

ORDINANCE NO. 2011-3

**AN ORDINANCE TO AMEND THE TOWN OF MILLERSBURG ZONING ORDINANCE NO. 472 AS PERMITTED BY INDIANA CODE 36-7-4-602 FOR REAL ESTATE DESCRIBED IN THIS ORDINANCE FROM B-3 BUSINESS AND WHOLESALE DISTRICT TO R-2 SINGLE AND TWO FAMILY DISTRICT AND BY CHANGING THE ZONE MAPS INCORPORATED BY REFERENCE IN ARTICLE 2 OF THE ELKHART COUNTY ZONING ORDINANCE**

**WHEREAS**, Marjorie Springer submitted an application to change the zone maps for real estate described in **SECTION 1** of this ordinance from B-3 to R-2;

**WHEREAS**, the Staff for the Elkhart County Advisory Plan Commission did hold a public hearing as provided by law on the 13<sup>th</sup> day of October 2011 and did take public input at that meeting after proper legal notice;

**WHEREAS**, the Elkhart County Advisory Plan Commission did give reasonable regard to the criteria established by IC 36-7-4-603;

**WHEREAS**, the petition was sent to the Town Council of Millersburg, Indiana with a favorable recommendation;

**WHEREAS**, the Town Council of Millersburg, Indiana did hold a public meeting as provided by law on the 26<sup>th</sup> day of October 2011 and did take public input at that meeting.

**THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF MIDDLEBURY, INDIANA, AS FOLLOWS:**  
*MILLERSBURG*

**SECTION 1.** Legal description see attachment "A".

**SECTION 2.** That the real estate described in **SECTION 1** of this Ordinance be rezoned from B-3 to R-2 effective immediately and the zone map adopted by reference in Article 2 of the Elkhart County Zoning Ordinance for Elkhart County, Indiana be amended and ordered amended and changed to reflect the said rezoning of said real estate.

The foregoing Ordinance was adopted by the Town Council for the Town of Millersburg, Indiana, at a properly called public meeting thereof held on the 26<sup>th</sup> day of October 2011.

TOWN COUNCIL FOR THE TOWN OF MILLERSBURG, INDIANA

By: \_\_\_\_\_

*John Wells*  
\_\_\_\_\_  
*Priscilla Hele*  
\_\_\_\_\_

Attest: \_\_\_\_\_

*Pat Barhydt*  
Pat Barhydt Clerk Treasurer

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A part of the Northeast Quarter of Section 3, Township 35 North, Range 7 East, Benton Township, Elkhart County, Indiana and more particularly described as follows:

Commencing at a P.K. nail marking the Northeast corner of said Northeast Quarter; thence South, 430.44 feet along the East Line of said Northeast Quarter and State Road 13; thence South 89 degrees 27 minutes 19 seconds West, 33.07 feet to a rebar, the point of beginning of this description; thence continuing along the last described bearing, 98.16 feet to a rebar; thence North 00 degrees 57 minutes 11 seconds East, 118.9 feet to an iron pipe; thence North 89 degrees 59 minutes 39 seconds East, 96.07 feet to an iron stake at the Southeast corner of Lot 26 in Rogers and Wehrly's Addition to Millersburg; thence South 00 degrees 03 minutes 09 seconds East, 117.96 feet to the point of beginning, containing 0.26 acre.

I, Robert Nemeth, Planner III for the Elkhart County Indiana Planning Department, affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security number in this document unless required by law.

Prepared by Robert Nemeth Planner III, Elkhart County Indiana Planning Department



# Elkhart County Planning & Development

Public Services Building - 4230 Elkhart Road, Goshen, Indiana 46526  
Phone: 574-875-3335 - Fax: 574-875-3308

October 14, 2011

Marjorie Springer  
407 South Martin Street  
Ligonier, IN 46767-9421

Case #227S BentonStreet-110901-1

You are hereby notified that the petition for a zone map change from B-3 to R-2 on property located on the West side of Benton Street (SR 13), 330 ft. South of Lincoln Street (CR 42), common address of 227 South Benton Street in Benton Township, was presented and considered by the Elkhart County Advisory Plan Commission on the 13<sup>th</sup> day of October 2011 and was acted upon as follows:

Recommended to the Millersburg Town Council that the petition be APPROVED in accordance with the Staff Analysis.

This will be presented to the Millersburg Town Council on **October 26, 2011 at 3:30 p.m.** at the Millersburg Town Hall, 201 W. Washington St., Millersburg, Indiana. You or your representative must be present at this public meeting.

A handwritten signature in cursive script, appearing to read 'Roger Miller'.

Roger Miller, Secretary  
Elkhart County Advisory Plan Commission

Cc: Ronald L. & Karen S. Butler

7. The application for a zone map change from B-3 to R-2 for **Marjorie Springer (seller) and Ronald L. & Karen S. Butler (buyers)** on property located on the West side of Benton Street (SR 13), 330 ft. South of Lincoln Street (CR 42), common address of 227 South Benton Street in Benton Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #227S BentonStreet-110901-1*.

