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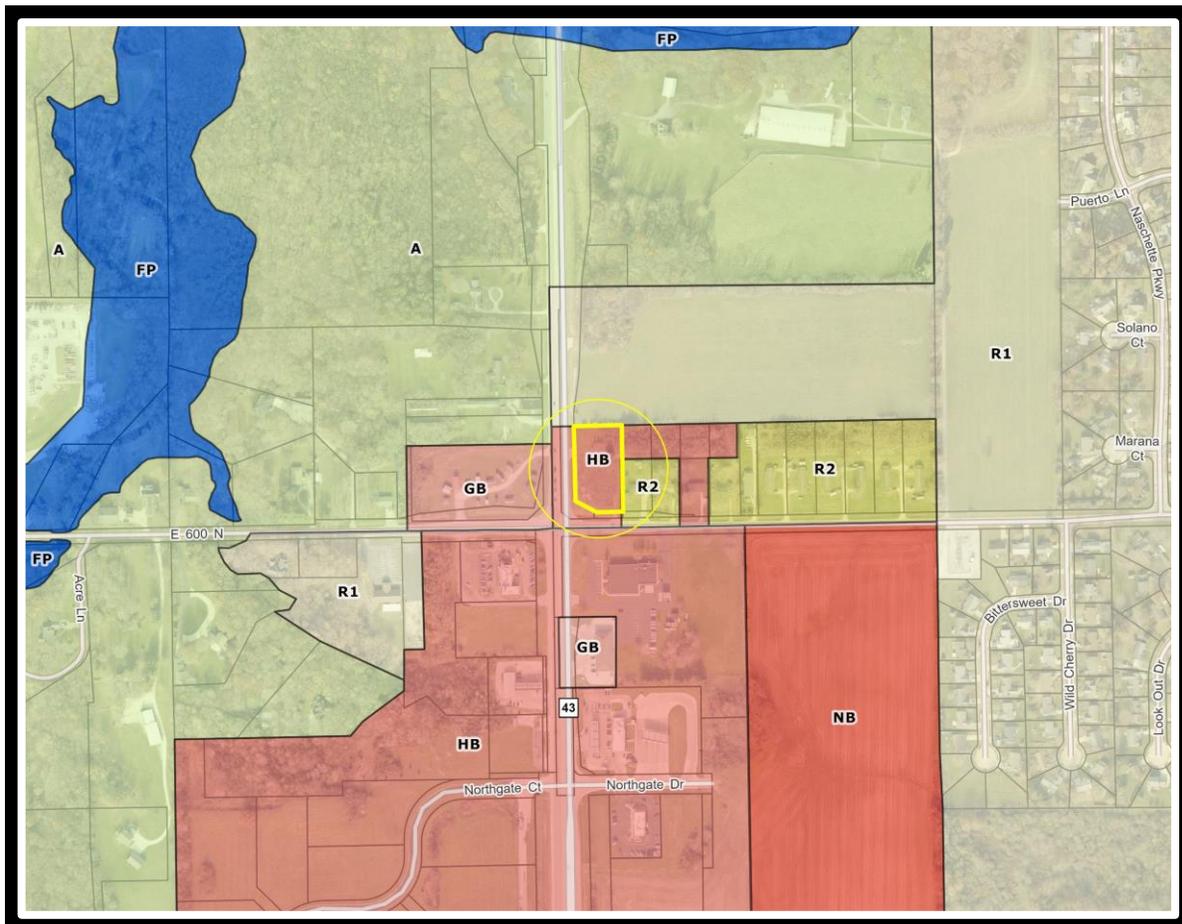
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**BZA-2073**  
**JON SHEIDLER – LANDWORX ENGINEERING**  
**(variances)**

