



BOARD OF ZONING APPEALS STAFF REPORT

To: Members of the Board of Zoning Appeals

From: Sergio Mendoza, Planning Director

Meeting Date: November 14, 2023

Agenda Item: BZA Docket No. 23-010

Application Type: **Developmental Standards Variance**

Hearing: **CONTINUED PUBLIC HEARING**

Summary: Katherine Rayner with Crew Carwash is seeking variances for three development standards: an off-site dumpster location, reduction of landscape in the first lot layer, and reuse of a previous carwash sign structure for a proposed Crew Carwash facility.

Applicant: Katherine Rayner, Crew Carwash Development Project Manager

Property Address: 111 Ridge Road

Current Zoning: CD-4A General Urban-A Character District

Adjacent Zoning: North: CD-3.R1 (Neighborhood- 70' Lot SFR Character District)
South: CD-4A General Urban-A Character District
East: CD-4A General Urban-A Character District
West: CD-4A General Urban-A Character District

Action Requested: Approval of Developmental Standards Variance

Additional Actions Required: Findings of Fact, Executed Dumpster Agreement

Staff Recommendation: Continue Public Hearing, Close Public hearing, Defer/Table Action

Previous Attachments:

1. Variance Application, Exhibit A (pg 9)
2. Draft Dumpster Agreement, Exhibit B (pg 13)
3. Dumpster Design, Exhibit C (pg 16)
4. Site Plan, Exhibit D (pg 17)
5. Continuance Letter, Exhibit E (pg 18)

