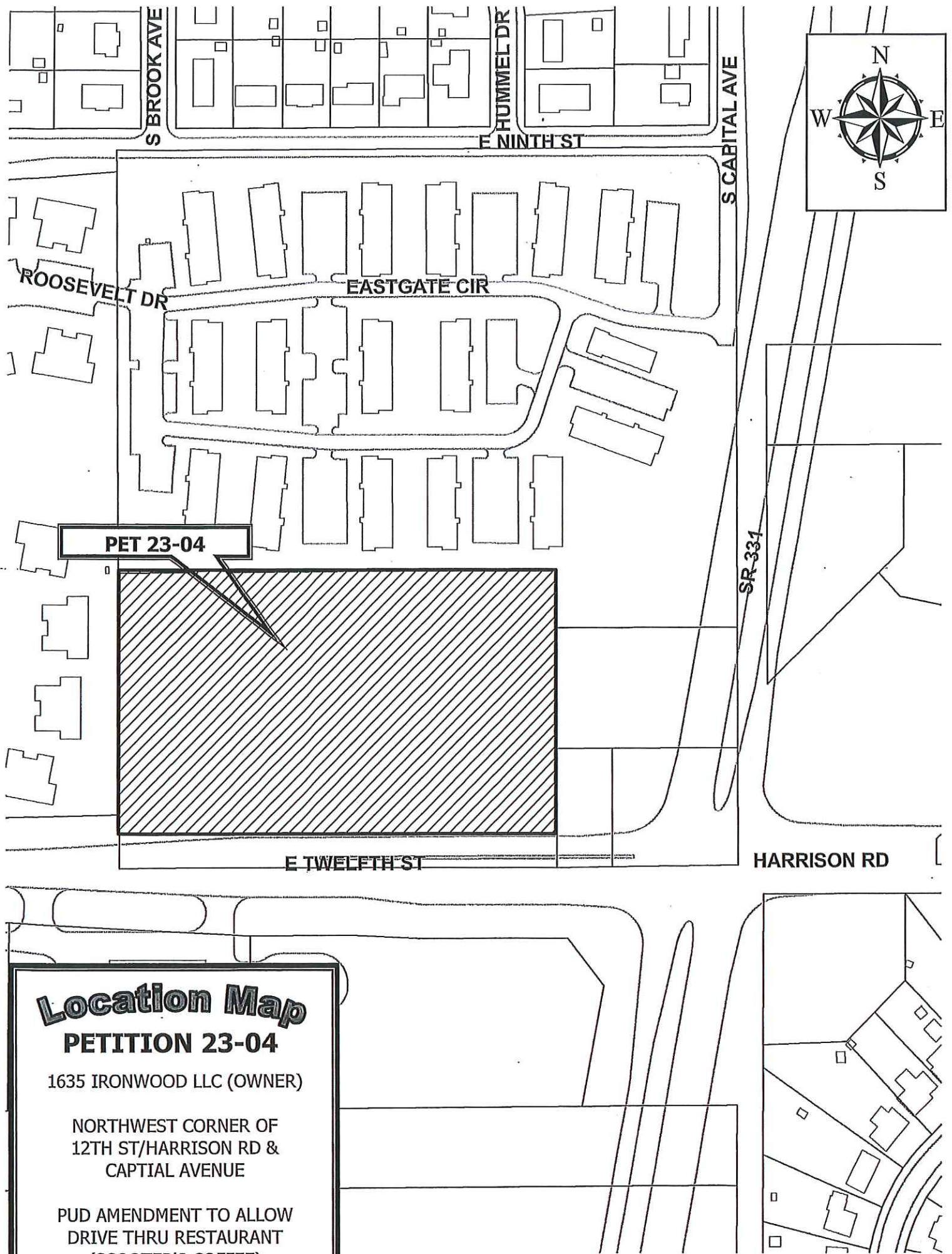
Scooter's Coffee





- [illegible]





Date: 02/22/23
Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

Deborah S. Block, IAMC, MMC

FEB 23 2023

City Clerk
Mishawaka, IN

PET 23-04
Received
FEB 22 2023

RE: Grandview Phase III PUD Amendment

Planning and
Community Development

The undersigned, Owner, of 1635 IRONWOOD 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:

A part of the Southeast Quarter (¼) of the Southeast Quarter (¼) of Section 14, Township 37 North, Range 3 East, in the City of Mishawaka, St. Joseph County, Indiana more particularly described as follows:

Beginning at a point on the South line of Section 14, 261.50 feet on an assumed bearing of South 89° 48' 39" West of the Southeast corner of said Section 14; thence continuing South 89° 48' 39" West along said South line of Section 14, 624.50 feet; thence North 0° 00' 00" West a distance of 411.72 feet; thence North 89° 48' 09" East, a distance of 624.50 feet; thence South 0° 00' 00" West, a distance of 412.60 feet to the place of beginning.

COMMON ADDRESS: Northwest Corner of Capital Avenue and 12th Street, Mishawaka

Petitioner owns one hundred percent (100%) of the above-described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for office and retail development containing a financial institution uses.

Petitioner desires said real estate to be amended as follows:

1. Additional Use:

1. To allow for the 1 Restaurant drive through Facility.
2. Allow for the proposed building materials presented by Scooters Coffee (See Attached Elevations)
 - Hardie Board Siding / and Hardie Reveal Panel materials.
 - Glazing as presented
 - No brick or stone Façade treatment.
3. Landscaping to follow the C-1 Commercial Zoning requirements.
4. Screening fence to be 6' in height.
5. Signage as presented in the building package will be acceptable with appropriate height and size requirements per C1-General Commercial Standards.
6. See Conditions of approval for remaining conformance regulations.

WHEREFORE, the petitioner respectfully requests that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, and appropriate ordinance be enacted amending the PUD of the above-described parcel of land located in the City of Mishawaka


1835 IRONWOOD, LLC
my number
John Freidline

CONTACT PERSON

Steve Ruby
Abonmarche Consultants
315 W. Jefferson Blvd.
South Bend, IN 46601
(574) 538-2201
sruby@abonmarche.com



Conditions of Approval

Northwest E. 12th Street & Capital Avenue PUD Amendment

Uses:

1. Permitted uses shall be limited to uses identified in the C-1 General Commercial District including one (1) restaurant with drive through facilities only.
2. Off-premise signs/billboards shall be prohibited.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
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1. All signage shall comply with the height and display area requirements for the C-1 General Commercial District, including but not limited to, all freestanding and directional signs.

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1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. Shielding of lighting shall be required in the areas to the rear of buildings adjacent to (in sight of) residential areas.
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Architectural Requirements:

1. Building materials for the proposed restaurant with drive through facilities shall be permitted to utilize fiber cement board, including HardiePlank CedarMill Lap Siding and a Hardie Reveal Panel System, as an appropriate exterior building material. Building colors shall comply with the C-1 General Commercial District.

Other:

1. All other developmental standards not identified shall comply with the height, area, and development regulations of the C-1 General Commercial District.

EXTERIOR ELEVATIONS

KEYNOTES

1. HANDED PLANK LAP SIDING (WOODGULL & CAP, SEE HANDED DETAIL SHEET)
2. HANDED INSULATED PANEL SYSTEM (METAL, SMOOTH FINISH, SEE HANDED DETAIL SHEET)
3. HANDED INSULATED PANEL SYSTEM (METAL, SMOOTH FINISH, SEE HANDED DETAIL SHEET)
4. HANDED INSULATED PANEL SYSTEM (METAL, SMOOTH FINISH, SEE HANDED DETAIL SHEET)
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24. HANDED INSULATED PANEL SYSTEM (METAL, SMOOTH FINISH, SEE HANDED DETAIL SHEET)
25. HANDED INSULATED PANEL SYSTEM (METAL, SMOOTH FINISH, SEE HANDED DETAIL SHEET)



PROJECT ADDRESS:
STREET
CITY, STATE, ZIP

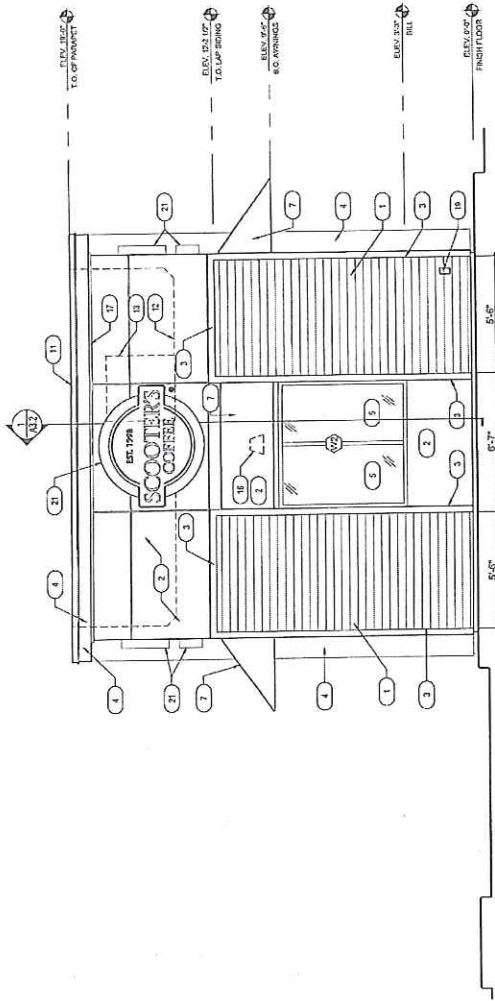
REVISIONS:

TITLE:
EXTERIOR
ELEVATIONS

KICKER: MAY 2022
MAY 2022
DATE: 10/05/2022
PROJECT NO. 220004

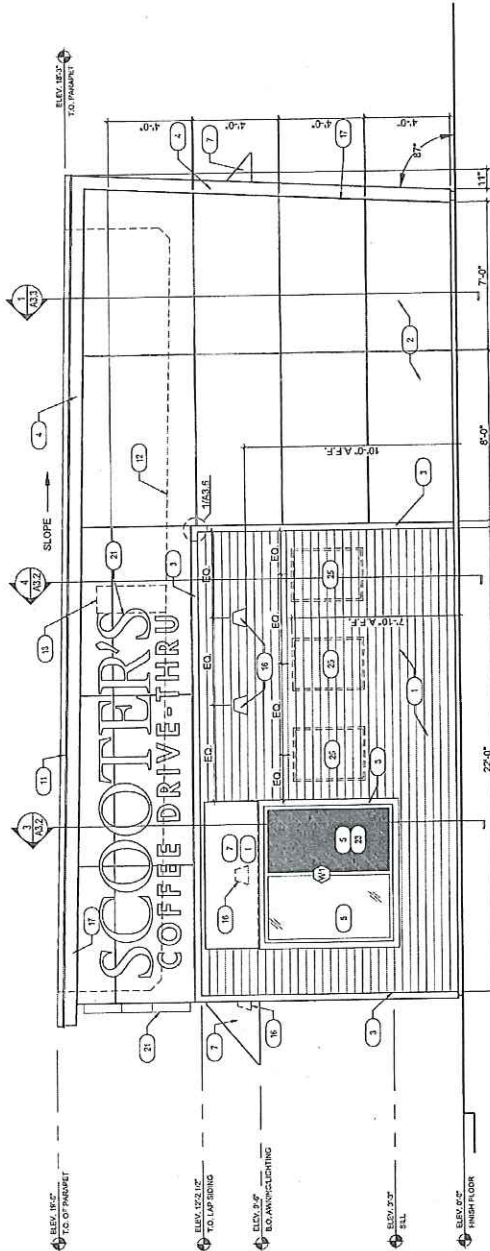
☒ PERMITTING SUBMITTAL
☐ CONSTRUCTION ISSUE
SHEET NO.

A2.1



1 FRONT EXTERIOR ELEVATIONS

SCALE: 1/8" = 1'-0"



2 SIDE EXTERIOR ELEVATIONS

SCALE: 3/8" = 1'-0"

[illegible]

PROJECT ADDRESS:
STREET
CITY, STATE, ZIP

REVISIONS:

TITLE:
EXTERIOR
ELEVATIONS

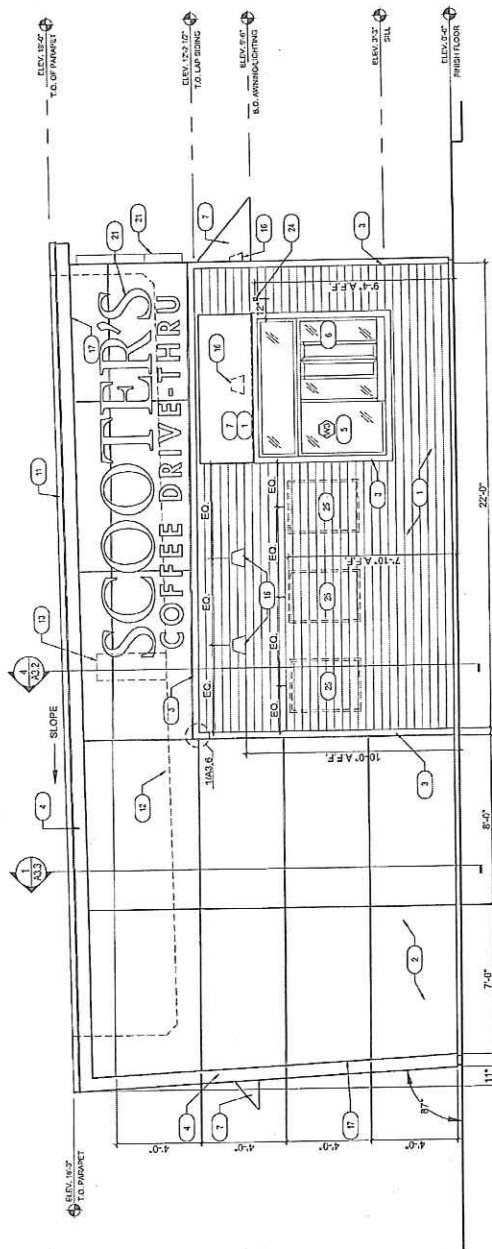
KIOSK PROTOTYPE:
4.1 PROTOTYPE
MAY 2022

DATE:
XXXXXX/2022

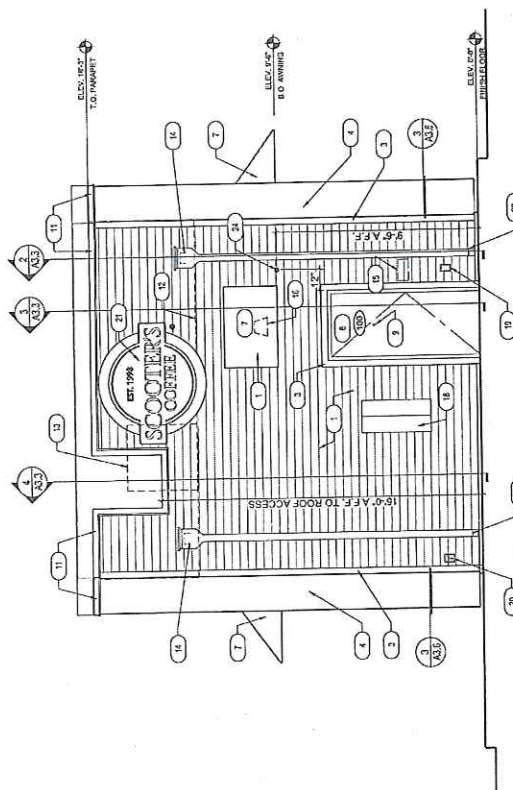
PROJECT NO.
27XXXX

☒ PERMIT/BID SUBMITTAL
☐ CONSTRUCTION ISSUE
 SHEET NO.

A2.2



1 EXTERIOR ELEVATIONS
SCALE 3/8" = 1'-0"



2 EXTERIOR ELEVATIONS

CONCEPTUAL SITE PLAN

Prepared for:
Client:
Date: 2/16/2023
Scale: 1" = 20'

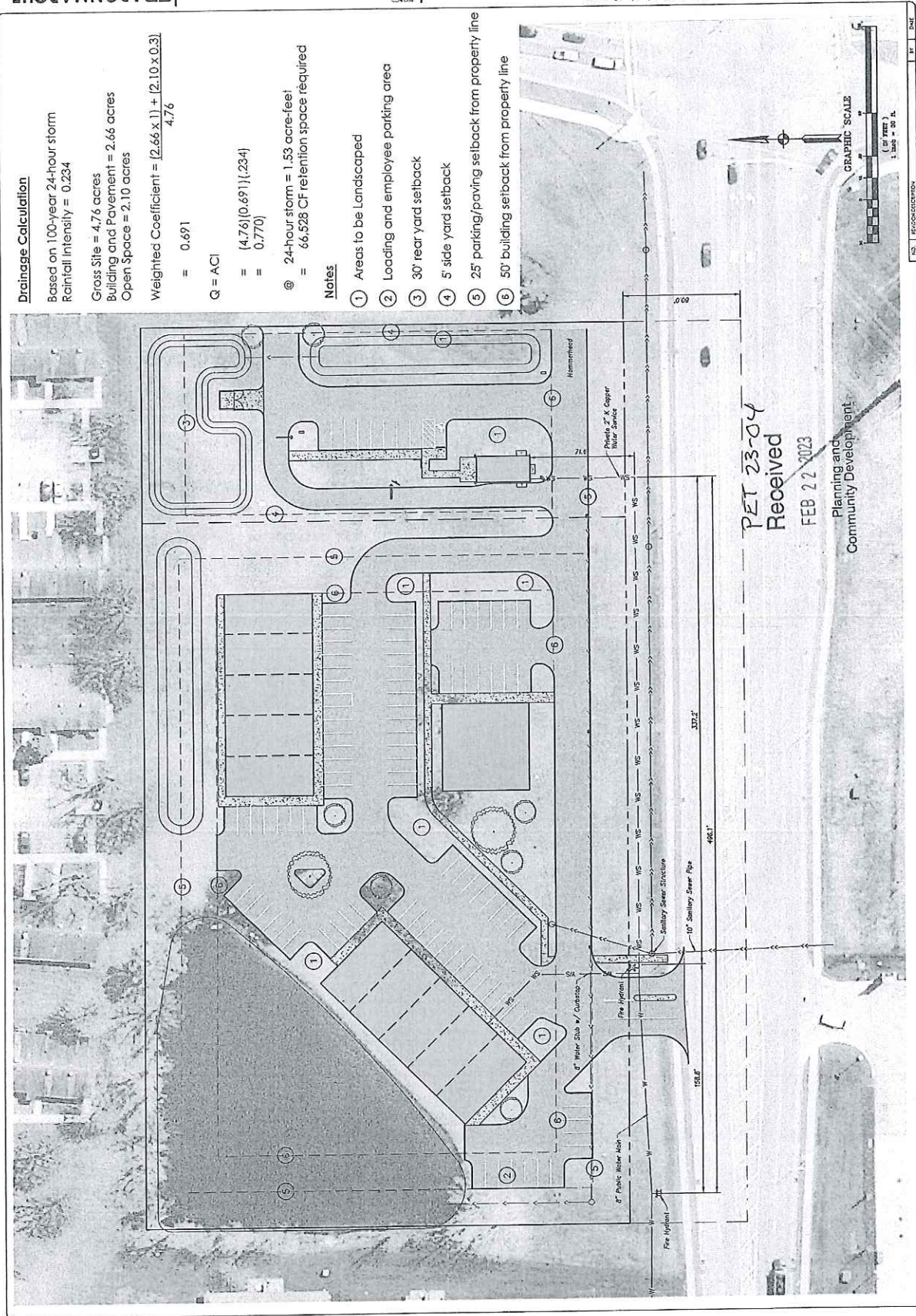
Project: 22-1930
Sheet: 1 of 1
Author: [Name]
Check: [Name]
Scale: 1" = 20'

