

CITY OF BLOOMINGTON



PLAN COMMISSION

February 12, 2024 5:30 p.m.

Council Chambers, Room #115

Hybrid Zoom Link:

<https://bloomington.zoom.us/j/82362340978?pwd=ZnExeVNaSUNGVGdZQTJHNjBBb3M0UT09>

Meeting ID: 823 6234 0978

Passcode: 622209

CITY OF BLOOMINGTON**PLAN COMMISSION (Hybrid Meeting)**

❖City Council Chambers, 401 N Morton Street Bloomington – Room #115

February 12, 2024 at 5:30 p.m.

❖Virtual Link:

<https://bloomington.zoom.us/j/82362340978?pwd=ZnExeVNaSUNGVGdZQTJHNjBBb3M0UT09>

Meeting ID: 823 6234 0978 Passcode: 622209

Petition Map: <https://arcg.is/0DmizG>

ROLL CALL

MINUTES TO BE APPROVED: November 6, 2023

REPORTS, RESOLUTIONS AND COMMUNICATIONS:

Election of Officers

Resolution for Interim Director Scanlan

PETITIONS TABLED:

SP-24-22

Cutters Kirkwood 123 LLC

115 E Kirkwood Ave

Parcel: 53-05-33-310-062.000-005

Request: Major site plan approval to construct a 4-story building with 3 floors of residential units over a ground floor parking garage and retail space in the MD-CS zoning district. The upper floors will consist of 15 dwelling units for a total of 38 beds. Case Manager: Karina Pazos

ZO-34-23

City of Bloomington Planning and Transportation

Text Amendment

Request: Text amendment related to Sign Standards and request for waiver of second hearing. Case Manager: Jackie Scanlan

***Next Meeting February 12, 2024*

Last Updated: 2/8/2024

Auxiliary aids for people with disabilities are available upon request with adequate notice.

Please call [812-349-3429](tel:812-349-3429) or e-mail human.rights@bloomington.in.gov.

The City is committed to providing equal access to information. However, despite our efforts, at times, portions of our board and commission packets are not accessible for some individuals. If you encounter difficulties accessing material in this packet, please contact the **Melissa Hirtzel** at hirtzelm@bloomington.in.gov and provide your name, contact information, and a link to or description of the document or web page you are having problems with.

PETITION CONTINUED to SPECIAL SESSION MARCH 19, 2024:**PUD-18-23 Sudbury Development Partners LLC**

S. Weimer Rd

Request: Request to rezone approximately 140 acres to Planned Unit Development and a request for approval of a District Ordinance and Preliminary Plan.

Case Manager: Jackie Scanlan**PETITIONS:****ZO-45-23 Indiana Center for Recovery, LLC**1003, 1005, 1007, 1008, 1010, 1018 West 1st, 649 & 651 S Walker

Parcel: 53-08-05-100-036.000-009; 53-08-05-100-033.000-009;

53-08-05-100-096.000-009

Request: Rezone 1.66 acres from Residential Small Lot (R3) to Mixed Use Healthcare (MH) Case Manager: Eric Greulich****Next Meeting February 12, 2024****Last Updated: 2/8/2024*****Auxiliary aids for people with disabilities are available upon request with adequate notice.******Please call [812-349-3429](tel:812-349-3429) or e-mail human.rights@bloomington.in.gov.***

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CITY OF BLOOMINGTON
PLAN COMMISSION
RS-01-24

WHEREAS, the Common Council of the City of Bloomington, Indiana, has established a Planning & Transportation Department under Bloomington Municipal Code § 2.14.000; and,

WHEREAS, on January 2, 2024, Mayor Kerry Thomson appointed Jacqueline Scanlan as Interim Director of the Planning & Transportation Department of the City of Bloomington, Indiana; and,

WHEREAS, Indiana Code § 36-4-9-2(a)(4) states that appointment of the head of the Planning & Transportation Department is subject to the approval of the City's Plan Commission; and,

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY OF BLOOMINGTON PLAN COMMISSION, MONROE COUNTY, INDIANA, THAT:

1. The City of Bloomington Plan Commission hereby confirms Mayor Kerry Thomson's appointment of Jacqueline Scanlan as Interim Director of the Planning & Transportation Department of the City of Bloomington, Indiana.
2. This Resolution shall be effective upon its adoption.

PASSED AND ADOPTED by the City of Bloomington Plan Commission, Monroe County, Indiana, upon this 12th day of February, 2024.

