



Board of Zoning Appeals
Board of Zoning Appeals Division III April
16, 2024
Meeting Agenda

Meeting Details

Notice is hereby given that the Metropolitan Board of Zoning Appeals will hold public hearings on:

Date: Tuesday, April 16, 2024

Time: 1:00 PM

Location: Public Assembly Room, 2nd Floor, City-County Building, 200 E. Washington Street

Business:

Adoption of Meeting Minutes:

Special Requests

2024-DV3-005 | 2360 Prospect Street

Center Township, CD #18, Zoned C-4
Linda Thompson, by Daniel Newton

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a six-foot-tall perimeter chain link fence within the required clear-sight triangle (maximum 3.5-foot-tall fence permitted in front yards, chain link not permitted within front yards, encroachment into the clear-sight triangle not permitted).

** Staff requests dismissal due to lack of payment after repeated attempts of contact

2024-DV3-011 | 6243 Hillcrest Lane

Lawrence Township, CD #3, Zoned D-1 / SU-34
Victor Aguilar, by Patricia Green

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of an accessory structure with a 20-foot rear yard setback (25 feet required).

** Petitioner to request withdrawal and refund of filing fees

PETITIONS REQUESTING TO BE CONTINUED:

Petitions for Public Hearing

PETITIONS TO BE EXPEDITED:

- 1. 2024-DV3-008 | 8155 Talliho Drive**
Lawrence Township, CD #4, Zoned D-6 (W-1)
Kenneth & Mary Farmer

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of an enclosed addition with a 3.13-foot north side yard setback (15-foot side yard setback required).

- 2. 2024-DV3-013 | 10220 East Washington Street**
Warren Township, CD #20, Zoned C-4 (TOD)
Indy WS40 LLC, by Joseph D. Calderon

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a bank with one primary entry (two required).

3. 2023-UV3-024 | 2745 and 2815 Curry Road

Warren Township, CD #14, Zoned D-A
David Palacios, by Joseph D. Calderon

Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a landscaping contractor, including the indoor and outdoor storage of commercial vehicles, equipment, and materials (not permitted).

PETITIONS FOR PUBLIC HEARING (Transferred Petitions):

4. 2023-DV3-050 | 805 and 825 South Kitley Avenue

Warren Township, CD #20, Zoned I-4 / C-7
Kitley Avenue Properties LLC, by J. Murray Clark and Mark R. Leach

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of an eight-foot-tall fence and gate within the front yard of Kitley Avenue (maximum height of six feet permitted).

5. 2024-MO1-001 / 2024-DV1-007 | 7530 Allisonville Road

Washington Township, Council District #3, Zoned D-A (FW) (FF)
Phillip D. Rushton & Joanne Rushton Rev. Trust – Rebecca Patton Successor TTE, by Gregory J. Cagnassola

Modification of Commitments related to 2009-UV2-036, to terminate Commitment Number Eight and Four, which requires compliance with required setbacks of the D-A District, and the use of slick mounted antenna and associated attachments, respectively.

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of structures related to the cell phone tower resulting in a seven-foot south side and 0.5-foot north side yard setback and a 2.5-foot rear yard setback, resulting in a 7.5-foot aggregate side yard setback (30-foot side yard, 75-foot aggregate side yard, 75-foot rear yard setbacks required) and a lot line adjustment resulting in a 0.606-acre lot and a 40-foot frontage (minimum three acres and frontage of 125 feet required).

PETITIONS FOR PUBLIC HEARING (Continued Petitions):

6. 2024-SE3-002 | 6760 Dalton Street

Lawrence Township, CD #4, Zoned C-4
Reagan Outdoor Advertising, by Michelle Noppenberger

Special Exception of the Consolidated Zoning and Subdivision Control Ordinance to provide for the relocation of a legally established Outdoor Advertising Sign due to a highway widening and improvement of I-69 and I-465 by a state agency.

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the relocation of an existing 14-foot by 48-foot, 50-foot tall off-premise advertising sign, of which the relocated off-premise sign will have a height of 65 feet (maximum height of 40 feet permitted) and will be considered a multi-sided sign with faces 33 degrees and 30 feet apart (maximum 15 degrees or 42 inches of separation permitted), to a 7,170 square-foot lot (maximum 6-foot by 12-foot sign permitted on lots with less than 10,000 square feet of area), with a five-foot setbacks from Bash Street, Dalton Street and the western property line (10-foot setback required), located 345 feet from the centerline of an interstate exit roadway (500-foot separation required from interstate ramp entries), within 605 and 975 feet from other outdoor advertising signs (1,000-foot radial spacing required).

7. 2024-DV3-003 | 3308 North Mitthoefer Road

Warren Township, CD #15, Zoned I-3 / I-4
The Finish Line Inc., by Joseph D. Calderon

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of two incidental signs, each encroaching 4.5-feet into the right-of-way of Mitthoefer Road (prohibited), with the north sign located 70-feet from a dwelling district (100-foot transitional yard required).

- 8. 2024-DV3-006 | 3805 South East Street**
Perry Township, CD #23, Zoned C-5
S & L Properties Indianapolis East LLC, by Emily Bublitz

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of an eating establishment with the location of a drive through and stacking spaces within the front yard of National Avenue without the required screening of a service unit (not permitted) and 120 parking spaces and zero bicycle parking (maximum 46 spaces permitted, three bicycle parking spaces required) and deficient landscaping.

PETITIONS FOR PUBLIC HEARING (New Petitions):

- 9. 2024-DV3-009 | 801 North Layman Avenue**
Warren Township, CD #14, Zoned D-4
Paul & Adrienne Du Rant

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building expansion including a driveway accessing St. Clair Street (exclusive vehicular access from improved alley required), resulting in a 65.82 percent open space and a four-foot north side yard setback (65 percent open space, five-foot side yard setback required).

- 10. 2024-DV3-010 | 1635 West Michigan Street**
Center Township, CD #18, Zoned SU-7 / CBD-S (RC)
INDPL Goodwill Industries Inc., by Alan S. Townsend

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of an 18.33-foot-tall freestanding pylon sign (eight-foot-tall sign permitted), with a sign area of 106.66 square feet (36 square feet permitted), with a five-foot front yard setback from West Michigan Street (10-foot required) and located within 300 feet of a protected district (600 feet of separation required).

- 11. 2024-DV3-012 | 2916 West Banta Road**
Perry Township, CD #22, Zoned D-A (GSB)
Martin Marietta Materials Inc., by Jennifer Milliken

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for Gravel, Sand and Borrow operations with a front yard setback of 100 feet from Banta and Concord Roads and a 100-foot east side yard setback (150-foot front yard setback, 175-foot side yard setback required).

- 12. 2024-UV3-004 | 2308 Shelby Street**
Center Township, CD #19, Zoned C-3 (TOD)
Walter Resinos

Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a tattoo parlor within 55 feet of a protected district (not permitted within 500 feet of a protected district).

- 13. 2024-UV3-005 | 6901 East 38th Street**
Warren Township, CD #9, Zoned C-5 (TOD)
Equipment Share, by Michael Rabinowitch

Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of heavy equipment sales and rental business (not permitted).

**** Petitioner has filed a timely automatic continuance, continuing this petition to the May 28, 2024 hearing of Division III**

Additional Business:

**The addresses of the proposals listed above are approximate and should be confirmed with the Division of Planning. Copies of the proposals are available for examination prior to the hearing by emailing planneroncall@indy.gov. Written objections to a proposal are encouraged to be filed via email at dmdpubliccomments@indy.gov, before the hearing and

such objections will be considered. At the hearing, all interested persons will be given an opportunity to be heard in reference to the matters contained in said proposals. The hearing may be continued from time to time as may be found necessary. For accommodations needed by persons with disabilities planning to attend this public hearing, please call the Office of Disability Affairs at (317) 327-5654, at least 48 hours prior to the meeting. - Department of Metropolitan Development - Current Planning Division.



BOARD OF ZONING APPEALS DIVISION III **April 16, 2024**

Case Number: 2024DV3005
Property Address: 2360 Prospect Street (approximate address)
Location: Center Township, Council District #18
Petitioner: Linda Thompson, by Daniel Newton
Current Zoning: C-4
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a six-foot-tall perimeter chain link fence within the required clear-sight triangle (maximum 3.5-foot-tall fence permitted in front yards, chain link not permitted within front yards, encroachment into the clear-sight triangle not permitted).
Current Land Use: Commercial
Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

As of April 11th, payment has not yet been made for the variance and no affidavit of notice of public hearing has been provided despite having already been continued once previously for non-payment and petitioner unavailability. The invoice was sent in February and additional reminders of the need for payment were made on 2/22, 3/25, 4/3, and 4/9. Staff would recommend this petition be dismissed for lack of prosecution unless payment is made prior to the time of hearing; a continuance to the May 28th hearing would be required to allow for adequate posting and sending of legal notice should payment be made between the publishing of this report and the hearing date.

This petition was continued from the March 19, 2024, to the April 16, 2024 hearing by staff on the petitioner’s behalf.



BOARD OF ZONING APPEALS DIVISION III

April 16, 2024

Case Number: 2024DV3011
Property Address: 6243 Hillcrest Lane (approximate address)
Location: Lawrence Township, Council District #3
Petitioner: Victor Aguilar, by Patricia Green
Current Zoning: D-1 / SU-34
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of an accessory structure with a 20-foot rear yard setback (25 feet required).
Current Land Use: Residential

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

After this petition was applied for and docketed, it came to staff's attention that the residential accessory rear setback exception within 743-306.A.4.b would mean that a variance would not be required to legalize the development. This case will be withdrawn at the April 16, 2024 hearing and a request for refunding of petition fees will be made of the board.



BOARD OF ZONING APPEALS DIVISION III

April 16, 2024

Case Number: 2024-DV3-008

Property Address: 8155 Talliho Drive (approximate address)

Location: Lawrence Township, Council District #4

Petitioner: Kenneth & Mary Farmer

Current Zoning: D-6 (W-1)

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of an enclosed addition with a 3.13-foot north side yard setback (15-foot side yard setback required).

Current Land Use: Residential

Staff Recommendations: Staff recommends approval of this petition

Staff Reviewer: Noah Stern, Senior Planner

PETITION HISTORY

- This is the first public hearing for this petition.

STAFF RECOMMENDATION

- Staff recommends approval of this petition

PETITION OVERVIEW

- This petition would provide for the construction of an enclosed addition with a 3.13-foot north side yard setback (15-foot side yard setback required).
- The subject site was a part of a cluster development of single-family attached dwellings in 1980. The residence located on the subject site currently contains approximately a 7-foot north side yard setback. The proposed addition would provide for a 3.13-foot north side yard setback.
- This proposal would match the surrounding context of adjacent single-family attached dwellings. Several of the other dwellings that were a part of the 1980 cluster development contain deficient side setbacks and reduced spacing in between buildings. The proposed 3.13 north side yard setback on the subject site would be a greater setback than several other dwellings in the subdivision. The Infill Housing Guidelines portion of the Comprehensive Plan recommends to reinforce the spacing on the existing block, leave room for maintenance, design strategically to match context, and to consider the size of surrounding houses when adding to an existing house. With Staff finding the proposal to



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be in character with the neighborhood, the plan would be in accordance with these recommendations and is, therefore, not opposed to the variance request.

GENERAL INFORMATION

Existing Zoning	D-6 (W-1)	
Existing Land Use	Residential	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	Zoning	Surrounding Context
	North: D-6 (W-1)	North: Two-family residential
	South: D-6 (W-1)	South: Two-family residential
	East: D-A	East: Wooded
	West: D-6 (W-1)	West: Two-family residential
Thoroughfare Plan		
Talliho Drive	Private Drive	0 feet of right-of-way existing and 0 feet proposed
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	Yes	
Site Plan	2/27/24	
Site Plan (Amended)	3/21/24	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	2/7/24	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Infill Housing Guidelines

Pattern Book / Land Use Plan

- The Marion County Land Use Plan pattern Book recommends the Suburban Neighborhood living typology for this site.



Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site. |

Neighborhood / Area Specific Plan

- Not Applicable to the Site. |

Infill Housing Guidelines

- The Infill Housing Guidelines document recommends:
 - Reinforce spacing on the existing block
 - Leave room for maintenance
 - Consider the size of surrounding houses
 - Design strategically to match context
 - When adding to an existing house, minimize significant increases in height
- The proposal would be in accordance with these recommendations |

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site. |



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ZONING HISTORY

ZONING HISTORY – SITE

81-Z-148; rezoning of a 13 acre tract of land being in a D-S district to a D-6 classification to provide for the construction of a single family attached cluster dwelling community surrounding a ten acre lake, **approved**.

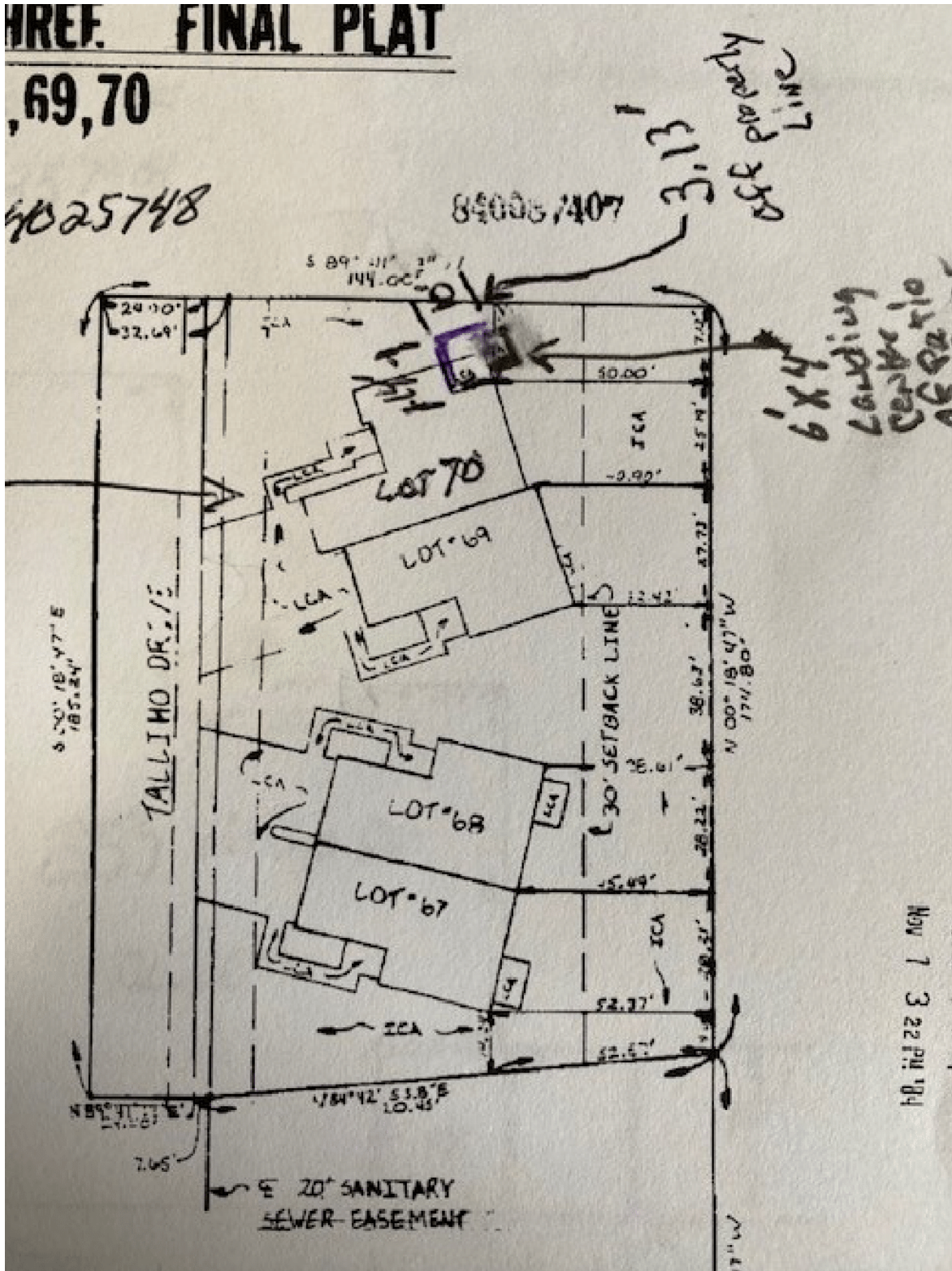
80-Z-180; rezoning from the D-S and A-2 classifications in order to develop a mulit-use complex including an office park, village shops and condominiums, **withdrawn**.