Drainage Calculation
 Based on 100-year 24-hour storm
 Rainfall intensity = 0.234
 Grass Silt = 4.76 acres
 Building and Pavement = 2.66 acres
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 Weighted Coefficient = $\frac{2.66 \times 1 + 2.10 \times 0.3}{4.76}$
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$Q = ACI$
 = $(4.76)(0.691)(0.234)$
 = 0.770
 @ 24-hour storm = 1.53 acre-feet
 = 66,528 CF retention space required

Notes

- 1 Areas to be Landscaped
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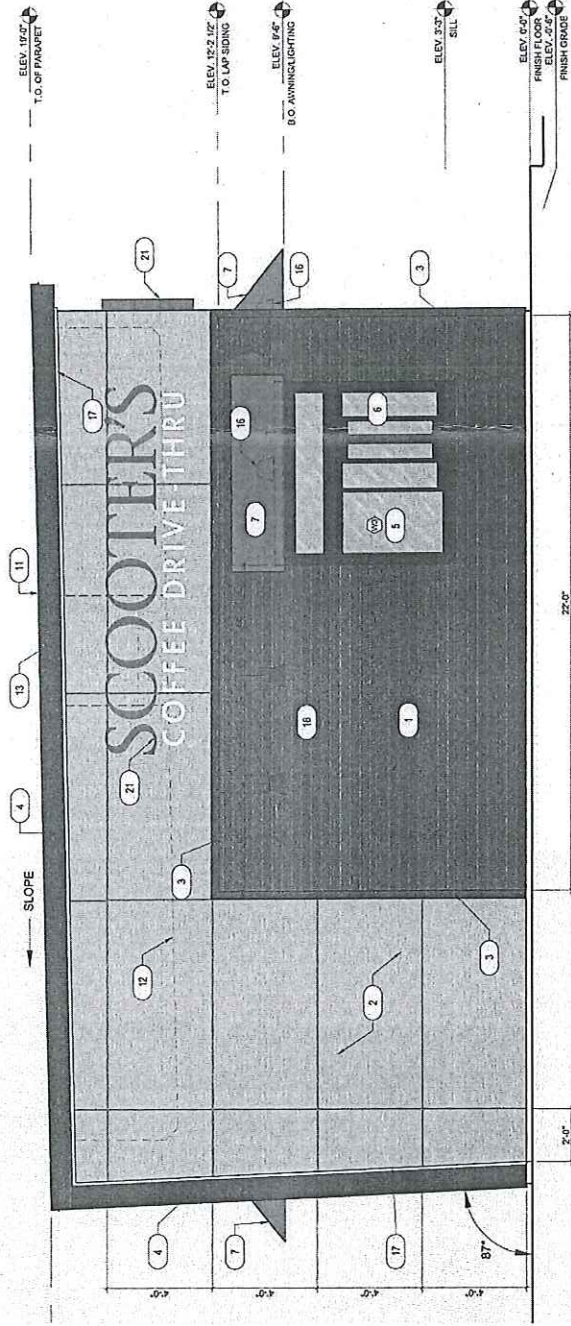
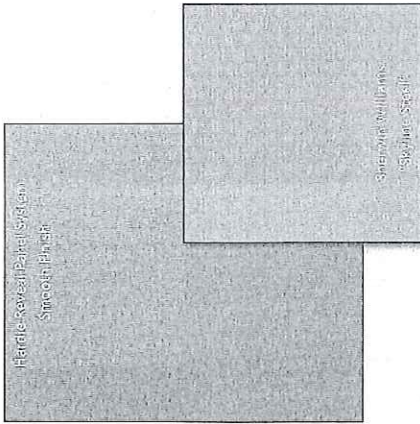
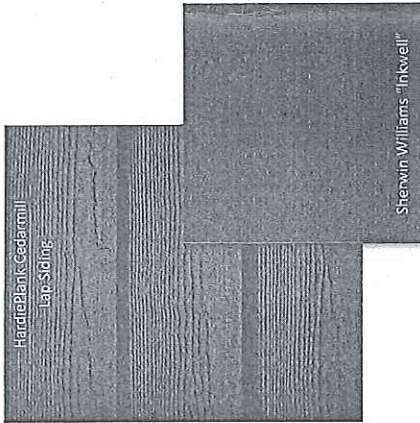
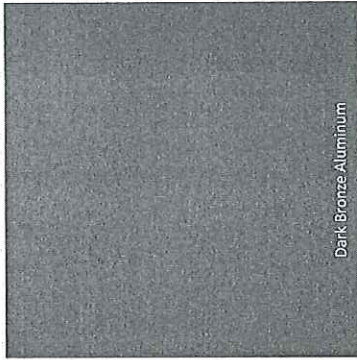


PET 23-04
Received
FEB 22 2023

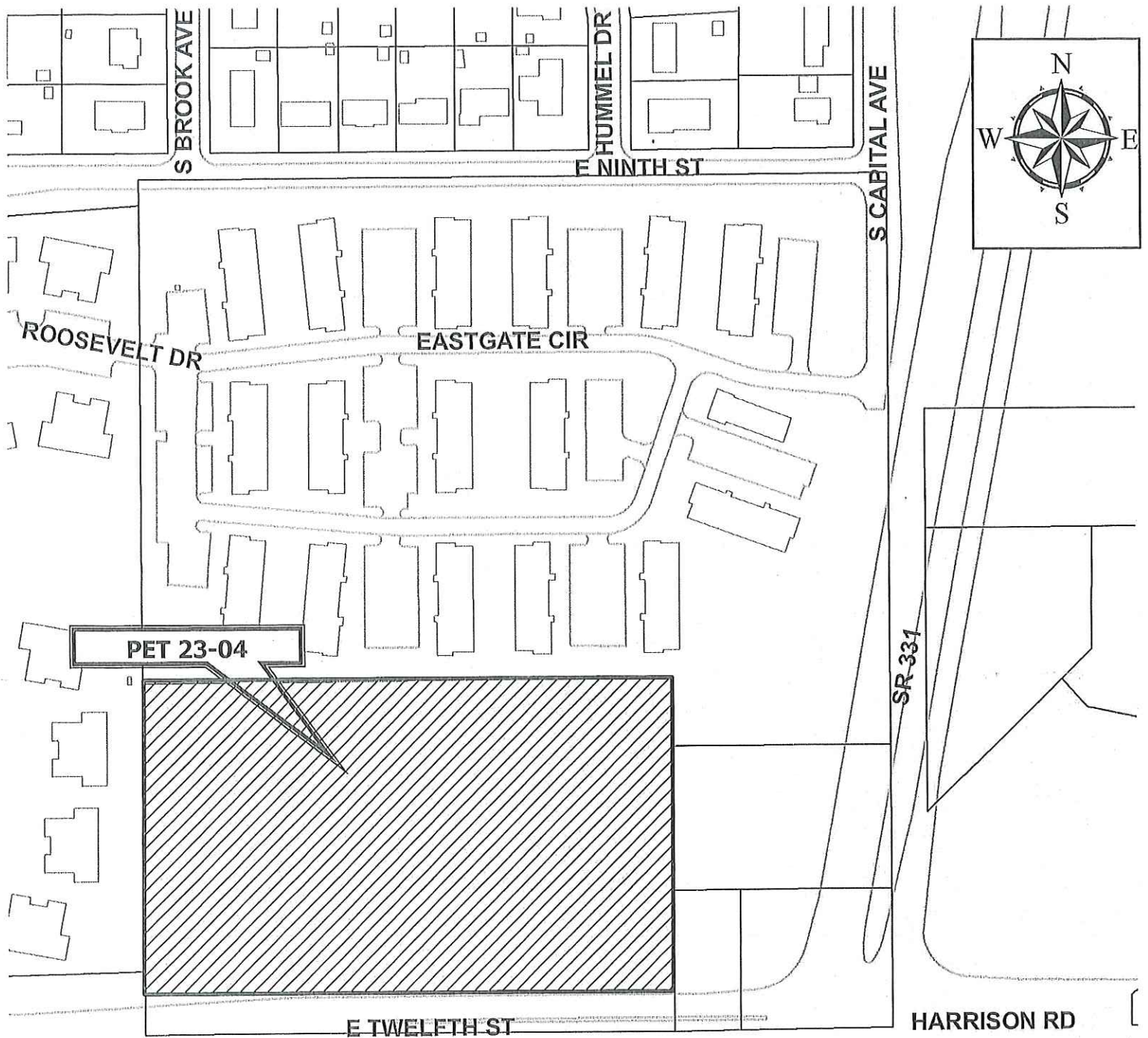
Planning and
 Community Development

FINISH LEGEND		
Exterior Finish	HardiePlank HZLO CedarMill Lap Siding (6.25" Width)	Painted to match Sherwin Williams "Inkwell" SW 6992, Eggshell Finish
Exterior Finish	Hardie Reveal Panel System WZLO, Smooth Finish	Painted to match Sherwin Williams "Skyline Steel" SW 1015
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Door Frames	Insulated Hollow Metal Door and Frame	Painted to match Sherwin Williams "Inkwell" SW 6992, Eggshell Finish
Exterior Accents	Black 20 Gauge Metal	

Scooter's Coffee







Location Map

PETITION 23-04

1635 IRONWOOD LLC (OWNER)

NORTHWEST CORNER OF
12TH ST/HARRISON RD &
CAPTIAL AVENUE

PUD AMENDMENT TO ALLOW
DRIVE THRU RESTAURANT
(SCOOTER'S COFFEE)



CITY OF MISHAWAKA



DAVID A. WOOD, MAYOR

Mishawaka Utilities
Wastewater Division

March 17, 2023

Mishawaka Common Council
100 Lincolnway West
Mishawaka, IN 46544

Re: Proposed Ordinance No. 2023-_____

Honorable Council Members:

Proposed Ordinance 2023-_____ is for the sale of revenue bonds to fund the City's Sewage Works projects. These planned projects will continue our efforts of reduction of Combined Sewer Overflows as outlined in our Long Term Control Plan (LTCP) and accomplish miscellaneous upgrades at the Wastewater Treatment Facility.

This proposed Bond sale **will not** impact current wastewater rates as it was programed with the initial rate discussion and ultimate rate approval of 2016. Therefore, there will be no request to increase rates with this final portion of funding. Upon completion of projects, a 4-overflow level of control as proposed in our current re-negotiation plan will be achieved. These improvements provide both reduction in combined sewer overflows and needed infrastructure updates in conjunction with the City's Neighborhood Revitalization Plan.

If you have questions regarding this matter, please contact myself or Chris in Engineering.

Respectfully,

Division Manager
Mishawaka Utilities, Wastewater Division
1020 Lincolnway West
Mishawaka, IN 46545
PH: 574.258.1655
Email - tbrill@mishawaka.in.gov

Cc: Mayor Dave Wood
Deborah, S. Block, City Clerk

MAR 16 2023

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2023-12
ORDINANCE NO. _____

An Ordinance concerning the construction of additions and improvements to the sewage works of the City of Mishawaka, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the City of Mishawaka, Indiana ("City") has heretofore established, constructed and financed its sewage works, and now owns and operates said sewage works in accordance with the provisions of Title 36, Article 9, Chapter 23 of the Indiana Code, as in effect on the date of delivery of the bonds herein authorized (all references hereinafter to the Indiana Code are designated as "IC" followed by the applicable code section or sections); and

WHEREAS, the Common Council of the City ("Common Council") now finds that certain additions, improvements and extensions to said works are necessary; and that preliminary plans, specifications and estimates have been or will be prepared and filed by the engineers employed by the City for the construction of said additions, improvements and extensions, as more fully described on Exhibit A attached hereto and made a part hereof (the "Project"), which preliminary plans, specifications and engineering estimates have been or will be approved by the Common Council and by all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management, will be approved by the aforesaid governmental authorities and are incorporated herein by reference and will be open for inspection at the office of the City Clerk (the "Clerk"), as required by law; and

WHEREAS, the City has obtained engineer's estimates for the costs of the construction of the Project, and will advertise for and receive bids for the construction of the Project, which bids will be subject to the City's determination to construct all or a portion of the Project and subject to the City obtaining funds to pay for all or a portion of the Project; that on the basis of said engineer's estimates, the maximum cost of the Project, including estimated incidental expenses, is in an amount not to exceed Forty Million Dollars (\$40,000,000); and

WHEREAS, the Common Council finds that it does not have sufficient funds on hand to apply to the costs of the Project, and that the entire cost of the Project is hereby authorized to be financed by the issuance of sewage works revenue bonds, in one or more series, in an aggregate amount not to exceed Forty Million Dollars (\$40,000,000), and, if necessary, bond anticipation notes ("BANs") in an aggregate principal amount not to exceed Forty Million Dollars (\$40,000,000); and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to finance the construction of additions and improvements to the sewage works and payable out of the revenues therefrom designated "Sewage Works Revenue Bonds of 2010, Series A," dated January 28, 2010 ("2010A Bonds"), originally issued in the amount of \$2,398,000,

now outstanding in the amount of \$1,012,000, and maturing semiannually over a period ending March 1, 2030, which 2010A Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the sewage works; and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to finance the refunding of certain outstanding sewage works bonds designated "Sewage Works Refunding Revenue Bonds of 2015," dated August 20, 2015 ("2015 Bonds"), originally issued in the amount of \$34,755,000, now outstanding in the amount of \$14,055,000, and maturing semiannually over a period ending March 1, 2027, which 2015 Bonds constitute a first charge upon the Net Revenues of the sewage works, on a parity with the 2010A Bonds; and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to finance the refunding of certain outstanding sewage works bonds and the construction of additions and improvements to the sewage works and payable out of the revenues therefrom designated "Sewage Works Revenue and Refunding Revenue Bonds of 2017, Series A," dated December 12, 2017 ("2017A Bonds"), originally issued in the amount of \$16,315,000, now outstanding in the amount of \$10,295,000, and maturing semiannually over a period ending March 1, 2034, which 2017A Bonds constitute a first charge upon the Net Revenues of the sewage works, on a parity with the 2010A Bonds and the 2015 Bonds; and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to finance the refunding of certain outstanding sewage works bonds and the construction of additions and improvements to the sewage works and payable out of the revenues therefrom designated "Sewage Works Revenue and Refunding Revenue Bonds of 2017, Series B," dated December 12, 2017 ("2017B Bonds"), originally issued in the amount of \$24,210,000, now outstanding in the amount of \$18,910,000, and maturing semiannually over a period ending September 1, 2034, which 2017B Bonds constitute a first charge upon the Net Revenues of the sewage works, on a parity with the 2010A Bonds, the 2015 Bonds and the 2017A Bonds; and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to finance the construction of additions and improvements to the sewage works and payable out of the revenues therefrom designated "Sewage Works Revenue Bonds of 2018," dated October 16, 2018 ("2018 Bonds"), originally issued in the amount of \$12,550,000, now outstanding in the amount of \$11,240,000, and maturing semiannually over a period ending September 1, 2038, which 2018 Bonds constitute a first charge upon the Net Revenues of the sewage works, on a parity with the 2010A Bonds, the 2015 Bonds, the 2017A Bonds and the 2017B Bonds; and

WHEREAS, the 2010A Bonds, the 2015 Bonds, the 2017A Bonds, the 2017B Bonds, and the 2018 Bonds are hereafter referred to as the Outstanding Bonds; and

WHEREAS, the ordinances authorizing the issuance of the Outstanding Bonds permit the issuance of additional bonds ranking on a parity with the Outstanding Bonds provided that certain conditions can be met, and the City finds that the finances of the sewage works will enable the City to meet the conditions for the issuance of additional parity bonds and that, accordingly, the revenue bonds authorized herein shall constitute a first charge on the Net

Revenues of the sewage works, on a parity with the Outstanding Bonds; and

WHEREAS, the Mishawaka Redevelopment Commission ("Redevelopment Commission") has previously adopted and amended a Declaratory Resolution designating and declaring an area known as the Consolidated Tax Increment Financing District ("Area") as an economic development area and an allocation area within the meaning of IC 36-7-14, and the Declaratory Resolution was ratified and confirmed by the Redevelopment Commission; and

WHEREAS, in connection with the issuance of the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, and the 2018 Bonds, the Redevelopment Commission adopted resolutions (collectively, the "Resolutions") which pledge an annual amount of all real and personal property tax proceeds in the Area allocated and deposited in the Allocation Fund created pursuant to IC 36-7-14 ("Tax Increment") to the payment of the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, and the 2018 Bonds, and the funding of any reserves for such 2010A Bonds, the 2017A Bonds, the 2017B Bonds, and the 2018 Bonds; and

WHEREAS, in connection with the issuance of bonds under this Ordinance, the Redevelopment Commission has adopted or will adopt a resolution ("2023 Resolution") to allow the pledge of Tax Increment as described in the Resolutions, to also apply to the payment of all bonds issued under this Ordinance, and the funding of any reserves for all bonds issued under this Ordinance; and

WHEREAS, the Resolutions and 2023 Resolution direct that the Pledged Tax Increment (as hereafter defined) shall be used as Net Revenues of the sewage works; and