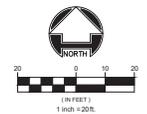
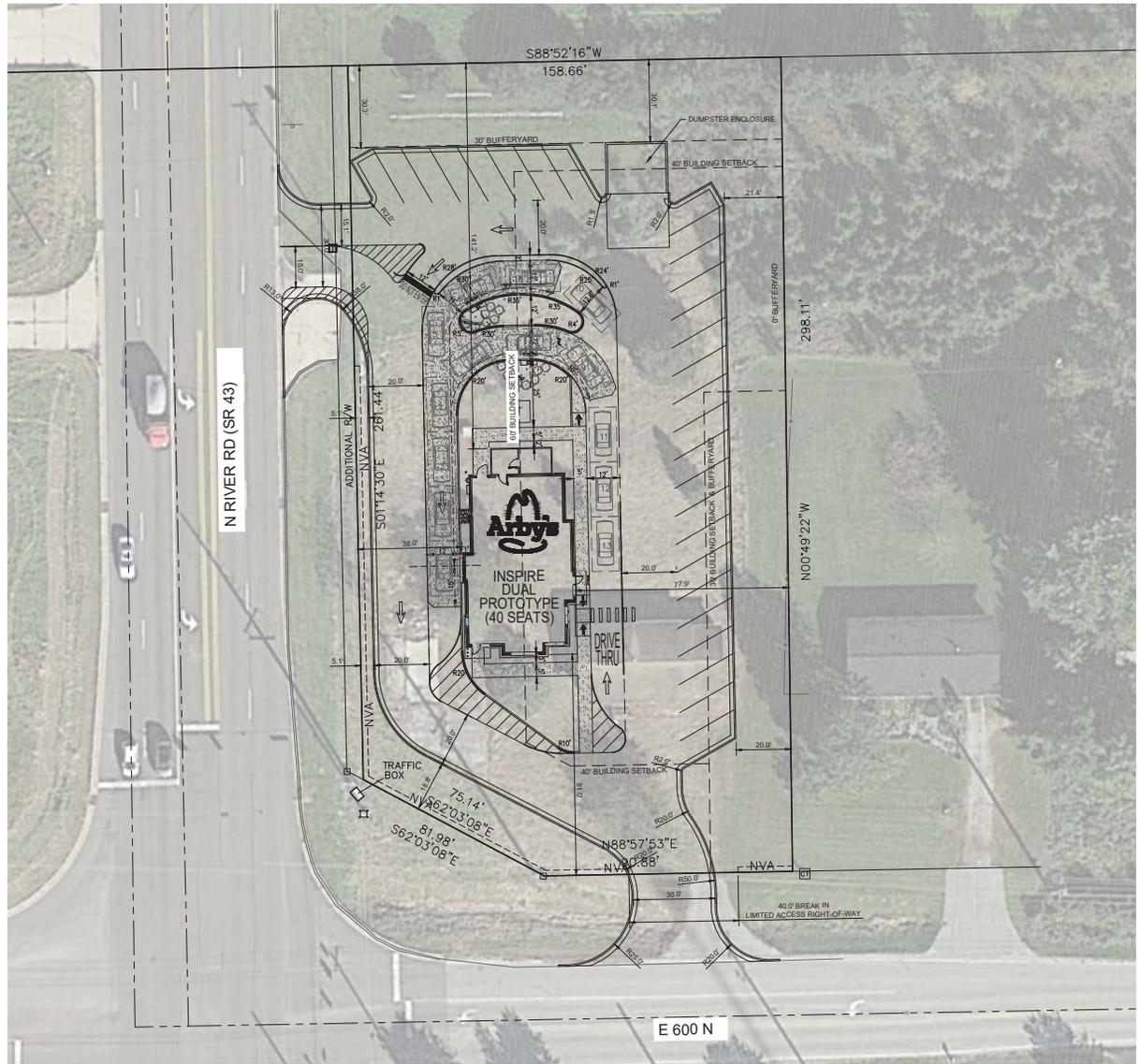
**STAFF REPORT**  
**March 17, 2022**

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05. 1310160 011065 [LAWRENCE] 100024 - ARBY'S DOLLIE GROUND DESIGN [LAWRENCE] 100024 - SITE-UTM-LAWY VAN SITEPLAN F101-JY-2022 12.44 PM 3016-JY-2022 12.33 PM



**SITE DATA:**

SITE AREA: 1.058 ACRES (46,098 SF)  
 BUILDING SQUARE FOOTAGE: 2,658 SF  
 PARKING LOT AREA: 25,172 SF  
 VEGETATIVE COVER: 16,195 SF (35%)  
 BUILDING HEIGHT: 24 FEET