Marjorie Springer, 407 S. Martin St., Ligonier, was present on behalf of this request. When she purchased the subject property, she said she was not told it was zoned for business (B-3) and apparently, that was not something the realtor needed to disclose to her. She did some research on this property, but was not able to ascertain how long it has been zoned B-3. The buyers are being funded with an FHA loan, and because this is a residential area, FHA has a problem that it is zoned business. Therefore, she said the Butlers are locked into a purchase agreement through at least October pending the rezoning process to see if they still buy this house.

There were no remonstrators present.

A motion was made and seconded (*Yoder/Holt*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Holt*) that the Advisory Plan Commission recommend to the Millersburg Town Council that this request for a zone map change from B-3 to R-2 be approved in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

8. The application for a zone map change from B-1 to B-3 for **Marvin H. & Ruth A. Schmucker** on property located on the West side of 1st Street (CR 13), 300 ft. North of CR 142 in Union Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 13-110808-1*.

Present on behalf of this request was Marvin Schmucker, 67515 CR 13, Goshen. As stated in the Staff Report, he said this property was originally zoned B-3 and then rezoned to B-1 for a house that was never constructed. He'd like to return it to B-3 so he can have a small used car lot.

When Mrs. Wolgamood asked if he owns the existing B-3 property located to the south, Mr. Schmucker said that is owned by Mr. Hess.

There were no remonstrators present.

A motion was made and seconded (*Miller/Holt*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Holt/Wolgamood*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from B-1 to B-3 be approved in accordance with the Staff Analysis. With a unanimous roll call vote, the motion was carried.

9. The application for a zone map change from B-3 Planned Unit Development to a Detailed Planned Unit Development-B-3 to be known as **WINGS ETC. NORTH GOSHEN DPUD-B-3**, for Trinity Development Group, LLC represented by Marbach, Brady & Weaver, Inc., on property located on the Southwest side of US 33, 192 ft. Southeast of Glenmore Avenue, common address of 23222 US 33 in Concord Township, was presented at this time.

# Staff Report

prepared by the DEPARTMENT OF PLANNING and DEVELOPMENT

HEARING DATE: September 13, 2012

**TRANSACTION**

**NUMBER:** 230WabashSt-120806-1

**FILE NUMBER:**

12-35-351-009; 12-35-351-010;  
12-35-351-029; 12-35-376-005

**EXISTING**

**ZONING:** R-1, B-2  
and A-1

**PETITION:** for a zone map change from R-1/B-2/A-1 to M-1

**PETITIONER'S**

**NAME(S):** Key Auctioneers, Jeff Doner, represented by Brads-Ko Engineering & Surveying

**LOCATION:** Southwest corner of Walnut Street and Wabash Street, in Clinton Township

**SITE DESCRIPTION:**

- Parcels 351-010, 351-009, and 351-029 are currently zoned B-2/R-1 and are requesting rezoning to M-1. These parcels are parts of the Carriage Complex with light manufacturing uses existing on site. These parcels are surrounded by M-1 and B-2 North, B-2 and R-1 West, R-1 South and M-1 East.
- Parcel 351-012 is requesting an M-1 zone; however, the maps in the Planning Department indicate that this parcel is already zoned M-1 and should be dismissed from this petition.
- Parcel 376-005 is a remnant of abandoned railroad right-of-way zoned A-1. Surrounding zoning is M-1 North and West, and A-1 South.

**HISTORY:** The zoning is original since the time of Millersburg's adoption of the Zoning Ordinance.

**STAFF ANALYSIS:** The Staff, after reviewing this petition, recommends **APPROVAL** of this rezoning for the following reasons:

1. It is consistent with the Comprehensive Plan, particularly Goal 1 Planned Growth, #2 "Redevelopment and review of commercial and industrial sites should be encouraged."
2. The current use of these properties is and has been manufacturing associated.
3. The most desirable use for these parcels is continued manufacturing.
4. Rezoning these properties will and is making the break-up of this complex more viable.
5. This is responsible growth and development directed at revitalizing the manufacturing facilities that exist.



# Elkhart County Planning & Development

Public Services Building - 4230 Elkhart Road, Goshen, Indiana 46526  
Phone: 574-875-3335 - Fax: 574-875-3308

September 24, 2012

Jeff Doner  
Key Auctioneers  
5520 South Harding Street  
Indianapolis, IN 46217

Case #230WabashSt-120806-1

You are hereby notified that the petition for a zone map change from R-1/B-2/A-1 to M-1, on property located on the Southwest corner of Walnut Street and Wabash Street, in Clinton Township, was presented and considered by the Elkhart County Advisory Plan Commission on the 13<sup>th</sup> day of September 2012 and was acted upon as follows:

Recommended to the Millersburg Town Council and the Elkhart County Board of County Commissioners that the petition be **APPROVED** in accordance with the Staff Analysis.

This will be presented to the Millersburg Town Council on **October 10, 2012, at 6:00 p.m.** at the Millersburg Town Office, 201 W. Washington St., Millersburg, Indiana, and the Elkhart County Board of County Commissioners on **October 15, 2012 at 9:00 a.m.** at the Elkhart County Administration Building, 117 N. 2<sup>nd</sup> Street, Goshen, Indiana. You or your representative must be present at this public meeting.