WHEREAS, the Common Council has been advised that Tax Increment has been pledged to the payment of the City of Mishawaka, Indiana, Redevelopment District Tax Increment Revenue Bonds, Series 2015 ("2015 Tax Increment Bonds") and the City of Mishawaka, Indiana, Redevelopment District Tax Increment Revenue Bonds, Series 2017 ("2017 Tax Increment Bonds"); the resolutions authorizing such 2015 Tax Increment Bonds and 2017 Tax Increment Bonds (collectively, "Tax Increment Bonds") pledge Tax Increment to the Tax Increment Bonds, but such pledges do not include the Pledged Tax Increment which Pledged Tax Increment is junior and subordinate to the payment of the Tax Increment Bonds; and

WHEREAS, the bonds to be issued pursuant to this Ordinance will constitute a first charge against the Net Revenues of the sewage works, on a parity with the Outstanding Bonds, and are to be issued subject to the provisions of the laws of IC 5-1-14 and IC 36-9-23, each as in effect on the issue date of the bonds authorized herein (collectively, the "Act"), and the terms and restrictions of this Ordinance; and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, in one or more series, if necessary, payable from the proceeds of the Bonds issued hereunder and to authorize the refunding of the BANs, if issued; and

WHEREAS, Section 1.150-2 of the Treasury Regulations (the "Reimbursement Regulations") specifies conditions under which a reimbursement allocation may be treated as an expenditure of bond proceeds, and the City intends by this Ordinance to qualify amounts advanced

by the City to the Project for reimbursement from proceeds of the BANs or the Bonds in accordance with the requirements of the Reimbursement Regulations; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and a debt service reserve surety for the Bonds authorized herein; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said BANs and Bonds have been complied with in accordance with the provisions of the Act;

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

Section 1. Authorization of Project. The City shall proceed with the construction of the Project in accordance with the preliminary cost estimates, plans and specifications heretofore prepared or to be prepared and filed by the consulting engineers employed by the City, which preliminary costs estimates, plans and specifications are now on file or will be subsequently placed on file in the office of the Clerk of the City, and are hereby adopted and approved, and by reference made a part of this Ordinance as fully as if the same were attached hereto and incorporated herein and two (2) copies of which are now on file or shall be placed on file in the office of the Clerk and open for public inspection pursuant to IC 36-1-5-4. The estimated cost of the Project is expected not to exceed the sum of Forty Million Dollars (\$40,000,000), plus investment earnings on the Bond and BAN proceeds. The terms "sewage works," "sewage works system," "works," "system," and other like terms where used in this Ordinance shall be construed to mean the Treatment Works, as defined in the Financial Assistance Agreement, dated January 28, 2010 ("Financial Assistance Agreement") between the City and the Indiana Finance Authority ("Authority") as part of its wastewater loan program established and existing pursuant to IC 5-1.2-10 ("SRF Program"), and includes the existing structures and property of the sewage works, including items defined at IC 36-9-1-8, and all real estate and equipment used in connection therewith and appurtenances thereto, and all enlargements, extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. The Project shall be constructed in accordance with the plans, specifications and cost estimates heretofore mentioned, which Project is hereby approved. The Project shall be constructed and the BANs and Bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Section 2. Issuance of BANs and Bonds. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of the Project, including costs of issuance in connection therewith. The City may issue its BANs, in one or more series, in an aggregate amount not to exceed Forty Million Dollars (\$40,000,000) to be designated "Sewage Works Bond Anticipation Notes of ____" (to be completed with the year in which issued and appropriate series designation, if any). The BANs shall be sold at not less than ninety-nine percent (99%) of their par value, shall be numbered consecutively from 1 upward, shall be in any denominations of Five Thousand Dollar (\$5,000), or any integral multiples in excess thereof if sold at a competitive sale, or One Hundred Thousand Dollars (\$100,000) and in integral multiples of Five Thousand Dollars (\$5,000) in excess thereof if sold through a private placement, as set forth in the hereinafter defined Bond Anticipation Note Agreement for the BANs, shall be dated

as of the date of delivery thereof, and shall bear interest at a rate not to exceed five and one half percent (5.5%) per annum (the exact rate or rates to be determined through bidding or negotiation with the purchaser of the BANs) payable at maturity or upon redemption. The BANs will mature no later than two (2) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed five and one half percent (5.5%) per annum (the exact rate or rates to be determined through bidding or negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five (5) years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

(b) The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act.

The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as the gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTs")) of the sewage works of the City, on a parity with the Outstanding Bonds. The Net Revenues of the sewage works shall include the Pledged Tax Increment. For purposes of this Ordinance, the "Pledged Tax Increment" shall mean an annual amount not to exceed \$3,360,000 of the Tax Increment remaining after payment of the Tax Increment Bonds available for deposit under this Ordinance. The Pledged Tax Increment is pledged to pay, on a parity basis, the debt service on and fund reserves for the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, the 2018 Bonds, and the Bonds issued under this Ordinance. The Pledged Tax Increment shall remain in force for so long as the Bonds authorized under this Ordinance are outstanding, provided, however, that (i) the Pledged Tax Increment may be reduced or shall be increased (but not in excess of \$3,360,000 annually) so that Net Revenues of the sewage works (including Pledged Tax Increment) in the fiscal year are not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the Net Revenues of the sewage works; or (ii) Pledged Tax Increment shall no longer be pledged or treated as Net Revenues of the sewage works upon the one time showing that prior to the City's determination to release the Pledged Tax Increment from the payment of the bonds, the sewage rates and charges are increased sufficiently so that the increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues (not including Pledged Tax Increment) for said year equal to not less than one hundred twenty-five (125%) of the maximum annual interest and principal requirements of all bonds payable from the Net Revenues of the sewage works. For purposes of this subsection, the records of the sewage works shall be analyzed and all showings prepared annually by a certified public accountant employed by the City for that purpose within 120 days of the close of each fiscal year.

(c) The City shall issue its sewage works revenue bonds, in one or more series, in an aggregate principal amount not to exceed Forty Million Dollars (\$40,000,000) to be designated "Sewage Works Revenue Bonds of ____" (to be completed with the year in which issued and appropriate series designation, if any) ("Bonds"), for the purpose of procuring funds to be applied on the cost of the Project, the payment of costs of issuance, including premiums for municipal bond insurance and a debt service reserve surety, if any, refunding the BANs, if issued, and all other costs related to the Project and/or the issuance of the Bonds.

The Bonds shall be issued in fully registered form. The Bonds shall be sold at a price not less than ninety-nine percent (99%) of their par value, shall be issued in the denominations of Five Thousand Dollar (\$5,000), or any integral multiples in excess thereof if sold at a competitive sale, or One Hundred Thousand Dollars (\$100,000) and in integral multiples of Five Thousand Dollars (\$5,000) in excess thereof if sold through a private placement, numbered consecutively from 1 upward, originally dated as of the first day of the month in which they are issued or sold or their date of delivery, as determined by the Controller with the advice of the City's municipal advisor, and shall bear interest at a rate or rates not exceeding five and one half percent (5.5%) per annum (the exact rate or rates to be determined by bidding or through negotiation), payable semiannually on March 1 and September 1 in each year, commencing on the first March 1 or the first September 1 following the date of issuance of the Bonds, as determined by the Controller, with the advice of the City's municipal advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and the Bonds shall mature semiannually on March 1 and September 1, commencing no later than one year following the date of issuance, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on March 1 and September 1 of each year, over a period not exceeding thirty-five (35) years from the date of issuance of the Bonds and in such amounts that will produce as level annual debt service as practicable taking into account the annual debt service of the Outstanding Bonds.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on the dates as determined by the purchaser thereof, but in no event later than the last serial maturity date of the Bonds as determined in accordance with the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at one hundred percent (100%) of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the preceding paragraph.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Each series of Bonds shall rank on a parity with the other for all purposes, including the pledge of Net Revenues under this Ordinance.

Section 3. Registrar and Paying Agent; Book-entry Provisions. (a) The Controller is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds and the BANs ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds, and if required the BANs. The Controller is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Controller is further authorized to pay such fees as the Registrar and Paying Agent may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Sinking Fund (as defined and continued herein) to pay the principal of and interest on the Bonds and fiscal agency charges.

As to the BANs and as to the Bonds, if the purchaser does not object to such designation, the Controller may serve as Registrar and Paying Agent and would be hereby charged with the performance of and all duties of and responsibilities of Registrar and Paying Agent.

(b) The principal of the Bonds shall be payable at the principal office of the Paying Agent. All payments of interest on the Bonds and principal of and interest on the BANs shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as the names appear as of the fifteenth day of the month preceding each interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

(c) Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal office of the Registrar, by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner thereof, or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity and the same series, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

(d) The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Controller is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Controller is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Sinking Fund continued in Section 15 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

(e) Interest on the Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid. Notwithstanding anything to the contrary herein, the Bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the Bonds or earlier payment in full of the Bonds.

(f) The City has determined that it may be beneficial to the City to have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this Ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such

Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this Ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this Ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other

action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this Ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

The City is authorized to issue its BANs in book-entry form and, in that case, all of the provisions set forth in this subsection (d) shall apply.

Section 4. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, on any date after one hundred eighty (180) days from the date of issuance, upon twenty (20) days' notice to the owner of the BANs, without premium.

(b) The Bonds of this issue are redeemable at the option of the City, but no sooner than ten (10) years after their date of issuance, and thereafter on any date, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, at face value plus accrued interest to the date fixed for redemption. The exact redemption provisions shall be established by the Controller, with the advice of the City's municipal advisor, prior to the sale of the Bonds.

(c) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or cancelled shall be credited by the Paying Agent at one hundred percent (100%) of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

Each authorized denomination amount of the Bonds shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption at one time, the Bonds to be redeemed shall be selected by lot within a maturity by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(d) Notice of redemption shall be given not less than thirty (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Section 5. Execution and Negotiability. Each of the Bonds and BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by the manual or facsimile signature of the Controller, and attested by the manual or facsimile signature of the Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each of the BANs and Bonds manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The BANs and Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Bonds shall also be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

The Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the sewage works of the City. The City shall not be obligated to pay the Bonds or the interest thereon except from the Net Revenues of said works, and said Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

Section 6. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Mishawaka, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. _____

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ST. JOSEPH

CITY OF MISHAWAKA
SEWAGE WORKS REVENUE BOND OF _____[, SERIES ____]

INTEREST <u>RATE</u>	MATURITY <u>DATE</u>	ORIGINAL <u>DATE</u>	AUTHENTICATION <u>DATE</u>	<u>[CUSIP]</u>
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REGISTERED OWNER:

PRINCIPAL SUM:

The City of Mishawaka ("City"), in St. Joseph County, State of Indiana, for value received, hereby promises to pay to the Registered Owner (named above) or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above, on [the Maturity Date set forth above] **OR** [September 1 and March 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this hereinafter defined Bond be subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum shall be fully paid at the [Interest Rate specified above] **OR** [Interest Rate[s] per annum set forth on Exhibit A attached hereto] from the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before _____ 15, 20__, in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable semiannually on the first day of September and March of each year, beginning on _____ 1, 20__. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The principal of this Bond is payable at the [principal corporate trust] office of _____ (“Registrar”) or “Paying Agent”), in the _____ of _____, _____. All payments of interest on this Bond shall be paid by check mailed one business day prior to the interest payment date to the registered owner hereof, as of the fifteenth day of the month preceding such interest payment date, at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. Notwithstanding anything to the contrary herein, this bond shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of this bond or earlier payment in full of this bond. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the Bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THIS BOND SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA, AND THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE SPECIAL FUND PROVIDED FROM THE NET REVENUES, ON A PARITY WITH THE OUTSTANDING BONDS (EACH AS HEREINAFTER DEFINED).

This Bond is [the only] one of an authorized issue of bonds of the City[, to be issued in series,] [of like tenor and effect, except as to numbering, interest rate[, series designation] and dates of maturity,] in the total amount of _____ Dollars (\$_____) [for this series] (“Bonds”); numbered consecutively from 1 up; issued for the purpose of providing funds to be applied on the cost of certain additions, extensions and improvements to the City’s sewage works[, to refund interim notes issued in anticipation of the Bonds] and to pay issuance expenses[, including premiums for a municipal bond insurance and a debt service reserve surety], as authorized by an Ordinance adopted by the Common Council of the City (the “Common Council”) on the _____ day of March, 2023, entitled “An Ordinance concerning the construction of additions and improvements to the sewage works of the City of Mishawaka, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith” (“Ordinance”), and in strict compliance with the provisions of IC 5-1-14 and IC 36-9-23, each as in effect on the issue date of the Bonds (collectively, the “Act”).

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this Bond and all other bonds of said issue, [including the Sewage Works Revenue Bonds of _____, Series _____ (the “Series _____ Bonds”),] and any bonds hereafter issued on a parity therewith are payable solely from the Sinking Fund (as continued by the Ordinance) to be provided from the Net Revenues (defined as the gross revenues of the sewage works of the City remaining after the

payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes) of the sewage works of the City. The bonds of this issue of which this Bond is a part rank on parity with the Outstanding Bonds (as defined in the Ordinance). Under the Ordinance, Net Revenues include the Pledged Tax Increment (as defined in the Ordinance) subject to Section 2(b) of the Ordinance.

The City reserves the right to issue additional bonds on a parity with this Bond and the issue of which it is a part, as provided in the Ordinance. The City irrevocably pledges the entire Net Revenues of said sewage works to the prompt payment of the principal of and interest on the Bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Bonds [and the Series ____ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works, as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of said works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the City or the proper officers of the City shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this Bond, the owner of this Bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this Bond and the interest hereon.

[The Bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this Bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

The City further covenants that it will set aside and pay into its Sinking Fund monthly, as available or more often if necessary, a sufficient amount of the Net Revenues of said works to meet: (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due; (b) the necessary fiscal agency charges for paying the bonds and interest; (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due; and (d) an additional amount as a margin of safety to maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge against the Net Revenues of said works, on a parity with the Outstanding Bonds [and the Series ____ Bonds].

The Bonds of this issue [maturing on _____ 1, 2031, and thereafter,] are redeemable at the option of the City on _____ 1, 2031, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value, without premium, plus accrued interest to the date fixed for redemption.

[The Bonds maturing on _____ 1, 20__ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

Term Bond

Date Amount

*

*Final Maturity]

Each authorized denomination amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the Bonds to be redeemed shall be selected by lot by the Registrar. [If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.]

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the City, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption unless the notice is waived by the registered owner of this Bond. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this Bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank an amount sufficient to pay such Bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This Bond is transferable or exchangeable only upon the books of the City kept for that purpose at the [principal corporate trust] office of the Registrar, by the registered owner hereof in person, or by its attorney duly authorized in writing, upon surrender of this Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. This Bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. The City, the Registrar, the Paying Agent and any other registrar or paying agent for this Bond may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

This Bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN

THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance, if the Common Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the Bonds.

The Bonds maturing in any one year are issuable only in fully registered form in the denomination of [\$5,000] **OR** [\$100,000] any integral multiple in excess thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the preparation and complete execution, issuance and delivery of this Bond have been done and performed in regular and due form as provided by law.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Mishawaka, in St. Joseph County, Indiana, has caused this Bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, countersigned with the manual or facsimile signature of the Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

CITY OF MISHAWAKA, INDIANA

[SEAL]

By: _____
Mayor

COUNTERSIGNED

By: _____
Controller

Attest:

Clerk

[BOND INSURANCE LEGEND]

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

It is hereby certified that this Bond is one of the Bonds described in the Ordinance.

_____,
as Registrar

By: _____,
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to transfer the within Bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

[EXHIBIT A]

(End of Bond Form)

Section 7. Authorization for Preparation and Sale of the BANs and Bonds; Official Statement; Continuing Disclosure; Bond Insurance. (a) The Controller is hereby authorized and directed to have the BANs and Bonds prepared, and the Mayor, the Controller and the Clerk are hereby authorized and directed to execute and attest the BANs and Bonds in the form and manner provided herein.

(b) The Controller is hereby authorized and directed to deliver the BANs and Bonds to the respective purchasers thereof after sale made in accordance with the provisions of this Ordinance, provided that at the time of delivery of the BANs and Bonds, the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than ninety-nine percent (99%) of the par value of the BANs, and not less than ninety-nine percent (99%) of the par value of the Bonds, as the case may be, plus accrued interest to the date of delivery, if any. The City may receive payment for the BANs and the Bonds in installments. Each series of Bonds, when fully paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the City's sewage works, to be set aside into the Sinking Fund as herein provided, on a parity with the Outstanding Bonds. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers

of the City are hereby directed to sell the Bonds, to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this Ordinance.

(c) If necessary, distribution of one or more Official Statements (preliminary and final) for the Bonds, prepared by Baker Tilly Municipal Advisors, LLC on behalf of the City, are hereby authorized and approved and the Mayor and the Controller are authorized and directed to execute any such Official Statement on behalf of the City in a form consistent with this Ordinance. The Mayor or Controller is hereby authorized to designate any such preliminary Official Statement as “nearly final” for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission (“Rule”).

If an Official Statement is not required, upon delivery of the Bonds the City shall obtain an investment letter from the purchaser of the Bonds which satisfies federal and state securities laws applicable to the Bonds.

(d) If required under the Rule, the Mayor and Controller are hereby authorized and directed to complete, execute and attest one or more Continuing Disclosure Undertakings (each a “Disclosure Undertaking”) for the Bonds on behalf of the City. Notwithstanding any other provisions of this Ordinance, failure of the City to comply with the Disclosure Undertaking shall not be considered an event of default under the Bonds or this Ordinance.

(e) In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy, the City hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this Ordinance for all purposes and is hereby incorporated herein by reference.

(f) Prior to the delivery of the Bonds, the Controller (i) shall be authorized, but not required, to investigate and to obtain credit rating(s) on the Bonds and (ii) shall obtain a legal opinion as to the validity of the Bonds from Krieg DeVault LLP, bond counsel, of Indianapolis, Indiana, and shall furnish this opinion to the purchaser of the Bonds. The cost of obtaining any such credit ratings, together with the bond counsel fee in preparing and delivering such opinion and in the performance or related services of bond counsel, and the City’s municipal advisor in connection with the issuance, sale and delivery of the Bonds, shall be considered as part of the costs incidental to these proceedings and may be paid out of proceeds of the Bonds.