Brad Wisler, President
Bloomington Plan Commission

**BLOOMINGTON PLAN COMMISSION
STAFF REPORT**

**CASE #: ZO-45-23
DATE: February 12, 2024**

LOCATION: 1008-1018 W. 1st Street;
1003-1009 W. 1st Street;
649 -651 S. Walker Street

PETITIONER: Indiana Center for Recovery, LLC
1004 W. 1st Street, Bloomington

REQUEST: The petitioner is requesting a map amendment (rezone) of approximately 1.66 acres from Residential Small Lot (R3) to Mixed-Use Healthcare (MH).

BACKGROUND:

Area: 1.66 acres
Current Zoning: Residential Small Lot (R3)
Comp Plan Designation: Mixed Urban Residential / W. 2nd Street – Former Bloomington Hospital Focus Area
Existing Land Use: Vacant/Single Family Residence
Proposed Land Use: Group Care Home, Large
Surrounding Uses: North – Office
South – Mobile Home Park
East – Dwelling, Multifamily
West – Office

REPORT: The petition site encompasses 9 properties that total 1.66 acres. The properties are located at 1008-1018 W. 1st Street, 1003-1009 W. 1st Street, and 649-651 S. Walker Street and are all zoned Residential Small Lot (R3). There were residential structures on several of the properties, however all but 2 of those have been removed and there is one house remaining at 649 S. Walker Street and one at 1008 W. 1st Street. The petitioner also owns the property to the east at 909 W. 1st Street, however that property is not party of this rezoning request. The properties are not located in any Historic or Conservation Districts.

The subject properties were all rezoned in 2021 during the City-wide zoning map update from the previous zoning of Mixed-Use Healthcare (MH) to the current zoning of Residential Small Lot (R3). The rezoning from Mixed-Use Healthcare to Residential Small Lot was a result of the departure of the Bloomington Hospital and subsequent medical uses and offices from this area to allow for the redevelopment of the properties in this area into residential uses. The Transform and Redevelopment Overlay (TRO) district was approved in 2022 for a large portion of the area formerly occupied by the Bloomington Hospital to further guide in the redevelopment of this area and provide a specific set of design standards and uses for this area. None of the properties within the petition site are located in the Transform and Redevelopment Overlay (TRO) district, however, that Overlay district is immediately to the north.

The petitioner requests to rezone the property in order to redevelop them with a use that is not currently allowed. The petitioner is proposing to redevelop the properties for the construction of a new group living building on the north side of 1st Street and a new group living building on the south side of 1st Street. Each building would serve as a potential ‘Group Care Home’ to provide housing for individuals going through the Indiana Center for Recovery’s programs. No opioid treatment is proposed to be provided in the buildings.

For reference, the UDO defines a “Group Care Home” as-

Group Care Home, FHAA, Small and Large: A residential dwelling or facility where persons are living, together with staff, as a single housekeeping unit providing care, supervision, and treatment for the exclusive use of citizens protected by the provisions of the federal Fair Housing Act Amendments of 1988, as defined in that Act and interpreted by the courts, or by any similar legislation of the State of Indiana, including but not limited to facilities providing housing for handicapped, mentally ill, or developmentally disabled persons. This use does not include “Opioid Rehabilitation Home, Small” or “Opioid Rehabilitation Home, Large.”

Group Home, FHAA Small

A facility designed for and occupied by eight or fewer residents living together.

Group Care Home, FHAA Large

A facility designed for and occupied by nine or more residents living together.

The UDO also has several Use-Specific Standards in Section 20.03.030(b)(11) that further regulates this use and are outlined below-

Group Care Home, FHAA (Small and Large) & Opioid Rehabilitation Home, (Small and Large)

- (A) Group homes for the exclusive use of citizens protected by the provisions of the federal Fair Housing Act Amendments of 1988 (FHAA), as defined in that Act and interpreted by the courts, or by any similar legislation of the State of Indiana, may be established in any Residential zoning district or portion of a Mixed-Use zoning district or PD district that permits residential dwellings, provided that they meet the definition of “small” and “large” facilities in Chapter 20.07: Definitions) and are located in zoning districts where facilities of that size are allowed pursuant to Table 3-1, and subject to the licensing requirements of the state and the City of Bloomington.
- (B) In the MN and R4 zoning districts, group homes shall not be designed for or occupied by more than 20 residents living together.
- (C) No Group Care Home shall be located within 300 feet of any other Group Care Home.
- (D) No Opioid Rehabilitation Home shall be located within 300 feet of any other Opioid Rehabilitation Home.
- (E) Where minimum spacing is required by subsections (C) and (D) above, the distance shall be measured from the nearest property line of the property from which spacing is required to the nearest property line on which the group home will be located, using a straight line, without regard to intervening structures or public rights-of-way.

While a rezone is not a request for a specific use, in this case, the petitioner has made clear a desire

for a particular use that would be allowed in the new district. However, the Use-Specific Standards require a separation for that use that doesn't appear to be possible on these properties.