A handwritten signature in black ink that reads 'Anthony J. Campanello'.

Anthony J. Campanello, Secretary  
Elkhart County Advisory Plan Commission



# Staff Report

prepared by the **DEPARTMENT OF PLANNING and DEVELOPMENT**

**HEARING DATE:** October 13, 2011

**TRANSACTION**

**NUMBER:** 227S BentonStreet-110901-1

**FILE NUMBER:**

16-03-229-012

**EXISTING**

**ZONING:** B-3

**PETITION:** for a zone map change from B-3 Business and Whole District to R-2 Single and Two Family District.

**PETITIONER'S**

**NAME(S):** Marjorie Springer (seller) and Ronald L. & Karen S. Butler (buyers)

**LOCATION:** West side of Benton Street (SR 13), 330 ft. South of Lincoln Street (CR 42), in Benton Township. This is in the Town of Millersburg.

**SITE DESCRIPTION:**

- The parcel has a 115 feet width and 93 feet depth for an area of  $\frac{1}{4}$  acre (~10,000 square feet).
- There is an existing single family house, garage, and shed on the site.

**SURROUNDING LAND USE AND ZONING:**

- North: Single-family house zoned R-2, Single and Two Family District.
- East: Across Benton Street, undeveloped zoned A-1, Agricultural District.
- West: Single-wide mobile trailer zoned B-3.
- South: Millersburg Lumber Company zoned B-3.

**HISTORY:**

- The original zoning map designated this parcel as B-3.
- February 15, 1965. Roberta Kemble created the parcel through deed for Robert and Isabel Lantz.
- March 1967. The Town of Millersburg annexed the parcel.
- The Property Assessment Report states that the house was constructed in 1967.

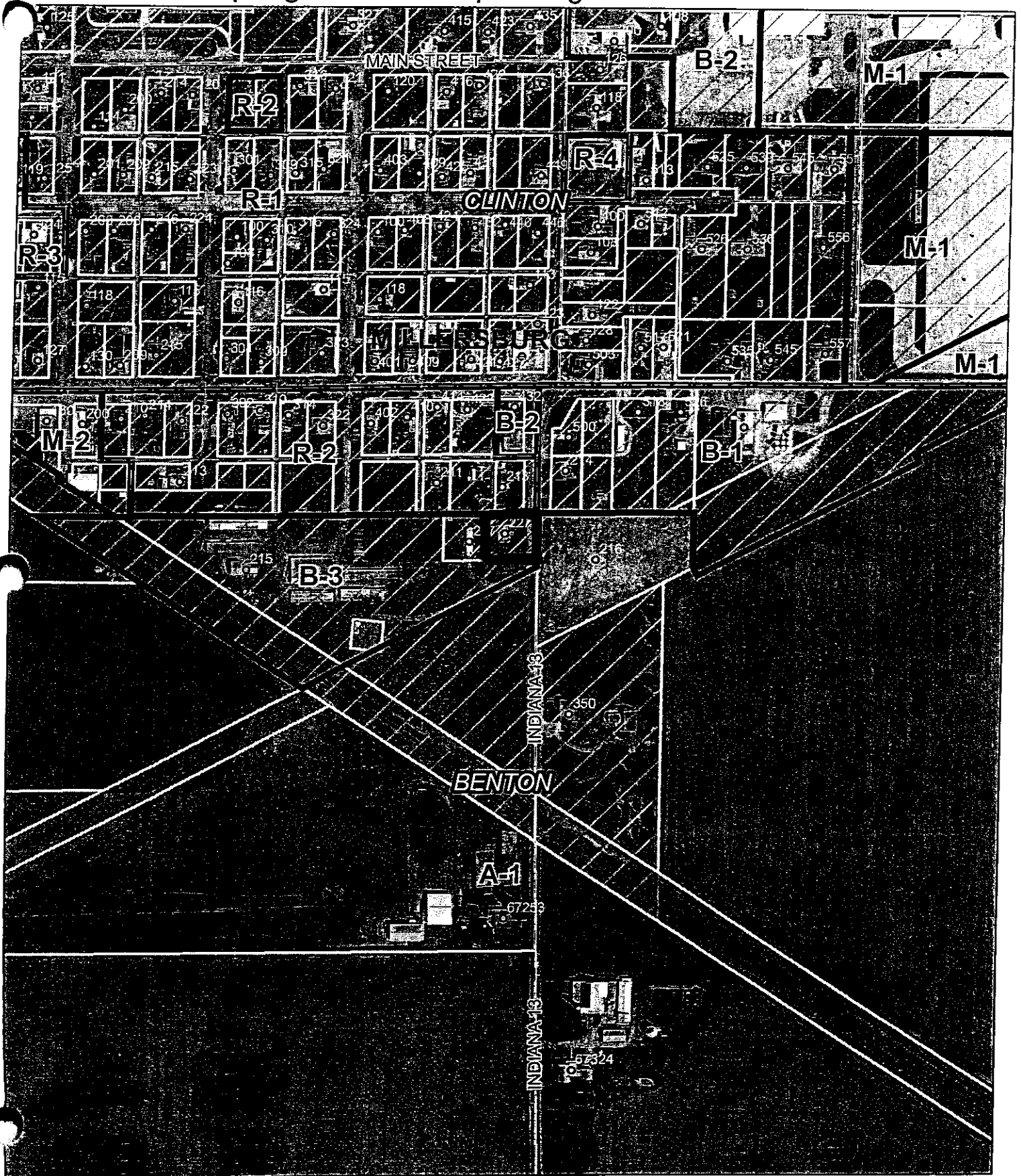
**STAFF ANALYSIS:**

Staff recommends favorable for the rezoning based on the following reasons:

