

# Board of Zoning Adjustment Staff Report

January 9, 2022



**Case Numbers:** 22-VARIANCE-0097; 22-VARIANCE-0121; 22-VARIANCE-0122; 22-WAIVER-0156; 22-WAIVER-0157; 22-WAIVER-0158; 22-WAIVER-0159  
**Project Name:** Sri Ganesh Addition  
**Location:** 2703, 2705 & 2707 Preston Highway  
**Owner:** Sri Ganesh, INC  
**Applicant:** Bardenwerper, Talbot & Roberts, PLLC  
**Jurisdiction:** Louisville Metro  
**Council District:** 10 – Pat Mulvihill  
**Case Manager:** Molly Clark, Planner II

## REQUESTS

- **Variance** from Land Development Code section 5.5.1.A.1.2 to build the proposed structure further away from the corner property lines than the maximum 5 feet away from the right-of-way of both streets on a corner lot (22-VARIANCE-0097)
- **Variance** from Land Development Code section 5.2.3.D.3.b where adjacent to residential use, a minimum side setback of 5 feet shall be maintained. (22-VARIANCE-0121)
- **Variance** from Land Development Code section 5.7.1.B.3 to allow the proposed structure to encroach into the 25 ft rear yard setback as required in the form district transition zone standards. (22-VARIANCE-0122)

| Location                      | Requirement | Request | Variance |
|-------------------------------|-------------|---------|----------|
| Front and Street yard Setback | 5 ft (max)  | 135 ft  | 130 ft   |
| Side Yard Setback             | 5 ft        | 0 ft    | 5 ft     |
| Rear Yard Setback             | 25 ft       | 7 ft    | 18 ft    |

- **Waiver** from Land Development Code section 5.7.1.B.3.b to not provide the same level of detail for the facades along the north, east and south property lines as required in the form district transition zone standards. (22-WAIVER-0156)
- **Waiver** from Land Development Code section 10.2.10 to not provide the 5-foot vehicular use area landscape buffer along Preston Highway and Linwood Avenue (22-WAIVER-0157)
- **Waiver** from Land Development Code section 5.5.1.A.1.3 to allow parking to be in front of the proposed building (22-WAIVER-0158)
- **Waiver** from Land Development Code section 10.2.4 (table 10.2.3) to not provide the 15 ft property perimeter landscape buffer along the north and east property lines (22-WAIVER-0159)

## CASE SUMMARY/BACKGROUND

The subject site has an existing 4,697 sq. ft. commercial structure. The applicant is proposing to build a 7,686 sq. ft. addition to the existing commercial structure that will include the expansion of the first floor and a new second floor on .331 acres. This site is within the C-1 Commercial zoning district and the Traditional Marketplace Corridor Form District. The property is located on the corner of Preston Hwy and Linwood

Avenue in the Parkway Village Neighborhood. This case is related to a category 2B development plan under case number 22-CAT2-0034.

### **STAFF FINDING**

Staff finds that all the requested variances and waivers are adequately justified and meet the standards of review.

Staff is concerned with 22-VARIANCE-0121 standard C in that having the 0 ft side yard setback will create a situation where the work on the exterior building would create the need to access the adjacent residential properties in order to do maintenance and construction.

Based upon the information in the staff report, and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting a variance established in Land Development Code.

### **TECHNICAL REVIEW**

Public Works and MSD have provided preliminary approval for the associated category 2B request. There are no outstanding technical issues associated with this review.

### **INTERESTED PARTY COMMENTS**

Staff has not received any interested party comments.

### **RELATED CASES**

None.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE Land Development Code section 5.5.1.A.1.2 to not build the proposed structure more than 5 feet away from the rights-of-way of both streets on a corner lot (22-VARIANCE-0097)**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare because the proposed building does not adversely impact the safe movement of vehicles or pedestrians.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity because the proposed addition will be constructed over the existing building footprint. The building materials proposed will also be in character with the neighborhood.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since the proposed addition will be constructed above the existing footprint.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations because the existing shopping center was built before today's zoning regulations and the applicant would need to tear down the existing structure in order to meet the code.