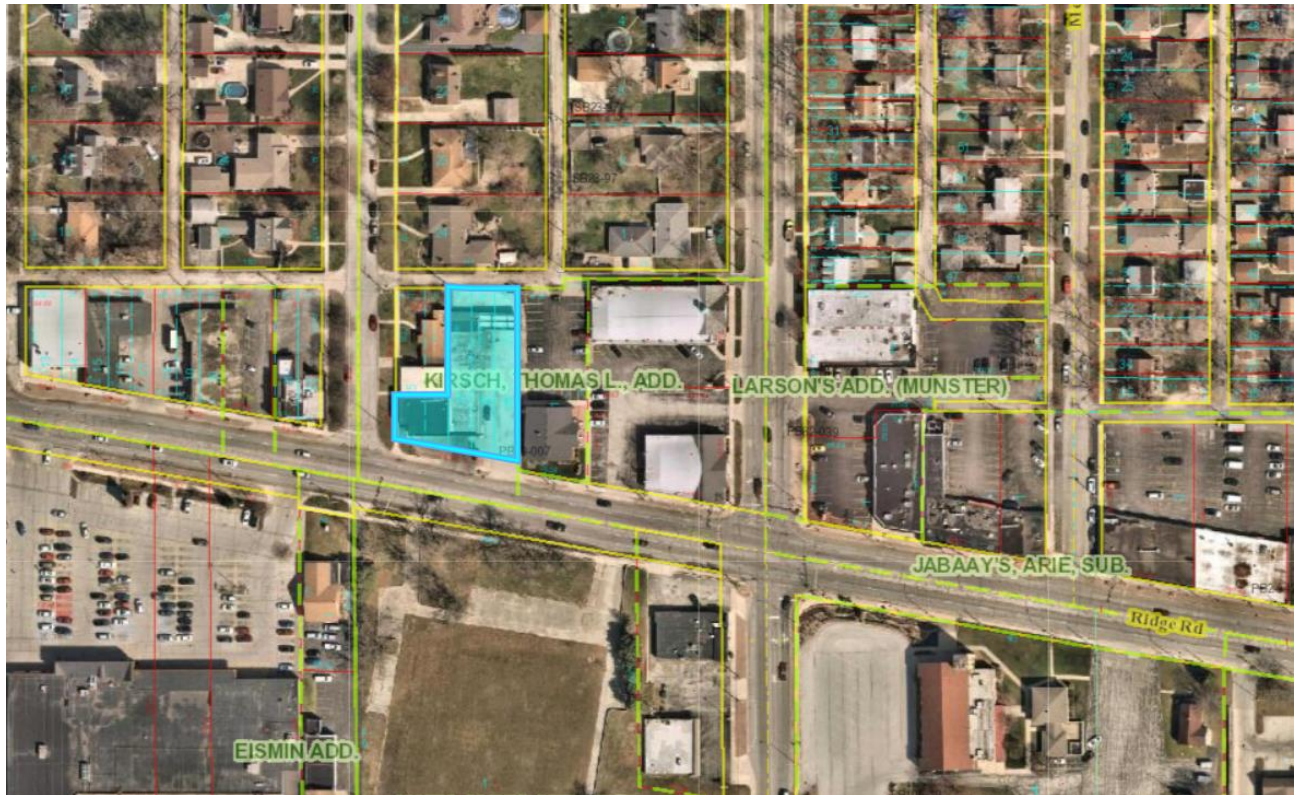


Figure 1 Subject Property.

PROJECT BRIEFING

Katherine Rayner, Development Project Manager with Crew Carwash is proposing the reuse of a former car structure for a Crew Carwash facility. The project will consist of a one-story carwash tunnel with approximately 5,780 square feet of total floor area on .38 of an acre (*see figure 1*). All traffic will enter at the south end of the property from Ridge Road from an existing curb cut. Customers will drive to one of three proposed lanes where they will select and purchase their wash. The washed vehicles will again exit on the south end of the property on to Ridge Road from an existing curb cut, proposed to be reduced in width.

The petitioner is seeking relief from certain development standards to help advance this project. A Developmental Standards Variance Application has been filed to allow for: an off-site dumpster location, to be located on an adjacent lot east of the project site at 131 Ridge Road (*see figure 2*); a reduction on landscape requirement in the first lot layer from 30% to 13%, (*see figure 3*) and; alter and maintain an existing “exposed pole” sign structure with an increase of letter height from the permitted 10” to 26” and an existing 40 sf sign face from the required 8 SF (*see figure 4*).

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Dumpster
Enclosure in
RED

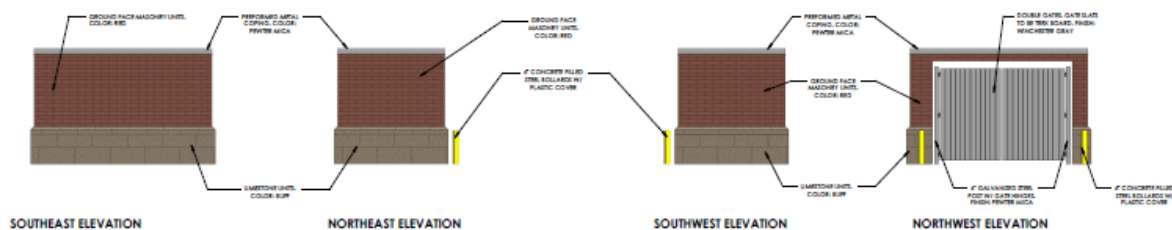


Figure 2 Off-site Dumpster location.