1. It will bring the zoning into conformance with the land use.
2. It will extend the existing R-2 zoning district from the north.
3. The existing house is compatible with the north adjacent residential subdivision, Rodgers and Wehrly's Addition, which was recorded on August 16, 1867 (not 1967).



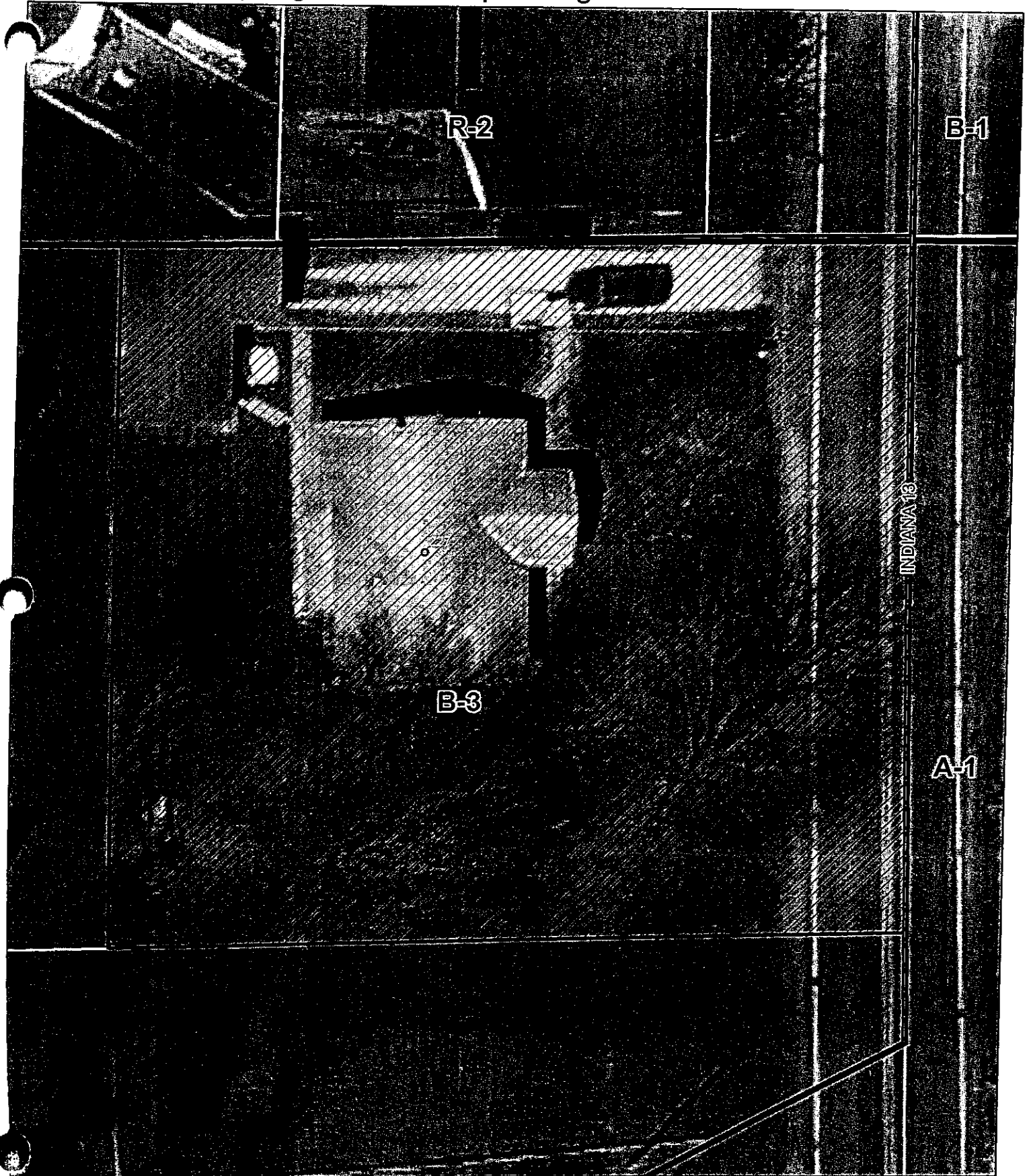
# Springer. Zone map change from B-3 to R-2.