Section 8. Sale of the Bonds; Award of Bonds. Unless sold to the Indiana Bond Bank, the Bonds may be sold at a competitive sale and, in such case, the Controller shall cause to be published either (i) a notice of such sale in the *South Bend Tribune* and the *Mishawaka Enterprise*, two (2) times, at least one (1) week apart, with the first publication made at least fifteen (15) days

before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in both newspapers described in (i) above and the *Indianapolis Star* or the *Indianapolis Business Journal*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the *Indianapolis Star* or the *Indianapolis Business Journal*, and a notice or summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the time and place of sale, the purpose for which the Bonds are being issued, the total amount and maturities thereof, the maximum rate of interest thereon and any limitations as to the number of interest rates and the setting of such rates, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem necessary or advisable. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price under Treasury Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the Preliminary Official Statement and/or the bid form. Such notice shall also provide, among other things, that each bid shall be accompanied by a certified or cashier's check or wire transfer in an amount equal to one percent (1%) of the par amount of the Bonds to guarantee performance on the part of the bidder, and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then such check and the proceeds thereof shall become the property of the City and shall be considered as the City's liquidated damages on account of such default. Such wire transfer can be made by a time specified in the Bond Sale Notice within one day of the award of the Bonds by the best bidder. All bids for the Bonds shall be sealed and shall be presented to the Controller or his or her designee at the physical or electronic address identified in the notice. Bidders for the Bonds shall be required to name the rate or rates of interest which the Bonds are to bear, not exceeding five and one half percent (5.5%) per annum. Such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). Bids may be received electronically. No conditional bid or bid for less than ninety-nine percent (99.0%) of the par value of the Bonds will be considered. The opinion of Krieg DeVault LLP, nationally recognized bond counsel of Indianapolis, Indiana, approving the legality of said Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted a bid in accordance with the terms of this Ordinance, IC 5-1-11, and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds from the date thereof to their respective maturities, adding thereto the discount bid, if any, and deducting therefrom the premium bid, if any. The City shall have the right to reject any and all bids. In the event an acceptable bid is not received on the date fixed in the notice, the Controller shall be authorized to continue the sale from day to day for a period of not to exceed thirty (30) days without readvertising. During the continuation of the sale, no bid shall be accepted which offers an interest cost which is equal to or higher than the best bid received at the time originally fixed for the sale of the Bonds in the bond sale notice.

As an alternative to competitive bid, the Controller may negotiate the sale of said Bonds at an interest rate or rates not exceeding five and one half percent (5.5%) per annum. The Mayor and the Controller are hereby authorized to (i) execute a purchase agreement with the purchaser, and (ii) sell such Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this Ordinance. The final form of the purchase agreement shall be approved by

the Mayor and Controller, upon the advice of the City's bond counsel and municipal advisor, and the Mayor and Controller are hereby authorized and directed to complete, execute and attest the same on behalf of the City so long as its provisions are consistent with this Ordinance.

Section 9. Use of Proceeds and Costs of Issuance; Reimbursement. Any accrued interest received at the time of delivery of the Bonds, and premium, if any, shall be deposited in the Sinking Fund, continued in Section 15. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Mishawaka, Sewage Works Construction Account" ("Construction Account"). All funds deposited to the credit of the Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds and BANs. The cost of obtaining any credit ratings, insurance and the cost of obtaining the services of Krieg DeVault LLP and Baker Tilly Municipal Advisors, LLC shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of the Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

The City hereby declares its "official intent", as such term is used in the Reimbursement Regulations, to reimburse the City's advances for costs incurred for the Project from proceeds of the BANs or the Bonds herein authorized by this Ordinance. The City reasonably expects to make such advances for the costs of the Project.

Section 10. Financial Records and Accounts and Maintenance of Books. The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the sewage works and all disbursements made therefrom and all transactions relating to the sewage works. Copies of all such statements and reports shall be kept on file in the office of the Clerk. The City shall maintain on file the audited financial statements of said works prepared by the State Board of Accounts.

Section 11. Pledged Tax Increment. The Net Revenues of the sewage works shall continue to include the Pledged Tax Increment. The Pledged Tax Increment is pledged to the payment of the Bonds, on a parity with the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, and the 2018 Bonds, subject to Section 2(b) of this Ordinance.

Section 12. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this Ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, on a parity with the Outstanding

Bonds, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

Section 13. Revenue Fund. The City shall segregate, deposit and keep in a special fund, separate and apart from all other funds of the City, all gross revenues received on account of the sewage works, which special fund was established and designated as the "City of Mishawaka, Indiana, Sewage Works Revenue Fund" ("Revenue Fund") and is continued hereby. Out of said revenues the proper and reasonable expenses of operation, repair and maintenance of the sewage works shall be paid, the principal and interest of all bonds and fiscal agency charges of bank paying agents shall be paid, reserves shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid as hereinafter provided. No moneys derived from the revenues of the sewage works shall be transferred to the general fund of the City or be used for any purpose not connected with the sewage works so long as any bonds payable from the revenues of the sewage works are outstanding.

Section 14. Operation and Maintenance Fund. The Operation and Maintenance Fund ("O&M Fund") is hereby continued. On the last day of each calendar month, a sufficient amount of revenues of the sewage works shall be transferred from the Revenue Fund to the O&M Fund so that the balance maintained in the O&M Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the sewage works for the then next succeeding two (2) calendar months. The moneys credited to the O&M Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the monies in the O&M Fund shall be used for transfers for PILOTs, depreciation, replacements, improvements, extensions or additions. Any monies in the O&M Fund may be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works, or if necessary to eliminate any deficiencies in credits to or minimum balance in the Reserve Accounts described below.

Section 15. Sewage Works Sinking Fund. The Sewage Works Sinking Fund ("Sinking Fund") is hereby continued for the payment of the principal of and interest on all revenue bonds which by their terms are payable from the Net Revenues of the sewage works and the payment of any fiscal agency charges in connection with the payment of bonds. The Sinking Fund shall consist of a Debt Service Account, and two Reserve Accounts hereby continued. The Sinking Fund shall be continued until all of the bonds payable from the Net Revenues of the sewage works have been paid.

(a) Debt Service Account. All Pledged Tax Increment shall be deposited into the Sinking Fund and shall be deemed as Net Revenues of the sewage works. Upon receipt by the City, the Pledged Tax Increment shall be credited to the Debt Service Account. Any Pledged Tax Increment received by the City in excess of the requirements of the Debt Service Account shall be used to satisfy the requirements of the 1994 Reserve Account and the 1999 Reserve Account (each as hereinafter defined) on a parity basis. After making the required monthly payments into the O&M Fund, Net Revenues shall be deposited into the Debt Service Account monthly, as available, in an amount sufficient for the payment of: (a) the amount required for the interest on all Outstanding Bonds, the Bonds and any bonds hereafter issued and payable by their terms from the Net Revenues of the sewage works; (b) the principal of all Outstanding Bonds, the Bonds and any bonds hereafter issued and payable by their terms from the Net Revenues of the

sewage works; and (c) the necessary fiscal agency charges for paying the principal of and interest on all Outstanding Bonds, the Bonds and any bonds hereafter issued and payable by their terms from the Net Revenues of the sewage works. After accounting for the amount of Pledged Tax Increment on deposit in the Debt Service Account, the monthly payments into the Debt Service Account shall be in an amount equal to at least one-sixth (1/6) of the amount required during the next succeeding six (6) calendar months for the payment of interest on and principal of the Outstanding Bonds, the Bonds, and all bonds hereafter issued payable by their terms from the Net Revenues of the sewage works, and an amount necessary to pay the bank fiscal agency charges as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Debt Service Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(b) Reserve Accounts. (i) The 2015 Bonds are secured by the 1994 Reserve Account described below. The 2010A Bonds purchased by the Authority as part of its SRF Program and the 2017A Bonds, 2017B Bonds, and 2018 Bonds are secured by the 1999 Reserve Account described below. The 1999 Reserve Account will serve as the reserve for the Bonds issued hereunder.

(i) 1994 Reserve Account. The reserve account, as continued for the 2015 Bonds (the "1994 Reserve Account") is hereby continued. The 1994 Reserve Account serves as the reserve for the 2015 Bonds and it may also serve as the reserve for any series of future bonds not purchased by the Authority as part of its SRF Program. The 1994 Reserve Account contains a surety which funds, in part, the required balance for the 1994 Reserve Account with the remaining balance being funded with cash. The balance to be maintained in the 1994 Reserve Account, taking into account the surety held therein and the cash, shall equal the maximum annual debt service on the 2015 Bonds ("1994 Reserve Requirement").

The 1994 Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the 2015 Bonds and any future bonds not purchased by the Authority as part of its SRF Program but secured by the 1994 Reserve Account, and the moneys in the 1994 Reserve Account shall be used to pay current principal and interest on the 2015 Bonds to the extent that moneys in the Debt Service Account are insufficient for that purpose. No moneys in the 1994 Reserve Account shall secure or be used to pay the principal of or interest on the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, the 2018 Bonds, or the Bonds issued under this Ordinance. Any moneys in the 1994 Reserve Account in excess of the 1994 Reserve Requirement shall be transferred to the Sewage Works Improvement Fund.

(ii) 1999 Reserve Account. The 1999 Reserve Account ("1999 Reserve Account") and together with the 1994 Reserve Account, the "Reserve Accounts") is hereby continued. The 1999 Reserve Account shall continue to serve as the reserve for the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, the 2018 Bonds, and shall also serve as the reserve for any future bonds purchased by the Authority as part of its SRF Program. The 1999 Reserve Account shall also serve as the reserve for the Bonds

issued under this Ordinance. The balance therein shall equal but not exceed the maximum annual debt service on the Bonds, the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, the 2018 Bonds, and any parity bonds issued in the future by the City which are payable from the Net Revenues of the sewage works and secured by the 1999 Reserve Account ("1999 Reserve Requirement" and together with the 1994 Reserve Requirement, the "Reserve Requirements"). If the initial deposit into the 1999 Reserve Account does not cause the balance therein to equal the 1999 Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be deposited to the 1999 Reserve Account on the last day of each calendar month until the balance therein equals the 1999 Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the 1999 Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The 1999 Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, the 2018 Bonds, and the Bonds, and the moneys therein shall be used to pay current principal and interest on the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, the 2018 Bonds, and the Bonds to the extent that moneys in the Debt Service Account are insufficient for that purpose. No moneys in the 1999 Reserve Account shall secure or be used to pay the principal of or interest on the 2015 Bonds. Any moneys in the 1999 Reserve Account in excess of the 1999 Reserve Requirement shall be transferred to the Sewage Works Improvement Fund.

(iii) Deficiency Restoration. Any deficiency in the balance maintained in the 1994 Reserve Account and the 1999 Reserve Account shall be made up on a parity (pro rata) basis, from the next available Net Revenues remaining after credits into the Debt Service Account.

Section 16. Sewage Works Improvement Fund. The Sewage Works Improvement Fund ("Improvement Fund") is hereby continued. After meeting the requirements of the O&M Fund and the Sinking Fund, any excess Net Revenues may be transferred or credited from the Revenue Fund to the Improvement Fund, and said Improvement Fund shall be used for improvements, replacements, additions or extensions to the sewage works, or for any other lawful purpose, including the payment of PILOTs. The City reserves the right to transfer PILOTs from the Improvement Fund to the City but no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the O&M Fund, the Sinking Fund and the Accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. In no event shall any PILOTs be treated as an expense of operation and maintenance, nor in any case shall any PILOT be payable from the O&M Fund or the Sinking Fund. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the then outstanding bonds of the sewage works or, if necessary, to eliminate any deficiencies in credits to or minimum balance in any of the Reserve Accounts of the Sinking Fund, or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

Section 17. Maintenance of Accounts; Investments. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City.

The O&M Fund and the Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the City (including, without limitation, any funds and accounts relative to any other utility of the City beyond the Sewage Works) and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly IC 5-13, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this Ordinance.

Section 18. Defeasance of the Bonds. If, when the Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then outstanding shall be paid; or (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's sewage works.

Section 19. Rate Covenant. The City covenants and agrees that it will establish and maintain just and equitable rates or charges for the use of and the service rendered by the works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses said sewage works by or through any part of the sewage system of the City, or that in any way uses or is served by such works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the City, together with the Pledged Tax Increment reasonably expected to be collected and available to provide for the timely payment of debt service on the Bonds, the 2010A Bonds, the 2015 Bonds, the 2017A Bonds, the 2017B Bonds, and the 2018 Bonds) to provide for the proper Operation and Maintenance (as defined in the Financial Assistance Agreement) of the sewage works, to comply with and satisfy all covenants contained in this Ordinance and the Financial Assistance Agreement, and to pay all obligations of the sewage works and of the City with respect to the sewage works. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient (together with the Pledged Tax Increment reasonably expected to be collected and available to provide for the timely payment of debt service on the Bonds, the 2010A Bonds, the 2015 Bonds, the 2017A Bonds, the 2017B Bonds and the 2018 Bonds) to meet the expenses of Operation and Maintenance of the sewage works and the requirements of the Sinking Fund. The rates or charges so established shall apply to any and all use of such works by and service rendered to the City and all departments thereof, and shall be paid by the City or the various departments thereof as the charges accrue.

For purposes of determining whether the Pledged Tax Increment will be considered to be reasonably expected to be collected and available to provide for the timely payment of debt service, the following shall control:

- (a) the estimated Pledged Tax Increment to be collected shall be based on the existing assessed valuation (unless such valuation has been challenged by the owner of the property, in which case the prior assessed value shall be used) and the then current tax rate;
- (b) any delinquent payments of property taxes constituting Pledged Tax Increment shall not be considered available; and
- (c) if there is any pending challenge against the establishment or propriety of the Pledged Tax Increment, or its proposed use under this Ordinance, such challenged portion of the Pledged Tax Increment shall not be considered available.

If in any year while the Bonds, the 2010A Bonds, the 2017A Bonds, the 2017B Bonds, or the 2018 Bonds are outstanding, the Net Revenues of the sewage works and the Pledged Tax Increment received from (a) the June settlement is less than the next September 1 payment on all outstanding bonds or (b) the June settlement (after payment of such September 1 payment), together with the December settlement, is less than the next March 1 payment on all outstanding bonds, then the City shall take all steps required to immediately increase sewage works rates and charges to the level required to provide for the timely payment of debt service on all outstanding bonds. Any such increase shall be enacted to be effective within forty-five (45) days after the receipt of the June or December settlement, as the case may be.

Section 20. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City shall not issue any additional obligations payable from or secured by the Pledged Tax Increment without the prior written consent of the Authority. The City reserves the right to authorize and issue additional bonds or other obligations payable out of the Net Revenues of its sewage works ranking on a parity with the Bonds and Outstanding Bonds (the "Parity Bonds") for the purpose of financing the cost of future additions, extensions and improvements to its sewage works, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this Ordinance, and the interest on and principal of all bonds or other obligations payable from the Net Revenues of the sewage works shall have been paid to date in accordance with their terms.

(b) The Net Revenues of the sewage works, including the Pledged Tax Increment, in the fiscal year immediately preceding the issuance of any such Parity Bonds (provided, within the 90 day period following the end of such preceding fiscal year, if such year's accounting records are not final as of the sale date of the additional bonds, the fiscal year preceding such year may be used in lieu of the immediately preceding fiscal year) shall be not less than one hundred twenty-

five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued; or, prior to the issuance of the additional Parity Bonds, the sewage rates and charges shall be increased sufficiently so that the increased rates and charges, if realized and when applied to the previous year's operations would have produced Net Revenues for said year, including the Pledged Tax Increment, equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the sewage works, including the additional Parity Bonds proposed to be issued.

For purposes of this subsection, the records of the sewage works shall be analyzed and all showings shall be prepared by an independent certified public accountant employed by the City for that purpose who shall certify the satisfaction of the foregoing conditions for the issuance of the additional Parity Bonds.

(c) The interest on the additional Parity Bonds shall be payable semiannually on the first day of March and September and the principal of, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable semiannually on March 1 and September 1.

(d) The Reserve Requirements shall be satisfied for the additional Parity Bonds either as of the date of delivery of said additional Parity Bonds or through equal monthly deposits of Net Revenues sufficient to accumulate the reserve in a manner which is commensurate with and proportional to the provisions established by Section 15 of this Ordinance.

(e) So long as any 2010A Bonds are outstanding and owned by the Authority as part of the SRF Program, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and the ordinance authorizing the 2010A Bonds, and (iii) the City is in compliance with its National Pollutant Discharge Elimination System permits, except for non-compliance for which purpose the additional Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

Section 21. Further Covenants of the City: Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the BANs and the Bonds, it is hereby specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employer's liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

(c) So long as any of the BANs or Bonds are outstanding, the City shall at all times maintain the sewage works system in good condition, and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the BANs or Bonds are outstanding, the City shall maintain insurance coverage on the insurable parts of said works, of a kind and in an amount, including fidelity bonds, such as would normally be carried by private corporation engaged in a similar type of business and, so long as any 2010A Bonds are owned by the Authority as part of its SRF Program, acceptable to the Authority. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. All insurance proceeds shall be used in replacing or repairing the property destroyed or damaged, unless so long as the 2010A Bonds are owned by the Authority as part of its SRF Program, the Authority consents to a different use.

(e) So long as any of the BANs or Bonds are outstanding, the City shall not mortgage, pledge or otherwise encumber the property and plant of its sewage works system, or any part thereof, nor shall it sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility; provided, however, the City shall obtain the prior written consent of the Authority so long as any 2010A Bonds are owned by the Authority as part of the SRF Program.

(f) For so long as any of the 2010A Bonds are outstanding and owned by the Authority as part of the SRF Program, the City shall not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the sewage works, other than for normal operating expenditures, without the prior written consent of the Authority if such undertaking would involve, commit or use the revenues of the sewage works.

(g) Except as otherwise specifically provided in Section 20 of this Ordinance, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said sewage works shall be authorized, issued or executed by the City, except such as shall be made junior and subordinate in all respects to the Bonds, unless all of the Bonds are redeemed or defeased pursuant to Section 18 hereof coincidentally with the delivery of such additional bonds or other obligations.

(h) The provisions of this Ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, all the terms of which shall be enforceable by any bondholder by any and all appropriate proceedings in law or in equity. After the issuance of the Bonds or BANs, this Ordinance shall not be repealed, amended or modified in any respect which will adversely affect the rights or interests of the owners of the Bonds or BANs, nor shall the Common Council or any other body of the City adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of the Bonds, the BANs, or the interest thereon, remain outstanding or unpaid. Except in the case of changes described in Section 22 (a)-(f), this Ordinance may be amended, however, without the consent of the owners of the Bonds or BANs, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs.

(i) The provisions of this Ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this Ordinance and of the governing Act. The provisions of this Ordinance shall also be construed to create a trust in a portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of the Sinking Fund as in this Ordinance set forth. The owners of the Bonds shall have all of the rights, remedies and privileges set forth in the provisions of the governing Act, including the right to have a receiver appointed to administer said sewage works, in the event the City shall fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or if there be a default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event of default in respect to any of the provisions of this Ordinance or the governing Act.