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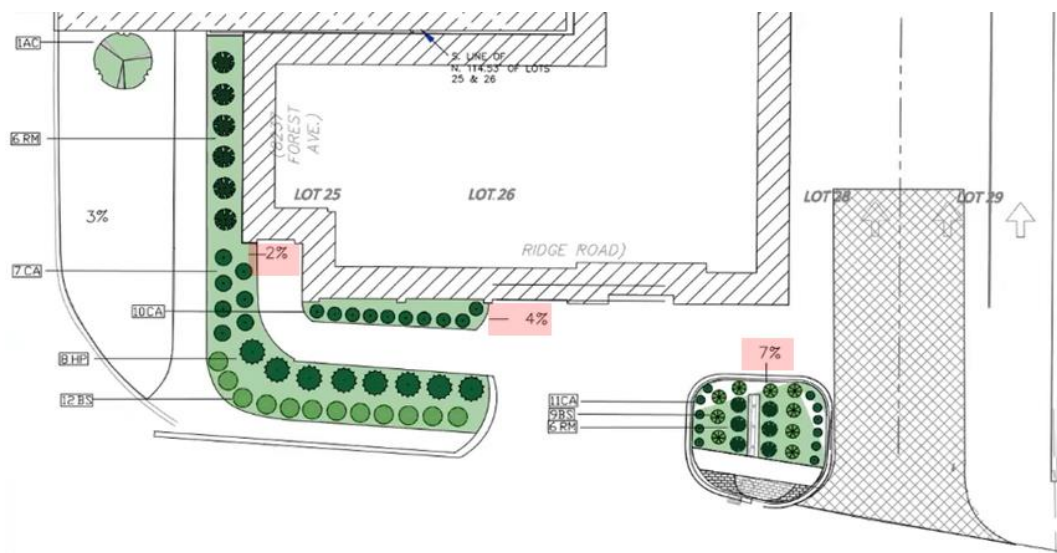
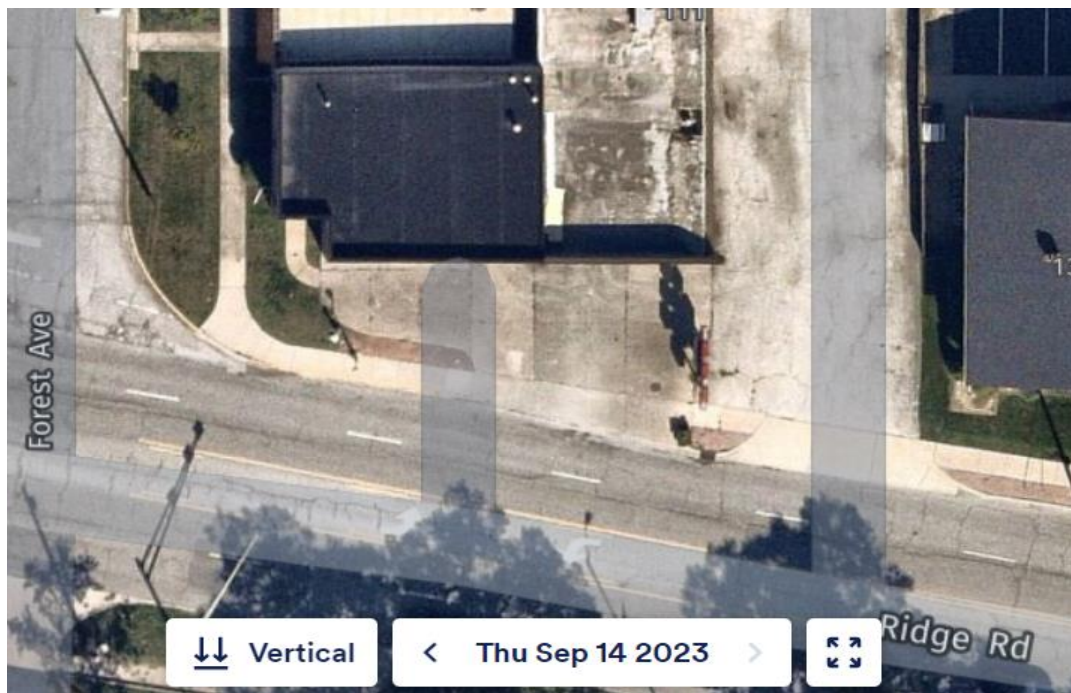


Figure 3 First lot layer Landscape Plan.

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Figure 4 Proposed Signage.

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The Munster Character Based Zoning codes from which the petition is seeking variances from are:

SECTION 26-6.405. O. 5. Trash Receptacle Requirements. (MZC pg. 256)

“Trash receptacles shall be provided for each Lot and shall be located in accordance with Section 26-6.405.O.6.”

TABLE 26-6.405. A-6: Private Landscaping and Fencing (MZC pg. 114)

“for all areas not covered by Structure, Parking Area, walkway, patio, terrace, or deck. If First Lot Layer \geq 10 ft., minimum of 30% of 1st Lot Layer must be landscaped in compliance with Section 26-6.405.P. 1st Lot Layer may not be paved except for driveway and sidewalk.”

SECTION 26-6-6.122 D. 2. b.: Alteration, Enlargement, Extension, etc. of Nonconforming Buildings Structures, Improvements, or Signs. (MZC pg. 14)

“If a Nonconforming Sign is Altered after the date of this Article ...the legal status of such Nonconforming Sign shall terminate and such Sign must conform to this Article...”

et seq.

SECTION: 26-6.701 B. 5. c. i.: General Sign provisions (MZC pg. 333)

*“The following materials are prohibited for Sign backgrounds, frames, supports, and ornamentation:
i. Exposed metal poles and...”*

And

TABLE 26-6.701 B. Dimensions (MZC pg. 349)

“Quantity (max): 1 per Building; Area 8 sf; Width / Height of Sign panel: max 48 in/max 40 in; Apex: 6 ft; Letter Height: max 10 in.”