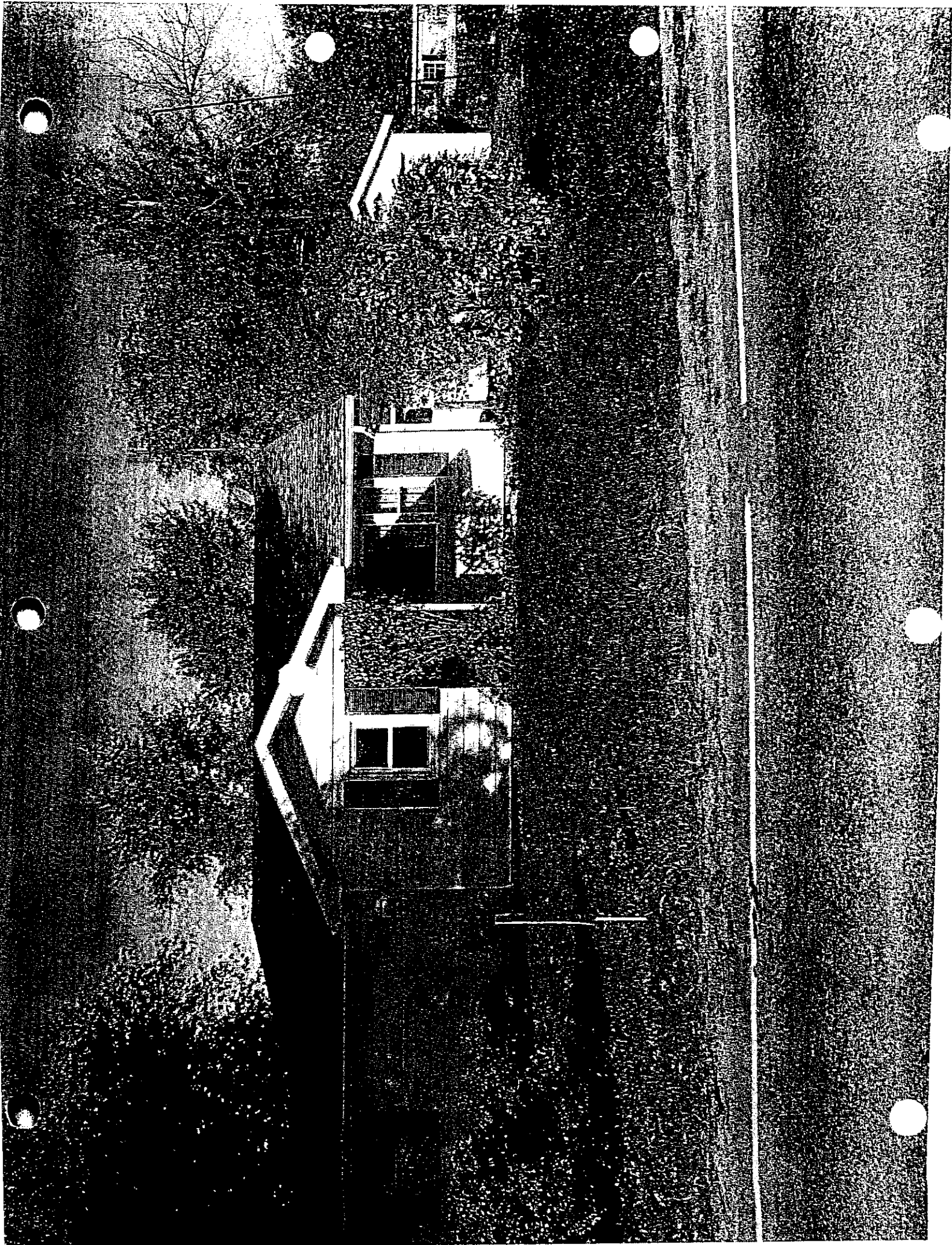


Springer. Zone map change from B-3 to R-2.

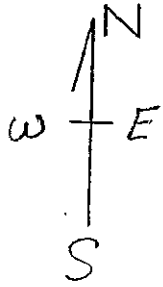
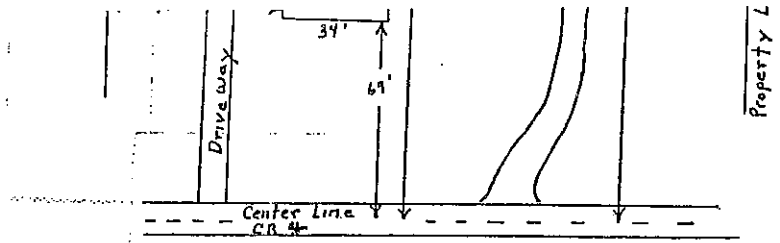


Springer. Zone map change from B-3 to R-2.