**ADDITIONAL CONSIDERATIONS:**

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as this shopping center was constructed before the creation of form districts. The applicant would need to demolish the existing building to bring the site into compliance.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as this shopping center was constructed before the creation of form districts.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not started construction and is requesting the variance.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from Land Development Code section 5.2.3.D.3.b where adjacent to residential use, a minimum side setback of 5 feet shall be maintained. The applicant proposes the structure to be 0 feet from the adjacent property line (22-VARIANCE-0121)**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare because the proposed addition does not adversely impact the safe movement of vehicles or pedestrians.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity because the proposed addition will be constructed over the existing building footprint. The building materials proposed will also be in character with the neighborhood.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since the proposed addition will be constructed over the existing building footprint. Staff is concerned that

maintenance and construction of this wall could be an issue as workers may need to access the properties at 800, 802 and 804 Reading Road to work on the exterior of the building.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations because the existing shopping center was built before today's zoning regulations and the applicant would need to tear down the existing structure in order to meet the code.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as this shopping center was constructed before the creation of form districts.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the proposed addition will be constructed over the existing building footprint. The building materials proposed will also be in character with the neighborhood.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not started construction and is requesting the variance

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from Land Development Code section 5.7.1.B.3 to allow the proposed structure to encroach into the 25 ft rear yard setback as required in the form district transition zone standards. (22-VARIANCE-0122)**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare because the proposed building does not adversely impact the safe movement of vehicles or pedestrians.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity because the proposed addition will be constructed over the existing building footprint. The building materials proposed will also be in character with the neighborhood.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since the proposed addition will be constructed over the existing building footprint. The building materials proposed will also be in character with the neighborhood.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations because the existing shopping center was built before today's zoning regulations and the applicant would need to tear down the existing structure in order to meet the code.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the existing shopping center was constructed before the creation of form districts.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the proposed addition will be constructed over the existing building footprint. The building materials proposed will also be in character with the neighborhood.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not started construction and is requesting the variance

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER from Land Development Code section 5.7.1.B.3.b to not provide the same level of detail for the facades along the north, east and south property lines as required in the form district transition zone standards. (22-WAIVER-0156)**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The requested waiver will not adversely affect adjacent property owners because the applicant will still be providing screening with a fence and the building materials used will be consistent with the adjacent residential neighborhood.

- (b) The waiver will not violate specific guidelines of Plan 2040;

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and

delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. The applicant is proposing parking away from the adjacent residential lots. Community Form Goal 2, Policy 11 calls for ensuring appropriate placement, design and scale of centers in Traditional Neighborhood, Neighborhood and Village Form Districts to ensure compatibility with nearby residences.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is proposing to redevelop an existing building that was constructed before form district regulations were implanted in the code. The facades facing residential will have windows but will also be partially screened with 6-foot fencing.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land because the applicant is still providing screening with 6 foot fencing. The applicant is also providing street trees along Linwood Avenue that will create screening for the south façade.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER from Land Development Code section 10.2.10 to not provide the 5 foot vehicular use area landscape buffer along Preston Highway and Linwood Avenue (22-WAIVER-0157):**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since the applicant is providing the required 3-foot masonry wall along Preston Highway and will be providing adequate screening with street trees on Preston and Linwood as required by the code.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 6 calls to discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and storm-water. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the

use of higher density residential between lower density residential and/or non-residential. This development will be bringing more housing to the area. Community Form Goal 1, Policy 9 calls to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Community Form Goal 1, Policy 10 calls to mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Residential uses that develop adjacent to agricultural land uses may be required to provide screening and buffering to protect both the farmer and homeowners. Community Form Goal 1, Policy 20 calls to mitigate adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is providing the required 3 foot masonry wall along Preston Highway and will be providing adequate screening with street trees on Preston and Linwood as required by the code.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the applicant is providing the required 3 foot masonry wall along Preston Highway and will be providing adequate screening with street trees on Preston and Linwood as required by the code. If the applicant provided the full VUA/LBA the site would lose a significant amount of parking.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 5.5.1.A.3.a. and 5.9.2.C.4. to allow the parking lot to be located in front of the building and to be located closer to the public street than the principal structure (22-WAIVER-0158):**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public rights-of-way to the building entrance.