The current zoning of the property as Residential Small Lot (R3) does not allow for the use 'Group Care Home, FHAA, Large'. The use is limited in the Unified Development Ordinance (UDO) to all districts except the Residential districts of Residential Large Lot (R1), Residential Medium Lot (R2), and Residential Small Lot (R3). The petitioner is requesting to rezone these parcels from Residential Small Lot (R3) to Mixed-Use Healthcare (MH).

COMPREHENSIVE PLAN: The Comprehensive Plan designates this site as 'Mixed Urban Residential' and it is also part of the 'W. 2nd Street' Focus Area. The Comprehensive Plan states these areas typically refers to the older neighborhoods that were developed with traditional block and grid-like street patterns, which is reflected in lot sizes and street layout of the area surrounding this site. The majority of these centrally located neighborhoods have been built out, so major changes will occur through redevelopment and property turnover. The Comprehensive Plan encourages these redevelopment opportunities to respect the scale and mass of surrounding structures that are mostly one and two-story in nature. A few locations may support increases in density and multifamily residential uses when located along higher volume roads or near major destinations, or located along neighborhood edges that may support small-scaled neighborhood mixed-uses. These instances shall use the Enhance Theme for development approvals.

The Department recognizes that the particular desired use, as opposed to the zoning district requested, is one that can be beneficial to the community and city as a whole. However, the Department has concerns about whether or not the zoning district that is being requested is supported by the Comprehensive Plan at this location. Additionally, the request is being done to allow larger structures deeper within a neighborhood, as opposed to located on a higher volume road. The Department has concerns about whether or not that is appropriate and supported by the Comprehensive Plan.

One of the goals also stated within the Comprehensive Plan and discussed at length during the creation of the Transform and Redevelopment Overlay (TRO) District was the need to create owner occupied housing within this area, which would not be accomplished with this proposal. The creation of the TRO District was the culmination of many public outreach meetings and Plan Commission and City Council meetings that analyzed the desired land uses and development style within this overall area and a focus on smaller footprint buildings and more traditional site layout was desired and expressed several times during that process. While multi-family style buildings are allowed and appropriate in some locations within the former Hospital area, the location of these properties for a Medical zoning district that is not on a high volume street and buried within a neighborhood may not be an appropriate location for this higher intensity zoning district.

Zoning Map Amendment: The Plan Commission shall review the zoning map amendment petition and shall forward its recommendation to the Common Council in accordance with Section 20.06.040(g) (Review and Decision), based on the approval criteria in Section 20.06.040(d)(6) Approval Criteria) and the following specific approval criteria:

20.06.040(d)(6)(B) General Compliance Criteria

- i. Compliance with this UDO
- ii. Compliance with Other Applicable Regulations
- iii. Compliance with Utility, Service, and Improvement Standards

- iv. Compliance with Prior Approvals

20.06.040(d)(6)(D) Additional Criteria Applicable to Primary Plats and Zoning Map Amendments (Including PUDs)