ZONING HISTORY – VICINITY |

N/A

EXHIBITS













BOARD OF ZONING APPEALS DIVISION III **April 16, 2024**

Case Number: 2024DV3013

Property Address: 10220 East Washington Street (approximate address)

Location: Warren Township, Council District #20

Petitioner: Indy WS40 LLC, by Joseph D. Calderon

Current Zoning: C-4 (TOD)

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a bank with one primary entry (two required).

Current Land Use: Undeveloped

Staff Recommendations: Staff recommends **approval** of this petition.

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **approval** of this petition.

PETITION OVERVIEW

- The subject site is currently developed with an unoccupied restaurant and is surrounded by commercial uses on all sides as part of the larger Washington Square Mall complex. Per documentation submitted for a previous variance case in 2023 and a pending plat petition, this site will be developed as a small integrated center housing three businesses including a bank on the new parcel furthest to the east. The property is zoned C-4 (TOD).
- Recent ordinance changes implementing the Transit-Oriented Development secondary zoning classification in 2021 stipulate new dimensional standards related to building scale and design. One of these rules relates to the number of required primary entry features along front facades; Table 744-702-2 indicates that for a front façade with this width at least two front entries would be required for all commercial development (including banks and financial service buildings). Approval of this variance would legalize the proposed bank with just one primary entry based on the elevation renderings included in the Exhibits below.



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- This property is zoned C-4 (Community-Regional District) to allow for development of major business groupings and regional-size shopping centers to serve a population ranging from a community or neighborhoods to a major segment of the total metropolitan area. It is also located within the TOD secondary zoning district since it is within 1000 feet of the future path of the Blue Line. This secondary zoning emphasizes dynamic, mixed-use environments where walking is the predominant mode of transportation and public and private spaces are accessed by many modes including transit, bicycles, walking and cars. The variance 2023DV3004 allowed this building and the two others proposed within the center some deviation from TOD standards last year.
- The Marion County Land Use Plan Pattern Book and Blue Line TOD Strategic Plan indicate that this property should be within the Regional Commercial and Community Center typologies respectively. The below table provides additional guidance on the development patterns envisioned by comprehensive plans for this site, but ease of pedestrian access is explicitly mentioned as a priority by both of those portions of the Plan.
- The site plan provided below by the petitioner is meant to provide a rough conceptual idea of the placement of the proposed bank. Staff would note that (a) the three pole signs shown would not be allowed per current ordinance standards and would require a separate petition to legalize; (b) the transit stop shown on plans would be further to the east than shown on plans; and (c) the sidewalk required to be installed along the western portion of the integrated center prior to construction is not shown.
- The TOD ordinance provides rules for the placement of front entry features to avoid long, monotonous, uninterrupted wall planes visible from the street and to encourage details that add architectural interest such as multiple entrances, projections, recesses, offsets, windows trimmed with frames, sills or lintels, or other ornamentation. Staff feels that the proposed deviation would be minor in nature, would otherwise comply with the design goals laid out in 744-702.B of the Zoning Ordinance, and would not create any negative impacts for surrounding properties. Therefore, approval of the variance request is recommended.



GENERAL INFORMATION

Existing Zoning	C-4 (TOD)	
Existing Land Use	Commercial	
Comprehensive Plan	Regional Commercial	
Surrounding Context	Zoning	Surrounding Context
	North:	North: Regional Commercial
	South:	South: Regional Commercial
	East:	East: Regional Commercial
	West:	West: Regional Commercial
Thoroughfare Plan		
Washington Street	Primary Arterial	124-foot existing and proposed
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	02/29/2024	
Site Plan (Amended)	N/A	
Elevations	02/29/2024	
Elevations (Amended)	04/05/2024	
Landscape Plan	N/A	
Findings of Fact	02/29/2024	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Blue Line TOD Strategic Plan

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Regional Commercial working typology which allows for general commercial and offices uses that serve a significant portion of the county rather than just the surrounding neighborhoods. Pedestrian connectivity should be emphasized and outdoor display of merchandise should be limited for the use category.



Red Line / Blue Line / Purple Line TOD Strategic Plan

- The Blue Line TOD Strategic Plan recommends this site for the Community Center typology which allows for a mix of retail, entertainment, office and residential uses with surface parking consolidated and placed behind buildings to allow for a pedestrian orientation at the street while still supporting drive-to businesses.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.



ZONING HISTORY

ZONING HISTORY – SITE

2023DV3004, Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the development of an integrated center with: a) an accessory drive through within 600 feet of a transit station with access provided by a private drive (alley access required); b) a surface parking area within the minimum 50-foot front yard setback (not permitted); c) all building maintaining a 20-foot front yard setback (maximum 10-foot setback permitted); d) and a 46% front building line (80% required), **approved**.

ZONING HISTORY – VICINITY

2022UV3031 ; 10435 E Washington Street (east of site), Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of an automobile service business (not permitted on lots greater than 0.5-acres), with a 23.5-foot front building line, 4% of the building line (60% front building line required), **withdrawn**.

2018UV2008 ; 10501 E Washington Street (east of site), Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for a contractor with outdoor storage, **approved**.

2011UV2018 ; 10009 E Washington Street (south of site), Variance of use to provide for a daycare center in a 4,200-square foot tenant space, **approved**.

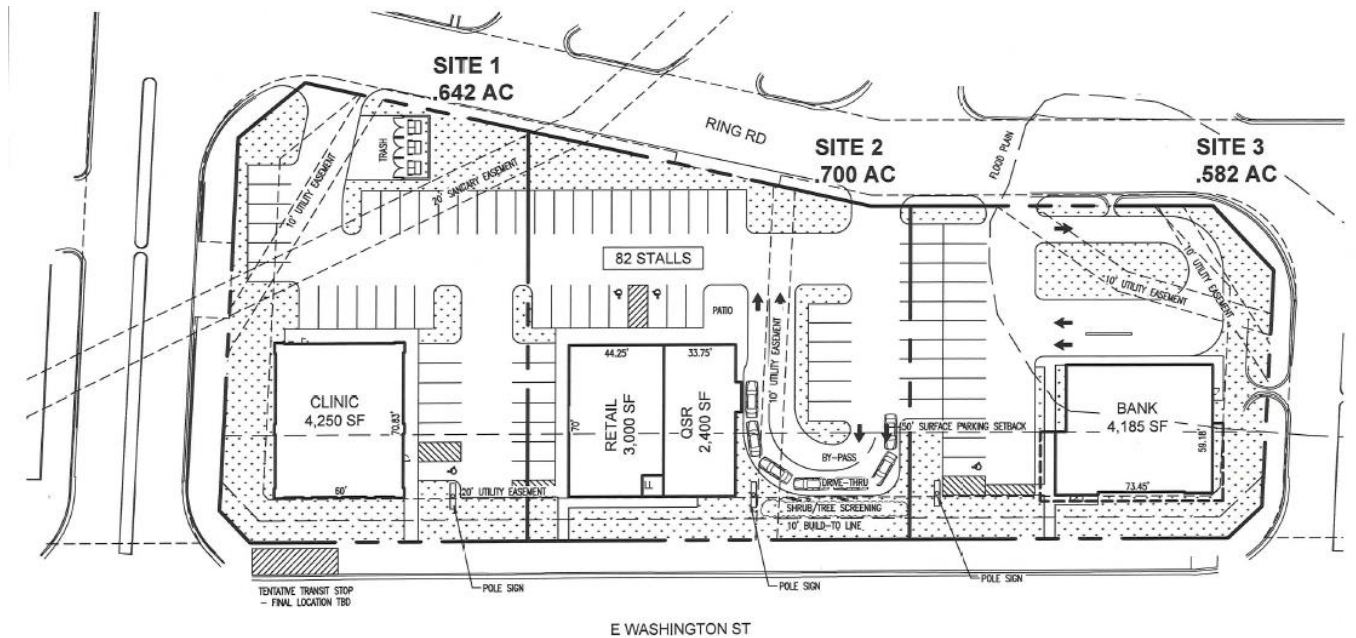
2010DV2005 ; 10002 E Washington Street (west of site), Variance of development standards of the Sign Regulations to provide for an 18-foot tall, 42.5-square foot freestanding sign, within the sight-triangle of Mitthoefer Road and Washington Street, with a five-foot setback from Washington Street (15-foot setback from existing right-of-way required, structures cannot be within the sight triangle), **denied**.

EXHIBITS

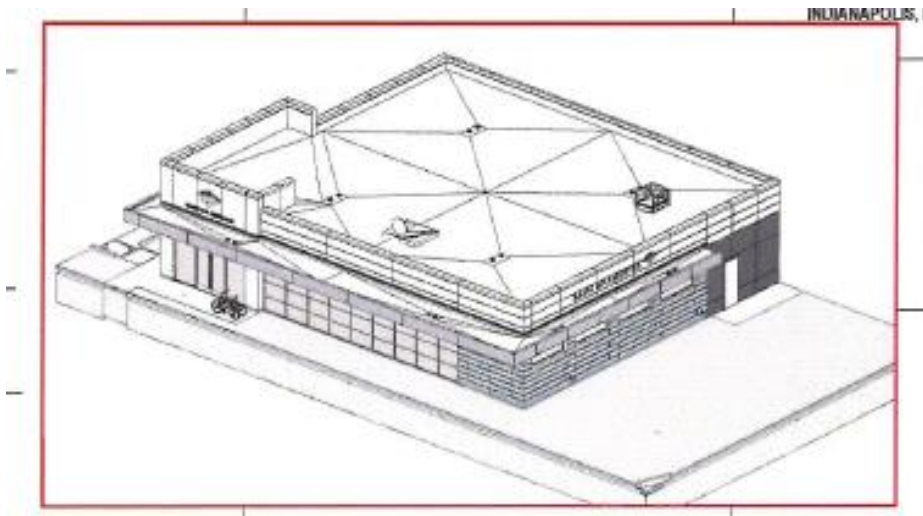
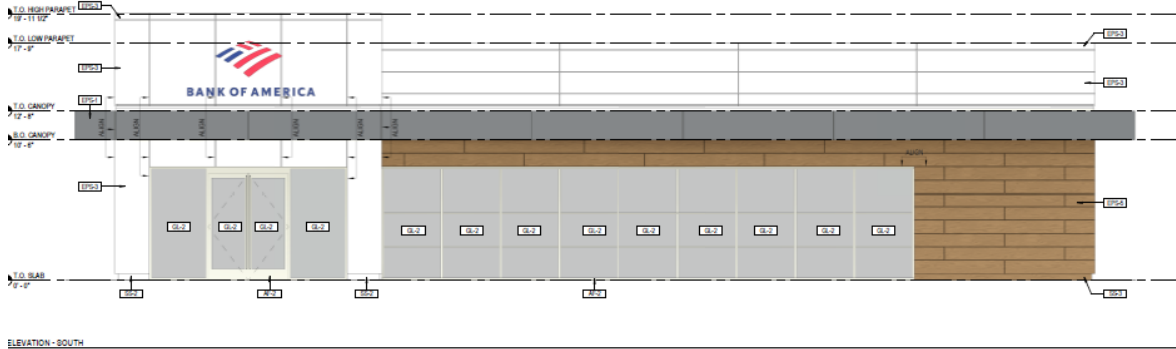
2024DV3013 ; Aerial Map



2024DV3013 ; Site Plan



2024DV3013 ; Front Elevation & Renderings





2024DV3013 ; Findings of Fact

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

the entry feature is prominent and will provide sufficient access to the building and allow for greater security for the building.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

none of the buildings which are adjacent to the subject property were required to meet the one entry per 50 linear feet standard, and as such, the proposed building will be consistent with the development pattern.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

the requirement of one entry feature for every 50 linear feet does not translate well to a bank branch which must provide security for its customers and employees.

2024DV3013 ; Pictures



Photo 1: Proposed Site + Property to North



Photo 2: Existing Property to West of Subject Site

2024DV3013 ; Pictures



Photo 3: Adjacent Property to South



Photo 4: Adjacent Property to East



BOARD OF ZONING APPEALS DIVISION III

March 19, 2024

Case Number: 2023-UV3-024
Address: 2745 and 2815 Curry Road (approximate address)
Location: Warren Township, Council District #14
Zoning: D-A
Petitioner: David Palacios, by Joseph D. Calderon
Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a landscaping contractor, including the indoor and outdoor storage of commercial vehicles, equipment, and materials (not permitted).

Current Land Use: Single Family Dwelling

Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This petition was previously automatically continued at the request of a registered neighborhood organization, from the January 16, 2024, hearing, to the February 20, 2024, hearing, and for cause at the request of the petitioner, from the February 20, 2024, hearing, to the March 19, 2024, hearing.

This petition was continued by the petitioner from the March 19, 2024, hearing to the April 16, 2024, hearing due to the lack of a full Board.

STAFF RECOMMENDATION

Staff recommends **approval** of this petition.

PETITION OVERVIEW

ADDENDUM FOR APRIL 16, 2024

- ◇ The petitioner has submitted an update plan of operation and commitments to the file. The commitments limit the amount of equipment and use to what is proposed in the plan of operation.
- ◇ In addition, an updated site plan was submitted indicating areas of parking and storage, however Staff has concerns for the proximity of some parking and store in relation to the Stream Protection Corridor. Therefore, Staff has requested a commitment to Administratively Approve the site plan, to ensure that the parking and storage areas are outside of the Stream Protection Area Corridor. The petitioner has agreed to this additional commitment.
- ◇ The proposed use, with the number of vehicles and equipment limited by the plan of operation, would be similar to agricultural operations that are permitted in the D-A District. Therefore, the impact would not be an increase in intensity as Staff had previously commented.
- ◇ Therefore, Staff **does now recommend approval of the request**, subject to the attached commitments.