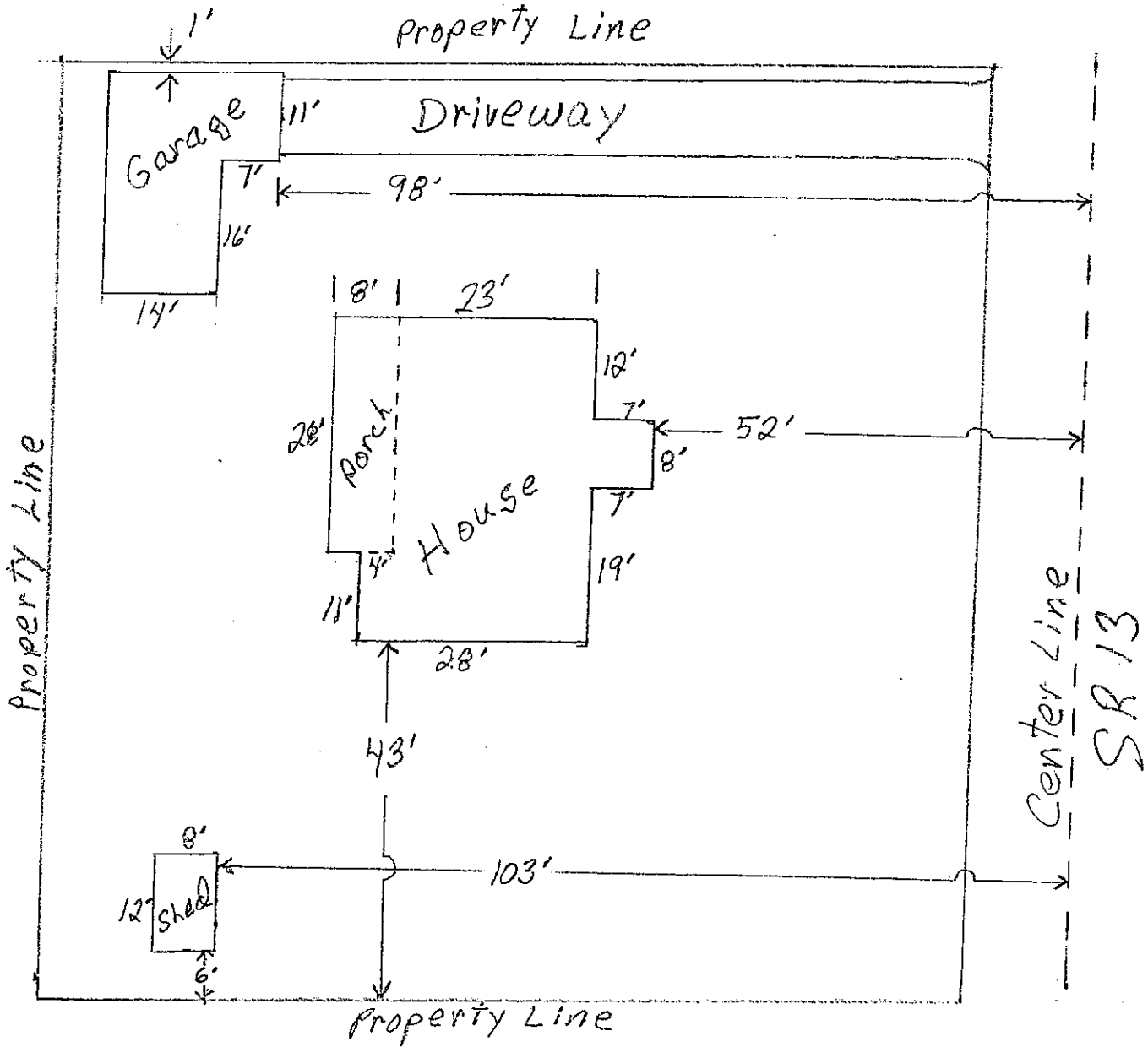




- property lines
- centerline of roadway
- alleys



0.26 acre



is site plan is a fair and accurate representation of my property and petition.

*Thynne Spinger*

DATE 10/26/11

IS SITE PLAN MUST ACCOMPANY YOUR APPLICATION. IF THE APPLICATION DOES NOT CLUDE THE SITE PLAN, THE STAFF WILL NOT ACCEPT THE APPLICATION.

# Staff Report

prepared by the **DEPARTMENT OF PLANNING and DEVELOPMENT**

**HEARING DATE:** November 8, 2012

**TRANSACTION**

**NUMBER:** 409ELincolnSt-120924-1

**FILE NUMBER:**

20-12-34-483-012.000-008

**EXISTING**

**ZONING:** R-1

**PETITION:** for a zone map change from R-1 to R-3

**PETITIONER'S**

**NAME(S):** Ideal Acres LLC

**LOCATION:** North side of East Lincoln Street (CR 42), 150 ft. East of Jackson Street, 350 ft. West of SR 13, in Clinton Township inside the Town of Millersburg.

**SITE DESCRIPTION:**

This is a 66 x 132 ft. (8,712 sq. ft.) lot served by municipal sewer. Currently there is a home and two apartments in a separate building on site.

**ADJACENT ZONING AND LAND USES:**

The following table shows the adjacent zoning and current land use for properties to the subject site.

	Zoning	Current Land Use
North	R-1	Residential
South	R-2	Residential
East	R-1	Residential
West	R-1	Residential

**HISTORY:**

The subject parcel is Lot 134 "Millers Eastern Subdivision" – Town of Millersburg – R-1 zoning is original.