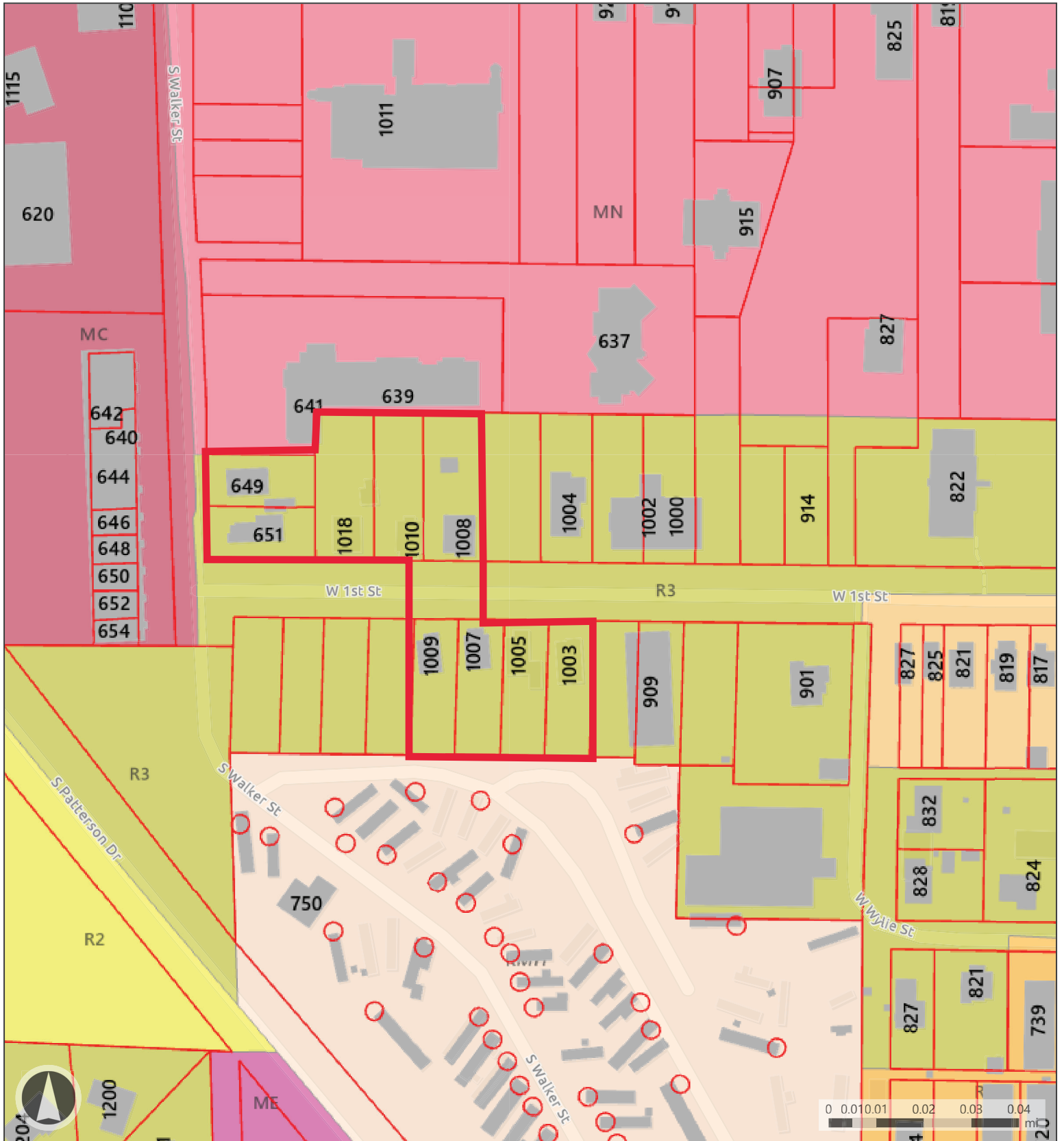
- i. Consistency with Comprehensive Plan and Other Applicable Plans
- ii. Consistent with Intergovernmental Agreements
- iii. Minimization or Mitigation of Adverse Impacts
- iv. Adequacy of Road Systems
- v. Provides Adequate Public Services and Facilities
- vi. Rational Phasing Plan

20.06.070(b)(3)(E)(i)(1) Specific Approval Criteria:

- [a] The recommendations of the Comprehensive Plan;
- [b] Current conditions and character of structures and uses in each zoning district;
- [c] The most desirable use for which the land in each zoning district is adapted;
- [d] The conservation of sensitive environmental features;
- [e] The conservation of property values throughout the jurisdiction; and
- [f] Responsible development and growth.

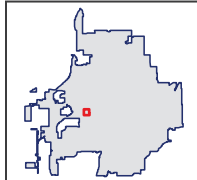
CONCLUSION: The Department recognizes the benefit of additional locations for those who need group home assistance, but has concerns about the map amendment request and how the request aligns with the Comprehensive Plan, as well as the implications of the desired use at this location and its existing surroundings. This petition is required to be heard at two hearings by the Plan Commission, and no waiver of second hearing was requested by the petitioner.