(j) The City shall take all action or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The City shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.

(k) For purpose this Section 21, the term "lease" shall include any lease, contract, or other instrument conferring a right upon the City to use property in exchange for a periodic payments made from the revenues of the sewage works, whether the City desires to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or other purposes as a capital lease, financing lease, operating lease, non-appropriation leases, installment purchase agreement or lease, or otherwise (including any combination thereof).

Section 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 21(h), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this Ordinance and then outstanding shall have the right, from time to time, to consent to and approve the adoption by the Common Council of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for any Bond issued pursuant to this Ordinance; or

(b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or

(c) The creation of a lien upon or a pledge of the revenues or Net Revenues of the sewage works ranking prior to the pledge thereof created by this Ordinance; or

(d) A preference or priority of any Bond or Bonds issued pursuant to this Ordinance over any other Bond or Bonds issued pursuant to the provisions of this Ordinance; or

(e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or

(f) A reduction in the Reserve Requirements.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk, no owner of any Bond issued pursuant to this Ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section, this Ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this Ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this Ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this Ordinance, and the terms and provisions of the Bonds and this Ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

Section 23. Investment of Funds. (a) The Controller is hereby authorized to invest moneys pursuant to the provisions of this Ordinance and IC 5-1-14-3 (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of this Ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any fees as operation expenses of the sewage works.

Section 24. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code"), and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) The sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business.

No person or entity other than the City or another state or local governmental unit will use more than ten percent (10%) of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than ten percent (10%) of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for the sewage works, the terms of the contract will comply with IRS Revenue Procedure 2017-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than ten percent (10%) of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than ten percent (10%) of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds or BANs, this Ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than five percent (5%) of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than five percent (5%) of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.

(e) No more than five percent (5%) of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall not be an event of default under this Ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) The City covenants that it will rebate any arbitrage profits to the United States to the extent required by the Code and the regulations promulgated thereunder.

(i) The City represents that the Bonds and the BANs are not private activity bonds as defined in Section 141 of the Code.-

(j) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be.

Section 25. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank, or any other purchaser pursuant to a Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Controller are hereby authorized and directed to execute a Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The Mayor and the Controller may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 26. Non-compliance with Tax Covenants. Notwithstanding any other provisions of this Ordinance, the covenants and authorizations contained in this Ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds and BANs from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption. At the time of delivery of the BANs and Bonds, the Mayor and the Controller will provide a copy of its post-issuance compliance procedures with respect to the BANs and Bonds relating to continued compliance of the City with respect to the Tax Sections to preserve the Tax Exemption.

Section 27. Rates and Charges. The present rates and charges of the sewage works are set forth in Ordinance No. 5568 adopted on March 6, 2017, which ordinance is incorporated herein by reference.

Section 28. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided, however, that this Ordinance shall not be construed as

modifying, amending or repealing the ordinances authorizing the Outstanding Bonds or as adversely affecting the rights of the owners of the Outstanding Bonds.

Section 29. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance.

Section 30. Effective Date. This Ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

* * * * *

Passed and adopted by the Common Council of the City of Mishawaka, Indiana on the ____ day of March, 2023.

COMMON COUNCIL OF THE CITY OF
MISHAWAKA

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMC, MMC, Clerk

Presented by me to the Mayor of the City of Mishawaka, Indiana, on the ____ day of
March, 2023, at ____: ____ .m.

Deborah S. Block, IAMC, MMC, Clerk

Presented to and approved by me, the Mayor of the City of Mishawaka, Indiana, and
signed this ____ day of March, 2023, at ____: ____ .m.

David A. Wood, Mayor

KD_14467310_4.docx

EXHIBIT A

PROJECT DESCRIPTION

The bond proceeds will fund projects that impact LTCP and are common to the Sanitary Sewer Neighborhood Revitalization Plan with right-of-way-to-right-of-way improvements. These projects will include new storm sewer, revitalizing existing sewer for sanitary only use with CIPP, replacement of sanitary lateral services, water main adjustments and lead water lateral replacement, new concrete curb and sidewalk, and new full depth pavement. The project locations will span the city limits which includes but is not limited to the Linden Study Area, Twin Branch Area, West Street Area, Beiger/Byrkit/Bendix Study Area, the City Central area, and Third Street storage-conveyance Projects.

In addition to the right-of-way projects, the wastewater facility will fund minor facility upgrades throughout the site which include, but are not limited to, chlorine storage/feed system improvements, and pumps and system upgrades.

**CITY OF MISHAWAKA, INDIANA
SEWAGE WORKS REVENUE BONDS OF 2023**

PRELIMINARY TRANSACTION TIMETABLE

*All dates are estimates and are subject to change
as of February 23, 2023

2023

S	M	T	W	T	F	S
February						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

S	M	T	W	T	F	S
March						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

S	M	T	W	T	F	S
April						
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

S	M	T	W	T	F	S
May						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

City/Issuer:	City of Mishawaka, Indiana
Common Council:	Mishawaka Common Council
Redevelopment Commission:	Mishawaka Redevelopment Commission
Issuer's Counsel:	Patrick Hinkle, John J. Roggeman and David V. Bent
Bond Counsel:	Krieg DeVault LLP
Municipal Advisor:	Baker Tilly Municipal Advisors, LLC
Underwriter/Placement Agent:	TBD
Registrar/Paying Agent:	[The Bank of New York Mellon Trust Company, N.A.]

<u>Date</u>	<u>Activity</u>	<u>Responsibility</u>	<u>Completed</u>
February 22	Bond Counsel circulates draft Bond Ordinance and preliminary transaction timetable.	Bond Counsel	Yes
Week of March 6	Comments due on draft Bond Ordinance and preliminary transaction timetable.	City Municipal Advisor	

<u>Date</u>	<u>Activity</u>	<u>Responsibility</u>	<u>Completed</u>
Early March	• [Municipal Advisor submits requests for proposals for Bonds from underwriters and placement agents.] • Municipal Advisor circulates either draft Preliminary Official Statement (if bonds to be sold by underwriter) or draft Information about the City and Sewage Works (if bonds to be sold by placement agent) for review by the working group. • Municipal Advisor requests IFA's approval to issue parity Bonds (as required by 2010A Bonds).	Municipal Advisor	
Monday, March 20	• Introduction of Bond Ordinance at Common Council meeting. • Common Council unanimously votes to suspend rules and pass Bond Ordinance at the same meeting it was introduced on first reading. • Common Council approves Bond Ordinance.	Common Council Issuer's Counsel	
Tuesday, March 21	• Bond Counsel delivers Notice of Intent to Sell Bonds to the <i>Mishawaka Enterprise</i>, <i>South Bend Tribune</i> and <i>Indy Star</i>. • Bond Counsel delivers Notice of Adoption and Purport of the Bond Ordinance to the <i>Mishawaka Enterprise</i> and <i>South Bend Tribune</i> (objections must be brought within 20 days of publication of notice).	Bond Counsel	
Wednesday, March 22	• [Proposals from prospective underwriters or placement agents due to City.]	Municipal Advisor	
By Friday, March 24	• Municipal Advisor requests rating and submits documents to S&P. • First publication of Notice of Intent to Sell Bonds in the <i>Mishawaka Enterprise</i>, <i>South Bend Tribune</i> and <i>Indy Star</i> (publish once each week for 2 weeks) (bond bids must be received within 90 days of publication). • Notice of Adoption and Purport of the Bond Ordinance published in the <i>Mishawaka Enterprise</i> and <i>South Bend Tribune</i>.	Municipal Advisor Newspapers	

<u>Date</u>	<u>Activity</u>	<u>Responsibility</u>	<u>Completed</u>
Monday, March 27	Redevelopment Commission adopts Resolution Pledging Tax Increment to Bonds.	Redevelopment Commission	
By Friday, March 31	- Second publication of Notice of Intent to Sell Bonds in the <i>Mishawaka Enterprise</i>, <i>South Bend Tribune</i> and <i>Indy Star</i>. [City selects underwriter/placement agent for Bonds.]	Newspapers City Municipal Advisor	
Tuesday, April 4	Last day to contest validity of Bonds (15 days after adoption of Bond Ordinance).		
Thursday, April 13	Last day to object to construction of sewage works project (petition must be filed within 20 days after publication of Notice of Adoption and Purport of the Bond Ordinance).		
Week of April 10	- Receive rating letter from S&P (valid for 90-days) - Finalize, print and post Preliminary Official Statement - Last day for interested bidders on Bonds to submit information (not less than 7 days after last publication of Notice of Intent to Sell Bonds).	S&P Municipal Advisor	
Tuesday April 18	Potential Bond bidders given at least 24 hour notice of date and time where bids are due.	Municipal Advisor	
Wednesday April 19	Bond Sale; Bond Purchase Agreement Executed	Municipal Advisor Bond Counsel	
Monday April 24	Bond Counsel circulates draft closing documents for review.	Bond Counsel	
Monday April 24	Last day to contest Bond sale (5 days after bond sale).		
Week of April 24	Finalize and distribute Final Official Statement.	Municipal Advisor	
Monday, May 1	Comments due on closing documents.	All	
Wednesday, April 26	Bond Counsel distributes closing packages for execution.	Bond Counsel	

<u>Date</u>	<u>Activity</u>	<u>Responsibility</u>	<u>Completed</u>
Tuesday, May 2	• Pre-closing for Bonds	Bond Counsel	
Wednesday, May 3	• Bond closing; Project funds available for disbursement; Notice to proceed given.	All	
By Friday, June 2	• Municipal advisor submits post-bond sale information to DLGF (within 30 days after the date the Bonds are issued, if Bonds are issued before October 1st).	Municipal Advisor	

Assumptions:

- Common Council meets the 1st and 3rd Monday of the month at 7:00 pm.
- Redevelopment Commission meets the 4th Monday of the month at 5:30 pm.
- The Bond are payable solely from the Net Revenues of the sewage works of the City, on a parity with the Outstanding Bonds (as defined in the Bond Ordinance).
- Construction of projects are subject to public bidding laws per IC 36-9-23-6(c).
- Competitive or Negotiated Sale with an Official Statement and Rating.
- All bodies comply with Indiana Open Door Law.
- All meetings have quorum.
- No objections will be received or lawsuits filed with respect to any of the proceedings.
- Conference calls will be held as needed.
- Newspaper agencies publishing schedules are not altered.
 - *Mishawaka Enterprise* publishes on Thursdays.
 - Notice deadline Tuesday at 5:00 p.m. (MishawakaNews@gmail.com)
 - *South Bend Tribune* publishes every day.
 - Notice deadline three (3) working days prior to publication (legals@sbtinfo.com)
 - *Indy Star* publishes Monday-Friday.
 - Notice deadline is 12:00 Noon on two (2) business days prior to publication (publicnotices@indystar.com)

MAR 16 2023

City Clerk
Mishawaka, IN

APPEAL #23-04

RESOLUTION NO. 2023-04

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

702 E Twelfth Street, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **702 E Twelfth Street, Mishawaka, Indiana**, more particularly known and described as follows:

Lots 8 & 9 of Towles 1st Addition Block 6A.

The Use Variance will to allow provide educational, social and faith support services in the R-2 Two Family Residential District.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

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

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because minimal external improvements will be made to the site, and will provide services on a pre-arranged schedule;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the population these services are designed to support reside in the adjacent properties;
3. The need for the variance arises from some condition peculiar to the property in that this use, a social service, is not specifically listed in the ordinance, but similar function, like churches, schools and community centers are;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the Appellant to expand their services which are already established nearby.
5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates apartment complexes and nursing facilities for this area. This provides support services to those apartment complexes.

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2023, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____ 2023,
at _____ o'clock ____ m.

Deborah S. Block, IAMC, MMC, City Clerk

RESOLUTION #2023-04
702 E Twelfth Street
Page 3 of 3

APPROVED by me this _____ day of _____, 2023, at
_____ o'clock _____ m.

David A. Wood, Mayor

STAFF REPORT

Location: 702 E Twelfth St

Date: March 14, 2023

Appeal: 23 04

Prepared By: CH

GENERAL INFORMATION

Applicant: The Vineyard Church

Status: Property Owner

Request: Use Variance to allow educational, social and faith support services

Zoning Classification: R-2 Two-Family Residential

Lot Size: 80' x 114' (0.21 acres)

Applicable Regulations: Section 137-42 Board of Zoning Appeals Use Variance
Section 137-187 R-2 Two-Family Residential Uses

SPECIAL INFORMATION

Area Development Pattern: North: R-2 Two-Family Residential (Barbee Creek)
South: R-2 Two-Family Residential & R-3 Multi-Family Residential
(vacant lot owned by The Vineyard Church)
East: R-1 Single Family Residential
West: R-2 Two-Family Residential (Barbee Creek)

Thoroughfare: East Twelfth Street and Michigan Avenue

School District: School City of Mishawaka

Township: Penn

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

Comprehensive Plan: Medium Density Residential (Apartment Complexes & Nursing Facilities)

ANALYSIS

The Appellants are requesting a Use Variance to provide educational, social and faith support services in the R-2 Two Family District. The property was built as a single family home at 702 E Twelfth Street. No one will be residing in the home; it will only provide services.

In November 2021, the Appellants were granted a Use Variance for a mobile medical clinic across the street at 635 W Twelfth St, the vacant lot which was the previous site of the Princess City Apartments. It was approved with a one year limit on the Use Variance, during which time, a site plan for the permanent community center could be developed.

Engineering asked how the Appellant plans to deal with parking. Planning requested a paved parking pad off the alley, when the Twelfth Street project closes the current driveway. The planned Twelfth Street project will allow on street parking, which would be available for anyone driving to visit.

Fire commented this is a change in use and all life safety will need to be added and inspected. This does not affect the Use Variance, but the occupancy of the building.

All other pertinent City departments have reviewed this petition and recommended approval.

RECOMMENDATION

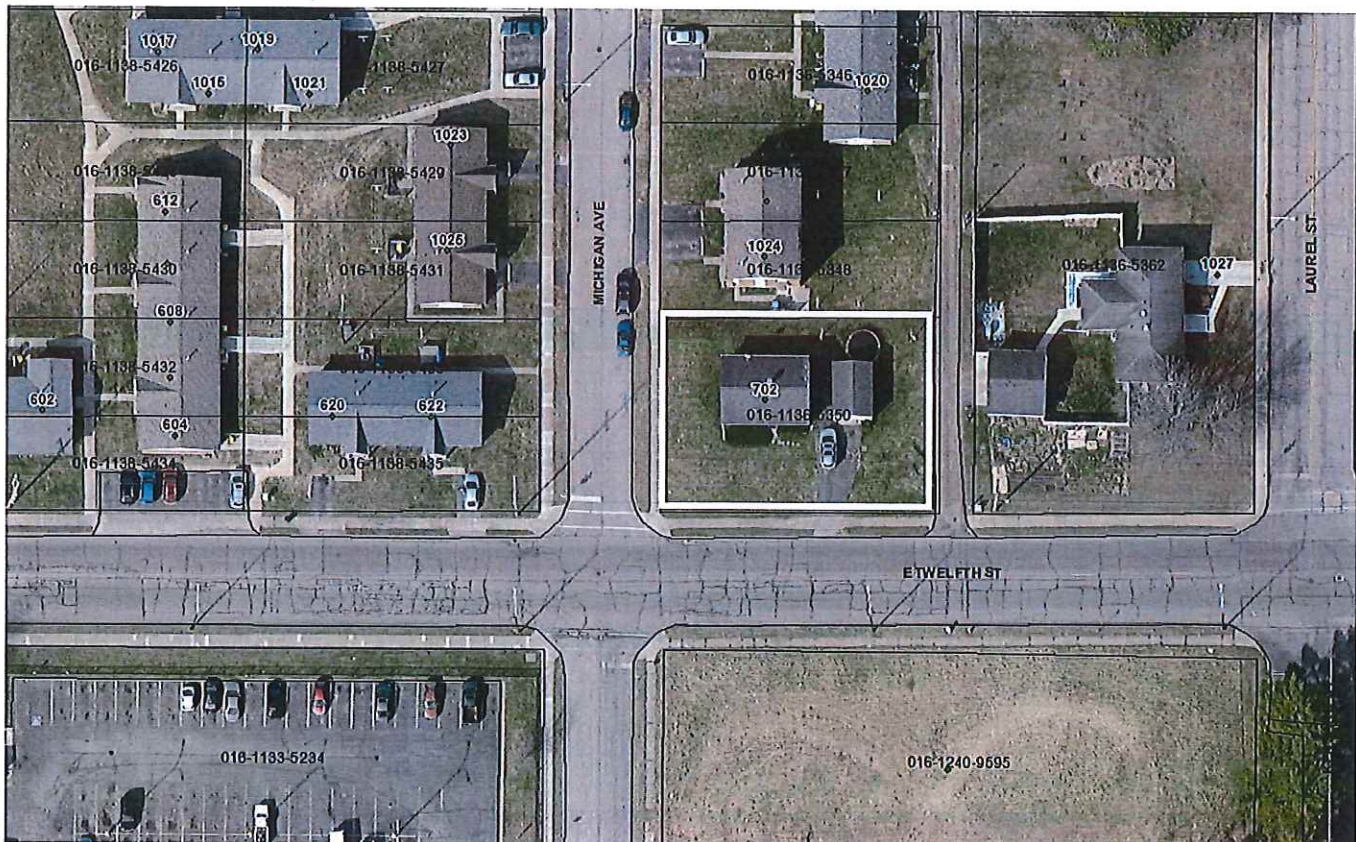
The Planning Staff recommends approval of Appeal #23-04 to provide educational, social and faith support services in the R-2 Two Family District at 702 E Twelfth Street subject to creating a paved parking pad off the alley, when the Twelfth Street project closes the current driveway access to Twelfth Street.

This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because minimal external improvements will be made to the site, and will provide services on a pre-arranged schedule;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the population these services are designed to support reside in the adjacent properties;
3. The need for the variance arises from some condition peculiar to the property in that this use, a social service, is not specifically listed in the ordinance, but similar function, like churches, schools and community centers are;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the Appellant to expand their services which are already established nearby.
5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates apartment complexes and nursing facilities for this area. This provides support services to those apartment complexes.