March 19, 2024

- ◇ The request would provide for a commercial contractor, a C-7 use, in a D-A district.
- ◇ The purpose of the D-A district is to provide for a variety of agricultural enterprises, with a secondary intent for the development of large estate or rural single-family dwellings. Because no agricultural enterprise exists on the subject site, development of the site would be considered a large estate or rural single-family dwelling
- ◇ The Comprehensive Plan recommends rural, or estate neighborhood uses for the subject site. The proposed use would be permitted in the C-7, High Intensity Commercial Zoning District. The C-7 district is designed to provide for specific areas for retail commercial uses which have unusually incompatible features relative to other commercial uses such as major outdoor storage or display of sizeable merchandise and the outdoor parking and maintenance of trucks or equipment essential to the operation of these uses. Because of the character and intensity of these uses, this district should be appropriately located on major commercial arterial thoroughfares where the gradual and reasonable transition from lesser commercial uses exist. Due to the intensity of the uses, the location of this district adjacent to protected districts should be avoided.
- ◇ Given the increase in intensity between the existing zoning and the proposed use, including the number of commercial vehicles and trailers as outdoor storage, approval of this request would facilitate the intrusion of heavy commercial uses into an established residential rural neighborhood. The request would encourage additional encroachment, in a manner violating the development norms and residential aesthetics of the street, and squarely deviating from the recommendations of the Comprehensive Plan.
- ◇ The petitioner has proposed commitments and a plan of operation that approval shall be subject to. However, they provide no limit on the number of days of operation, allowing for the commercial contractor business to operate seven days a week. In addition, there are references to vehicles and equipment, but there is no limit on these amounts to protect adjacent properties from an intensification of the already high intensity use, either from this user, or future owners.
- ◇ The strict application of the terms of the zoning ordinance does not constitute a practical difficulty for the property, since the site is zoned D-A and could be used by any number of uses permitted, by right, in the D-A zoning classification. Any practical difficulty is self-imposed by the desire to use the site for operation of a construction contractor, including the on-site storage of commercial vehicles and trailers associated with the use.
- ◇ The subject site is similar in size to other nearby properties, that are able to follow the comprehensive plan and zoning ordinance without the need for use variances. Therefore, the Comprehensive Plan recommendation should not be disregarded, nor of the clearly residential nature of the surrounding area. For these reasons, staff recommends its denial.



GENERAL INFORMATION

Existing Zoning	D-A	
Existing Land Use	Single Family Dwellings	
Comprehensive Plan	Rural or Estate Neighborhood	
Overlay	No	
Surrounding Context	Zoning	Surrounding Context
	North: D-A	North: Single-family dwelling
	South: SU-2	South: School
	East: SU-2	East: Undeveloped
	West: D-A	West: Single-family dwelling
Thoroughfare Plan		
Curry Road	Local Street	30-foot existing and proposed right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	500-year flood plain	
Wellfield Protection Area	No	
Site Plan - Updated	April 10, 2024	
Elevations	N/A	
Commitments - Updated	April 10, 2024	
Landscape Plan	N/A	
Findings of Fact	November 15, 2023	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends rural or estate neighborhood development.

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Rural or Estate Neighborhood typology for this site. This typology provides for rural or agricultural areas and historic, urban areas with estate-style homes on large lots. In both forms, this typology prioritizes the exceptional natural features – such as rolling hills, high quality woodlands, and wetlands – that make these areas unique. Development in this typology should work with the existing topography as much as possible. Typically, this typology has a residential density of less than one dwelling unit per acre unless housing is clustered to preserve open space.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.



Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves
(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.

ZONING HISTORY

2019-SE3-002; 11149 Stoneybrook Drive (south of site), requested a special exception of the Consolidated Zoning and Subdivision Ordinance to provide for a wireless communications facility with a 120-foot monopole tower, with a 10-foot antenna, **granted**.

2001-DV3-031; 11300-11149 East Stonybrook Drive (south of site), requested a variance of development standards of the Sign Regulations to provide for the installation of a 122.96 square foot, two-sided, brick, limestone, and modular aluminum double pylon sign being 7.33 feet tall, with a 61.92 square foot electronic variable message sign component, being 50.35-percent of the total sign area, and located 80 feet from a protected district, **granted**.

2000-DV2-015; 2910 Curry Road (north of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for a single-family dwelling and detached garage on a 1.1-acre lot, **granted**.

95-DV2-60; 11205 East 30th Street (north of site), requested a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a single-family residence with a lot area of 1.1 acres, **granted**.

RU *****

EXHIBITS

Location Map



Site Plan - Updated





Plan Of Operation - Updated

DAVID PALACIOS | THE RANCHES LANDSCAPING LLC | 2023-UV3-024

AMENDED PLAN OF OPERATION
2745 and 2815 Curry Road

THE BUSINESS

David Palacios d/b/a The Ranches Landscaping LLC, performs certain activities associated with his landscaping business on property commonly known as 2745 and 2815 Curry Road (the "Subject Property"). The Subject Property has three (3) existing residential structures and multiple accessory structures, including garages, barns and sheds. The residential structures either are occupied by renters or are not used presently. The Petitioner would like to use the northern-most residential structure (2815 N. Curry) as an office for the business in the future. Petitioner proposes to continue to use the Subject Property in conjunction with his landscaping business, by using certain of the existing accessory structures for storing and maintaining landscaping equipment, including mowers, trimmers, weed whackers, shovels, rakes, wheel barrels and ladders, a skid steer and mini track loader, in the existing accessory structures as shown on the site plan attached to this Plan of Operation as Exhibit "A" ("Site Plan"). The existing equipment and vehicles may be replaced from time to time without jeopardizing the variance, and additional vehicles and equipment may be permitted so long as they are stored in the areas designated on the site plan. A complete list of existing equipment and vehicles is attached as Exhibit "B". Company trucks and trailers, which are deployed to job sites during the day, are stored overnight at the rear of 2745 Curry are shown on the site plan. Landscaping materials are intended to be used at the job site, but occasionally there will be landscaping materials on-site for temporary periods of time. The materials shall be limited to those areas shown on the Site Plan. No materials shall be shipped to the Subject Property directly.

ZONING

Existing zoning is D-A, which permits residential use and agri-business uses.

HOURS OF OPERATION

Petitioner is planning to operate the facility between 8:00 a.m. to 6:00 p.m., Monday through Friday, although in season, the hours might shift to 7:00 a.m. to 8:00 p.m., and include weekends.

NUMBER OF EMPLOYEES

Currently four (4) employees work for the Company. Employees meet at the Subject Property in the morning, go to the job site and return thereafter.

EXISTING STRUCTURES

Petitioner intends to use the existing accessory structures located on the Subject Property, generally as shown on the site plan submitted with this plan of operation. There are no new structures planned for the Subject Property. The existing structures may be replaced, with similarly sized structures not to exceed 125% of the current size of the structures.

SALES | CUSTOMERS

There will be no sales activity occurring on the Subject Property, and no customers shall be directed to the Subject Property.

COMMITMENTS

The Petitioner is offering commitments as a part of the variance request, which are attached hereto as Exhibit "C".



Proposed Commitments - Updated

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH A VARIANCE, SPECIAL EXCEPTION OR APPROVAL GRANT.

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of the parcel of real estate:

Legal Description: See Exhibit "A" Attached Hereto And Incorporated By Reference (the "Subject Property").

Statement of COMMITMENTS:

1. The Subject Property shall be used as set forth in the Amended Plan of Operation attached hereto as Exhibit "B".
2. All storage and disposal of fluids associated with the maintenance and repair of landscaping equipment shall be in compliance with all applicable environmental laws and regulations.
3. No materials for off-site landscaping jobs shall be drop-shipped to the Subject Property.
4. An amended site plan showing that vehicle parking and material storage areas are located outside of the stream protection corridor (at least 50 feet from top of bank) located on the Subject Property, shall be submitted for Administrator's Approval.

These COMMITMENTS shall be binding on the owner, subsequent owners, and other persons acquiring an interest in the real estate. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Board of Zoning Appeals made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the grant of variance, special exception or approval petition #2023-UV3-024 by the Metropolitan Board of Zoning Appeals or the Hearing Officer.

These COMMITMENTS may be enforced jointly and severally by:

1. The Metropolitan Development Commission; and
2. Owners of all parcels of ground adjoining the real estate depth of two (2) ownerships, but not exceeding six hundred sixty (660) feet from the perimeter of the real estate. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various township assessors of the Marion County, which the current owners of record at the time the notice shall be sent. (This paragraph defines the category of persons entitled to receive personal notice of the variance, special exception or approval petition under the rules of the Board in force at the time the COMMITMENT was made); and
3. Warren Township Development Association.



Findings of Fact

Petition Number _____

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF USE

FINDINGS OF FACT

1. THE GRANT WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE COMMUNITY BECAUSE

the operation of the business still allows for residential use of the properties and is wholly contained behind the residential structures, thus preserving the residential character of the property. The proposed use is similar in intensity to permitted agricultural uses.

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 BECAUSE

the properties are large and the operation of the business is no more intense than permitted agricultural uses, and there is adequate separation of the business activities and uses on the adjacent properties.

3. THE NEED FOR THE VARIANCE ARISES FROM SOME CONDITION PECULIAR TO THE PROPERTY INVOLVED BECAUSE

the parcels are unusually deep and, while large, have been parceled out such that agricultural use is not realistic.

4. THE STRICT APPLICATION OF THE TERMS OF THE ZONING ORDINANCE CONSTITUTES AN UNUSUAL AND UNNECESSARY HARDSHIP IF APPLIED TO THE PROPERTY FOR WHICH THE VARIANCE IS SOUGHT BECAUSE

the proposed business uses many of the same types of equipment and materials as agricultural uses which are permitted, yet the business is categorized along with other general contractors.

5. THE GRANT DOES NOT INTERFERE SUBSTANTIALLY WITH THE COMPREHENSIVE PLAN BECAUSE

the proposed business operates well with the 6.5 acres which comprises the subject property as an accessory use of the property, which is consistent with the rural or estate category of the comprehensive plan.

Photographs



Subject site 2745 Curry Road single family dwelling, looking east



Subject site 2815 Curry Road single family dwelling, looking east



Subject site, storage of multiple commercial trucks and trailers



Subject site, storage of commercial landscaping materials



Adjacent single family dwelling to the west



Adjacent single family dwelling to the north, looking east.



BOARD OF ZONING APPEALS DIVISION III

April 16, 2024

Case Number:	2023DV3050
Property Address:	805 S Kitley Ave (approximate address)
Location:	Warren Township, Council District #18 (#20 beginning 2024)
Petitioner:	Kitley Avenue Properties LLC, by J. Murray Clark and Mark R. Leach
Current Zoning:	I-4 / C-7
Request:	Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of an eight-foot-tall fence and gate within the front yard of Kitley Avenue (maximum height of six feet permitted).
Current Land Use:	Commercial
Staff Recommendations:	Staff recommends denial of this request.
Staff Reviewer:	Michael Weigel, Senior Planner

PETITION HISTORY

This case was first heard in full at the January 16, 2024 hearing where it received an indecisive 2-1 vote. It was then continued to the hearing date on February 20, 2024.

Due to a lack of quorum at the February 20, 2024 hearing, this petition was continued by the petitioner to the April 16, 2024 hearing of Division III.

STAFF RECOMMENDATION

Staff **recommends denial** of this request.

PETITION OVERVIEW

- This property currently houses a fencing contractor. The property was previously used as an appliance repair service business and received a variance in 2016 to allow for up to two dwelling units on the second floor of the existing building. In September of 2023, a violation case was opened related to the installation of a fence with height exceeding 6' in the front yard (disallowed per Table 744-510-2 of the Indianapolis Zoning Ordinance).
- This petition would seek to legalize the portion of the fence installed on the western portion of the property within the front yard at a height of 8 feet. The portions of the fence placed in the side yard are allowed by-right (maximum height allowable would be 10 feet for side and rear yards).



Department of Metropolitan Development
 Division of Planning
 Current Planning

- Most of the land occupied by these parcels are zoned I-4 (Heavy Industrial District) while a small portion to the south is zoned C-7 (High-Intensity Commercial District). The Marion County Land Use Plan Pattern Book recommends Heavy Commercial development for this area.
- The Indianapolis Zoning Ordinance prescribes height limitations for fences to maintain visibility, orderly development, and the appearance of open space while also allowing for reasonable privacy. Although neighboring properties have taller fences in front yards that predate current ordinance standards, it is unclear what inherent practical difficulties exist that would be remedied by an 8-foot fence but not by an ordinance-compliant 6-foot fence. Therefore, staff recommends denial of this request.

GENERAL INFORMATION

Existing Zoning	I-4/C-7	
Existing Land Use	Commercial	
Comprehensive Plan	Heavy Commercial	
Surrounding Context	Zoning	Surrounding Context
	North: C-S	North: Light Industrial
	South: C-7	South: Heavy Commercial
	East: I-3	East: Light Industrial
	West: C-S	West: Light Industrial
Thoroughfare Plan		
Kitley Avenue	Primary Collector	Existing ROW: 50' Prop ROW: 80'
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	11/27/23	
Site Plan (Amended)	N/A	
Elevations	11/27/23	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	11/27/23	
Findings of Fact (Amended)	N/A	



COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Heavy Commercial working typology for this site.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.



ZONING HISTORY

ZONING HISTORY – SITE

2016UV3014, Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for up to two dwelling units (not permitted) on the second floor of the existing building, including residential accessory uses and structures (not permitted), **approved**.

2002LNU021, legally established nonconforming use certificate to legally establish uses and development standards in relation to the Industrial Zoning Ordinance and the Sign Regulations of Marion County, Indiana, **denied**.

81-Z-108, requested the rezoning of 2.39 acres from the SU-28 district to the I-4-U district, **approved**.

ZONING HISTORY – VICINITY

95-Z-104; 601 Kitley Avenue (west of site), Rezoning of 24.84 acres from the I-3-U and I-3-S Districts, to the C-S classification to provide for the continued use and development of a racetrack and associated facilities, **approved**.

93-UV2-44; 6464 Brookville Road (southwest of site), Variance of use of the Industrial Zoning Ordinance to provide for the sale of automobiles, **approved**.

90-V1-109; 6520 Brookville Road (southeast of site), Variance of development standards of the Industrial Zoning Ordinance to legally establish an existing front setback of less than the required 40 feet from the right-of-way; to allow more than 10% of the required parking within the front yard; to permit the construction of a storage building to store fencing materials within 300 feet of a dwelling district; to permit a rear yard setback of 3.5 feet; and a variance of development standards of the Sign Regulations of Marion County to legally establish an existing pole sign with a 14.5 foot setback from the right-of-way, **approved**.