**STAFF ANALYSIS:**

Development of this site previously, has already established a density greater than R-3 would permit (6,000 sq. ft./unit required – existing site contains only 8,712 sq. ft. total). Furthermore, no evidence that onsite parking requirements could be met (6 spaces).

This lot and improvements (existing) could be considered legal non-conforming with the current R-1 zoning and would remain non-conforming even if rezoned to R-3. Staff therefore recommends **denial** of this rezoning.

Ideal Acres LLC. Rezoning from I . 1 to R-3.



Ideal Acres LLC. Rezoning from R-1 to R-3.



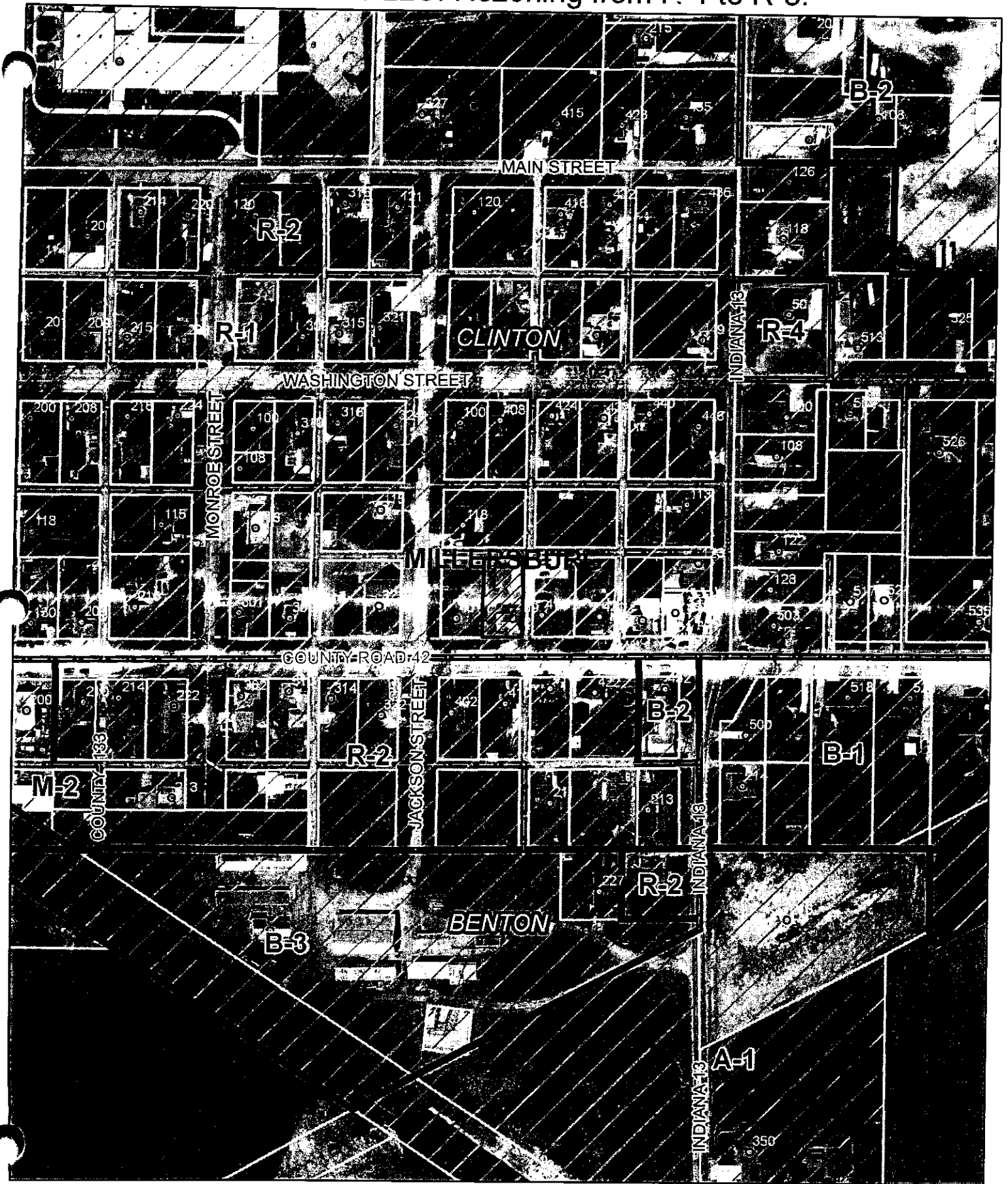
2011 Aerials

1 inch = 100 feet





Ideal Acres LLC. Rezoning from R-1 to R-3.



- b. No temporary, short or long-term occupancy of RV's (i.e. no overnight residing).
- c. The use of this real estate as a vehicle assembly or transfer yard, including vehicle chassis or the finished product, boats, RV's or cars.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Doug Miller, Blake Doriot, Tony Campanello, Dennis Sharkey, Roger Miller, Mike Yoder.