**SITE LAYOUT NOTES:**

1. ALL CONSTRUCTION METHODS AND MATERIALS MUST CONFORM TO CURRENT STANDARDS AND SPECIFICATIONS OF THE FEDERAL, STATE, COUNTY, CITY, OR LOCAL REQUIREMENTS, WHOEVER HAS JURISDICTION.
2. ALL PARKING STRIPES ARE TO BE 4" PAINTED WHITE, UNLESS OTHERWISE NOTED ON THE PLANS, DETAILS OR SPECIFICATIONS.
3. ALL DIMENSIONS ARE TO EDGE OF PAVEMENT OR FACE OF CURB, WHERE APPLICABLE.
4. ALL DIMENSIONS TO BUILDING ARE TO THE OUTSIDE FACE OF BRICK OR FACING MATERIAL, WHERE APPLICABLE.
5. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND ELEVATIONS IN THE FIELD PRIOR TO THE START OF CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL FIELD DIMENSIONS AND ELEVATIONS DURING THE ENTIRE CONSTRUCTION SCHEDULE. IF ANY DISCREPANCIES ARE FOUND IN THESE PLANS FROM ACTUAL FIELD DIMENSIONS, THE CONTRACTOR SHALL CONTACT THE ENGINEER IMMEDIATELY.
6. PROVIDE SMOOTH TRANSITION FROM NEWLY PAVED AREAS TO EXISTING AREAS AS NECESSARY. ALL AREAS WHERE PROPOSED PAVEMENT MEETS EXISTING PAVEMENT, THE EXISTING EDGE OF PAVEMENT SHALL BE FREE OF ALL LOOSE DEBRIS. THE EDGE OF EXISTING ASPHALT PAVEMENT SHALL BE PROPERLY SEALED WITH A TACK COAT MATERIAL IN ALL AREAS WHERE NEW ASPHALT PAVEMENT IS INDICATED TO JOIN EXISTING.
7. ALL EXCAVATED AREAS TO BE SEEDED AND/OR SOCCED AFTER FINISH GRADING UNLESS OTHERWISE NOTED. ALL NEWLY SOCCED/SEEDED AREAS SHALL HAVE A MINIMUM OF 4" OF TOPSOIL, HOLD SOIL DOWN 1" FROM PAVEMENT ELEVATION. CONTRACTOR TO SUPPLY STRAW MULCH WHERE GRASS SEED HAS BEEN PLANTED.
8. RESURFACE OR RECONSTRUCT AT LEAST TO ORIGINAL CONDITIONS ALL AREAS WHERE TRAFFIC BY CONTRACTORS, SUBCONTRACTORS OR SUPPLIERS HAVE DAMAGED EXISTING PAVEMENT, LAWNS OR OTHER IMPROVEMENTS DURING CONSTRUCTION. AFTER CONSTRUCTION WORK IS COMPLETE.
9. ALL UTILITY TRENCHES WITHIN 5 FEET OF PAVEMENT SHALL BE COMPLETELY BACKFILLED WITH GRANULAR BACKFILL.
10. ALL RADI INDICATED SHALL BE CONSTRUCTED AS CIRCULAR ARCS.



Client Name & Address	
Date	
Description	
No.	

**ARBY'S RESTAURANT**  
**EAST 600 NORTH AND NORTH RIVER ROAD (SR 43)**  
**BATTLE GROUND, INDIANA**  
**SITE PLAN**

Professional Seal & Signature

Drawn: ETW	Sheet
Checked: JES	
Date: 02/18/2022	<b>C200</b>
Scale:	
Project: LW-00000	

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**BZA-2073**  
**LANDWORX ENGINEERING**  
**Variances**

**Staff Report**  
**March 17, 2022**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner and owner, Sanjay Arora, represented by Jon Sheidler of Landworx Engineering, is requesting the following two variances:

1. To allow a 38' side setback instead of the minimum required 60' side setback along a primary arterial road (SR 43) and;
2. To allow a 20' bufferyard along the adjacent property zoned R2 to the east instead of the minimum required 30'.

The property is currently vacant, apart from a small pet cemetery on the north end. If approved, the property will house an Arby's restaurant with indoor seating for 40 and a 2-lane drive-thru. The proposed building will be set back 38' from the western property line, 40' from the south, 77'9" from the east, and 60' from the north. The required bufferyard between the adjacent property zoned R2 to the east will be 20' with a 30' bufferyard to the north. The property is commonly known as 6001 SR 43 N, Lot 1 in Arora Minor Subdivision in Battle Ground, Tippecanoe 22(SW) 24-4.