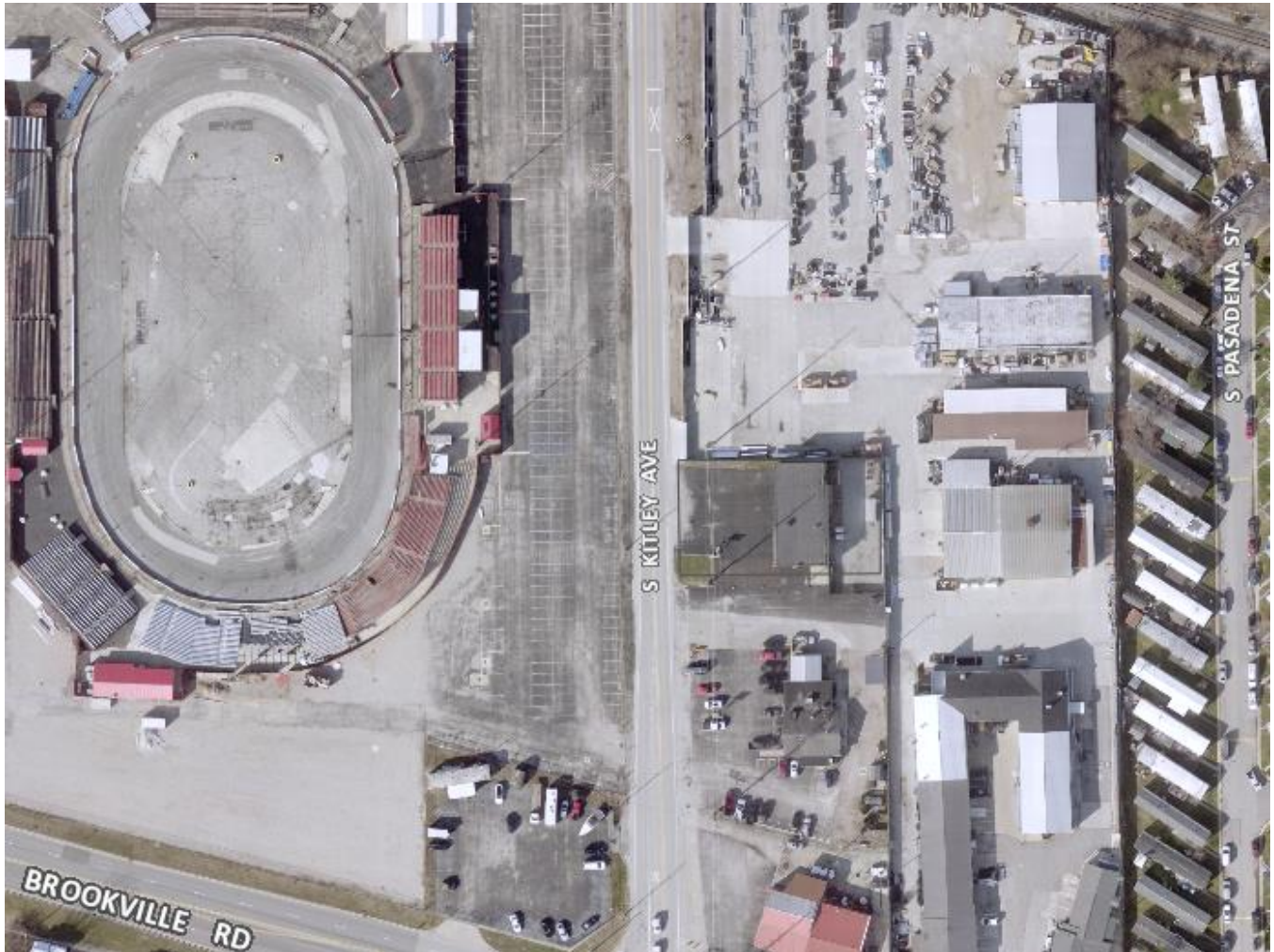
85-V1-59; 6520 Brookville Road (southeast of site), Special request to allow outside storage in excess of fifty percent of total building space, use of the required front yard for outdoor display of products and the use of side transitional yard for storage and display and to extend the time in which to obtain an Improvement Location Permit, **approved**.

84-Z-80; 6450 Brookville Road (southwest of site), Rezoning of 0.822 acres from the I-3-U District, to the C-3 District to provide for restaurant and tavern uses, **approved**.

83-UV1-133; 802 S Kitley Avenue (west of site), Variance of use of the Industrial Zoning Ordinance to allow the construction of a building for restroom facilities accessory to an auto-race track, **approved**.




EXHIBITS

2023DV3050 ; Aerial Map



2023DV3050 ; Site Plan



-  Front Yard with Tall Fence
-  8' Ornamental Black Metal Fence with 24'-wide Cantilever Gate
-  8' Decorative Masonry Fence



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



2023DV3050 ; Findings of Fact

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

The fence was installed at its current height to protect the safety of those from the surrounding area as well to protect the substantial business investment of the Petitioner. The Petitioner operates a Monday - Friday business that is open during normal business hours. However, the surrounding sites include a bar (to the south) that is open until 3:00 AM each day and the Indianapolis Speedrome (to the west) that has eclectic, but often after hours, events drawing large numbers of people to the area. During these times, Petitioner's site, which stores its commercial vehicles and a large supply of valuable and dangerous (i.e., sharp) fencing materials, is vulnerable. Further, if someone were to gain access, especially with reduced mental faculties due to alcohol consumption, the potential to injure themselves is great.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

The Petitioner owns a number of parcels in the area which they have taken pains to secure to preserve the safety of their property and the general public. The business to the west, the Indianapolis Speedrome, is an entertainment complex with inconsistent hours of visiting patrons and patrons that may be new to the area. The fence is of high quality and looks aesthetically pleasing and complements the surrounding area. Clearly the use or value of adjacent properties will not be adversely affected.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

The fence is of similar height and quality as the other fences along the business and in the area. This specific parcel is one of many that the Petitioner owns that completes an entire business footprint that encompasses a majority of the block. Requiring the fence to be lowered to less than its current height would create inconsistencies and detriment to the business. Further, IMPD reports that from June 6, 2023, to November 20, 2023, there were 167 incident reports made within a 1-mile radius of the site. If the Petitioner's fence is lower, the site could become a magnet for the existing nearby activity, and attract the problematic activity to the site. Additionally, strict compliance with the ordinance would substantially decrease protection of the commercial materials within the Petitioner's property. Finally, it would be cost prohibitive to remove the fence, as it is valued at more than \$42,000.

2023DV3050 ; Pictures



Photo 1: View of the Subject Site (from West)



Photo 2: View of the Subject Site (from South)

2023DV3050 ; Pictures (continued)



Photo 3: Fence from South



Photo 4: Fence from South showing Front Building Line

2023DV3050 ; Pictures (continued)



Photo 5: Adjacent Property to North



Photo 6: Adjacent Property to South



BOARD OF ZONING APPEALS DIVISION III **April 16, 2024**

Case Number: 2024-MO1-001 / 2024-DV1-007
Address: 7530 Allisonville Road (approximate address)
Location: Washington Township, Council District #3
Zoning: D-A (FW) (FF)
Petitioner: Phillip D. Rushton & Joanne Rushton Rev. Trust – Rebecca Patton Successor TTE, by Gregory J. Cagnassola
Request: Modification of Commitments related to 2009-UV2-036, to terminate Commitment Number Eight and Four, which requires compliance with required setbacks of the D-A District, and the use of slick mounted antenna and associated attachments, respectively.

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of structures related to the cell phone tower resulting in a seven-foot south side and 0.5-foot north side yard setback and a 2.5-foot rear yard setback, resulting in a 7.5-foot aggregate side yard setback (30-foot side yard, 75-foot aggregate side yard, 75-foot rear yard setbacks required) and a lot line adjustment resulting in a 0.606-acre lot and a 40-foot frontage (minimum three acres and frontage of 125 feet required).

Current Land Use: Single-family dwelling and Wireless Communication Facility
Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This petition was assigned to the March 5, 2024, Board I hearing, in order to comply with the township representation statute as it has a Washington Township representative. However, the commitments that are being requested to be modified were previously imposed by Board III. Therefore, Staff requested that this petition be continued from the March 5, 2024, Board I hearing, and transferred to the March 19, 2024, Board III hearing, so that any modification of the commitments can be done by Board III as statutorily required.

At the March 19,2024 hearing, this petition was automatically continued due to indecisive votes.

STAFF RECOMMENDATION

Staff makes **no recommendation** for the modification of commitments.
Staff **recommends denial** of the Variance of Development Standards request.



PETITION OVERVIEW

ADDENDUM FOR APRIL 16, 2024

- ◇ The petitioner has indicated that in order to satisfy the setback requirements for each of the North side and South side setbacks, the adjoining property owners have agreed to quitclaim the appropriate amount of footage to the petitioner such that that land shall no longer require a setback variance from the City of Indianapolis for the North side and South side. They are working with surveyors from American Structurepoint to develop the correct legal descriptions for the above conveyance. They are also in contact with the Cell Tower lessee regarding the West side setback and, specifically, the lean-to shelter to assess the capability of relocating the lean-to shelter to adhere to setback requirements.
- ◇ If the variance requests for the North, South and possibly West side setbacks are no longer needed, then they should be withdrawn at the April 16, 2024, hearing.
- ◇ If the setback variances are withdrawn, Staff **continues to recommend denial** of the remaining variance of development standards requests, as they would continue to subvert the Subdivision Ordinance by creating an unbuildable lot.

March 19, 2024

- ◇ In 2000, petition 2009-UV2-036, requested a variance of use to provide for a 137-foot tall wireless communications facility (WCF), with accessory equipment cabinets. That variance was continued and transferred to Division III. On March 16, 2010, the Metropolitan Board of Zoning Appeals, Division III, granted the request. The request was subject to the amended site plan and elevations, file-dated September 20, 2010, and to the commitments, recorded as Instrument NO: 2010-00094718, in the office of the Recorder of Marion County, Indiana.

MODIFICATION REQUEST

- ◇ The 2009-UV2-036 variance grant was subject to nine total commitments (attached). The petitioner requests to modify the commitments to terminate the following two commitments. Commitment 2.4 indicates that all planned and future antenna attachments will be slick mounted to further blend with the established tree canopy. Commitment 2.8 indicates the site shall comply with the applicable setback requirements set forth in Chapter 731 of the Dwelling Districts Zoning Ordinance – City of Indianapolis.
- ◇ The commitments restricting site development and layout were the result of negotiation between the petitioner and interested parties during the 2009 variance process. Staff played no role in the negotiation of the subject commitments, and ordinarily provides no recommendation under such circumstances. Staff would note, however, that the neighborhood organization(s) negotiated in good faith with the petitioner during the petition process, and their agreement was contingent upon all commitments being included with the variance petition.



VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The petitioner is requesting to create a second parcel to provide for the location of structures related to the cell phone tower (WCF) resulting in a seven-foot south side and 0.5-foot north side yard setback and a 2.5-foot rear yard setback, resulting in a 7.5-foot aggregate side yard setback and a lot line adjustment resulting in a 0.606-acre lot and a 40-foot frontage.
- ◇ The need for the reduced setbacks is self-imposed by mistakes made by the cell provider and property owner, and not a result of the zoning ordinance.
- ◇ According to the petitioner, it was discovered that when the cell tower was constructed, the cell provider did not correctly follow the plans, and the lean-to-shelter was constructed to the south of the existing one-story building instead of in line with it or to the north of it. This resulted in a reduced ten-foot side setback.
- ◇ Additionally, it was determined that sometime after the original 2009 use variance was granted, subject to the zoning setbacks, the property owners sold off (conveyed) a portion of the rear property to neighbors, thereby reducing the required rear setback to five feet and the northside setback to three feet, causing the current non-compliance that exists today.
- ◇ The proposed request is self-imposed by the desire of the property owner to create a deficient lot and legally establish deficient setbacks, by separating it from the primary use single-family dwelling with a majority of the acreage that originally made the WCF zoning compatible, only to maintain ownership of the WCF.
- ◇ The WCF can continue to be provided without the variances requested through either the relocation of the current WCF to a zoning complaint parcel, or by relocating the misplaced lean-to shelter, buying back the required setbacks that were previously sold off, and not splitting the parcel to be ordinance complaint.
- ◇ The strict application of the terms of the zoning ordinance does not constitute a practical difficulty for the property, since the site is zoned D-A and could accommodate appropriate uses as permitted, by right, in the D-A zoning classification. Any practical difficulty is self-imposed by the desire to create a smaller deficient sized parcel in order to maintain ownership of the income-producing portion of the site.
- ◇ The subject site is similar in size to other nearby properties, that are able to follow the zoning ordinance without the need for variances. Therefore, staff does recommend denial of the variance of development standards request.



GENERAL INFORMATION

Existing Zoning	D-A	
Existing Land Use	Single-family dwelling and Wireless Communication Facility	
Comprehensive Plan	Suburban Neighborhood / Floodway	
Overlay	100-year floodplain	
Surrounding Context	Zoning	Surrounding Context
	North:	North: Single-family dwellings
	South:	South: Single-family dwellings
	East:	East: Single-family dwellings
	West:	West: Single-family dwellings
Thoroughfare Plan		
Allisonville Road	Secondary Arterial	90-foot existing and proposed right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	Yes / Yes	
Wellfield Protection Area	No	
Site Plan	January 19, 2024	
Elevations	N/A	
Commitments	January 31, 2024	
Landscape Plan	N/A	
Findings of Fact	January 17, 2024.	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends suburban neighborhood and floodway uses for the site.

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Suburban Neighborhood typology for this site. This typology is predominantly made up of single-family housing but is interspersed with attached and multifamily housing where appropriate. This typology should be supported by a variety of neighborhood-serving businesses, institutions, and amenities. Natural Corridors and natural features such as stream corridors, wetlands, and woodlands should be treated as focal points or organizing systems for development. Streets should be well-connected, and amenities should be treated as landmarks that enhance navigability of the development. This typology generally has a residential density of 1 to 5 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park.
- The Floodway category delineates areas that exhibit a great potential for property loss and damage from severe flooding, or for water quality degradation. No development should occur within the floodway. Nonconforming uses currently within a floodway should not be expanded or altered.



Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.

ZONING HISTORY

76-V2-60; 7530 Allisonville Road (subject site), requested a variance of development standards to erect an addition to a detached garage, **granted**.