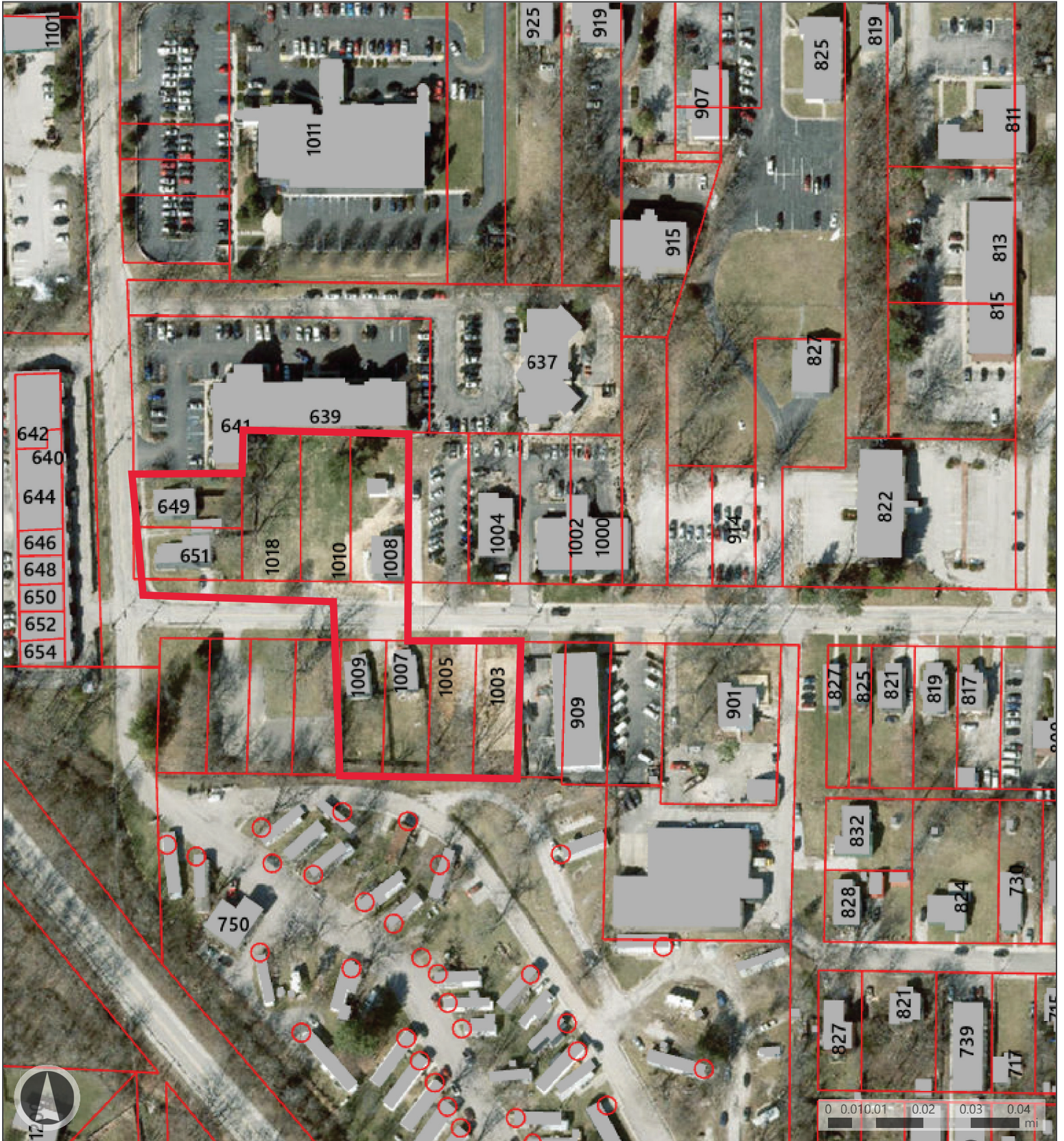
RECOMMENDATION: The Department recommends the Plan Commission continue ZO-45-23 to the required second hearing on March 11, 2024.



Map Legend

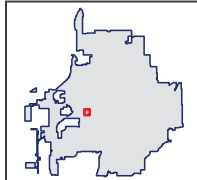
- Parcels
- Buildings
- Mixed-Use Employment
- Mixed-Use Neighborhood-Scale
- Residential Small Lot
- Residential Urban
- Residential Multifamily
- Residential Medium Lot