**AREA ZONING PATTERNS:**

The site in question is zoned HB (Highway Business) and has been since 2008, when it was rezoned from R2 (Single- and Two-Family Residential, Z-2383), with the intention of housing a gas station and convenience store (never built). The zoning pattern in this area, especially near the interstate, is primarily commercial. Both sides of SR 43 from I-65 to its intersection with CR 600 N are zoned HB except for one GB parcel (General Business). The rezone from R2 to HB in 2008 also included the north end of Lots 2-6, as well as Lot 5, creating a "U" shape of commercial around the residential zones. North of CR 600 N beyond the HB zone to the east is all residential. The 14-acre property immediately to the north of this parcel is zoned R1 (Sing-Family Residential). The most recent zoning activity in this area was a rezone from HB to GB south on SR 43 in 2013 (Z-2553) and a parking variance further south on SR 43 in 2015 (BZA-1937).

**AREA LAND USE PATTERNS:**

This parcel is currently vacant, except for a small pet cemetery along the north end which was approved through a special exception in 1993 (BZA-1203). That business is no longer active, though the gravesites are still visited. Per the case file for that special exception, the cemetery was planned to expand east along the north side of Lots 2-6 of Bluebird Estates, with 2' x 3' burial sites. It appears that only the north section of Lot 1 was ever used for this purpose.

The neighboring parcel to the east is a single-family dwelling built in 1970, and the R1 acreage to the north appears to be in row-crops. The intersection of SR 43 and 600 N is primarily commercial, with uses geared toward the traveling public on I-65: gas stations and restaurants. Directly south across 600 N is the State Police Post. Across 43 to the west is a portable storage barn business. Beyond the intersection and interchange, uses become increasingly rural and residential in all directions.

#### **TRAFFIC AND TRANSPORTATION:**

SR 43 is classified as a rural primary with a 60' setback and CR 600 N is a rural secondary with a 40' setback, according to the *Thoroughfare Plan*. SR 43 is a divided four-lane highway with a speed limit of 45mph.

The site plan shows new access points from both SR 43, slightly north of the current driveway, and 600 N, slightly west of that current driveway.

The petitioner is meeting their required amount of parking, with 28 spots shown, when 27 are required for their gross floor area in an HB zone.

#### **ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

Sewer and water do not currently serve the site, though it is in the service area for the Town of Battle Ground. The petitioner is working with the Town to get service to the property.

#### **STAFF COMMENTS:**

The petitioner is requesting two variances. The first would allow a building setback of 38' instead of the required 60' from SR 43 on the western lot line. The second would allow a 20' bufferyard instead of the required 30' along the eastern lot line, where the property abuts an R2 zone. The lot dimensions are 298.11' by 158.66'. If the petitioner were to meet the required setback and bufferyard requirements, they would be left with 68' for the building, driving and drive-thru lanes and parking. Alternately, switching the site of the building and side parking to be closer to the R2 zone on the east would allow the building to meet the required setback of 60' along SR 43. The bufferyard however would still be narrower than 30', and the required parking spots would not be met, because the western property line is shorter than the one on the east (because of the angled southwest corner intersection).

This building is of a smaller footprint building design, with more focus on the drive-thru business – taking advantage of the heavily-trafficked intersection and being near the interstate, by having two drive-thru lanes. Staff believes the petitioner is making the best use of the dimensions of this site, by constructing a smaller building. The site plan meets all ordinance requirements except for the western setback and eastern bufferyard widths. The petitioner has not requested any sign variances, and has plans to meet the requirements, per written communication with APC staff.

This property was the site of a rezone from R2 to HB in 2008, with the intention of building a gas station and convenience store, which was never built. It was also replatted before

the bufferyard requirements were amended in 2018 from 20' to 30'. The petitioner is attempting to meet the ordinance requirements on a narrow commercial lot, in part by meeting pre-2018 standards instead of today's standards.

Staff members feel an ethical responsibility to help preserve the pet cemetery for the community, which is still visited by family members today. As a condition of approval for the two variances in this request, a public access easement should be created for the cemetery, with a gated fence separating the parking lot from the bufferyard zone. Staff also recommends that the bufferyard plantings be placed such that no headstones are disturbed.

Regarding the ballot items:

1. The Area Plan Commission at its March 16, 2022 meeting determined that the variances requested **ARE NOT** use variances.