2004-HOV-041; 4720 East 75th Street (west of site), requested a variance of development standards to provide for a 368-square foot enclosed non-habitable attached accessory structure with one-square inch of open venting per two square feet of enclosed area subject to flooding, **granted**

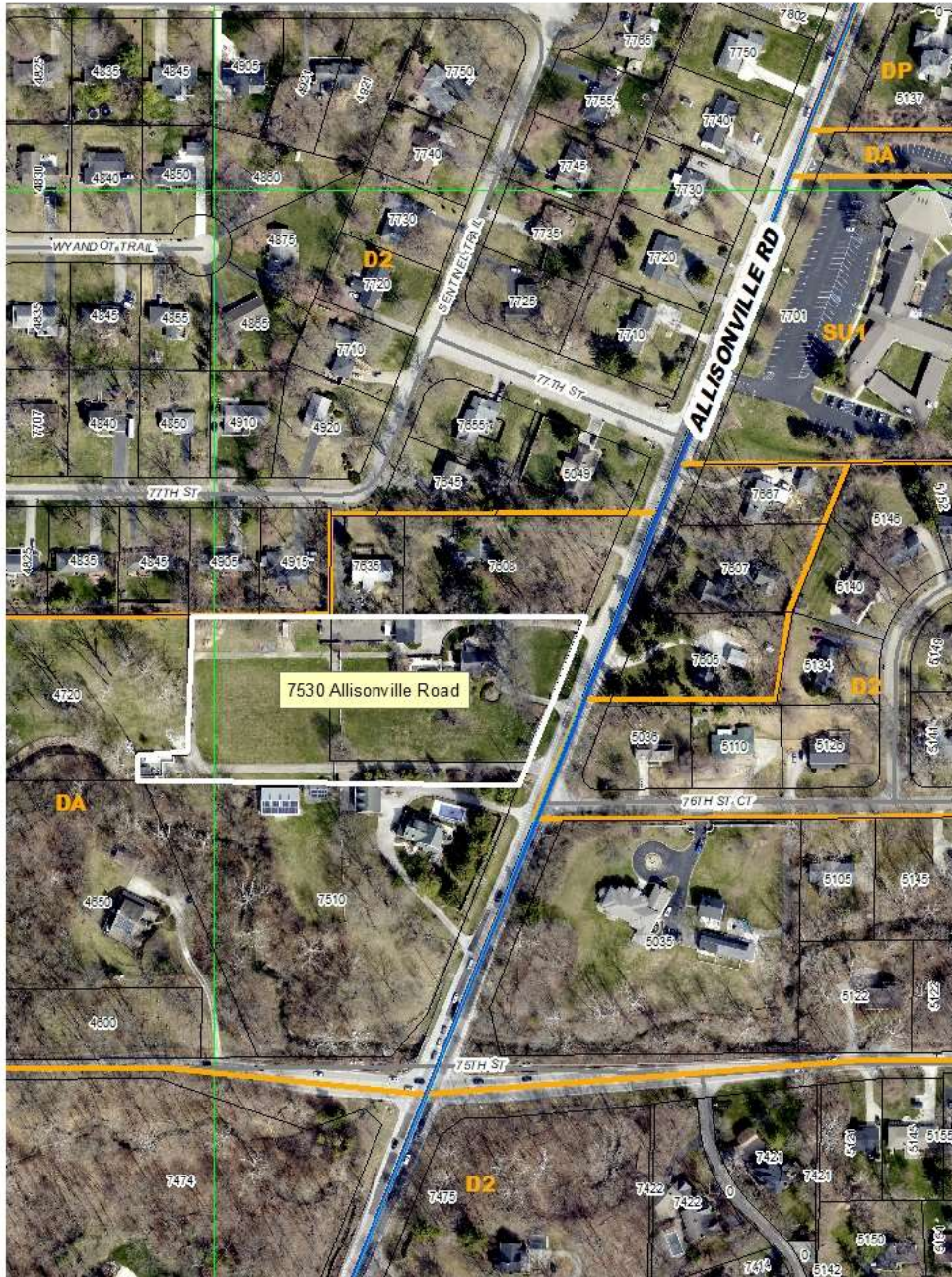
2007-DV2-027; 5035 East 76th Street (southeast of site), requested a variance of development standards to provide for the construction of an 830-square foot cabana and in-ground swimming pool in front of the established front building lines along East 75th Street and Allisonville Road, **granted**.

2009-UV2-036; 7530 Allisonville Road (subject site), requested a variance of sue to provide for a 137-foot tall wireless communications facility, with accessory equipment cabinets, **granted subject to commitments**.

RU

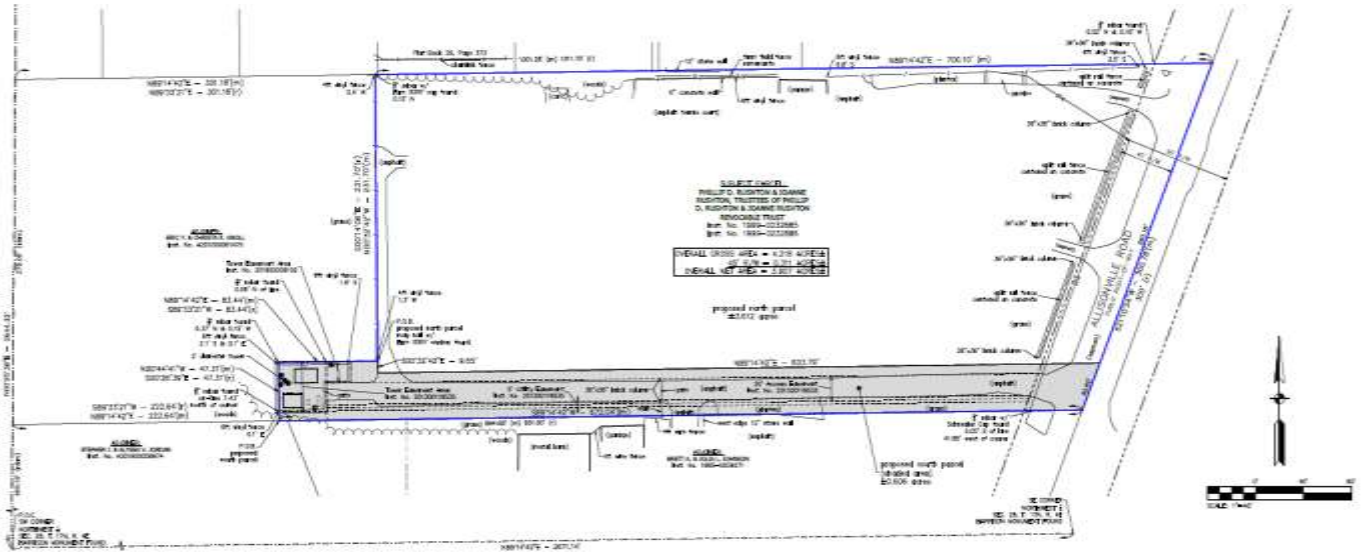
EXHIBITS

Location Map





Site Plan





Commitments - Current

A201000094718



September 27, 2010 1:50 PM
Julie L. Voorhies
Marion County Recorder

Pages: 5
Fee: \$25.50
By: MJM

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH VARIANCE, SPECIAL EXCEPTION, OR APPROVAL GRANT.

In accordance with I.C. 36-7-4-921, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of the parcel of real estate:

Legal Description: See attached, "Exhibit A".

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by the Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. See attached, "Exhibit B".

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein. These COMMITMENTS may be modified or terminated or extended by a decision of the Metropolitan Board of Zoning Appeals made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the grant of variance, special exception or approval petition # 2009-UV2-036 by the Metropolitan Board of Zoning Appeals or the Hearing Officer.

These COMMITMENTS may be enforced jointly or severally by:

1. The Metropolitan Development Commission;
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six-hundred-sixty (660) feet from the perimeter of the real estate. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various township assessors of Marion County which list the current owners of record at the time the notice shall be sent. (This paragraph defines the category of persons entitled to receive personal notice of the variance, special exception, or approval under the rules of the Board in force at the time the COMMITMENT was made); and
3. _____
4. _____



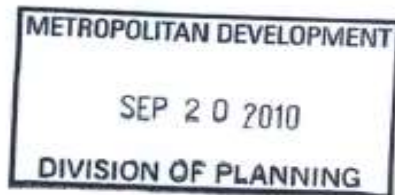
Commitments – Current continued

"Exhibit B"

**Commitments
7530 Allisonville Road
Petition 2009-UV2-036 (Amended)**

1. The equipment compound area illustrated on the site plan dated October 22, 2009 will be enclosed with 1) a white privacy fence at a minimum height of six (6) feet to match existing fence lines, and 2) a shed or other enclosure.
2. The perimeter of the equipment compound area illustrated on the site plan dated October 22, 2009, with the exception of the gate area, will be landscaped with shrubs planted 10-feet on-center with a minimum spread of 18 inches at time of planting. Final placement location, size, spacing, and species will be subject to administrator's approval prior to the issuance of an Improvement Location Permit.
3. The lower section of the proposed 130-foot tall cellular tower (not including a 7-foot tall lightening rod atop the tower) will be painted brown in color to blend with the established tree canopy (as depicted in the simulation).
4. That all planned and future antenna attachments will be slick mounted to further blend with the established tree canopy (as depicted in the simulation).
5. In the event that the cellular tower becomes obsolete, the Petitioner will remove the tower from the site within 90 days of the tower ceasing to function as a part of the Petitioner's communications network.
6. The petitioner will provide enhanced landscaping where adjoining the rear yards of certain properties within the Arrowhead Estates subdivision, as per the landscape plan presented at the March 9, 2010 Greater Allisonville Community Council meeting, which plan shall require the final approval of the Arrowhead Estates Homeowner's Association Board of Directors prior to the issuance of an Improvement Location Permit.
7. All antenna attachments will be mounted to be compatible with the established tree canopy to the extent reasonably possible.
8. The site shall comply with the applicable setback requirements set forth in Chapter 731 Dwelling Districts Zoning Ordinance – City of Indianapolis.

1460584





Commitments - Proposed

**COMMITMENTS MODIFYING OR TERMINATING EXISTING COMMITMENTS
CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN
CONNECTION WITH VARIANCE OR SPECIAL EXCEPTION GRANT.**

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of commitment(s) concerning the use and development of the parcel of real estate:

Legal Description:

Legal Description:

Commencing at the southwest corner of the Northwest Quarter of said Section 28; thence along the west line of said quarter section, North 00 degrees 25 minutes 38 seconds East 465.10 feet (basis of bearing - Indiana Geospatial Coordinate System, Marion Zone) to the southwest corner of a parcel of land conveyed to Phillip D. Rushton & Joanne Ruston, Trustees of Phillip D. Rushton & Joanne Rushton Revocable Trust in Instrument Number 1999-0232886, on file in the Office of the Recorder of Marion County, Indiana, and also being the southwest corner of an original survey parcel conveyed to Eric Y. & Christa R. Knoll in Instrument Number A201000061475, on file in said Recorder's Office; thence parallel with the south line of the Northwest Quarter of said Section 28 and along the boundary of said Rushton parcel and said Knoll parcel, North 89 degrees 14 minutes 42 seconds East 222.64 feet to the southeast corner of said Knoll parcel and being the point of beginning; thence continue along the boundary of said Knoll parcel the following two (2) courses: 1) North 00 degrees 44 minutes 41 seconds West 47.31 feet; 2) North 89 degrees 14 minutes 42 seconds East 83.44 feet; thence South 00 degrees 32 minutes 42 seconds East 9.65 feet; thence parallel with the south line of the Northwest Quarter of said Section 28, North 89 degrees 14 minutes 42 seconds East 603.79 feet to the centerline of Allisonville Road and also being a point on the east line of said Rushton parcel; thence along said centerline and said east line, South 21 degrees 10 minutes 54 seconds West 40.60 feet to the southeast corner of said Rushton parcel; thence parallel with the south line of the Northwest Quarter of said Section 28 and along the south line of said Rushton parcel, South 89 degrees 14 minutes 42 seconds West 672.04 feet to the point of beginning and containing 0.606 acres, more or less.

Statement of Modification or Termination of COMMITMENTS:

1. Commitments #4 and #8 related to 2009-UV2-036, as Recorded in Instrument #A2010000094718 shall be terminated.

- 2.



Findings of Fact

Petition Number _____

METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

The cellular tower has been onsite for about 13 years. In that time, the cellular tower has not been injurious to the public health, safety, morals, and general welfare of the surrounding property owners or the community as a whole. In fact, the cell tower serves to provide a necessary utility to the community, one that could cause harm to the general welfare of the community if it were not able to be continued or if it was disrupted.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

In seeking the variance, Petitioner does not propose a change to the property as it stands, rather they seek only to bring the existing landscape of the property into compliance with local ordinance by way of a variance. The adjacent property owners will not be substantially affected because the surrounding land will stay the same, and they will continue to receive the same utility if the variance is granted. In fact, denial of the variance is likely to affect adjacent property owners more if the cell had to be removed or modified.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

Applying the setback requirements as is would present a substantial difficulty. The cell tower is a structure which is difficult to move or modify, and in taking either of those actions there would be a large expense. The practical result of applying the setback requirements is that the cell tower would have to be moved or removed. If it is moved, this could cause a nuisance on the property and to the adjacent properties. If it is removed, this could cause a dead zone in cellular coverage and deprive the community of a utility that has been traditionally enjoyed. Additionally, requiring a 3 acre parcel is impractical because both parcels total 4.2 acres, making it not possible to achieve 3 acre parcels. It benefits the Rushtons and the neighborhood most to keep the home parcel larger.

DECISION

Photographs



Subject property, existing single-family dwelling looking west



Subject property, existing wireless communications facility looking west



Existing wireless communication facility with seven-foot south side setback, looking west



Existing wireless communication facility with 0.5-foot north side setback, looking west



Existing wireless communication facility with 2.5-foot west rear setback, looking east



Adjacent single-family dwelling to the south, looking west.



BOARD OF ZONING APPEALS DIVISION III **April 16, 2024**

Case Number: 2024-SE3-002
Property Address: 6760 Dalton Street (approximate address)
Location: Lawrence Township, Council District #4
Petitioner: Reagan Outdoor Advertising, Michelle Noppenberger
Current Zoning: C-4

Special Exception of the Consolidated Zoning and Subdivision Control Ordinance to provide for the relocation of a legally established Outdoor Advertising Sign due to a highway widening and improvement of I-69 and I-465 by a state agency.

Request:

Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the relocation of an existing 14-foot by 48-foot, 50-foot tall off-premise advertising sign, of which the relocated off-premise sign will have a height of 65 feet (maximum height of 40 feet permitted) and will be considered a multi-sided sign with faces 33 degrees and 30 feet apart (maximum 15 degrees or 42 inches of separation permitted), to a 7,170 square-foot lot (maximum 6-foot by 12-foot sign permitted on lots with less than 10,000 square feet of area), with a five-foot setbacks from Bash Street, Dalton Street and the western property line (10-foot setback required), located 345 feet from the centerline of an interstate exit roadway (500-foot separation required from interstate ramp entries), within 605 and 975 feet from other outdoor advertising signs (1,000-foot radial spacing required).

Current Land Use: Undeveloped

Staff Recommendations:

Staff recommends **approval** of the special exception request to provide for the relocation and of the variance requests related to separation of faces of the sign, sign area, sign setbacks, and proximity from both the centerline of an interstate exit roadway and from other outdoor advertising signs.
Staff makes **no recommendation** on the variance request related to sign height.

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This petition was continued from the March 19, 2024 hearing to the April 16, 2024 hearing at the request of the petitioner to allow time for consultation with neighborhood groups and provision of updated documentation.



STAFF RECOMMENDATION

ADDENDUM (April 16, 2024)

Renderings of the sign height and visibility from both the proposed height and height required by ordinance have been added to the Exhibits below. Staff feels that given the approximately 500 feet of roadway between the end of the hotel obstruction and proposed sign location, time would still exist for both northbound and southbound motorists to view the advertising content of the sign. Staff continues to make no recommendation on the variance request related to sign height.

Staff recommends **approval** of the special exception request to provide for the relocation and of the variance requests related to separation of faces of the sign, sign area, sign setbacks, and proximity from both the centerline of an interstate exit roadway and from other outdoor advertising signs.

Staff makes **no recommendation** on the variance request related to sign height.