- (b) The waiver will not violate specific guidelines of Plan 2040;

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building

materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Community Form Goal 2, Policy 11 calls for ensuring appropriate placement, design and scale of centers in Traditional Neighborhood, Neighborhood and Village Form Districts to ensure compatibility with nearby residences. Community Form Goal 2, Policy 15 calls for parking in activity centers should reflect the area's associated Form District standards to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is redeveloping the existing building that was created before form districts were implemented into the code. The applicant would need to tear down the existing structure to bring the site into compliance.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant would need to tear down the existing structure to bring the site into compliance. The applicant is redeveloping the existing building that was created before form districts were implemented into the code.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER from Land Development Code section 10.2.4 (table 10.2.3) to not provide the 15 ft property perimeter landscape buffer along the north and east property lines (22-WAIVER-0159)**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since the applicant is still providing screening with a fence.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 6 calls to discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and storm-



water. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential. Community Form Goal 1, Policy 10 calls to mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Residential uses that develop adjacent to agricultural land uses may be required to provide screening and buffering to protect both the farmer and homeowners. Community Form Goal 1, Policy 20 calls to mitigate adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is still providing screening with a 6-foot fence. The existing building was also constructed before form district regulations. The applicant would need to tear down the existing structure in order to bring the site into compliance.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The applicant is still providing screening with a 6 foot fence. The existing building was also constructed before form district regulations. The applicant would need to tear down the existing structure in order to bring the site into compliance.

### **VARIANCE PLAN REQUIREMENT**

In accordance with LDC Section 11.5B.1.C (Requirement to Follow Approved Plan), a variance shall be approved only on the basis of the plan approved by the Board and shall be valid only for the location and area shown on the approved plan. All construction and operations must be conducted in accordance with the approved plan and conditions attached to the variance.

### **REQUIRED ACTIONS**

- **APPROVE or DENY the VARIANCE** from Land Development Code section 5.5.1.A.1.2 to build the proposed structure more than 5 feet away from the right-of-way of both streets on a corner lot (22-VARIANCE-0097)
- **APPROVE or DENY the VARIANCE** from Land Development Code section 5.2.3.D.3.b where adjacent to residential use, a minimum side setback of 5 feet shall be maintained. (22-VARIANCE-0121)

- **APPROVE or DENY the VARIANCE** from Land Development Code section 5.7.1.B.3 to allow the proposed structure to encroach into the 25 ft rear yard setback as required in the form district transition zone standards. (22-VARIANCE-0122)
- **APPROVE or DENY the WAIVER** from Land Development Code section 5.7.1.B.3.b to not provide the same level of detail for the facades along the north, east and south property lines as required in the form district transition zone standards.(22-WAIVER-0156)
- **APPROVE or DENY the WAIVER** from Land Development Code section 10.2.10 to not provide the 5 foot vehicular use area landscape buffer along Preston Highway and Linwood Avenue (22-WAIVER-0157)
- **APPROVE or DENY the WAIVER** from Land Development Code section 5.5.1.A.1.3 to allow parking to be in front of the proposed building (22-WAIVER-0158)
- **APPROVE or DENY the WAIVER** from Land Development Code section 10.2.4 (table 10.2.3) to not provide the 15 ft property perimeter landscape buffer along the north and east property lines (22-WAIVER-0159)

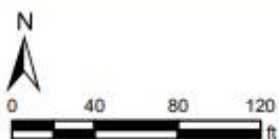
#### **NOTIFICATION**

| <b>Date</b>       | <b>Purpose of Notice</b> | <b>Recipients</b>                                                                                       |
|-------------------|--------------------------|---------------------------------------------------------------------------------------------------------|
| <b>12/21/2022</b> | Hearing before BOZA      | 1 <sup>st</sup> tier adjoining property owners<br>Registered Neighborhood Groups in Council District 10 |
| <b>12/28/2022</b> | Hearing before BOZA      | Notice posted on property                                                                               |