And it is staff's opinion that:

2. Granting both variances **WILL NOT** be injurious to the public health, safety, and general welfare of the community. A reduced setback (#1) and a 20' bufferyard (#2) will have no negative impact. The reduced setback will not negatively impact the travelling public on SR 43. The 20' bufferyard will support the same number of plantings of a 30' bufferyard, at a denser capacity. The petitioner has not requested to reduce the number of plantings. This will help to offset any potential negative impacts the narrower width of the bufferyard would have had.
3. Regarding the reduced setback in variance #1 and bufferyard in variance #2, use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. The reduced setback allows the building to be placed closer to the western side of the lot as opposed to the eastern side, where it abuts a single-family dwelling. Automobiles will still be able to use SR 43, at no reduced value to the road by allowing this reduced setback.
4. The terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district. The lot size and dimensions only allow for a narrow building footprint and minimal parking, whereas typical fast-food restaurants have much more parking and a larger building footprint with more indoor seating. For example, a similar business diagonally across the intersection has a much larger footprint and parking area. Additionally, this lot was replatted before the bufferyard requirements changed in 2018.
5. Strict application of the terms of the zoning ordinance **WILL** result in an unusual or unnecessary hardship as defined in the zoning ordinance. Regarding both variances, building with the required setback and bufferyard widths would further reduce the area for the required parking, as well as the available space for the building. Again, the bufferyard of 30' was changed in 2018 from a 20' width, after this property was platted.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS NOT** self-imposed or solely based on a perceived reduction of or restriction on economic gain. The lot size and dimensions created the hardship in attaining the required setback and bufferyard widths.

5b. The variances (#1 and #2) sought **DO** provide only the minimum relief needed to alleviate the hardship. The site plan provides the largest size setback and bufferyard while still allowing space for the building and parking requirements.

**STAFF RECOMMENDATION:**

Variance #1: (reduced setback of 38') Approval, with condition

Variance #2: (reduced bufferyard of 20') Approval, with condition

**Condition:**

1. Prior to building permit issuance, record a public access easement to the existing pet cemetery with a gated fence between the parking lot and greenspace.

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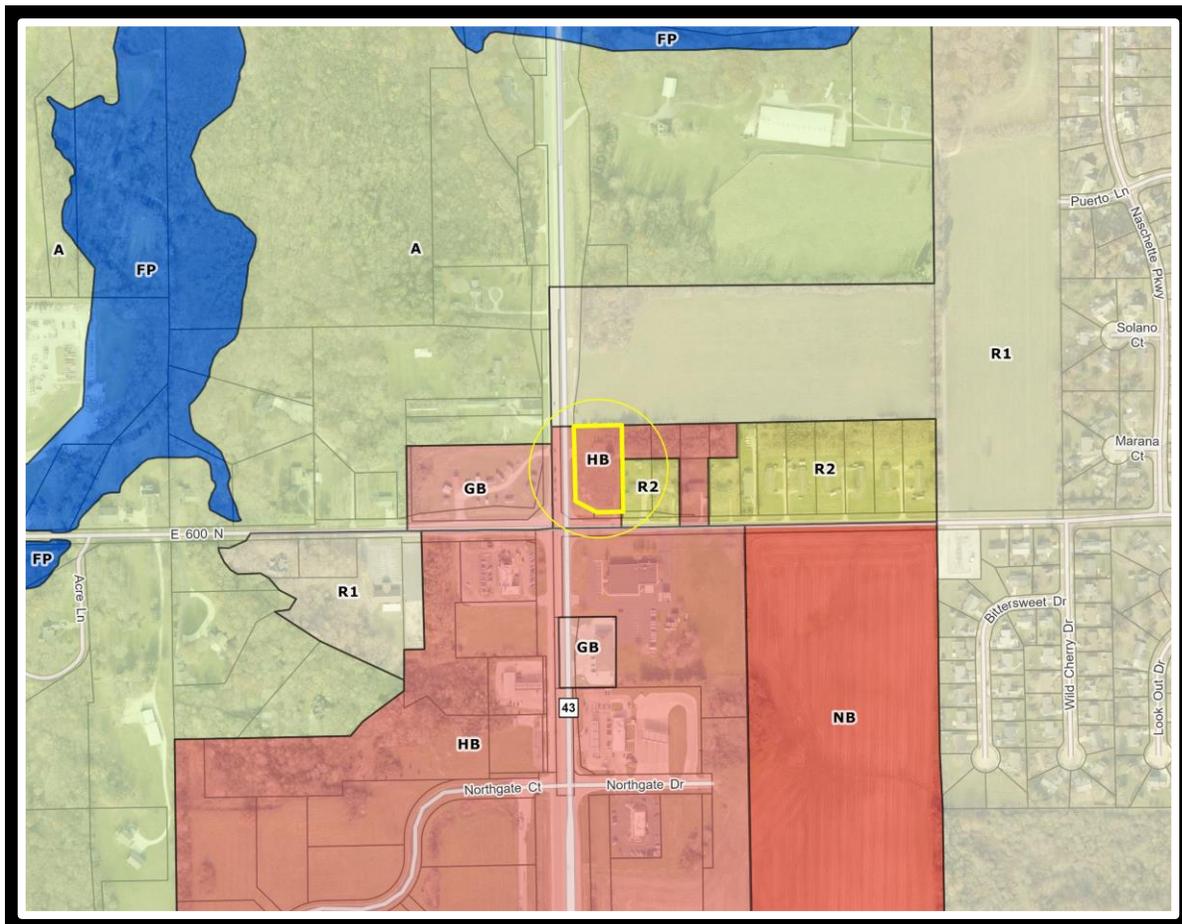
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**BZA-2073**  
**JON SHEIDLER – LANDWORX ENGINEERING**  
**(variances)**