PETITION OVERVIEW

- The subject site is currently undeveloped land zoned for commercial use. It is surrounded by C-4 zoning on all sides and is approximately 345 feet from an interstate exit ramp. The site is approximately 187 feet to the northwest from the location of a Tri-vision off-premises sign that was removed from 8011 Bash Street in late 2021 or early 2022 due to the expansion of I-69 by INDOT eliminating the previous location on private property.
- The Indianapolis Zoning Ordinance defines off-premises signs as “a sign that directs attention to a business, profession, commodity, or service offered on the property other than that on which the sign is located. This limitation does not apply to the content of noncommercial messages”. This definition would be inclusive of outdoor advertising signage.
- In 2017, the Indiana State Legislature adopted I.C. 8-23-20-25.6. This statute imposes new obligations on local municipalities with respect to state highway projects that result in the required removal or relocation of outdoor advertising signs. In cases when an existing outdoor advertising sign must be moved or removed as part of a highway improvement project, the owner of the sign must be allowed to either elevate or relocate the sign either by-right or by special exception. This statute would supersede local ordinance and is excerpted within the exhibits below.
- Ordinance amendments adopted by the City of Indianapolis in 2023 (744.904.C) would require the filing of a special exception for circumstances when legally established off-premises signs are required to be relocated from highway widening. Although the elevation or relocation sign would need to comply with other applicable developmental standards of the zoning ordinance (regardless of if those standards were enforceable at the initial time of construction), this circumstance matches the context described by the above-referenced statute and ordinance.
- Based on the plans provided to staff, several variances of development standards would be required to legalize the off-premises advertising sign in this location. The petitioner has asked for



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a sign height of 65 feet when 40 is the maximum height (the original sign was 50 feet tall). Additionally, variances for the sign size, degree of separation between the two faces, sign setbacks, and sign proximity to both an interstate exit and other outdoor advertising signs would be needed per current ordinance standards.

- A separate but related section of Indiana Code (8-23-20.5-3), also excerpted in the exhibits below, indicates that under certain circumstances, the county or municipality “is responsible for the payment of full and just compensation for the outdoor advertising sign... including any costs and fees associated with a variance application, if applicable, to the outdoor advertising sign’s owner”. Given this constraint and the government-imposed practical difficulty at the previous site, staff would be supportive of the special exception request.
- The variance requests related to the sign area, sign setbacks from the property lines of the Dalton parcel, and proximity to both other off-premises signs and the centerline of the interstate exit are borne from the state-imposed practical difficulty caused by the INDOT expansion. These variances also come as close as possible to being a ‘one-for-one’ replacement of the removed sign given that it would be relocated to a vacant parcel 187 feet away that is an appropriate area removed from protected districts and oriented to the same location. Staff would be supportive of the variance requests related to area, setbacks, and proximities.
- Based on aerial photography of the previous sign, it appears that the two faces of the originally constructed off-premises sign had a separation of approximately 18 feet. Grant of this variance would allow for legalization of a multi-sided sign with a wider degree of separation (33 degrees and 30 feet apart requested) than what is allowed by ordinance for multi-sided signs or what was existing for the previously legalized sign. The applicant has provided site plan and findings of fact documentation indicating that the increased separation would be needed to allow both northbound and southbound traffic along the interstate to view the contents of the billboard. Given the small degree of increased separation and the fact that the replacement sign has a greater distance from the interstate, staff views this as minimal relief as close to a ‘one-to-one’ replacement as possible and would be supportive of the variance request for increased width between sign faces.
- The variance requested related to height would result in legalization of a sign that is approximately 163% taller than that typically allowed by ordinance. The findings of fact submitted along with this application and additional correspondence with the applicant mention that the increased height would be necessary to allow for visibility over the road deck adjacent to I-69 as well as potential obstruction of the view from a nearby hotel to the northeast (height of 52 feet). Several requests were made to the applicant for renderings showing how severely the proposed sign would be obstructed by these impediments and how visible the sign might be from heights of both 40 feet and 65 feet, but this documentation was not received by the date of publishing. Although IC 8-23-20-25.6 does allow for elevation of a conforming outdoor advertising sign or the sign’s relocation due to highway widening, staff was not provided with conclusive documentation indicating a hardship that would only be made whole by grant of a variance for a dramatically taller sign. Considering this context, staff would make no recommendation on the variance request related to the sign height.



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GENERAL INFORMATION

Existing Zoning	C-4		
Existing Land Use	Undeveloped		
Comprehensive Plan	Community Commercial		
Surrounding Context	Zoning	Surrounding Context	
	North:	C-4	North: Community Commercial
	South:	C-4	South: Community Commercial
	East:	C-4	East: Community Commercial
	West:	C-4	West: Community Commercial
Thoroughfare Plan			
Dalton Street	Local Street	30-foot right-of-way existing and 50-foot right-of-way proposed	
Bash Street	Local Street	40-foot right-of-way existing and 50-foot right-of-way proposed	
Context Area	Metro		
Floodway / Floodway Fringe	No		
Overlay	No		
Wellfield Protection Area	No		
Site Plan	02/13/2024		
Site Plan (Amended)	N/A		
Elevations	Not provided		
Elevations (Amended)	N/A		
Landscape Plan	N/A		
Findings of Fact	02/13/2024		
Findings of Fact (Amended)	03/12/2024		



COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book

Pattern Book / Land Use Plan

- The Community Commercial working typology allows for low-intensity commercial and office uses to serve nearby neighborhoods. The Pattern Book makes no specific recommendations related to the placement of on-premises or off-premises signage.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.



ZONING HISTORY

ZONING HISTORY – SITE

80-Z-103, rezoning of 43.38 acres from D-S zoning to the C-4 zoning classification, **approved**.

ZONING HISTORY – VICINITY

2017UV3005 ; 8130 Summit Hill Drive (northeast of site), Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the automobile sales and fulfillment center, including a 65-foot tall vehicle vending machine (not permitted), with a portion of the parking and circulation area having a five-foot setback along the interstate (10-foot setback required), **approved**.

2016UV3004 ; 8073 Castleton Road (west of site), Variance of use of the Commercial Zoning Ordinance to provide for a retail and wholesale automobile sales facility (not permitted), **approved**.

2001DV1029 ; 8111 Bash Street (northeast of site), Variance of development standards of the Sign Regulations to provide for a 15-foot wide sign canopy above the eastern entrance of a hotel (maximum 10 feet of width permitted), **approved**.

2001ZON148 ; 6752 Gentry Street (north of site), rezoning of 0.69 acres to C-4 zoning, **approved**.

91-UV3-72 ; 8067 Castleton Road (west of site), variance of use of the Commercial Zoning Ordinance to permit the repair of fire trucks, **approved**.

89-Z-51 ; 6817 E 82nd Street (east of site), rezoning of 3.51 acres to C-6 zoning, **approved**.

88-Z-83 ; 8123 Castleton Road (north of site), rezoning of 1.39 acres to SU-9 zoning, **approved**.

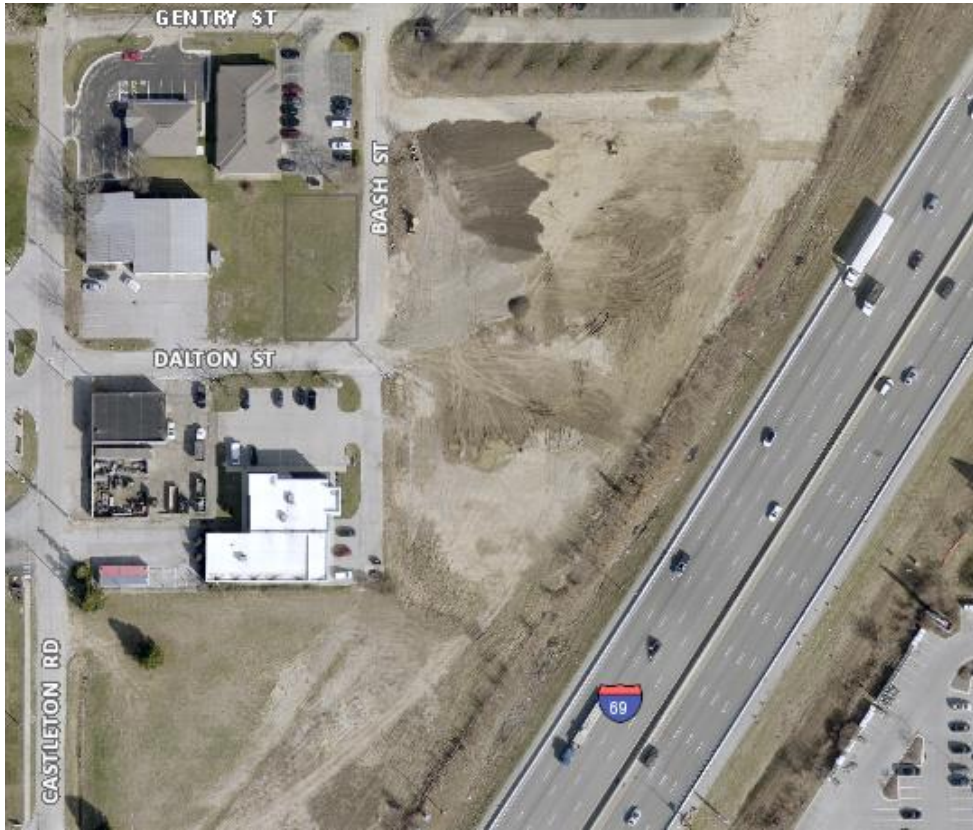
84-HOV-58 ; 8007 Castleton Road (south of site), variance of development standards of the Industrial Zoning Ordinance to provide for the construction and use of a 7978 square foot office and warehouse building within the required front and rear yards and with parking in the side and rear yards, **approved**.

83-HOV-104 ; 8015 Castleton Road (south of site), variance of front, side and rear development standards of the Industrial Zoning Ordinance to provide for an office warehouse on parcel A and future development of parcel B, with a waiver of the one year limit to obtain a permit for parcel B, **approved**.

75-Z-151 ; 8111 Bash Street (northeast of site), rezoning of 7.75 acres to C-4 zoning, **approved**.

EXHIBITS

2024SE3002 ; Aerial Map



2024SE3002 ; Site Plan



2024SE3002 ; Distance from Previous Sign Location



2024SE3002 ; Distance from Interstate Exit Roadway



2024SE3002 ; Sign Visibility Southbound Traffic



Sign Height at 40 Feet



Sign Height at 65 Feet

2024SE3002 ; Sign Visibility Northbound Traffic



Sign Height at 40 Feet



Sign Height at 65 Feet



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2024SE3002 ; I.C. 8-23-20-25.6

IC 8-23-20-25.6 Obstruction or removal of outdoor advertising sign; elevation or relocation of outdoor advertising sign; compensation; notice of project

Sec. 25.6. (a) As used in this section, "market area" means a point within the same county as the prior location of an outdoor advertising sign.

(b) This section applies only to an outdoor advertising sign located along the interstate and primary system, as defined in 23 U.S.C. 131(t) on June 1, 1991, or any other highway where control of outdoor advertising signs is required under 23 U.S.C. 131.

(c) If an outdoor advertising sign is no longer visible or becomes obstructed, or must be moved or removed, due to a noise abatement or safety measure, grade changes, construction, directional sign, highway widening, or aesthetic improvement made by any agency of the state along the interstate and primary system or any other highway, the owner or operator of the outdoor advertising sign, to the extent allowed by federal or state law, may:

- (1) elevate a conforming outdoor advertising sign; or
- (2) relocate a conforming or nonconforming outdoor advertising sign to a point within the market area, if the new location of the outdoor advertising sign complies with the applicable spacing requirements and is located in land zoned for commercial or industrial purposes or unzoned areas used for commercial or industrial purposes.

(d) Except as provided in subsection (j), if within one (1) year of an action being filed under [IC 32-24](#), an owner can demonstrate that the owner has made good faith efforts to relocate a conforming or nonconforming outdoor advertising sign to a conforming location within the market area, but the owner has not obtained a new conforming location, the outdoor advertising sign will be treated as if it cannot be relocated within the market area. Notwithstanding subsection (e) and [IC 8-23-20.5](#), if an outdoor advertising sign cannot be elevated or relocated to a conforming location and elevation within the market area, the removal or relocation of the outdoor advertising sign constitutes a taking of a property interest and the owner must be compensated under section 27 of this chapter.

(e) The county or municipality, under [IC 36-7-4](#), may, if necessary, provide for the elevation or relocation by ordinance for a special exception to the zoning ordinance of the county or municipality.

(f) The elevated outdoor advertising sign or outdoor advertising sign to be relocated, to the extent allowed by federal or state law, may be modified:

- (1) to elevate the sign to make the entire advertising content of the sign visible;
- (2) to an angle to make the entire advertising content of the sign visible; and
- (3) in size or material type, at the expense of:
 - (A) the owner, if the modification in size or material type of the outdoor advertising sign is by choice of the owner; or
 - (B) the department, if the modification in size or material type of the outdoor advertising sign is required for the outdoor advertising sign to comply with [IC 22-13](#).

(g) This section does not exempt an owner or operator of a sign from submitting to the department any application or fee required by law.

(h) At least twelve (12) months before the filing of an eminent domain action to acquire an outdoor advertising sign under [IC 32-24](#), the department must provide written notice to the representative of the sign owner identified on the outdoor advertising sign permit that is on file with the Indiana department of transportation that a project has been planned that may impact the outdoor advertising sign.

(i) If the agency fails to provide notice required by subsection (h) within twelve (12) months of an action being filed against an owner under [IC 32-24](#), the owner may receive reasonable compensation for losses associated with the failure to receive timely notice. However, failure to send notice required by subsection (h) is not a basis of an objection to a proceeding under [IC 32-24-1-8](#).

(j) Notwithstanding subsection (d), if an action that has been filed under [IC 32-24](#) is pending as of July 1, 2023, and:

- (1) the parties have not entered into a final settlement agreement; or
- (2) no final judgment has been entered by the trier of fact;

the owner may relocate the outdoor advertising sign under this section and [IC 8-23-20.5](#).

As added by P.L.222-2017, SEC.2. Amended by P.L.97-2022, SEC.1; P.L.178-2022(ts), SEC.10; P.L.201-2023, SEC.115.



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2024SE3002 ; I.C. 8-23-20.5-3

IC 8-23-20.5-3 Special exception or variance; compensation by county or municipality; eminent domain action

Sec. 3. (a) If a county or municipality either:

- (1) subject to [IC 8-23-20-10](#), does not amend its zoning ordinance as necessary to provide for a special exception to the zoning ordinance for the relocation of an outdoor advertising sign; or
- (2) does not approve a variance to the zoning ordinance filed by the outdoor advertising sign's owner that conforms to the filing requirements;

the county or municipality that did not approve the relocation of the outdoor advertising sign within the market area is responsible for the payment of full and just compensation for the outdoor advertising sign under [IC 8-23-20-27](#), including any costs and fees associated with a variance application, if applicable, to the outdoor advertising sign's owner.

(b) A county or municipality's consideration of a special exception or variance may not be a basis to delay the appointment of appraisers under [IC 32-24-1-9](#).

(c) If a county or municipality has not approved the relocation of an outdoor advertising sign located within its jurisdiction before the date an action under [IC 32-24](#) is filed, the county or municipality must be named as a party to the action.

As added by P.L. 97-2022, SEC. 4. Amended by P.L. 201-2023, SEC. 116.

2024SE3002 ; Project Description

DETAILED DESCRIPTION OF THE PROPOSAL: There is an Off-Premises sign that existed at 8011 Bash Street, Indianapolis, IN 46250, in the County of Marion in the State of Indiana. As a result of a State of Indiana Department of Transportation Road project at the I-465 N/I-69 N Interchange (INDOT Project - ClearPath 465), this necessitates the taking of multiple parcels including the parcel where an Off-Premises sign owned by Reagan Outdoor advertising and the removal of our sign. Pursuant to INDOT Rules and Regulations, and in conformity with state statute, this Off-premises sign is eligible for relocation as it is permitted to be relocated within the same county of the current location per INDOT rules. The outdoor advertising sign is eligible for relocation pursuant to Indiana Code 8-23-20.