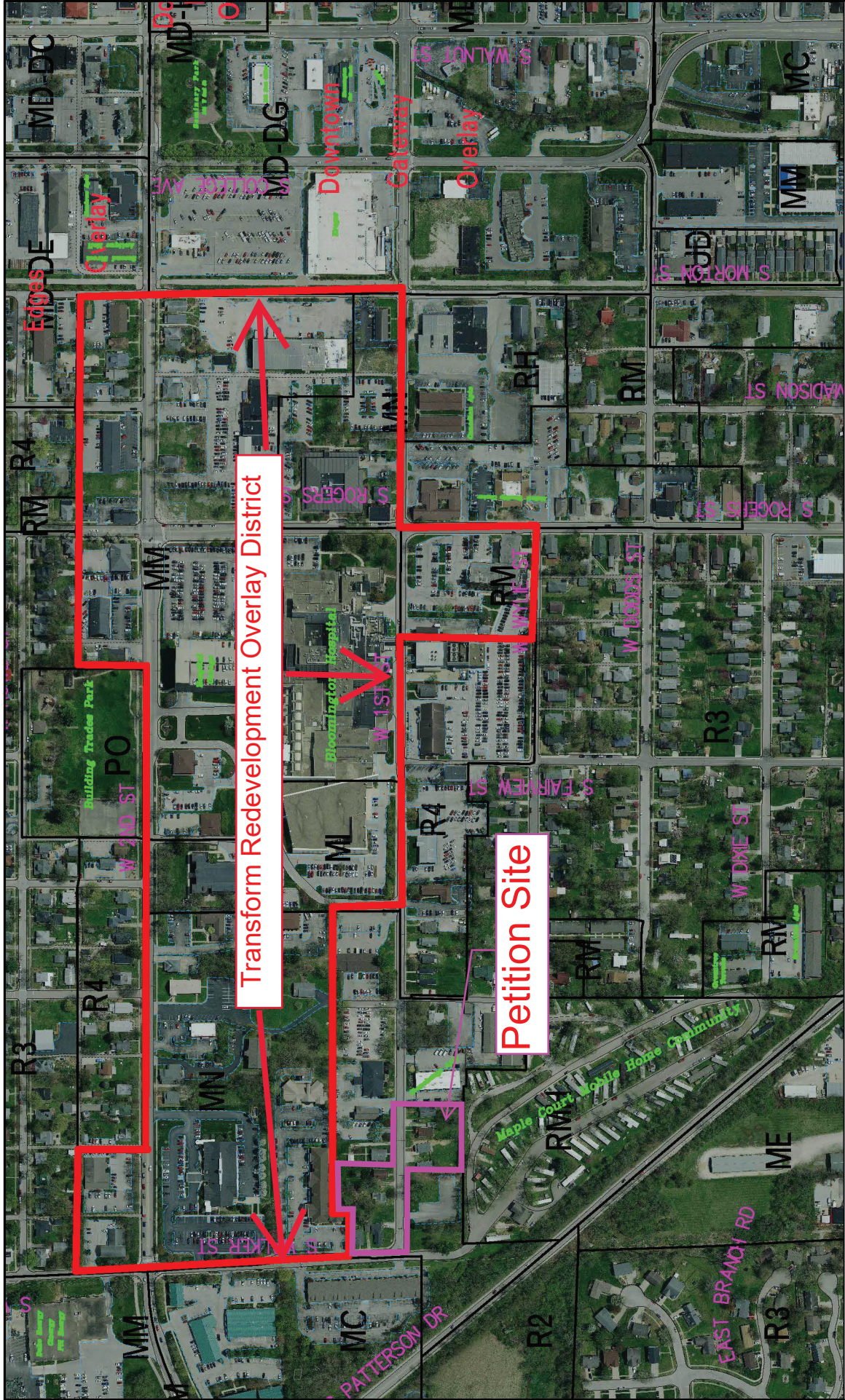




Map Legend

-  Parcels
-  Buildings

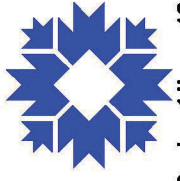




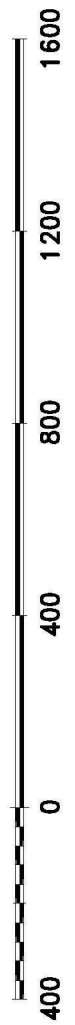
Transform Redevelopment Overlay District

Petition Site

City of Bloomington



Scale: 1" = 400'



15 Sep 22

For reference only; map information NOT warranted.

092



December 4, 2023

City of Bloomington
 Planning and Transportation
 401 N. Morton St.
 Suite 130
 Bloomington, Indiana 47404

Sent via E-Mail: planning@bloomington.in.gov

RE: Petition for Rezone from R-2 to MH

Dear Planning Department,

This letter is written on behalf of Indiana Center for Recovery (“ICFR”), as the operator, and West 1st Street Assemblage, LLC, as the owner, of the real property located along the north and south sides of West First Street having the addresses described below. For the reasons described herein, we request a rezone of the property back to MH (as defined below). This use, which is a protected use under the Americans with Disabilities Act and the Fair Housing Act, would be consistent with surrounding uses, and ultimately would prove to be of substantial benefit to the area and to the community of Bloomington.

Summary

This Petition for Rezone is to request a rezone of certain properties that were spot-zoned from their original intended use, as Mixed-use Healthcare (“MH”), to Residential Medium Lot (“R-2”). This petition for rezone is to request a rezone back to the initial zone of MH, which would support ICFR’s investment-backed expectation of the right to use the New Properties (as defined below) as Group Care Home, FHAA (Large) (“Group Care Home”).

Factual Overview

ICFR is a fully licensed and credentialed mental and behavioral healthcare organization located principally at 1004 West 1st Street, Bloomington, Indiana. ICFR offers a full continuum of care at its existing first street locations at 909 and 1000 West First Street. ICFR is licensed under 440 I.A.C. 7.5, and treats patients suffering from a broad array of mental and behavioral health conditions, including co-occurring disorders that overlap with substance use disorder. Since opening in 2017, ICFR has provided substance use disorder and mental health treatment services to more than 6,000 patients, and has consistently generated more than 150 positions of employment with above-average pay for the residents of Bloomington and the surrounding area.