ATTACHMENTS

Aerial, Photographs, Appeal, Location Map





Front of house from Twelfth Street



Rear yard from Michigan Avenue

DATE: 2/21/2023

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. Vineyard Church Inc. (16219 Jackson Rd. Mishawaka, IN) the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to- wit:

- Lots 8 & 9 of Towles 1st Addition Block 6A - 702 East 12th Street, Mishawaka, IN 46544

2. The above-described real estate presently has a zoning classification of R2 Residential District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (*or proposes to occupy*) the above-described property in the following manner:

Current property use is a rental home owned by the Vineyard Church

4. Appellant desires to (*Explain what is proposed that violates the Ordinance.*)

The Vineyard church will host small group meetings as part of a regular religious daily activity for the residents of the existing neighborhood. This is in conjunction with our current community center activities tied to the Vineyard Church within the Barbee Creek community. Our desire is to host small group and more collaborative activities for the current residents (walking distance) of the Barbee Creek neighborhood. This would continue our mission of assisting the Barbee Creek residents in educational, social and faith needs.

5. The Zoning Ordinance of the City of Mishawaka requires (*Explain ordinance requirements and note Section Number of the Ordinance.*)

Section 137-87 does not allow for the specific proposed use of the property since it is not owned/directly operated by Mishawaka Housing Authority (Barbee Creek), the owner of the adjacent Barbee Creek Village for which the services will be provided..

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.

Strict adherence to the ordinance will not allow for use of the property as intended and described above.

7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community?

This use will not be injurious to the public health, safety, morals or general welfare of the community and our intention is to continue to improve it through our efforts within the community.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *YES OR NO and explain your reason why.*

The use and value of the adjustment properties will not be affected adversely as the intent would be to increase the general welfare of the community.

- (3) Does the need for the variance arise from some condition peculiar to the property involved?

The use variance is needed as the R-2 zoning does not currently permit the proposed use.

- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?

If the variance is not granted, the additional use of the property for small group gathering cannot occur. This would mean that the increased presence of community benefit the Vineyard Church is providing the Barbee Creek community would be limited.

- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?

No – this approval would not interfere substantially with the Mishawaka 2000 comprehensive plan.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Signature of Property Owner/Title Holder

Print Name Here

Steve Huffman



Second Property Owner/Title Holder

Print Name Here

MARK POPE

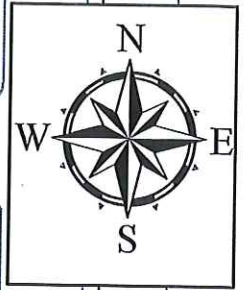
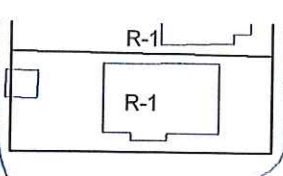
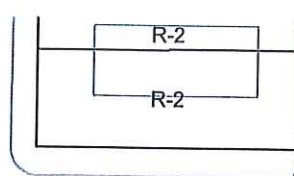
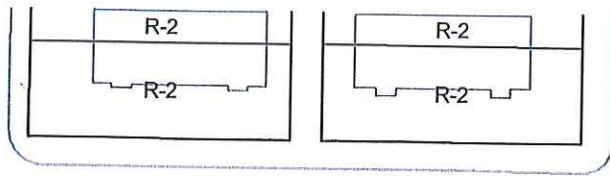
CONTACT PERSON:

Name: Steve Huffman

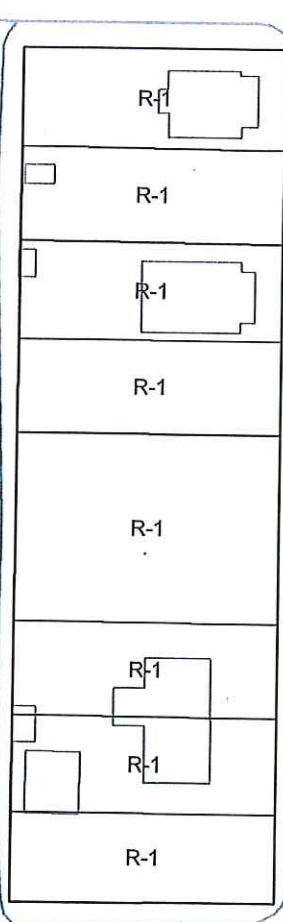
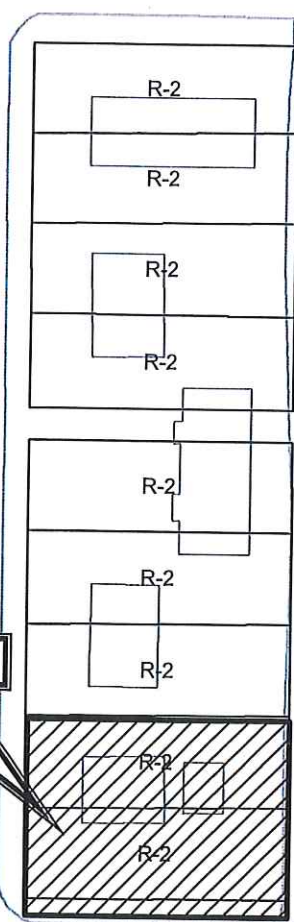
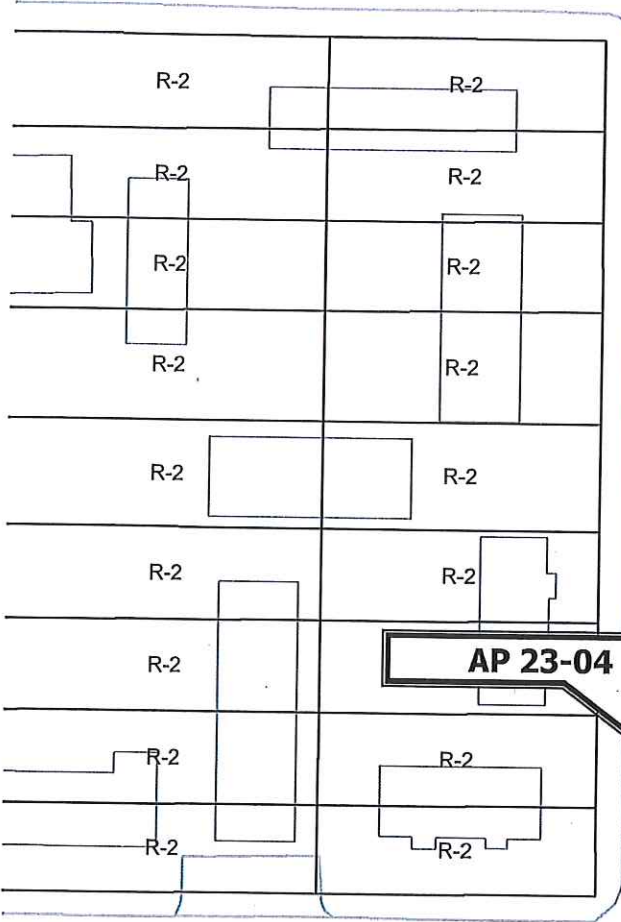
Address: 16219 Jackson Rd. Mishawaka, IN 46544

Day Phone Number: 574-257-1924

Email: steve@thevineyard.org



E ELEVENTH ST



LAUREL ST

E TWELFTH ST

Location Map

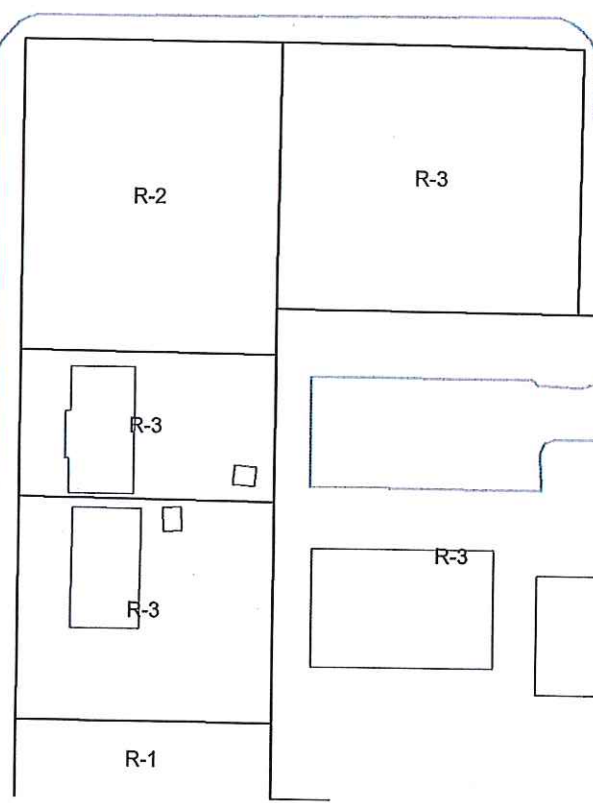
APPEAL 23-04

VINEYARD CHURCH (OWNER)

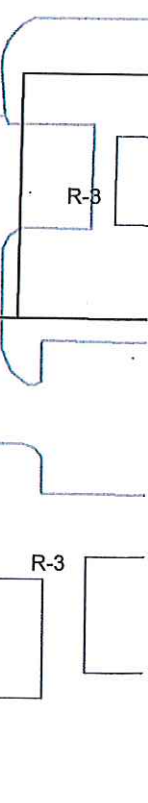
702 E TWELFTH ST

USE VARIANCE TO ALLOW
EDUCATIONAL, SOCIAL AND
FAITH SUPPORT SERVICES
IN AN R-2 RESIDENTIALLY
ZONED PROPERTY

MICHIGAN AVE



KENSARD CT



DATE: 2/21/2023

Deborah S. Block, IAMC, MMC

Ap 23-04

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

FEB 23 2023

City Clerk
Mishawaka, IN

The undersigned appellant respectfully shows the Board:

1. Vineyard Church Inc. (16219 Jackson Rd. Mishawaka, IN) the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to- wit:

- Lots 8 & 9 of Towles 1st Addition Block 6A - 702 East 12th Street, Mishawaka, IN 46544

2. The above-described real estate presently has a zoning classification of R2 Residential District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (*or proposes to occupy*) the above-described property in the following manner:

Current property use is a rental home owned by the Vineyard Church

4. Appellant desires to (*Explain what is proposed that violates the Ordinance.*)

The Vineyard church will host small group meetings as part of a regular religious daily activity for the residents of the existing neighborhood. This is in conjunction with our current community center activities tied to the Vineyard Church within the Barbee Creek community. Our desire is to host small group and more collaborative activities for the current residents (walking distance) of the Barbee Creek neighborhood. This would continue our mission of assisting the Barbee Creek residents in educational, social and faith needs.

5. The Zoning Ordinance of the City of Mishawaka requires (*Explain ordinance requirements and note Section Number of the Ordinance.*)

Section 137-87 does not allow for the specific proposed use of the property since it is not owned/directly operated by Mishawaka Housing Authority (Barbee Creek), the owner of the adjacent Barbee Creek Village for which the services will be provided..

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.

Strict adherence to the ordinance will not allow for use of the property as intended and described above.

7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community?

This use will not be injurious to the public health, safety, morals or general welfare of the community and our intention is to continue to improve it through our efforts within the community.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *YES OR NO and explain your reason why.*

The use and value of the adjustment properties will not be affected adversely as the intent would be to increase the general welfare of the community.

- (3) Does the need for the variance arise from some condition peculiar to the property involved?

The use variance is needed as the R-2 zoning does not currently permit the proposed use.

- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?

If the variance is not granted, the additional use of the property for small group gathering cannot occur. This would mean that the increased presence of community benefit the Vineyard Church is providing the Barbee Creek community would be limited.

- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?

No – this approval would not interfere substantially with the Mishawaka 2000 comprehensive plan.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Signature of Property Owner/Title Holder

Print Name Here

Steve Huffman



Second Property Owner/Title Holder

Print Name Here

MARK POPE

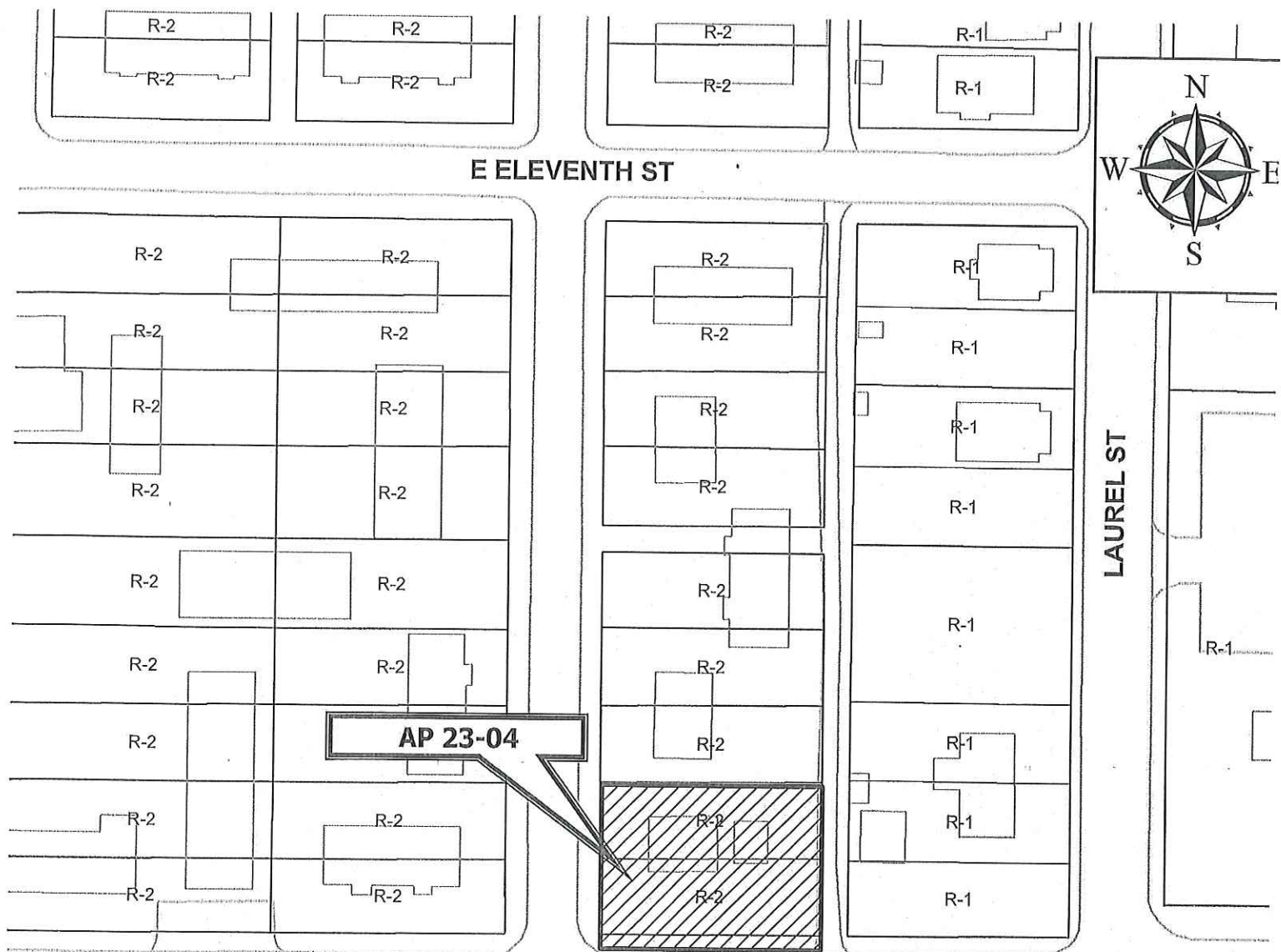
CONTACT PERSON:

Name: Steve Huffman

Address: 16219 Jackson Rd. Mishawaka, IN 46544

Day Phone Number: 574-257-1924

Email: steve@thevineyard.org



E TWELFTH ST

MICHIGAN AVE

KENSARD CT

Location Map

APPEAL 23-04

VINEYARD CHURCH (OWNER)

702 E TWELFTH ST

USE VARIANCE TO ALLOW
EDUCATIONAL, SOCIAL AND
FAITH SUPPORT SERVICES
IN AN R-2 RESIDENTIALLY
ZONED PROPERTY

MAR 16 2023

City Clerk
Mishawaka, IN

APPEAL #23-06

RESOLUTION NO. 2023-05

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA,
APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE
PROPERTY LOCATED AT:

3607 Grape Road, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its
intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval;
and

WHEREAS, the Common Council must take action within sixty (60) days after the
Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on
such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable
recommendation, pursuant to applicable state law, including the imposition of reasonable
conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition
from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance
for property located at **3607 Grape Road, Mishawaka, Indiana**, more particularly known
and described as follows:

Lot 46 Degrootes Sub.

The Use Variance will to allow microblading as a use inside an existing salon.

Section II. Following a presentation by the Petitioner, and after proper public
hearing, the Common Council hereby approves the Petition as recommended by the
Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to
wit, the recommendations of the Department of City Planning, a copy of which is on file in
the Office of the City Clerk.

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

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the existing business provides similar personal services/salon uses;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because it is included in a large commercial area;
3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit a tattoo establishment, but does allow the salon where the process is taking place, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property, because the nature of the business is similar to that of a salon and should not generate more traffic than any of the existing businesses within the area;
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial.

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2023, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____ 2023,
at _____ o'clock ____ m.

Deborah S. Block, IAMC, MMC, City Clerk

RESOLUTION #2023-05
3607 Grape Road
Page 3 of 3

APPROVED by me this _____ day of _____, 2023, at
_____ o'clock _____.m.

David A. Wood, Mayor

STAFF REPORT

Location: 3607 Grape Road

Date: March 14th, 2023

Appeal: 23 06

Prepared By: SA

GENERAL INFORMATION

Applicant: ALC Holdings LLC/Blush Studio Salon

Status: Property Owner/Tenant

Request: Use Variance to allow microblading/semi-permanent make-up services

Zoning Classification: C-1 General Commercial

Lot Size: 0.85 acres

Applicable Regulations: 137.42 Board of Zoning Appeals (4) Variance of Use

SPECIAL INFORMATION

Area Development Pattern: North: C-4 Auto-Oriented Commercial (A-Plus Auto Service Center)
South: C-1 General Commercial (Hana Yori of Japan)
East: C-4 Auto-Oriented Commercial (Phillips 66)
West: C-2 Shopping Center Commercial

Thoroughfare: Grape Road

School District: Penn-Harris-Madison

Public Utilities: All utilities are available and serve the existing building

Comprehensive Plan: General Commercial

ANALYSIS

The petitioners are requesting a Use Variance to allow for microblading services within the Blush Studio Salon. Microblading is a form of semi-permanent makeup that provides a means to partially or fully camouflage missing eyebrow hair with the appearance of simulated hair using fine deposits of cosmetic tattoo pigments.