VARIANCE STANDARDS

The variance process is established to provide relief to a property owner when, due to unique circumstances, compliance with the zoning code imposes a hardship or practical difficulty on a property owner. The BZA is under no obligation to grant a variance. It is the petitioner's responsibility to prove a hardship or practical difficulty. The BZA should ask the petition to address the criteria listed below.

Section 26-6.804. I. Deviation from Standards & Requirements (pg 392) of the Munster Zoning Code states that the basis for a variance is as follows:

g. General Standards.

A Variance may be granted only if the Decision-Making Authority has made the following determinations for such Variance:

- i. the practical difficulties or unnecessary hardships that would be incurred by strict application of the Use or Development standard, as applicable, are unique and not shared by all properties in the vicinity and are not self-imposed;
- ii. such Variance is the minimum Variance that will relieve such practical difficulties or unnecessary hardships, as applicable;
- iii. such Variance is in the spirit of the general purposes and intent of this Article as stated in Division 1; and
- iv. such Variance is so designed as to provide reasonable consideration to, among other things, the character of the neighborhood, District, or Civic Zone, the conservation of property values in the vicinity, and the guidance of Development in accordance with the Comprehensive Plan.

h. Specific to Development standards Variances:

A Variance from Development Standards may be approved or approved with conditions only if:

- i. it will not be injurious to the public health, safety, morals, and general welfare of the community;
- ii. the use and value of the area Adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
- iii. the strict application of the Development standards will result in practical difficulties in the use of the property.

The applicant has addressed these criteria in the attached application.

STAFF FINDINGS and RECOMMENDATION

Staff review of the subject site identifies the lot to be approximately 75 percent smaller than other nearby Crew Carwash facilities located in Merrillville and St. John. The established lot of record at the Munster location, along with the existing carwash structure, predate the adoption of the town's current zoning codes. The re-establishment of the former carwash may present practical difficulties for the site to fully comply with the strict application of the 30% first lot layer landscape requirements due to the location of the existing structure. In addition, the size of the lot limits the opportunity for a dumpster to meet the current bulk and design standards and be located on-site. The current exposed pole sign structure appears to have been designed to allow for vehicular line of site for customers exiting onto Ridge Road, while allowing for marketing of the location. Finally, from review of a historic ariel image, the sign and proportion of the lettering may have been part of the neighborhood character in 1978. It is the opinion of staff that the town's current zoning codes impact the preexisting structures and site design for the same land use and believes granting the variances requested will relieve such practical difficulties.

One additional note, staff request that no action be taken until a dumpster location easement agreement has been executed and presented to the Board. Or if there is a motion to grant the variances, that it be with the condition that no site improvement permit (building permit) be issued until a dumpster location easement agreement has been executed and secured with BZA 23-010 file.

MOTION

The Board of Zoning Appeals may wish to consider one of the following motions:

1. *Motion to table/defer BZA 23-010 to December 12, 2023 to allow time for the petitioner to submit an executed dumpster easement agreement.*

Or

2. *Motion to approve BZA 23-010 variances as presented, including all discussion and findings with the condition that no building permit be issued until an executed dumpster easement agreement has been secured with the Community Development Department, including all discussion and findings.*

EXHIBIT A

Petition BZA _____ - _____

Date: _____

Application Fee: \$ _____

Sign Fee: \$ _____

Town of Munster Board of Zoning Appeals Petition Application**OWNER INFORMATION:**Name of Owner Dahm LLCPhone Number 317-572-2408Street address, City, ST, ZIP Code 11700 Exit 5 Pkwy Fishers IN 46037Email address kraayner@crewcarwash.com**APPLICANT OR PETITIONER INFORMATION (if different than above):**Name of Applicant/Petitioner Katherine RaynerPhone Number 317-572-2408Street address, City, ST, ZIP Code 11700 Exit 5 Pkwy Fishers IN 46037Email address kraayner@crewcarwash.com**PROPERTY INFORMATION:**Business or Development Name (if applicable) Crew CarwashAddress of Property or Legal Description 111 Ridge Rd. Munster IN 46321Current Zoning CD4-A - carwash use**APPLICATION INFORMATION:**