**STAFF REPORT ADDENDUM**  
**April 21, 2022**

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**BZA-2073**  
**LANDWORX ENGINEERING**  
**Variances**

**Addendum**  
**April 21, 2022**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner and owner, Sanjay Arora, represented by Jon Sheidler of Landworx Engineering, is requesting the following two variances:

1. To allow a 38' side setback instead of the minimum required 60' side setback along a primary arterial road (SR 43) and;
2. To allow a 20' bufferyard along the adjacent property zoned R2 to the east instead of the minimum required 30'.

The property is currently vacant, apart from a small pet cemetery on the north end. If approved, the property will house an Arby's restaurant with indoor seating for 40 and a 2-lane drive-thru. The proposed building will be set back 38' from the western property line, 40' from the south, 77'9" from the east, and 60' from the north. The required bufferyard between the adjacent property zoned R2 to the east will be 20' with a 30' bufferyard to the north. The property is commonly known as 6001 SR 43 N, Lot 1 in Arora Minor Subdivision in Battle Ground, Tippecanoe 22(SW) 24-4.

**ADDITIONAL INFORMATION:**

APC staff met with the petitioner, the petitioner's attorney, and APC legal counsel to discuss the special nature of this property after the petitioner requested a continuance. An alternate condition to the one proposed in the original staff report was discussed. The petitioner has agreed to record a license, tied to the land, which would address the following items:

- 1) The right of interested parties to access the pet cemetery through a gated fence.
- 2) An "interested party" is anyone whose pet is buried in the cemetery.
- 3) The license would terminate after five (5) years, unless an interested party requested an extension for an additional five years; one final five-year extension beyond the first would also be permitted if requested, not to extend more than 10 years after license is recorded.
- 4) The interested party would enter through a gated fence to the area "at their own risk".
- 5) Continued maintenance of the area surrounding the gravestones to be performed by property owner.

The license provided by petitioner on 04/21/2022 is attached. The license will still need to be reviewed by APC's attorney. The petitioner has also agreed that a semi-permanent, weather-proof sign be placed near the gate, outlining the purpose of the license and rights of the interested parties.

The current site plan shows a 30' bufferyard along the north end of the property, where it abuts an R1 zone. Per the UZO, the petitioner is only responsible for providing half of the required 30' bufferyard, since the adjacent property is unimproved. A second condition is being added to this addendum, to provide a revised site plan showing the new width of the bufferyard. It should also be noted that fifteen feet from the property line infringes on the grave sites. The UZO allows an exception where the continued use of existing site conditions, such as driveways and/or buildings, would impede the placing of a bufferyard. Staff's interpretation of this ordinance includes the pet grave sites, which is to mean a bufferyard need not be placed in the area of the graves.

APC staff is in support of the license as an alternate condition, and still recommends full approval for the two variances sought.

**STAFF RECOMMENDATION:**

Variance #1: (reduced setback of 38') Approval, subject to the following conditions:

Variance #2: (reduced bufferyard of 20') Approval, subject to the following conditions:

**Conditions**

- 1) A revised site plan showing the required 15' bufferyard to the north with consideration for the existing headstones.
- 2) Prior to the building permit issuance, petitioner shall record an Access License agreed upon by petitioner and APC staff (see attached draft, was received 04/21/2022 and needs to still be reviewed by APC attorney before hearing on 04/27/2022).