In recent years, we have received and approved several requests for microblading.

It should be noted that while microblading is a service that can be found in a spa or beauty salon, it is a form of tattoo and not specifically permitted within the zoning district. The need for a Use Variance arises from the fact that a tattoo establishment is not an approved use within the C-1 zoning district.

All pertinent City departments have reviewed and approved of the request.

RECOMMENDATION (S)

Staff recommends in **favor** of Appeal #23-06 for a Use Variance, to allow microblading services in (Blush Studio Salon). This recommendation is based upon the following findings of fact:

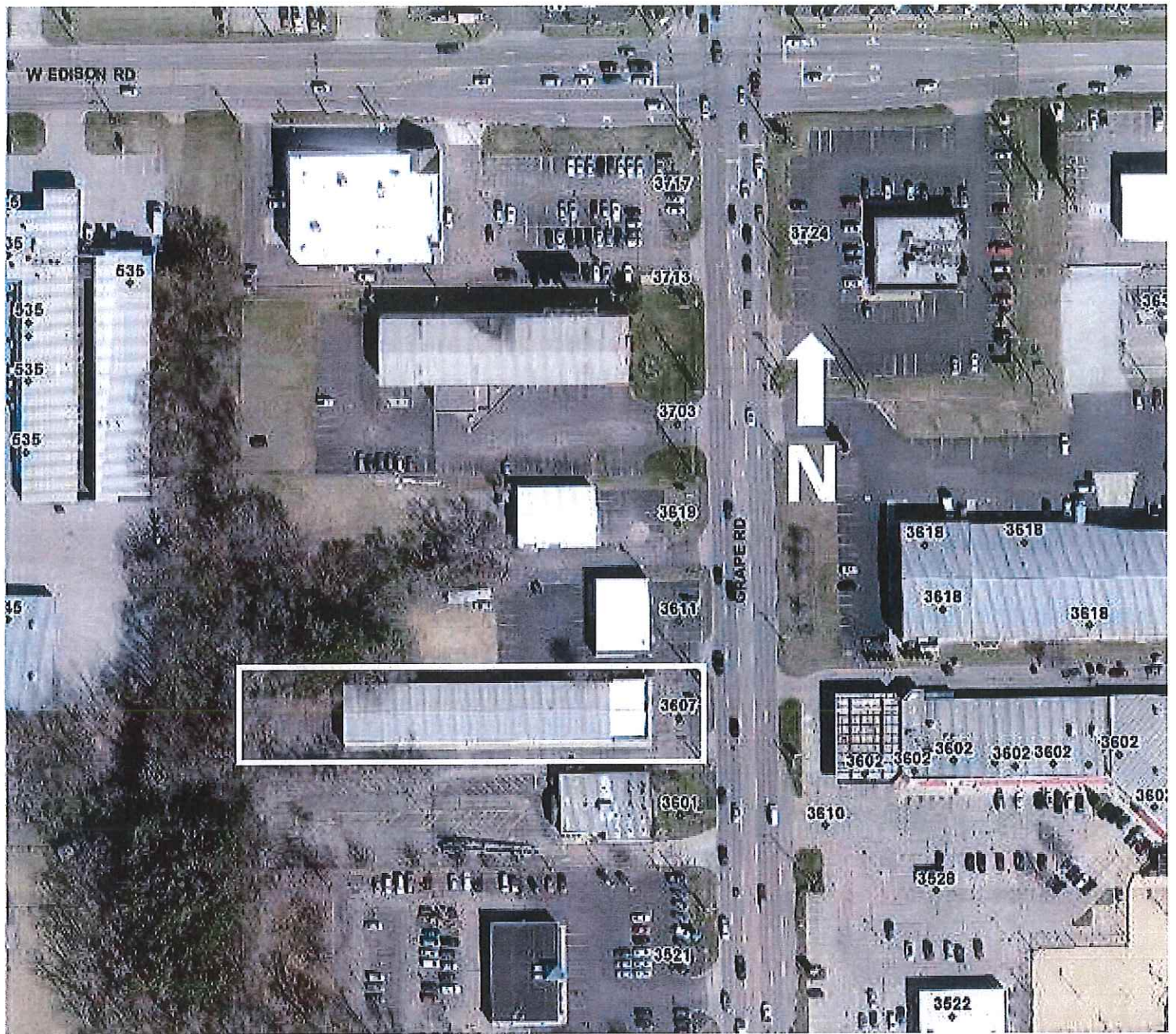
1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the existing business provides similar personal services/salon uses;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because it is included in a large commercial area;
3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit a tattoo establishment, but does allow the salon where the process is taking place, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property, because the nature of the business is similar to that of a salon and should not generate more traffic than any of the existing businesses within the area;
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial.

ATTACHMENTS

Photograph, Aerial, Appeal, Location Map



West facing from Grape Road



Aerial

DATE: December 8, 2022

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

Received

FEB 22 2023

Planning and
Community Development

The undersigned appellant respectfully shows the Board:

1. I, **ALC Holdings**, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

The parcel is legally described as: Lot 46 Degrootes Sub
Commonly known as 3607 Grape Rd.

2. The above-described real estate presently has a zoning classification of C-1 General Commercial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies the above-described property in the following manner: Describe salon services that will be provided. -Permanent Makeup/Cosmetic Tattooing category. I use specially formulated pigments, not tattoo inks, to implant color into the skin with needles.
4. Appellant desires to add microblading service to already existing hair salon that resides in the complex. Describe microblading.
-The pigments are designed to slowly fade over time so that they remain natural looking instead of bold like a traditional tattoo. All Permanent Makeup services are a two step process. You have one session done and then a perfecting session in 6-8 weeks after that.
5. The Zoning Ordinance of the City of Mishawaka equates microblading to tattooing, which is not a permitted use by right in any district.
6. The strict adherence to the ordinance requirements creates an unusual hardship because it doesn't list microblading as a use in any zoning area.
7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community?

No it will not be injurious to the public health, safety, morals or general welfare of the community. training and licenses.

-I was certified in microblading by Michiana Microblading in 2020. In 2021 I was certified in pixel eyeliner by Brow Tricks. In 2022 I was certified by Brow Kingdom in LiFt Saline Tattoo Removal and Fine Line Studio for Tiny Tattoos. I was certified in 2023 by Brow Tricks for Lip Blush.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?
The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the business will be located in a building that is surrounded by various commercial uses.
- (3) Does the need for the variance arise from some condition peculiar to the property involved?
Yes, the need for the variance arises from some condition peculiar to the property involved. The current zoning does not permit microblading, but does allow the salon where the process is taking place, thus requiring the use variance for the proposed use.
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?
Yes, this constitutes as an unnecessary hardship because the current zoning does not permit microblading, but does allow the salon where the process is taking place.
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
No this approval will not interfere substantially with the Mishawaka 2000 Comprehensive plan. This is a personal/cosmetic service similar to the hair/beauty salon that currently resides in the complex.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Suellen Reese

Print Name Here -

Print Name Here

CONTACT PERSON:

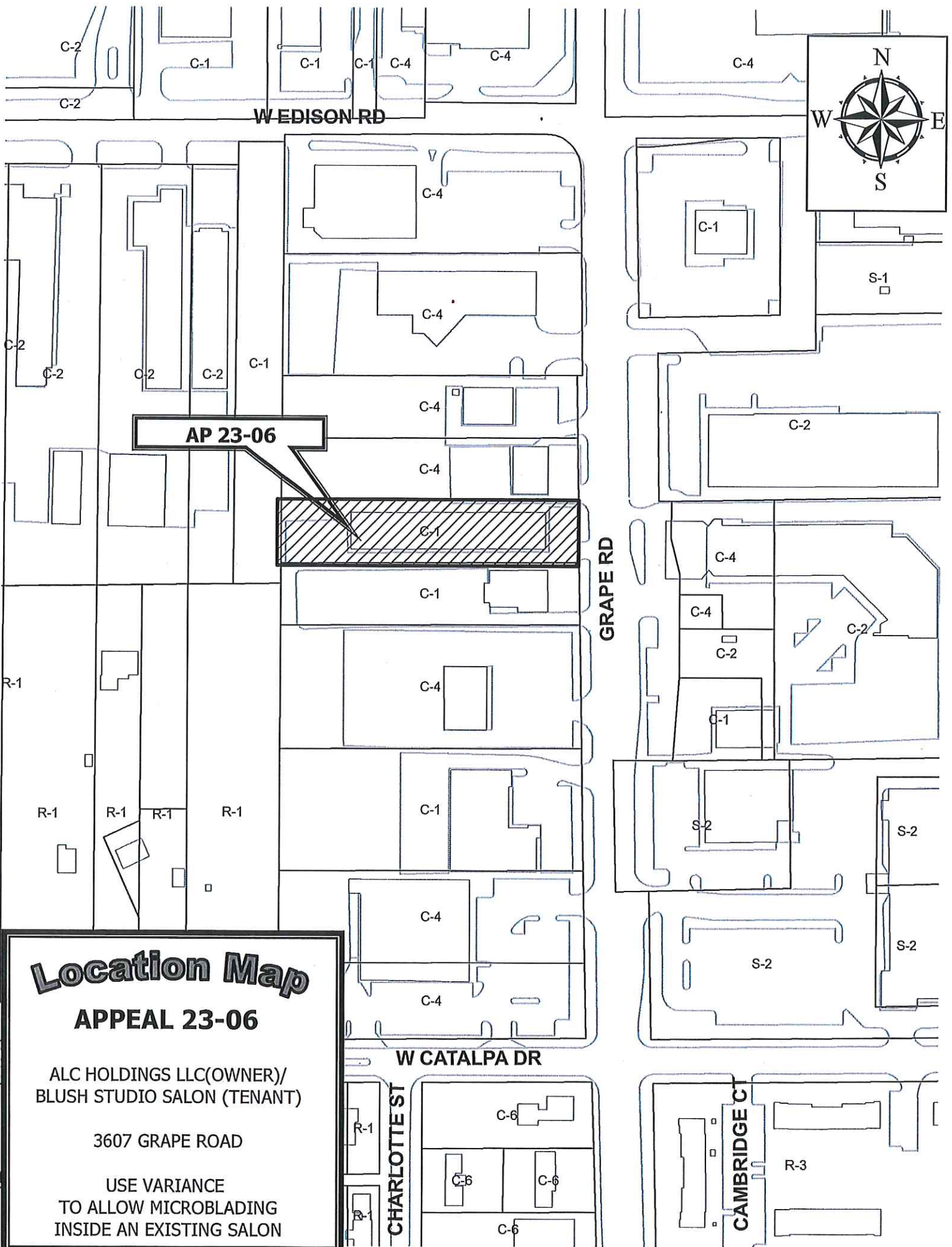
Name: Suellen Reese

Address: 3607 Grape rd Mishawaka , In 46545

Day Phone Number: 574-607-5060

Fax Number:

Email: Blushstudiosalonllc@gmail.com



DATE: December 8, 2022
TO: Board of Zoning Appeals
City of Mishawaka, Indiana

FEB 23 2023
City Clerk
Mishawaka, IN

AP 23-06
Received
FEB 22 2023

The undersigned appellant respectfully shows the Board:

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5. The Zoning Ordinance of the City of Mishawaka equates microblading to tattooing, which is not a permitted use by right in any district.
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7. Answer the following necessary questions for a **USE VARIANCE**:

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No this approval will not interfere substantially with the Mishawaka 2000 Comprehensive plan. This is a personal/cosmetic service similar to the hair/beauty salon that currently resides in the complex.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Suellen Reese

Print Name Here -

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CONTACT PERSON:

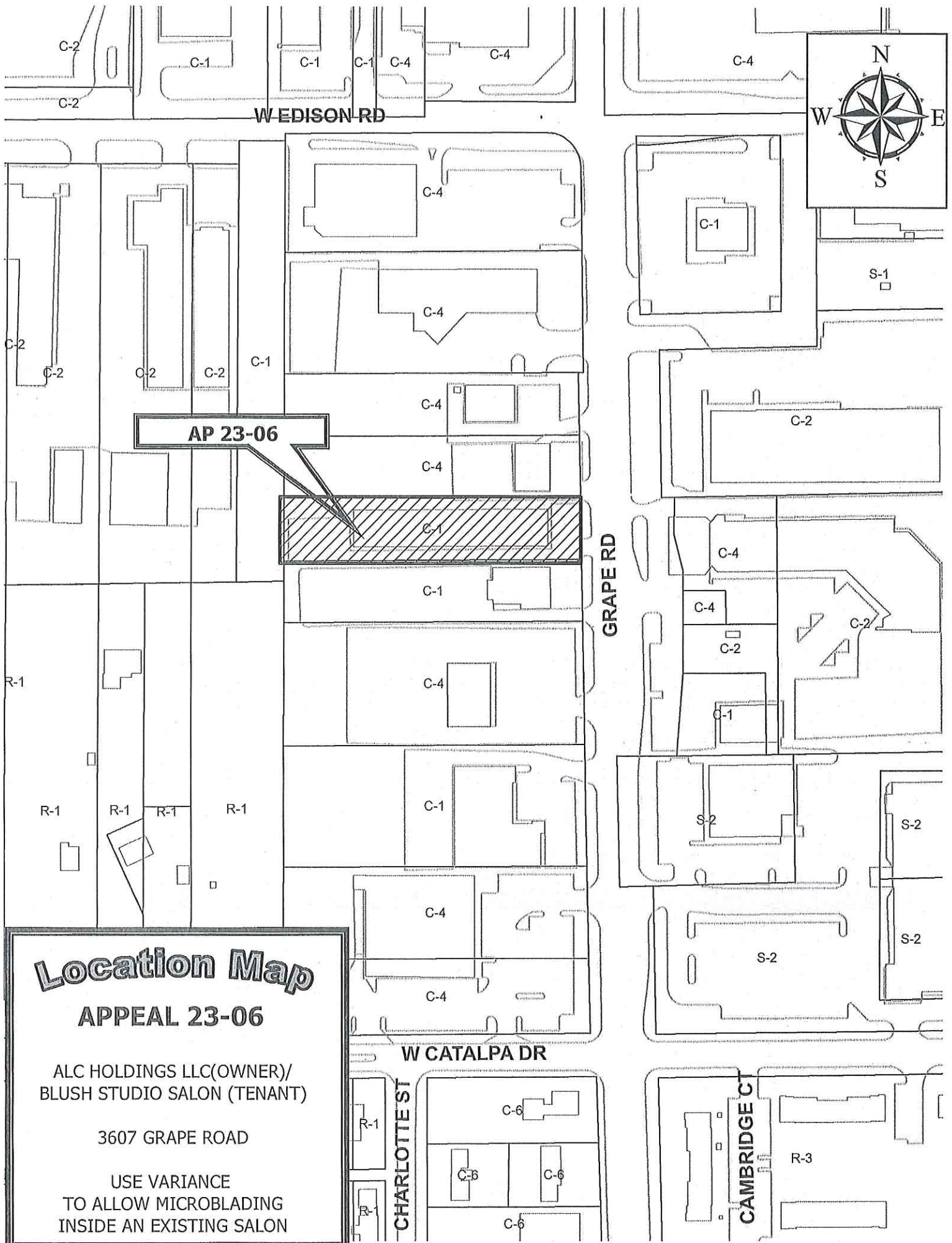
Name: Suellen Reese

Address: 3607 Grape rd Mishawaka , in 46545

Day Phone Number: 574-607-5060

Fax Number:

Email: Blushstudiosalonllc@gmail.com



1st Reading 3/6/23

2nd Reading

Passed

Failed

Continued To

Deborah S. Block, IAMC, MMC

MAR 02 2023

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2023-10

ORDINANCE NO. _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA AMENDING
TITLE III, CHAPTER 34 OF THE
MISHAWAKA MUNICIPAL CODE**

WHEREAS, from time to time it may be necessary for active duty and reserve members of the various branches of the Armed Forces of the United States and National Guard, including the Indiana National Guard, to ready themselves for service in military actions, or to provide assistance to, or to assume responsibilities in the military upon Orders of the Governor of the State of Indiana or the President of the United States; and

WHEREAS, among those called to service or potentially called to such service are employees of the City of Mishawaka, Indiana and employees of Mishawaka Utilities, hereinafter referred to as "City;" and

WHEREAS, various State and Federal laws provide minimum benefits to be accorded such employees by the City during their terms of active duty; and

WHEREAS, the Common Council, in conjunction with the City administration, stands behind and supports, proudly, any and all City employees called to such service, and desires to establish terms and conditions of the employment of those City employees while on active duty related to Orders of the Governor or President, which ratify and go beyond the minimum requirements of the law so as to provide for those employees and their families and dependents.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. TITLE III, Chapter 34: Personnel Policies: of the Municipal Code of the City of Mishawaka, Indiana, is hereby amended by deleting Ordinance #4631 in its entirety and replacing it with the following:

SECTION I – COVERED EMPLOYEES

1. The terms of employment policies embodied within this Ordinance apply to all regular full-time city employees and sworn officers called to active duty in the Armed Forces of the United States or Indiana National Guard for service related to the deployment of troops upon Order of the Governor or President.
2. Each covered employee shall be considered as remaining in the employ of the City of Mishawaka or Mishawaka Utilities in an inactive status while on active duty related to an ordered deployment of troops. Each covered employee shall continue in such inactive status until he or she returns to active employment with the City.

3. Each covered employee assigned to active military duty shall be responsible to notify the City, in writing, of each change in military status (including, but not limited to, wage changes, promotions, or active-duty status changes), within forty-eight (48) hours of the change, or as soon as reasonably possible under the circumstances.
4. Each covered employee must notify the City's Human Resources Department of his or her intention regarding return to active employment with the City on the required forms available from Human Resources. Such reapplication must occur within ninety (90) days after such time as he or she is released from active duty assignment, honorably discharged from such service or released from hospitalization continuing after discharge. The employee shall file his or her final active military pay stub and the final military pay grid with his or her form for reapplication.
5. Following reapplication, each covered employee, if still qualified to perform the duties of the position he or she held immediately prior to being called to military duty, shall be restored to such position or to a position of the like seniority, status, and pay. If any covered employee is not qualified to perform the duties of the position he or she held immediately prior to being called to military duty, by reason of disability sustained during such service, but is qualified to perform the duties of any other position in the employ of the City, he or she shall be offered employment and, if such covered employee so requests, shall be employed in such other position the duties of which the covered employee is qualified to perform as will provide him or her like seniority, status and pay, or the nearest approximation thereof consistent with the circumstances in his or her case.