Please select what this Application is for:

☒ **Variance**

If yes, select one of the following:

☐ **Use**☒ **Developmental Standards**☐ **Conditional Use**☐ **Administrative Appeal****Brief Description of Project and List of Variances or Conditional Uses Being Requested (if applicable):**Remodel of existing carwash facilityvariances requesting:1. offsite dumpster2. landscape percentagesName of Registered Engineer, Architect or Land Surveyor Gabriella FreitasPhone Number 219-281-3103Street address, City, ST, ZIP Code 1155 Troutwine Rd. Crown Point IN 46307Email address gmfreitas@dvgteam.com



Petition BZA _____ - _____

Town of Munster Board of Zoning Appeals Application Signature Page

I hereby authorize Katherine Rayner to act on my behalf as my agent in this petition and to furnish, upon request, supplemental information in support of this petition application.

Wm J. Dahn 8/22/23
Signature of Owner Date

Katherine Rayner 8/22/23
Signature of Applicant Date

REQUIRED ATTACHMENTS

Required Attachments for Board of Zoning Appeals Applications

To ensure that adequate information is provided to the BZA, please check off each of these items and provide documentation to the Community Development Department at the time of submittal of the application.

ALL APPLICATIONS	Included	N/A
Narrative statement describing project	<input checked="" type="checkbox"/>	
Property owner consent (Signature page)	<input checked="" type="checkbox"/>	
Proof of Ownership (e.g. copy of tax bill)	<input checked="" type="checkbox"/>	
Plat of Survey depicting current conditions	<input checked="" type="checkbox"/>	
Site Plan containing the following:		
Boundary identification	<input checked="" type="checkbox"/>	
Fire hydrant locations	<input checked="" type="checkbox"/>	
Accessory structures	<input checked="" type="checkbox"/>	
Parking lot design	<input checked="" type="checkbox"/>	
Utility location	<input checked="" type="checkbox"/>	
Building footprints	<input checked="" type="checkbox"/>	
Proposed curb cuts	<input checked="" type="checkbox"/>	
Drainage/detention plans	<input checked="" type="checkbox"/>	
Traffic circulation	<input checked="" type="checkbox"/>	
Ingress/egress locations	<input checked="" type="checkbox"/>	
Major topographic information	<input checked="" type="checkbox"/>	
Infrastructure improvements	<input checked="" type="checkbox"/>	
Conditions of Approval Form (Note: complete the form specific to your petition)*	<input checked="" type="checkbox"/>	
Any other information that the BZA may find useful in determining whether the application is merited.		

* Unique conditions have been established for special use permits for public garages, gas filling stations, used car lots, garden centers, massage parlors, adult bookstores, tattoo parlors, adult cabarets, and outdoor dining areas. Community Development staff will advise potential applicants of these at the pre-application meeting.

NOTE: If you checked any exhibits "N/A", please explain:

DEVELOPMENTAL VARIANCE CONDITIONS OF APPROVAL

The Munster Board of Zoning Appeals is authorized to hear petitions for developmental standards variances and to approve or deny. The Board of Zoning Appeals may also impose reasonable conditions and restrictions. Indiana Code 36-7-4-918.5 lists the legal criteria for a developmental standards variance:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

Dumpster enclosure will not be injurious to public health due to having a safe and accessible access point on the property.

Landscaping will be added all around the property and enclosed by curbing.

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. Explain why this statement is true in this case:

The value of the area will increase because the new state of the art crew carwash will replace the existing abandoned old wash.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. Explain why this statement is true in this case:

The existing lot size hinders modern and safe carwash development, therefore this development needs these variances.

Attach additional pages if necessary

EXHIBIT B**EASEMENT AGREEMENT**

This Easement Agreement, ("Agreement"), is entered into on this _____ day of October, 2023, by and between The Thomas L. Kirsch Trust, with an address of 113 Ridge Road, Munster, Indiana 46321 ("Grantor"), and, DAHM Acquisition LLC, 111 Ridge Road, Munster, Indiana 46321, ("Grantee"):

WHEREFORE:

- A. Grantee owns certain real estate in Munster, Indiana, as shown by the following legal description, ("Grantor's Parcel"):

Lot 1, Thomas L. Kirsch Addition to the Town of Munster, per plat thereof recorded in the Office of the Recorder of Lake County, Indiana