Since opening in 2017, ICFR and its affiliates have since acquired the properties along the remainder of the north side of First Street, which range from 1008 West First Street to 651 and 649 South Walker. On the south side of First Street, ICFR and its affiliates have expanded their reach from the western edge of their property at 909 West First Street all the way to 1009 West 1st Street (collectively, “the New Properties”).

At the time the New Properties were acquired, in 2020, they fell into the MH zoning district, which permits a Group Care Home as a matter of right. ICFR shortly after acquiring each of the New Properties, applied for an obtained demolition permits through applications to the Historic Commission, which were approved based on the lack of historic value of the properties thereon. It was explained during those hearings that the uses were for the expansion, in one form or another, of ICFR’s operations. No objections were made by anyone at the City of Bloomington at that time.

Since the acquisition of the New Properties, the City of Bloomington has selectively “carved out” the entire area comprising the New Properties, and has down-zoned them to R-2, in which Group Care Homes are not permitted. The City of Bloomington chose only the New Properties to down-zone, and left the remaining parcels as medical uses – specifically, those uses that were zoned for medical uses before were left as medical uses, leaving only ICFR’s properties as R-2. None of ICFR’s properties that were rezoned as R-2 were worthy of saving, and most had already been demolished as approved by the Historic Commission.

During the City Council meeting of May 13, 2021, ICFR objected to the modification of the zoning district in which the New Properties fell, arguing that it should remain the same as the surrounding properties: MH. However, members of the City Council explained that (1) if they did not approve the revised zoning map, they would be required to start the process again from scratch, and (2) that anyone dissatisfied with the zoning district in which they were placed could come back to the City Council and ask for a rezone. A link to the video of the May 13, 2021 City Council meeting can be found here (<https://www.youtube.com/watch?v=IaSGHv11Wyw>). The specific commentary by counsel for ICFR relating to the New Properties can be found at 1:34:35, which is followed shortly thereafter by commentary by Members of the City Council related directly to the New Properties at 1:48:00.

ICFR now takes the City of Bloomington up on its offer to return and request a rezone of the New Properties. In particular, ICFR asks that the City Council permit a rezone of the New Properties to MH to allow ICFR to operate a Group Care Home thereon.

A. ICFR’s Intended Use

If granted the requested rezone, to revert the New Properties back to their original zone, MH, ICFR will operate a Group Care Home on the north and south sides of West First Street. Consistent with its existing uses, ICFR will operate under a license from the Indiana Department of Mental Health and Addiction under 440 IAC 7.5, and will be accredited by the Joint Commission, the gold standard in healthcare accreditation.

ICFR's Patients

ICFR's patients are within a protected class of individuals with disabilities, as defined under the Americans with Disabilities Act, as amended ("ADAA"), and the Fair Housing Act, as amended ("FHAA"). Specifically, they are individuals who suffer from substance use disorder, and a myriad of mental and behavioral health conditions. *See, e.g., MX Group, Inc. v. City of Covington*, 293 F.3d 326 (6th Cir. 2002). By its association with its patients, ICFR is also protected under the ADA and the FHAA. ICFR's patients are not individuals who are in current use of illicit substances.

ICFR's New Construction

In 2020, ICFR began planning with a local architect and design firm to design and begin site studies to construct two (2) new, state-of-the-art facilities adjacent to its existing facilities along the north and south sides of West First Street. The additions to existing operations will effectively reduce the need for ICFR patients and personnel to cross the First Street, by ensuring services are available to its patients regardless of the side of the street on which they reside. This will reduce the risk to ICFR's patients and West First Street travelers.

On the north side of West First Street, ICFR will construct a three-story, inpatient residential building for treating patients suffering from substance use disorders and mental and behavioral health conditions. The north building ("the North Building") will be constructed to within all applicable development standards, and will contain three (3) stories. On the first floor, there will be 2 one-bedroom units, 7 two-bedroom units, along with 4 offices and 2 meeting/conference. On the second floor, occupants can expect to see 3 one-bedroom units and 8 two-bedroom units. On the third floor, occupants can expect 3 one-bedroom units, and 8 two-bedroom units. In total, there will be 31 units, 54 bedrooms, 4 offices, and 2 meeting/conference rooms.

On the south side of West First Street, ICFR will construct a two-story, inpatient residential building for treatment of patients suffering from substance use disorders and mental and behavioral health conditions. The south building ("the South Building"), on the other hand, will be only a two-story building. There, the first floor will contain 4 one-bedroom units, 2 two-bedroom units, 1 office, and 2 meeting/conference rooms. The second floor, however, will be purely residential, with 4 one-bedroom units and 3 two-bedroom units.