# ACCESS LICENSE

This Access License is effective this \_\_\_\_ day of \_\_\_\_\_, 2022, (the “**Effective Date**”) \_\_\_\_\_ an Indiana limited liability company (the “**Company**”).

WHEREAS, the Company is the fee owner of the Property;

WHEREAS, the parties desire to provide for permitting Licensee to enter onto the Pet Cemetery for the purpose of paying respects to Licensee’s deceased pet.

1. Definitions. When used and capitalized in this License (as hereinafter defined), the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context in which the word or phrase is used:

(a) “**Licensee**” means any individual who resided with a pet that is now buried in the Pet Cemetery. “**Licensee**” does not include any individual with a contractual relationship with any prior owner, operator, or manager of the Property or Pet Cemetery.

(b) “**Pet Cemetery**” means the area on or about the northwest corner of the Property containing pet gravestones.

(c) “**Property**” means the certain real property commonly known as 2014 E 600 N, Lafayette, Indiana that is owned by the Company.

2. License. The Company hereby grants to Licensee a license (the “**License**”) to enter onto the Pet Cemetery for the purpose of paying respects to Licensee’s deceased pet. The parties do not intend to create a lease or any other interest in the Property or Pet Cemetery for Licensee through this License. The Licensees shall only have the rights granted by this License. No persons, including the Licensees shall have right to intur any additional animals on the Property or Pet Cemetery.

3. License Period. The License will terminate five years after the Effective Date. Licensee may renew the License for an additional five years by providing written notice to the Company before the end of the initial five-year period at the following address. The Company will display a sign at the Pet Cemetery making Licensee aware of this extension.

Eric M. Douthit  
Church Church Hittle + Antrim  
Two North Ninth Street  
Noblesville, IN 46060  
317-773-2190  
edouthit@cchalaw.com

4. Access. Licensee shall have the right to access the Pet Cemetery during daylight hours per day, seven (7) days per week; provided, however, that the Company, its employees, contractors, and agents shall also, at all times, have access to the Pet Cemetery, no consent of Licensee being required for any such access at any time.

5. Indemnification. Licensee enter the Pet Cemetery at Licensee’s own risk. Licensee shall, at Licencee’s own expense, defend, indemnify, and hold harmless the Company against

any and all losses arising out of or in connection with any claim made or judicial or administrative action filed which allege that the Company is liable to the claimant by reason of:

(a) any injury to or death of any person, or damage to or loss of property, or any other thing occurring on or about any part of the Property, or in any manner growing out of, resulting from or connected with the use, condition or occupancy of the Pet Cemetery if caused by any negligent or wrongful act or omission of the Licensee or any other person or entity for whose conduct the Licensee is legally responsible; and

(b) violation of or failure to observe or perform any condition, provision, or obligation of, or under, this License on the part to be observed or performed hereunder. The indemnity obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this License.

6. Assignment. The License is personal to Licensee and shall not be assigned, nor shall Licensee sublicense or otherwise permit or suffer the occupancy of the Pet Cemetery by any third party without the prior written consent of the Company.

7. Governing Law. This License is governed by the laws of the State of Indiana, without regard to principles of conflict of laws.

8. Severability. The invalidity or unenforceability of any provision of this License shall not affect the validity or enforceability of any other provision of this License, and each provision of this License shall be severable and enforceable to the extent permitted by law.

9. Attorney's Fee, etc. Should either party employ an attorney or attorneys to enforce any of the provisions herein, to protect its interest in any matter arising under this License or to recover damages for the breach of this License, the prevailing party shall be entitled to recover from the other party all reasonable costs, charges, and expenses, including without limitation reasonable attorney's fees expended or incurred in connection therewith, at trial or on appeal.

**[REMAINDER OF PAIGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the undersigned have executed this Pet Cemetery License License as of the Effective Date.

**COMPANY:**

\_\_\_\_\_  
By: John Wade, President

STATE OF INDIANA )

) SS:

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared John Wade, in his capacity as \_\_\_\_\_ of \_\_\_\_\_, who acknowledged the execution of the foregoing License, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

Printed: \_\_\_\_\_

Residing in \_\_\_\_\_ County, \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_