Commonly known as: 131 Ridge Road, Munster, Indiana 46321

Parcel No. 45-06-24-126-028.000-027

- B. Grantee is hereby being granted a certain Easement over and across the following portion of said real estate from Grantor, as shown by the following legal description, ("Grantee's Easement"):

The Northern 15 Feet Lot 1, Thomas L. Kirsch Addition to the Town of Munster, per plat thereof recorded in the Office of the Recorder of Lake County, Indiana

- C. It is the mutual desire of the parties hereto to establish an easement granting the Grantee the right to use that part of Grantee's Parcel comprising the aforesaid Northern 15 Feet of said parcel's parking lot and driveway space for the benefit of Grantee, and its business activities related to trash disposal services.
- D. **Creation of Easements.** Grantor hereby grants and conveys to Grantee a non-exclusive, perpetual easement permitting Grantee to use that part of the Purchaser's Parcel described herein for the erection and lawful operation of trash enclosures and receptacles to service the Grantee's adjacent business, and for the benefit of the Grantee's Parcel. This Easement shall run with the land, and is not personal to the Grantee.
- E. **Term.** The term of these easements shall be perpetual.

- F. **Taxes and Assessments.** The Grantor shall be responsible for the payment of the real estate taxes regarding Grantee's Parcel. All costs and expenses associated with the erection, operation, care, and maintenance of the trash enclosure and receptacles shall be the responsibility of the Grantee.
- G. **Access; Fences; Non-obstruction.** The easements granted in Paragraph D shall be deemed to include reasonable access for purposes of enjoying such easement rights.
- H. **Hours and Use Restrictions.** None.
- I. **Running of Benefits and Burdens.** All provisions of these easements, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the heirs, personal representatives, grantees, successors and assigns of the parties hereto.
- J. **Indemnification.** In the event a Parcel owner, its employees, agents or contractors, damages, disturbs or otherwise alters the other Parcel owner's property, the Parcel owner that caused such damage, disturbance or alteration shall be responsible, at its sole cost, for restoring the damaged, disturbed or altered property to substantially the same condition that existed. Grantee shall indemnify, defend and hold harmless Grantor from and against any and all damages, liabilities, costs and expenses, arising from or in connection with any damage to persons or property that may occur within Grantee's Parcel as a result of the acts or omissions of Grantee, its employees, agents or contractors in the exercise of Grantee's easement rights under this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year set opposite their signatures.

Grantor: **Thomas L. Kirsch Trust**

Dated: _____

By: _____
Signature

Printed

Title

Grantee: DAHM Acquisition, LLC

Dated: _____

By: _____

Signature

Printed Name

Title

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public, in and for said County and State, on this _____ day of October, 2023, personally appeared Thomas L. Kirsch, and acknowledged the execution of the above and foregoing to be his voluntary act and deed.

Signature Notary Public

Printed Name

My Commission Expires:

Resident of _____ County, _____

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public, in and for said County and State, on this _____ day of October, 2023, personally appeared _____ and acknowledged the execution of the above and foregoing to be his voluntary act and deed.