#### **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Site Photos

1. Zoning Map



Tuesday, January 3, 2023 | 5:27:54 PM

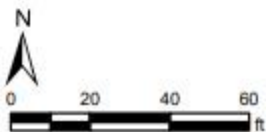


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## 2. Aerial Photograph



Tuesday, January 3, 2023 | 5:31:37 PM



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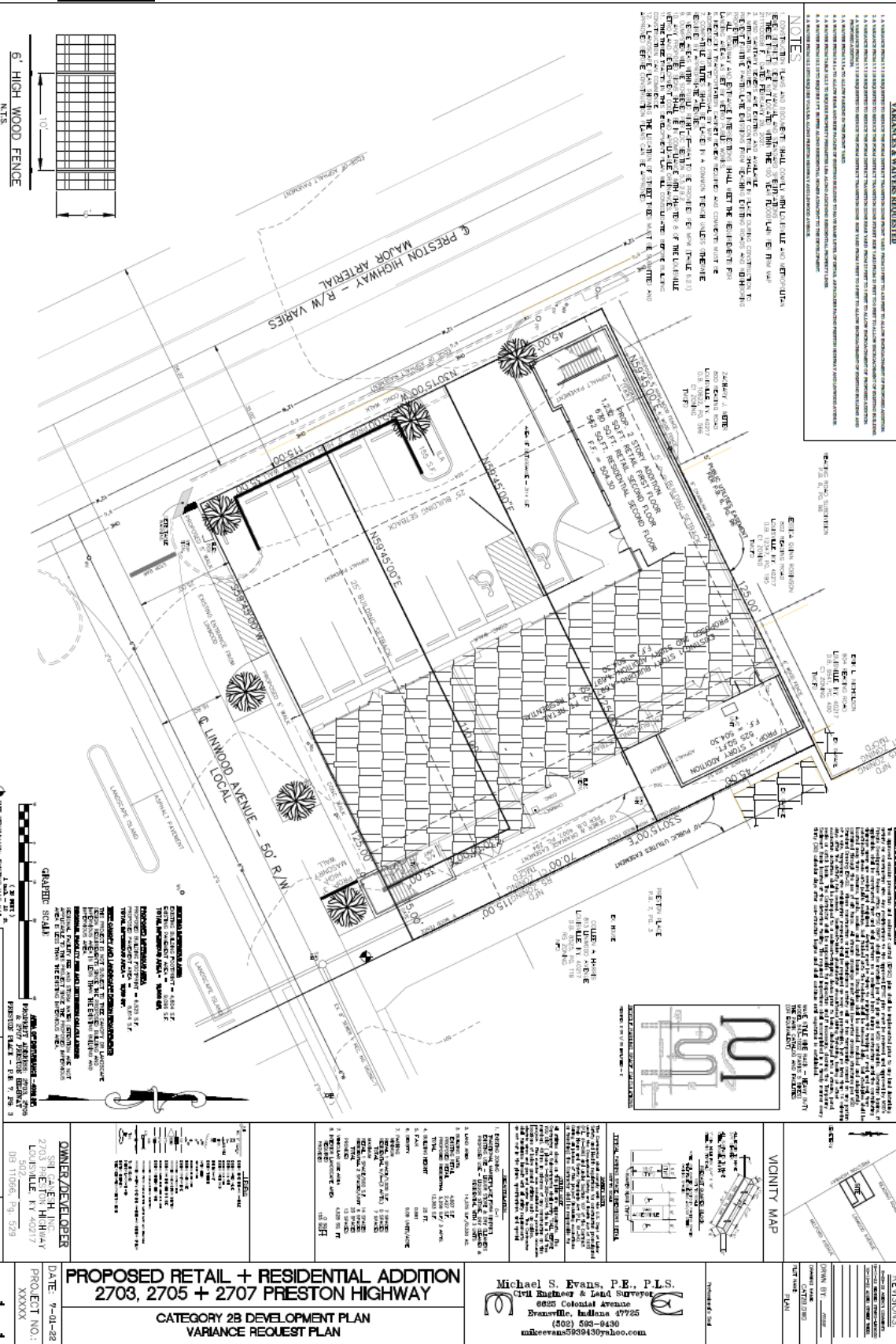
This map is not a legal document and should only be used for general reference and identification

### 3. Site Plan

Received Nov. 07, 2022

PDS

DATE: 9-01-22  
PROJECT NO.: XXXXX





5. Site Photos

Front of subject property





Across the Street





Down the street on Preston Hwy