Upon completion of construction, the site will include all appropriate landscaping, and substantial beautification in a form similar to the existing site along West First Street. ICFR maintains all its properties to the highest aesthetic standards inside and out, and the North and South Buildings will be no different.

B. ICFR's Operations and Requests to the City are subject to the Dictates of the ADAA and the FHAA.

ICFR falls within a protected class by virtue of its association with the patients it treats. As such, any municipality within which ICFR operates is prohibited from treating ICFR differently than others based on the patients ICFR serves.

In *MX Group, Inc. v. City of Covington*, the Court of Appeals addressed a situation where neighbors of a property owner who wished to open a methadone clinic had complained that they were concerned about the effects of a nearby methadone clinic. 293 F.3d 326 (6th Cir. 2002). The court found that the zoning code at issue in that case was facially discriminatory against victims of addiction because it included any “place whose primary function is to care for the chemically dependent.”

Accordingly, ICFR’s proposal cannot be denied on the basis that ICFR is treating patients suffering from substance use or mental health disorders. Importantly, when the City rezoned the New Properties, it left other surrounding healthcare properties in their existing zones – that is, they did not change the zones of a neighboring eye clinic, or a neighboring former IU Health parking lot, which has since been modified to a hub for the use of ambulances. Rather, when the City rezoned the New Properties, along with ICFR’s existing properties, it specifically targeted only the substance use disorder treatment facility along north and south First Street.

C. ICFR was Unlawfully Spot-Zoned

“Spot-Zoning” is the “singling out of property for a different treatment from that accorded to similar surrounding land which is indistinguishable from it in character.” *L&W Outdoor Advertising Co. v. State*, 539 N.E.2d 497, 499 (Ind. Ct. App. 1989). Particularly, zoning a particular parcel of land in order to avoid the application of state or federal law is improper and an unlawful use of spot zoning. *Id.*

The courts have been unequivocal that where a municipality spot zones an area without a rational relation to the public health, safety, morals, convenience or general welfare, such actions are illegal. *See also Hundt v. Costello*, 480 N.E.2d 284 (Ind. Ct. App. 1985). In the case of ICFR’s existing properties and the New Properties, the City specifically targeted only ICFR’s properties and spot-zoned them to effectively prohibit ICFR from expanding within its then-existing MH zone.

Furthermore, ICFR appears to have been specifically targeted in violation of the ADA and the FHAA. Per the Department of Justice, the Fair Housing Act prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a protected characteristic (such as Title II of the ADA). Here, the only west first street zoning change from MH to R-2 was ICFR’s properties, despite the fact that it was already in use for medical purposes.

This Petition, however, is a follow-up to the City Council’s invitation to apply for a rezone of the New Properties. Granting the Petition would (1) render the New Properties more consistent with existing uses along West First Street, and (2) correct the spot-zoning that occurred in 2021 when the City rezoned the New Properties from MH to R-2.

D. The Rezoning of the Property Constitutes a Regulatory Taking and is Subject to a Claim of Inverse Condemnation.

Inverse condemnation arises when a condemning municipality, such as the City of Bloomington, effectively acquires property without the owner's consent. Typically, this is done through the eminent domain process, but when a municipality takes a zoning action that substantially reduces the value of the property, a claim for inverse condemnation arises.

In Indiana, inverse condemnation claims are codified under Indiana Code §32-24-1-16. The myriad cases that interpret the statute hold that even if there is no physical taking of the subject land, it is enough for a claim of inverse condemnation where there is "substantial interference with private property which destroys or impairs one's free use and enjoyment of the property or one's interest in the property." *Center Township Corp. v. City of Mishawaka*, 882 N.E.2d 762, 770 (Ind. Ct. App. 2008).

In the case of ICFR and the New Properties, the City Council was placed on notice by counsel for ICFR that ICFR's investment backed expectation was to be able to use the New Properties for a healthcare use. As was explained to the City Council on May 13, 2021, ICFR's investment-backed expectation when it acquired the New Properties was that it would be able to function within an MH zoning district. As referenced above, if the MH zoning district remained along West First Street, this petition would not have been necessary, and ICFR could begin operations without further requests from the City. By permitting the rezone back to MH, the issue can be remedied, and ICFR can continue with its plan to construct Group Care Homes on the north and south sides of West First Street.

Conclusion

ICFR's long-standing operation on Bloomington's West First Street has become a fixture, and its expansion would add additional life to an already thriving cluster of healthcare properties in the area. The stretch of West First Street subject to this petition should not have been rezoned, but granting this Petition would operate as a correction to the improper spot-zoning that occurred back in 2021.

Respectfully submitted,



Cheyenne N. Riker
Counsel for Indiana Center for Recovery, LLC
and West 1st Street Assemblage, LLC