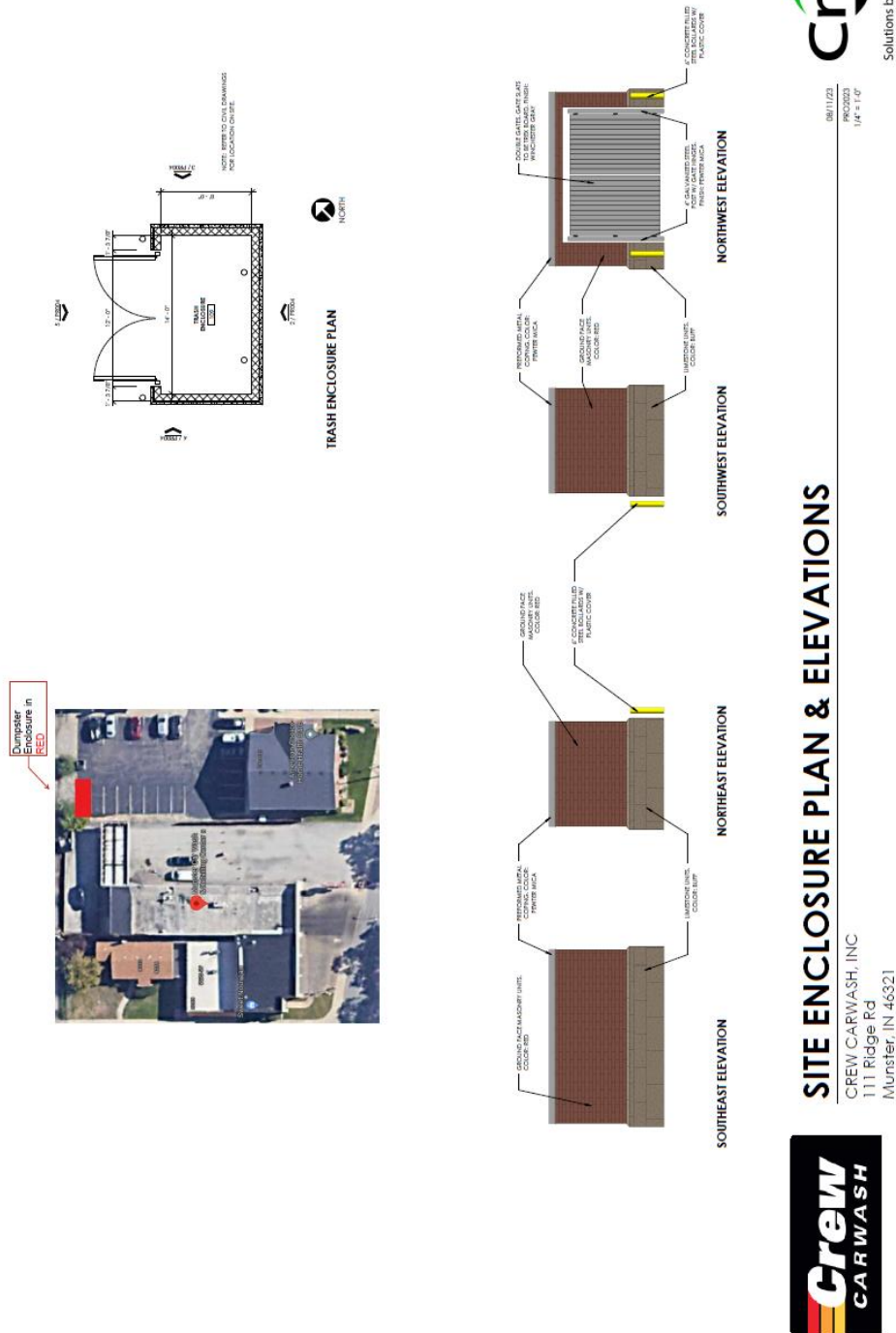
Signature Notary Public

Printed Name

My Commission Expires:

Resident of _____ County, _____

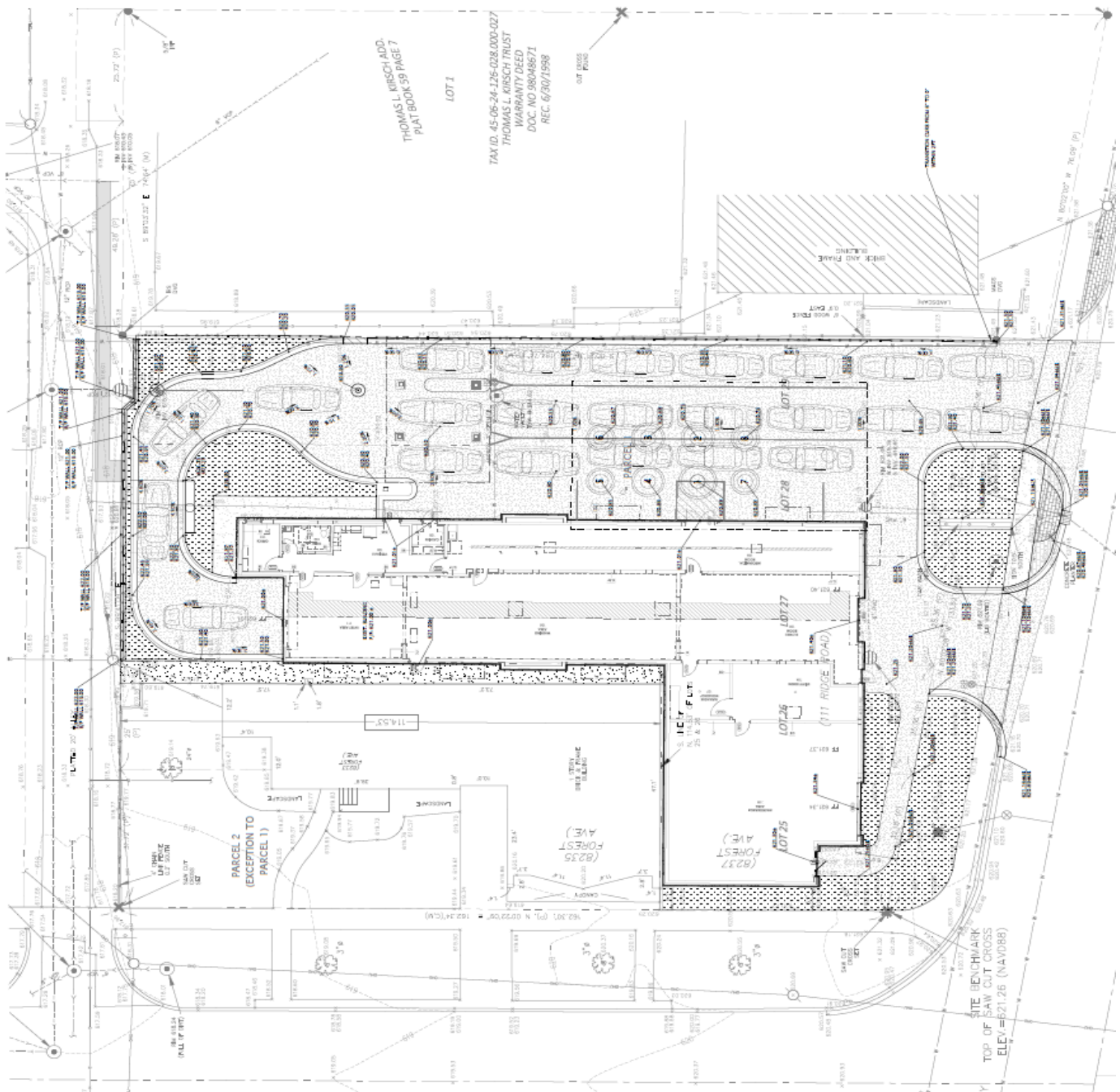
EXHIBIT C



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EXHIBIT D

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EXHIBIT E**WIESER & WYLLIE, LLP**

429 West Lincoln Highway
Schererville, Indiana 46375
Telephone (219) 865-7404
Fax (219) 865-7408

Attorneys at Law

JAMES L. WIESER
E-mail:
jlw@wieserwyllielaw.com

October 9, 2023

Via Email Transmission

Sergio Mendoza, Planning Director
Town of Munster
1005 Ridge Road
Munster, Indiana 46321

Re: Our Client: Crew Car Wash
Subject: Request for Continuance/Deferral of October 10, 2023 Hearing
BZA Docket No. 23-010

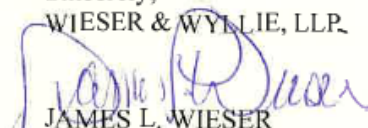
Dear Sergio:

First of all, please let this letter act as my formal entry of appearance on behalf of Crew Car Wash in this matter. As you know, we are scheduled for a public hearing tomorrow night, and, as one of the principal matters to be resolved, had hoped to have prepared for you a fully signed and executed dumpster shared use Agreement at an off-site location. Although we worked diligently to obtain that agreement, several issues still remain which we believe will be resolved very shortly and permit us to submit the agreement to you in the very near future.

Therefore, we are requesting a continuance/deferment of our public hearing to your November 14th meeting, at which time, we feel confident we will have the necessary agreement as well as all the documentation ready to proceed and answer any questions or concerns the members of the Boarding of Zoning Appeals may have. Therefore, please submit this letter as a request for a brief delay in proceeding with the public hearing until your November 14th meeting.

If you have any questions, please do not hesitate to contact either Katherine Rayner at Crew Car Wash or myself.

Sincerely,
WIESER & WYLLIE, LLP.



JAMES L. WIESER
Attorney at Law

JLW:ge