SECTION II – WAGES AND BENEFITS

1. Each covered employee shall receive paid leave for the number of working days between the last day of active employment with the City and the first day of military duty not to exceed thirty (30) calendar days. This paid leave will be paid in regularly-scheduled, bi-weekly paychecks unless other arrangements are made with the Board of Public Works and Safety.
2. Each covered employee shall be allowed to elect, in writing, to receive compensation at his or her current rate of pay for all unused leave days available on his or her last day of active employment with the City before reporting to active military duty.
3. Beginning with the first day of active military pay and ending with the final day of active military pay, each covered employee shall receive a regular bi-weekly paycheck from the City in an amount equal to the difference between his or her current gross City wage and his or her gross military wage. For purposes of this ordinance, gross wages is defined as total compensation subject to FICA withholding. It is the employee's responsibility to inform the City Controller's Office if the gross military wage is less than the employee's gross City wage. In no event shall the total of gross military and gross City wages (including any amount paid under Section II (1) above) paid during the active military period exceed the total gross wages that would have been earned during the same time period by the covered employee in his or her City position had he or she not been

- called to active duty. Reconciliation of the amounts owed to or by the City shall occur as needed, following the employee's return to active City employment.
4. **Employees with appropriate military orders will be granted paid leave for annual training for the Reserve or National Guard for a period of up to two (2) weeks per year; and are entitled to civilian and military pay up to one (1)) weekend per month. Long-term deployment pay will follow USERRA. Specialty training required for promotions will require the employee to use his/her own banked time.**
 5. For purposes of computing the covered employee's gross City wages, each covered employee shall receive that annual increase he or she would have received had he or she not been called to active military duty.
 6. Leave days, such as but not limited to, Vacation, Sick, FTO and Bonus will not accrue during such time the covered employee is on active military duty.
 7. Time on the job and seniority will accrue during such time the covered employee is on active military duty.
 8. Upon the employee's return to active status with the City, he or she is eligible for any leave time, including vacation, that is available to all active City employees. Human Resources can counsel the returning employee on his or her options, should leave be necessary.
 9. Regular deductions from City paychecks will be honored only in the event the employee expresses his or her desire, in writing, to continue the deduction AND that there are sufficient funds due to the employee. The funds due to the employee include the differential paid according to Section II(3) above and any funds deposited by the employee to the City for the purpose of paying the deduction. Such deposits must occur prior to the scheduled deduction (or pay period). The employee is solely responsible for maintaining his or her qualification for each policy or program. In the event insufficient funds are present for all requested deductions and no further direction has been received from the employee, the City shall appropriate the funds in the following order (as appropriate):
 - a. Court-Ordered Deductions/Garnishments
 - b. Health Insurance premium for dependents
 - c. Union Dues
 - d. Deferred Compensation
 - e. Supplemental Insurance or other voluntary deductions

SECTION III – HEALTH INSURANCE

1. Pursuant to the terms of the Group Contract providing Health Care Benefits ("the Contract") governing the terms and conditions of employee health care coverage provided by the City, health care benefits for each covered employee shall terminate as of the date he or she is activated to military duty, as medical coverage is provided to the covered employee by the United States Government.
2. Dependents of covered employees with City-provided dependent health care coverage at the time the covered employee reports to active duty, shall remain covered under the Contract pursuant to Contract administration policies while the covered employee is activated to military duty.

3. Pursuant to exclusions listed in life insurance contracts, any life insurance provided to the covered employee by the City will cease while the employee is on active military duty.

SECTION IV – PERF

To the extent allowed by law, the City shall, during each covered employee's term of active military duty, continue to pay the pension contributions normally paid by the employer on behalf of the employee by virtue of his or her employment.

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Common Council, signature of the Mayor, attestation by the City Clerk and publication as required by law.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this

_____ day of _____, 2023 at _____ o' clock, _____.M.

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock, _____ M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of, _____ 2023, at _____ o'clock, _____ M..

Dave A. Wood, Mayor

Items to Discuss RE: Military Action Pay Amendment

Susan Kile <skile@mishawaka.in.gov>

Wed 3/15/2023 12:17 PM

To: Michael Compton <mcompton@mishawaka.in.gov>; Mike Bellovich <mbellovich@mishawaka.in.gov>

Cc: Gregg Hixenbaugh <gahixenbaugh@mishawaka.in.gov>

 3 attachments (201 KB)

20230314153613891.pdf; 20230314160728828.pdf; 20230314160737980.pdf;

Hi,

Would you like to meet before the Council meeting next Monday to discuss the points below?

Reservists and Active Duty are treated differently:

1. Active duty is covered by the federal law USERRA where they are made whole for their pay, given medical and other benefits, and hold their seniority and banked time. They are considered full time employees of the government on leave from their full-time civilian job. Please see the attached flyer which explains the rights of active duty military.
2. Reservists are not considered full-time government employees. They deploy for weekends and usually have one two week training per year. I have attached an example schedule. The city has continued their pay as military leave pay for the weekends and the two week training for public safety officials. They get the city pay and the military pay because they are salaried employees. Please see the attached FLSA explanation. An hourly employee is different and is explained in the FLSA attachment. The ordinance would pay the hourly worker the same as the salaried worker.
3. In 2022, the city had 1 public safety employee on active duty and 1 Central Services employee. The city had 12 reservists.
4. In 2023, the city has 6 reservists and 1 active duty employee.



Reply to

NGIN-IBI-BE

DEPARTMENT OF THE ARMY
BRAVO COMPANY
2ND BATTALION, 151ST INFANTRY
912 SOUTH GICOTT STREET
LOGANSPOUT, IN 46947

RECEIVED

OCT 12 '21

Controller's
Office

5 May 2021

MEMORANDUM FOR Soldiers and leaders of Bravo Company, 2nd Battalion, 151st Infantry
Regiment

SUBJECT: Drill and Annual Training Dates for Training Year 2022.

1. All dates are subject to change and soldiers will be notified at the earliest possible time so that families and employers may be informed. Soldiers must report in for first formation at 0600 and Non-Commissioned Officers at 0530 for coordination meeting unless otherwise notified. Soldiers are authorized to report to Home Station the night prior to their armories for safety considerations.

Dates	Event	MUTA	Location
1 - 3 OCT 21	IDT	6	Camp Atterbury, IN
12 - 14 NOV 21	IDT	6	Camp Atterbury, IN
4 DEC 21	IDT	2	South Bend, IN
7 - 9 JAN 22	IDT	6	South Bend, IN
FEB 22	NO IDT	0	
4 - 6 MAR 22	IDT	6	Camp Atterbury, IN
1 - 3 APR 22	IDT	6	Camp Atterbury, IN
13 - 15 MAY 22	IDT	6	Camp Atterbury, IN
24 - 26 JUN 22	IDT	6	Home Station Armory
23 JUL - 6 AUG 22	AT	15 Days	Camp Atterbury, IN
17 - 18 SEP 22	IDT	4	Home Station Armory

** Subject to change

48 Total UTAs (2 MUTAs = 1 day of training)

2. All Soldiers are required to report in proper uniform and a professional appearance in accordance with AR 600-9 regulations.

3. We thank you for your continued support of our Indiana National Guardsman who make a commitment to defend America's freedom.

4. The point of contact for this memorandum is SFC Travis Spurgeon ext. 88401 or email at travis.n.spurgeon.mil@mail.mil.


TRAVIS N. SPURGEON
SFC, USA
Readiness NCO

Do I have to pay an employee on military leave? Can I require the employee to use paid time off/vacation time?

March 2, 2022

Under the Fair Labor Standards Act (FLSA), exempt employees may not have their salary reduced for partial-week absences due to temporary military leave. If an exempt employee works any portion of the workweek and is absent the remainder of the week for military-related duties, the employer must pay the employee his or her full weekly salary as if he or she had worked the entire week. There is no requirement under the FLSA to pay exempt employees when they are absent for a full workweek and perform no work during the week. See 29 C.F.R. §541.602 (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-A/part-541/subpart-G/section-541.602>).

Several recent court cases have brought military leave pay obligations under the Uniformed Services Employment and Reemployment Rights Act (USERRA) into the spotlight. In general, the courts have found that USERRA requires employers to pay employees for military leave if the leave closely resembles other types of leave for which employees are paid. However, there is little clarity on what other types of leave are comparable to a military-related absence. This topic is one which employers should keep a close eye on and seek legal counsel as needed. See USERRA May Require Employers to Pay Reservists on Military Leave (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/court-report-userra-may-require-paying-reservists-on-military-leave.aspx).

The use of paid time off/vacation benefits is the employee's choice for military-related absences. An employer is prohibited from requiring employees to use their leave benefits for a military absence; however, the employer must allow the use of paid leave if an employee requests it. See 20 C.F.R. §1002.153 (<https://www.ecfr.gov/current/title-20/chapter-IX/part-1002/subpart-D/subject-group-ECFR445761424bb812c/section-1002.153>).

Company policies, collective bargaining agreements, and state and local laws may all have provisions for paid military leave that are more generous than USERRA. Employers should review all of these when encountered with a request for military leave.

Feedback

HR DAILY NEWSLETTER

News, trends and analysis, as well as breaking news alerts, to help HR professionals do their jobs better each business day.



YOUR RIGHTS UNDER USERRA

THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DOL or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.



U.S. Department of Labor
1-866-487-2365



U.S. Department of Justice



Office of Special Counsel



1-800-336-4590

Publication Date — April 2017



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF HR

Deborah S. Block, IAMC, MMC

March 3, 2023

MAR 02 2023

Mishawaka Common Council
100 Lincolnway West
Mishawaka, Indiana 46544

City Clerk
Mishawaka, IN

Mr. President and Honorable Members of the Council:

I respectfully request your approval of the attached proposed ordinance, approving amending Title III, Chapter 34 of the Mishawaka Municipal Code.

I plan to attend the meeting to speak in favor of approval and to be available to answer questions at the pre-Council meeting that evening. Feel free to contact me prior to the meeting at 574-258-1615 or at skile@mishawaka.in.gov.

Thank you in advance for your consideration.

Sincerely,

Susan W. Kile, PHR
Human Resources Director

RESOLUTION NO. 2023-02

MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

**A RESOLUTION APPROVING AMENDING MILITARY ORDINANCE 4750
TITLE III, CHAPTER 34 OF THE MISHAWAKA MUNICIPAL CODE**

WHEREAS, the City of Mishawaka adopted Ordinance 4750, an Ordinance amending the Title III, Chapter 34 of the Mishawaka Municipal Code on March 18th, 2003;

WHEREAS, such Ordinance requires the approval of the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council;

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of the City of Mishawaka the following Amendment to Ordinance 4750:

Section 1. Section II-Wages and Benefits : 4. Employees with appropriate military orders will be granted paid leave for annual training for the Reserve or National Guard for a period of up to two (2) weeks per year; and are entitled to civilian and military pay up to one (1) weekend per month. Long-term deployment pay will follow USERRA. Specialty training required for promotions will require the employee to use his/her own banked time.

Section 2. This Resolution shall be forwarded to the Mishawaka Common Council for its review and final action.

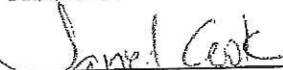
ADOPTED by the Board of Public Works of the City of Mishawaka, on this 28th day of February 2023.


Kenneth Prince, President


Rebecca Maguire, Vice President


Ronald E. Watson, Member

ATTEST:


Janel Cook, Clerk of the Board

PROPOSED ORDINANCE NO. 2003-07

ORDINANCE NO. 4750 AS AMENDED

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA AMENDING
TITLE III, CHAPTER 34 OF THE
MISHAWAKA MUNICIPAL CODE**

WHEREAS, from time to time it may be necessary for active duty and reserve members of the various branches of the Armed Forces of the United States and National Guard, including the Indiana National Guard, to ready themselves for service in military actions, or to provide assistance to, or to assume responsibilities in the military upon Orders of the Governor of the State of Indiana or the President of the United States; and

WHEREAS, among those called to service or potentially called to such service are employees of the City of Mishawaka, Indiana and employees of Mishawaka Utilities, hereinafter referred to as "City;" and

WHEREAS, various State and Federal laws provide minimum benefits to be accorded such employees by the City during their terms of active duty; and

WHEREAS, the Common Council, in conjunction with the City administration, stands behind and supports, proudly, any and all City employees called to such service, and desires to establish terms and conditions of the employment of those City employees while on active duty related to Orders of the Governor or President, which ratify and go beyond the minimum requirements of the law so as to provide for those employees and their families and dependents.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. TITLE III, Chapter 34: Personnel Policies: of the Municipal Code of the City of Mishawaka, Indiana, is hereby amended by deleting Ordinance #4631 in its entirety and replacing it with the following:

SECTION I – COVERED EMPLOYEES

1. The terms of employment policies embodied within this Ordinance apply to all regular full-time city employees and sworn officers called to active duty in the Armed Forces of the United States or Indiana National Guard for service related to the deployment of troops upon Order of the Governor or President.
2. Each covered employee shall be considered as remaining in the employ of the City of Mishawaka or Mishawaka Utilities in an inactive status while on active duty related to an ordered deployment of troops. Each covered employee shall continue in such inactive status until he or she returns to active employment with the City.

3. Each covered employee assigned to active military duty shall be responsible to notify the City, in writing, of each change in military status (including, but not limited to, wage changes, promotions, or active-duty status changes), within forty-eight (48) hours of the change, or as soon as reasonably possible under the circumstances.
4. Each covered employee must notify the City's Human Resources Department of his or her intention regarding return to active employment with the City on the required forms available from Human Resources. Such reapplication must occur within ninety (90) days after such time as he or she is released from active duty assignment, honorably discharged from such service or released from hospitalization continuing after discharge. The employee shall file his or her final active military pay stub and the final military pay grid with his or her form for reapplication.
5. Following reapplication, each covered employee, if still qualified to perform the duties of the position he or she held immediately prior to being called to military duty, shall be restored to such position or to a position of the like seniority, status, and pay. If any covered employee is not qualified to perform the duties of the position he or she held immediately prior to being called to military duty, by reason of disability sustained during such service, but is qualified to perform the duties of any other position in the employ of the City, he or she shall be offered employment and, if such covered employee so requests, shall be employed in such other position the duties of which the covered employee is qualified to perform as will provide him or her like seniority, status and pay, or the nearest approximation thereof consistent with the circumstances in his or her case.

SECTION II – WAGES AND BENEFITS

1. Each covered employee shall receive paid leave for the number of working days between the last day of active employment with the City and the first day of military duty not to exceed thirty (30) calendar days. This paid leave will be paid in regularly-scheduled, bi-weekly paychecks unless other arrangements are made with the Board of Public Works and Safety.
2. Each covered employee shall be allowed to elect, in writing, to receive compensation at his or her current rate of pay for all unused leave days available on his or her last day of active employment with the City before reporting to active military duty.
3. Beginning with the first day of active military pay and ending with the final day of active military pay, each covered employee shall receive a regular bi-weekly paycheck from the City in an amount equal to the difference between his or her current gross City wage and his or her gross military wage. For purposes of this ordinance, gross wages is defined as total compensation subject to FICA withholding. It is the employee's responsibility to inform the City Controller's Office if the gross military wage is less than the employee's gross City wage. In no event shall the total of gross military and gross City wages (including any amount paid under Section II (1) above) paid during the active military period exceed the total gross wages that would have been earned during the same time period by the covered employee in his or her City position had he or she not been

- called to active duty. Reconciliation of the amounts owed to or by the City shall occur as needed, following the employee's return to active City employment.
4. Employees with appropriate military orders will be granted paid leave for annual training for the Reserve or National Guard for a period of up to two (2) weeks per year; and are entitled to civilian and military pay up to one (1) weekend per month. Long-term deployment pay will follow USERRA. Specialty training required for promotions will require the employee to use his/her own banked time.
 5. For purposes of computing the covered employee's gross City wages, each covered employee shall receive that annual increase he or she would have received had he or she not been called to active military duty.
 6. Leave days, such as but not limited to, Vacation, Sick, FTO and Bonus will not accrue during such time the covered employee is on active military duty.
 7. Time on the job and seniority will accrue during such time the covered employee is on active military duty.
 8. Upon the employee's return to active status with the City, he or she is eligible for any leave time, including vacation, that is available to all active City employees. Human Resources can counsel the returning employee on his or her options, should leave be necessary.
 9. Regular deductions from City paychecks will be honored only in the event the employee expresses his or her desire, in writing, to continue the deduction AND that there are sufficient funds due to the employee. The funds due to the employee include the differential paid according to Section II(3) above and any funds deposited by the employee to the City for the purpose of paying the deduction. Such deposits must occur prior to the scheduled deduction (or pay period). The employee is solely responsible for maintaining his or her qualification for each policy or program. In the event insufficient funds are present for all requested deductions and no further direction has been received from the employee, the City shall appropriate the funds in the following order (as appropriate):
 - a. Court-Ordered Deductions/Garnishments
 - b. Health Insurance premium for dependents
 - c. Union Dues
 - d. Deferred Compensation
 - e. Supplemental Insurance or other voluntary deductions

SECTION III – HEALTH INSURANCE

1. Pursuant to the terms of the Group Contract providing Health Care Benefits ("the Contract") governing the terms and conditions of employee health care coverage provided by the City, health care benefits for each covered employee shall terminate as of the date he or she is activated to military duty, as medical coverage is provided to the covered employee by the United States Government.
2. Dependents of covered employees with City-provided dependent health care coverage at the time the covered employee reports to active duty, shall remain covered under the Contract pursuant to Contract administration policies while the covered employee is activated to military duty.

3. Pursuant to exclusions listed in life insurance contracts, any life insurance provided to the covered employee by the City will cease while the employee is on active military duty.

SECTION IV – PERF

To the extent allowed by law, the City shall, during each covered employee's term of active military duty, continue to pay the pension contributions normally paid by the employer on behalf of the employee by virtue of his or her employment.

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Common Council, signature of the Mayor, attestation by the City Clerk and publication as required by law.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this

17th day of March, 2003 at 7:40 o'clock, P.M.

William D. Pemberton /s/
Presiding Officer, William Pemberton

ATTEST:

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

PRESENTED by me to the Mayor this 18th day of March, 2003, at 10:52 o'clock,
A. M.

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

APPROVED by me this 18th day of, March 2003, at 3:30 o'clock, P.M..

Robert C. Beutter /s/
Robert C. Beutter, Mayor