**Action:** Approve

6. The application for a zone map change from R-1 to R-3, for *Ideal Acres LLC* on property located on the North side of East Lincoln Street (CR 42), 150 ft. East of Jackson Street, 350 ft. West of SR 13, common address of 409 E. Lincoln Street in Clinton Township, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #409ELincolnSt-120924-1*.

Marlin Miller with Ideal Acres, 26404 CR 52, Nappanee, requested this rezoning. He purchased a couple of properties in Millersburg from the same owner, but he did not realize how they were zoned at the time.

Mr. Miller said he went to the bank to get a mortgage and found out that the properties he purchased were zoned R-1, but the bank requires that one of the properties should be properly zoned at R-3 in order to get a mortgage. Mr. Miller informed the Board that there is a residence and two apartments in a separate building on this property. He said there is parking along the front of CR 42 or Lincoln Street in Millersburg and there is a carport that will park four cars. He informed the Board that parking has not been an issue and the previous owner has had these parking arrangements for 30 years. Mr. Miller stated that when he bought the property he assumed it was zoned properly and did not see any problem with the parking as it is. Mr. Yoder asked him if he was trying to rezone the property simply to get a bank mortgage and Mr. Miller said that was correct.

Roger Miller asked if there was space available to park between the sidewalk and the road. Mr. Miller replied by pointing out on the map where the parking areas would be in the front and back. He said there were no issues with the neighbors and noted that the back unit of the apartment has two bedrooms and the actual residence has one bedroom upstairs and two bedrooms downstairs.

Mr. Sharkey asked how long the houses had been there. Mr. Miller stated that the houses were originally built in the early 1900s, but the previous owner converted them into separate living areas in the 1970s and made them into a three unit rental building. However, the previous owner did not tell Mr. Miller whether he got permits and nothing was ever rezoned. Mr. Miller said he bought the property earlier this year and found out about the situation a couple of months ago.

Mr. Yoder stated that the curious thing to him was that the current R-1 is non-conforming and the Staff indicates that the R-3 is going to be non-conforming, so he did not understand what that changes for the bank. Mr. Doriot said he realized it is non-conforming because they would have to get a lot size variance, however, he thought if the bank saw that the R-3 zoning was approved they would probably accept it. Mr. Miller believed the bank just required that the rezoning be changed to R-3 and that would make it acceptable to mortgage.

In discussing the need for a lot size variance, Mr. Mabry clarified that a lot size variance would not be needed unless the bank required it or if he were making any kind of improvements that required a building permit. Roger Miller reminded them that if the structures were to burn down they could not be rebuild without approval from the BZA and Mr. Kolbus stated that was correct.

Mr. Miller said there was an empty lot next to him and an alley in the back, but the Board told him he still did not have enough square footage without a variance. Mr. Sharkey asked him if

he had any plans for the empty lot, but he does not own it, so he cannot combine them. Mr. Miller explained that the church owns the vacant property to his west.

Roger Miller thought the mortgage company would find the R-3 zone to be acceptable and Mr. Doriot agreed.

There were no remonstrators present.

**Motion: Moved by Dennis Sharkey, Seconded by Mike Yoder,** that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation:

**Motion: Moved by Blake Doriot, Seconded by Tony Campanello,** that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from R-1 to R-3 be approved.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Doug Miller, Blake Doriot, Tony Campanello, Dennis Sharkey, Roger Miller, Mike Yoder.

**Action:** Approve

7. The application for a zone map change from M-1 PUD to M-1, for *J J Incorporated* represented by Nuway Construction, on property located on the East side of Charlotte Avenue, 2,000 ft. South of CR 20 (Mishawaka Road), 2,000 ft. West of SR 19 (Cassopolis Street), common address of 58050 Charlotte Avenue in Baugo Township, zoned M-1 PUD, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #58050CharlotteAve-121001-1*. Mr. Burrow stated that essentially the only thing that actually got implemented was the 50 ft. landscaping easement and that was established under the platting, so subsequently, there is no value in continuing on with the Planned Unit Development zoning.

Andy Nesbitt, Nuway Construction, 2119 Carmen Court, Goshen, represented the petition. He said they were planning to construct a 1,000 sq. ft. office addition and as the Staff indicated, they did not feel that the PUD needed to exist.

There were no remonstrators present.

**Motion: Moved by Blake Doriot, Seconded by Roger Miller,** that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation:

**Motion: Moved by Blake Doriot, Seconded by Tony Campanello,** that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from M-1 PUD to M-1 be approved in accordance with the Staff Analysis.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Blake Doriot, Tony Campanello, Dennis Sharkey, Roger Miller, Mike Yoder, Doug Miller.

**Action:** Approve

8. *2013 Planning Calendar – Duane Burrow*

Mr. Burrow indicated that every year as part of the Rules of Procedure this Board adopts, for the BZA and for the Plan Commission, the application deadlines for the meetings. He said this calendar is the same as the last three years with the exception of one item being removed which is the Secondary submittal. He said that was deleted from the Planning Calendar. Mr. Burrow stated that there will only be one planning date for application. The reason why the Secondary application deadline was removed was based on the fact that the minor subdivisions no longer require going to the Plat Committee, because the Plan Director can now give approval. Also, the Subdivision