The structure will continue to be a v-type structure with each facing being 14 feet by 48 feet in advertising sign space. The structure will also continue to be illuminated by lights affixed to each side of the structure. The relocated sign would consist of the construction and operation of a 65' tall, V-shaped, 14'x48' static off-premises sign (billboard or sign). The proposed height of the sign is necessary to overcome the height of the road deck adjacent to the location along I-69 where the sign will be viewed from. Each face of the proposed sign will be oriented toward Interstate 69 and hold static messages. The property and location is in a commercial area of the city that is bordered by commercial properties. C4 zoning to the North, South, East and West with C7 zoning to the southeast. The Land Use Plan for this parcel and surrounding parcels is Community Commercial.



2024SE3002 ; Findings of Fact (Special Exception)

1. The proposed use meets the definition of that use in Chapter 740, Article II because

The existing outdoor advertising sign that is being relocated pursuant to this special exception has been in place for over 32 years. The existing and relocated signs are both zoned commercial. This highly commercial area is compatible with signage, both on-premise and off-premise.

2. The proposed use will not injure or adversely affect the adjacent area or property values in that area because

The existing outdoor advertising sign that is being relocated pursuant to this special exception already has been in place since 1992 without affecting the neighboring properties in a substantially adverse manner. The new location of the sign is in an area of the City of Indianapolis appropriate for outdoor advertising signs. Further, pursuant to this special exception, the outdoor advertising sign is being relocated to facilitate a road improvement project administered by the Indiana Department of Transportation ("INDOT") known as the ClearPath 465/I-69 Project.

3. The grant will not materially and substantially interfere with the lawful use and enjoyment of adjoining property because

The outdoor advertising sign that is being relocated pursuant to this special exception already has been in place since 1992 without affecting the neighboring properties in a substantially adverse manner. The new location of the sign is in an area of the City of Indianapolis appropriate for outdoor advertising signs. Further, the sign will be located on the perimeter of the property so it will not interfere with future commercial development.

4. The proposed use will be compatible with the character of the district, land use authorized therein and the Comprehensive Plan for Marion County because

The proposed location of the outdoor advertising sign is in an area of the City of Indianapolis (oriented to I-69) appropriate for outdoor advertising signs. The Comprehensive Plan base land use is Community Commercial. Further, this area is zoned commercial, and it already is a highly commercial corridor.

5. The proposed use conforms to the development standards in Chapter 744 applicable to the zoning district in which it is located because

The outdoor advertising sign is being relocated to a nearby site appropriate for outdoor advertising signs. It will continue to be oriented to Interstate 69.

6. The proposed use conforms to all provisions of the Zoning Ordinance, including the performance standards in Chapter 740 and the development standards in Chapter 744 applicable to the zoning district in which it is located because

The outdoor advertising sign is being relocated to a nearby site appropriate for outdoor advertising signs. It will continue to be oriented to Interstate 69. It will be approximately 605 feet from another off-premises sign, adjacent to an I-69 ramp. It will continue to be located in Commercial zoning.

7. The proposed use conforms to all of the use-specific standards in Chapter 743 for that use, including any Special Exception standards for that use because

The outdoor advertising sign is being relocated to a nearby site appropriate for outdoor advertising signs. It is an area zoned and highly developed as commercial.



2024SE3002 ; Findings of Fact (Variances)

- 1. The grant will not be injurious to the public health, safety, morals and general welfare of the community because:**

The existing outdoor advertising sign that is being relocated pursuant to this grant of variance has been in place over 32 years without causing any injury to the public health, safety, morals, and general welfare of the community. The existing outdoor sign is being relocated to facilitate a road improvement project being administered by the Indiana Department of Transportation (“INDOT”) known as the Clear Path 465 Project. The use of the property for a billboard site is consistent with the underlying zoning and usage. The property is zoned C-4 Community Commercial. The majority of the immediate area is commercially zoned.

There is no evidence that the outdoor advertising sign has caused any injury, in any manner, to the public health, safety, morals, and general welfare of the community. The sign will conform to Federal, INDOT, and industry standards with regard to construction and safety. The general welfare of the community could be adversely impacted should the variance not be granted by requiring Indianapolis-Marion County tax dollars to be diverted from other public programs to pay for the taking of the billboard. Additionally, the sign will remain oriented to Interstate 69. The general welfare of the community could be adversely impacted should the variance not be granted by requiring Indianapolis-Marion County tax dollars to be diverted from other public programs to pay for the taking of the billboard.

- 2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:**

Currently, the zoning is C-4 Community Commercial, for this parcel. The existing outdoor advertising sign that is being relocated pursuant to this grant of variance has been in place for 32 years without affecting the neighboring properties in a substantially adverse manner. The location of the already existing sign is in an area of the City of Indianapolis appropriate for outdoor advertising signs

Pursuant to this grant of variance, the outdoor advertising sign will be relocated to facilitate a road improvement project being administered by the Indiana Department of Transportation (“INDOT”) known as Clear Path 465.

A majority of the surrounding parcels are also zoned C-4 and used as commercial and office spaces. The parcel to the south opposite Dalton Street (also zoned C-4) is used as office spaces. The property to the east is now owned by the State for the Clear Path 465 road widening project. The property to the west is an auto repair shop along with more office spaces to the north. The relocation of the outdoor advertising sign is within 187 feet of the removed structure.



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2024SE3002 ; Findings of Fact (Variances) cont.

3. **The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:**

The location of the already existing 50' off-premise billboard sign is in an area of the City of Indianapolis (oriented to I-69) appropriate for outdoor advertising signs. The existing off-premise billboard sign that is being relocated pursuant to this grant of variance already has been in place for over 32 years without generating any adverse impact. The relocation is a direct result of the State of Indiana Department of Transportation's Road project Clear Path 465/I-69. Strict application of the zoning ordinance will result in the loss of the billboard, and the costs of the taking would be shifted to Indianapolis-Marion County pursuant to Indiana Code 8-23-20-25.6. The zoning ordinance places an unnecessary and unusual hardship on the application through no fault or action of applicant and does not further the intent of the zoning ordinance. The petitioner seeks to be made whole through the replacement of the billboard taken under eminent domain. Construction of a 65-foot-tall structure will be approximately 55 feet above road grade, of Interstate-69, as the property sits below Interstate-69 at approximately 10'.

The parcel's overall square footage is approximately 7,900 sf and any future development would require the increased off-premises sign's height, of 65' to allow for construction of a building. Without the increased sign height to 65', a practical difficulty would exist for future development. The existing off-premise sign was also closer to I-69 whereas the relocated sign sits west of Bash Street. Clear Path 465's interstate widening and moving the structure further away from the interstate will cause blockage of the faces at 40', which creates a practical difficulty. To the northeast, of our proposed site, sits a 4-story hotel building at 52' overall height and to the south, sits an office building at approximately 28' overall height creating a practical difficulty if the overall height is set at 40'.

The off-premise billboard sign setback that existed was approximately 60 feet from the right of way. The five (5) foot setback at the proposed off-premise billboard location is measured at approximately 190 feet from the soon to be constructed interstate creating a 130-foot increase in distance from the interstate view. Not receiving the five (5) foot setback variances would create a practical difficulty as the distance seen from the interstate is farther than the off-premise sign that existed and due to the limited square footage of the parcel it would not be possible to have a setback of more than 5'. Also, there is a practical difficulty regarding the limited square footage, of the parcel, where our existing off-premise billboard's face size was 14'x48' and the ordinance requires a parcel, of at least 43,650 sf or above to have the 14'x48' face sizing. A 6'x12' sign would not be able to be seen from the interstate. Also, due to the setback from the interstate, a 30' (33 degree) V separation is also required to view the faces from I-69. It would be a practical difficulty to limit the separation to 15 degrees, as the faces would not be seen from I-69 due to the interstate widening and the setback. Due to special circumstances with the need to relocate the off-premise billboard sign there is a need for flexibility as the existing sign was not previously subject to (i.e. radial distance less than 1,000' from other existing off-premise signs and distance from the centerline of an interstate exit roadway).

2024SE3002 ; Pictures



Photo 1: View of Subject Site & Previous Sign from I-465 looking West (June 2021)



Photo 2: View of Subject Site and Removed Previous Sign from I-465 looking West (August 2023)

2024SE3002 ; Pictures (continued)



Photo 3: View of Previous Sign from I-465 looking South (June 2021)



Photo 4: View of Subject Site from I-465 looking South (August 2023)

2024SE3002 ; Pictures (continued)



Photo 5: Subject Site looking East to I-465



Photo 6: Subject site looking Northwest to Adjacent Property

2024SE3002 ; Pictures (continued)



Photo 7: Previous Sign Approx. Location looking E to I-465



Photo 8: Previous Sign Approx. Location looking N to I-465

2024SE3002 ; Pictures (continued)



Photo 9: Subject Site looking North to Adjacent Property



Photo 10: Subject Site looking South to Adjacent Property



BOARD OF ZONING APPEALS DIVISION III **April 16, 2024**

Case Number: 2024-DV3-003
Property Address: 3308 North Mitthoefer Road (approximate address)
Location: Warren Township, Council District #15
Petitioner: The Finish Line Inc., by Joseph D. Calderon
Current Zoning: I-3 / I-4

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of two incidental signs, each encroaching 4.5-feet into the right-of-way of Mitthoefer Road (prohibited), with the north sign located 70-feet from a dwelling district (100-foot transitional yard required).

Current Land Use: Industrial
Staff Recommendations: Staff recommends denial of the request
Staff Reviewer: Noah Stern, Associate Planner

PETITION HISTORY

ADDENDUM FOR APRIL 16, 2024 BZA DIVISION III HEARING

- This petition was continued from the February 20, 2024 BZA Division III hearing to allow for additional review.
- The petition was then continued to the April 16, 2024 BZA Division III hearing to allow for potential revisions the site plan.

STAFF RECOMMENDATION

Staff recommends denial of the request.

PETITION OVERVIEW

- This petition would provide for the location of two incidental signs, each encroaching 4.5-feet into the right-of-way of Mitthoefer Road (prohibited), with the north sign located 70-feet from a dwelling district (100-foot transitional yard required).
- The business operating at the subject property frequently has semi-trucks entering and exiting for shipments and pick-ups. The site contains two access drives for vehicular entry and exit, leading to the need for adequate signage to communicate to truck drivers the correct access drive to use.



**Department of Metropolitan Development
Division of Planning
Current Planning**

- On-premise signs are required to be placed within the lot lines of private property to ensure that businesses do not obstruct visibility and access to public rights-of-way. The right-of-way at this property measures at approximately 70 feet from the centerline, and 134 feet in total. Additionally, pole signs in industrial districts have a front setback requirement of 5 feet.
- Current Planning Staff, as well as members of DPW are concerned with the proposed placement of the two signs being within the public right-of-way, potentially blocking visibility of both vehicles and pedestrians along North Mitthoefer Road. Despite the right-of-way along this portion of North Mitthoefer Road being wider than usual (approximately 70 feet from the centerline), Staff does not view this as a practical difficulty, as a significant portion of the subject property remains visible from the road at various points of view.
- Additionally, Staff finds that any claimed hardship created by the chain-link fence to be self-imposed, and that the site itself possesses no practical difficulty in nature. Moreover, Staff sees the desire to have the signs placed within the right-of-way to be unnecessary and that the fence does not truly constitute hardship, as alternative solutions exist that allow for adequate wayfinding to truck drivers that do not result in signs being placed within the right-of-way. The petitioner has the ability to alter the fencing to accommodate new signs, the signs could be mounted or bracketed atop the fence, or the signs could be placed just inside the property line at a height that stands above the height of the fence (pole signs are permitted to have a height of up to 20 feet in industrial districts). These options would be both visible to truck drivers from North Mitthoefer Road and located outside public right-of-way. Staff would note that these solutions would likely still require variances for the 100-foot transitional yard and the 5-foot front setback, which Staff would be willing to support, as the main concern remains the placement of signs in the right-of-way.
- To summarize, Staff does not wish to see any signs placed within the right-of-way, the site itself does not create any practical difficulty upon the petitioner, and the petitioner has alternative location options within the subject property lines. For these reasons, Staff recommends denial of the request for the proposed on-premise signs located in the right-of-way.

GENERAL INFORMATION

Existing Zoning	I-3 / I-4	
Existing Land Use	Industrial	
Comprehensive Plan	Heavy Industrial	
Surrounding Context	Zoning	Surrounding Context
North:	I-3	North: Industrial
South:	I-3	South: Industrial
East:	D-4	East: Residential
West:	I-4	West: Industrial
Thoroughfare Plan		
N Mitthoefer Road	Secondary Arterial	Existing ROW: 134 feet Proposed ROW: 80 feet



Context Area	Metro
Floodway / Floodway Fringe	No
Overlay	No
Wellfield Protection Area	No
Site Plan	1/17/24
Site Plan (Amended)	N/A
Elevations	N/A
Elevations (Amended)	N/A
Landscape Plan	N/A
Findings of Fact	1/17/24
Findings of Fact (Amended)	N/A

COMPREHENSIVE PLAN ANALYSIS
Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Greenways Master Plan

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Heavy Industrial working typology for this site.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves
 (Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)



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- The Grassy Creek Regional Park Trail is to connect Grassy Creek Regional Park with the eastern side of North Mitthoefer Road directly across from the subject site.



ZONING HISTORY

ZONING HISTORY – SITE

94-HOV-25, variance of development standards of the Industrial Zoning Ordinance to provide for the construction of a parking area that is 75 feet from Mitthoefer Road (minimum 150 feet required) and that exceeds 10% of the total area of the required front yard (maximum 10% permitted), **approved**.

90-V2-116, variance of development standards of the Industrial Zoning Ordinance to permit the construction of a building without the required 75 feet of public street frontage and to allow off-street parking within the front yard in excess of 10%, **approved**.

ZONING HISTORY – VICINITY

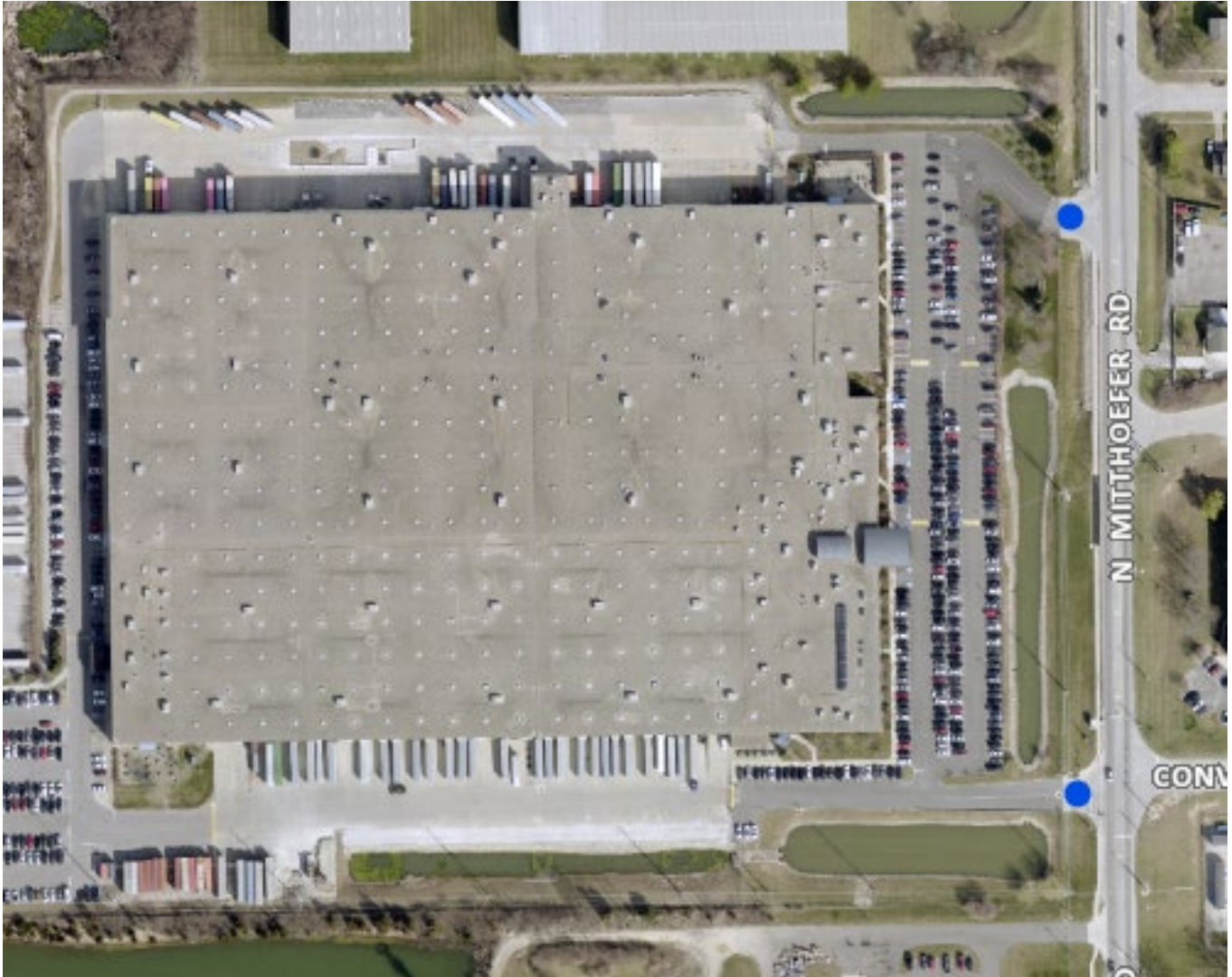
2021ZON041; 3601 N Mitthoefer Road (north of site), Rezoning of 4.81 acres from the D-6II district to the MU-2 district, **approved**.

2020DV1065; 9635 Park Davis Drive (north of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for an industrial development with a 14-foot front setback, a five-foot west side setback and a four-foot south rear setback with deficient landscaped yards, and with parking being within 45% of the front yard (60-foot front setback from proposed right-of-way, 30-foot rear and side setbacks with 10-foot landscape yards required, 10% of front setback may be used for parking required), **withdrawn**.

97-Z-61; 9503 E 33rd Street (west of site), rezoning of 10.993 acres, being in the I-3-S district, to the I-4-S classification to provide for heavy industrial development including a truck terminal over 10 acres in size, **approved**.

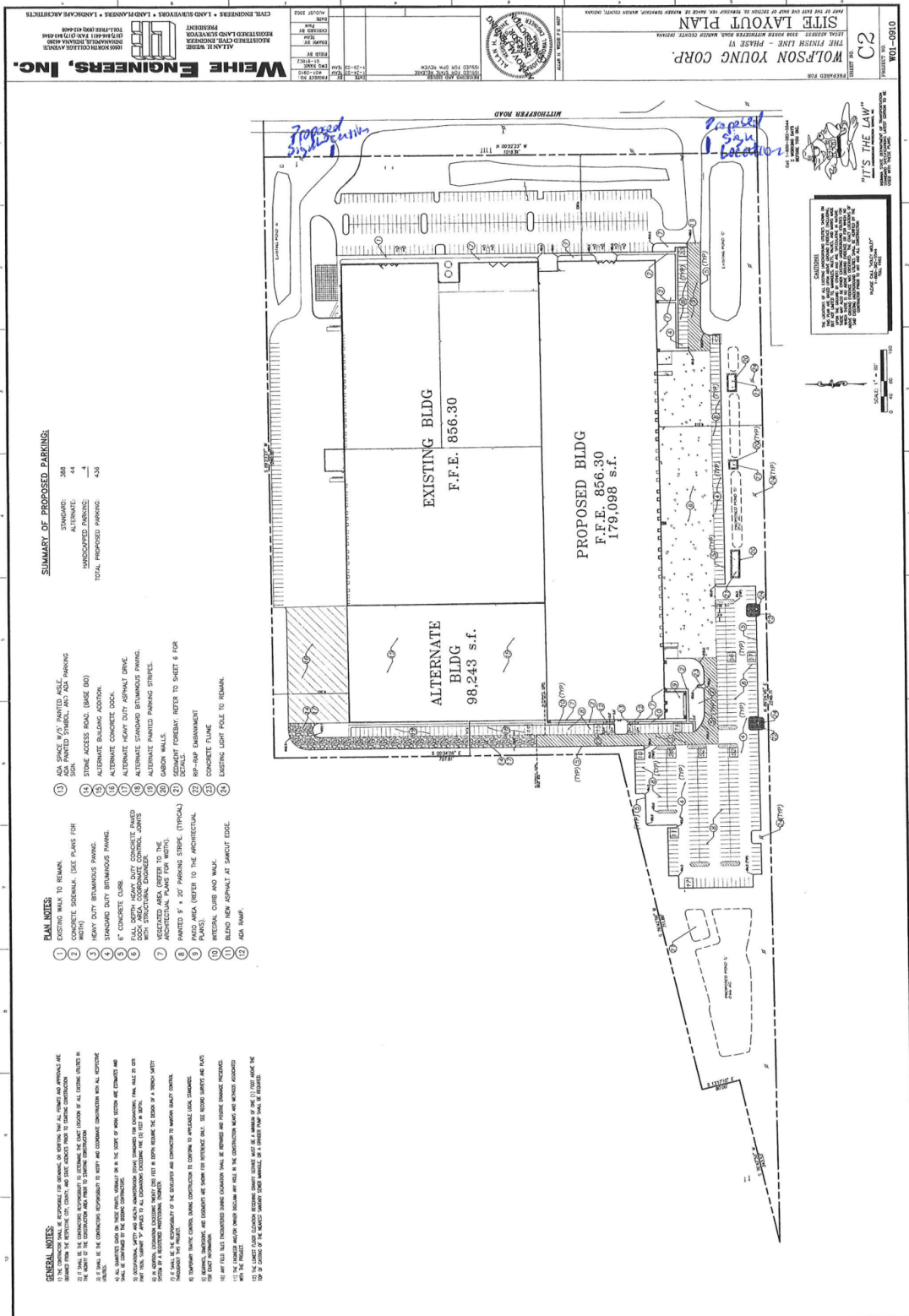
91-Z-15B; 3620 Mitthoefer Road (north of site), requested the rezoning of 46.0 acres from the D-6II district to the I-3-S district, **approved**.

EXHIBITS

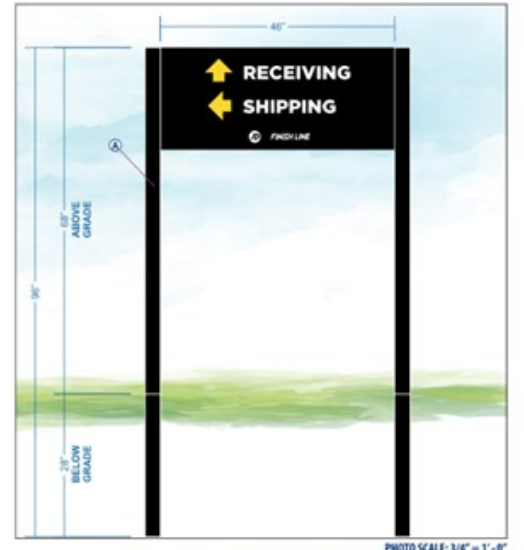


Department of Metropolitan Development
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Current Planning





JD/FINISH LINE • INDIANAPOLIS, IN RENDERING #: 1122-0055B



FABRICATE AND INSTALL QTY 2 D/F POST AND PANEL SIGNS (SIGNCOMP)

SIGN KIT - SERIES 3 3" POST AND PANEL SYSTEM WITH SLIDE BODY PART #K1260
REVEAL POSITION - QTY 2- 3/8" REVEALS
PANEL ADAPTOR - 1/8" PANEL ADAPTOR
PANELS - SERIES 3 ALUMINUM PANELS PAINTED TO MATCH SPECS
POSTS - 3" EXTRUDED SQUARE ALUMINUM POSTS PAINTED TO MATCH SPECS
VINYL - MATCH SPECS

INSTALLATION - PANELS SLID INTO POSTS, POSTS BURIED IN GRADE
 (68" ABOVE GRADE, 28" BELOW GRADE)

		COLOR SPECIFICATIONS: ① M2Z BLACK ② SIGNCRAFT SIGN-TO-WHITE REFLECTIVE ③ SIGNCRAFT SIGN-TO-REDUCED-GLARE REFLECTIVE ④ SIGNCRAFT SIGN-TO-REDUCED-GLARE REFLECTIVE	NOTE: THERE WILL BE COLOR VARIATIONS FROM THIS PRINTED DRAWING TO THE FINAL PRODUCT. COLORS SPECIFIED WILL ALWAYS BE MATCHED AS CLOSELY AS POSSIBLE. RENDERING IS BASED ON ESTIMATED OBSERVING. A FINAL SURVEY MAY ALTER ELECTRICIAN SPECIFICATIONS AND PLACEMENT. IF ILLUMINATED: SHALL BE WIRED TO 120VOLT (60HZ) OTHERWISE SPECIFIED. THIS SIGN IS INTENDED TO BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 600 OF THE NATIONAL ELECTRICAL CODE AND/OR OTHER APPLICABLE LOCAL CODES. THIS INCLUDES PROPER GROUNDING AND BONDING OF THE SIGN.	SD REP: SMC	DESIGNER: JR	PERMIT INFORMATION: N/A
		DATE: 11/14/2022		REVISION DATE: 05/23/2023	FINAL DATE & BY: 1/2	



Department of Metropolitan Development
Division of Planning
Current Planning

Petition Number _____

METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

the signs need to be placed as proposed in order to properly direct traffic to the appropriate location within the facility, which actually will improve public safety.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

the properties to the north, south, and west are industrial properties, and the proposed signs will not interfere with access to or visibility of said properties, and the properties across Milthoeffer Road will likewise not be adversely impacted because there will be no interference with the access to or visibility to or from those properties either.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

the requirement that an incidental sign meet a 100 foot setback requirement will result in the sign not being able to meet its purpose, which in this case is providing important directional information.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____









BOARD OF ZONING APPEALS DIVISION III

April 16, 2024

Case Number: 2024-DV3-006

Property Address: 3805 South East Street (approximate address)

Location: Perry Township, Council District #23

Petitioner: S & L Properties Indianapolis East LLC, by Emily Bublitz

Current Zoning: C-5

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of an eating establishment with the location of a drive through and stacking spaces within the front yard of National Avenue without the required screening of a service unit (not permitted) and 120 parking spaces and zero bicycle parking (maximum 46 spaces permitted, three bicycle parking spaces required) and deficient landscaping.

Current Land Use: Commercial

Staff Recommendations: Staff **recommends approval** of the drive through and stacking spaces within the front yard, but **recommends denial** of the deficient landscaping

Staff Reviewer: Noah Stern, Senior Planner

PETITION HISTORY

ADDENDUM FOR APRIL 16, 2024 BZA DIVISION III HEARING

- The petition was continued from the March 19, 2024 BZA III hearing to the April 16, 2024 BZA Division III hearing to allow for the petitioner to revise the submitted site plan.

STAFF RECOMMENDATION

- Staff **recommends approval** of the drive through and stacking spaces within the front yard, but **recommends denial** of the deficient landscaping.

PETITION OVERVIEW

- This petition would provide for the construction of an eating establishment with the location of a drive through and stacking spaces within the front yard of National Avenue. With the petitioner having revised the initial site plan, many of the requested variances have since been addressed, meaning certain portions of the request will no longer be necessary.
- The revised elevations show proper screening of the drive through service unit, rendering this portion of the request unnecessary.



**Department of Metropolitan Development
Division of Planning
Current Planning**

- The request formally states that a maximum of 46 parking spaces is permitted. This figure was determined by Staff by considering the use and square footage of the proposed new structure on the subject site. However, the petitioner brought to the attention of Staff that they plan on providing a new parking area for the entire parcel, which contains additional uses and buildings beyond the proposed new structure. Given this, the total maximum parking spaces permitted is 190, in which the proposal would be in compliance. Additionally, with the proposed site plan detailing a complete separation from the parking area for the adjacent parcel via landscaping strip, the two parcels would not serve as an integrated center with shared parking, meaning the parking requirements shall be determined by only considering the uses/buildings on the subject site parcel. Therefore, this portion of the request is no longer needed.
- The petitioner’s revised site plan would provide for the sufficient amount of bicycle parking spaces (3), meaning this portion of the request is no longer needed.
- Staff had raised concerns about the drive through and stacking spaces being located within the front yard along National Avenue. The petitioner has since agreed to adequately screen the drive through facility and limit its visibility from public right-of-way. Further, the order window will not be placed within the front yard, and will have ample surrounding landscaping. Staff is therefore, not opposed to that portion of the request.
- The petitioner’s proposed landscape plan is deficient in both frontage trees and interior landscaping trees. The Ordinance calls for 1 shade tree per 35 feet of frontage- with the subject site containing 825 feet of frontage, and the landscape plan showing 8 frontage trees, the plan is deficient by 15 frontage trees. Likewise, the Ordinance calls for 1 shade tree for every 180 square feet of the required interior landscaping area- with the required interior landscaped area being 3699 square feet, and the landscape plan showing 9 trees, the plan is deficient by 11 interior trees. With the site containing sufficient frontage space and interior landscaped space to accommodate these amounts of trees, Staff finds there to be no practical difficulty for not meeting the landscaping requirements set forth by the Ordinance. Therefore, Staff is opposed to the request for deficient landscaping.

GENERAL INFORMATION

Existing Zoning	C-5	
Existing Land Use	Vacant commercial building	
Comprehensive Plan	Village Mixed-Use	
Surrounding Context	Zoning	Surrounding Context
North:	C-5	North: Commercial
South:	C-5	South: Commercial
East:	C-5	East: Commercial
West:	C-5	West: Commercial



Thoroughfare Plan		
South East Street	Primary Arterial	105 feet of right-of-way existing and 104 feet proposed
National Avenue	Local Street	30 feet of right-of-way existing and 48 feet proposed
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	1/23/24	
Site Plan (Amended)	3/27/24	
Elevations	1/23/24	
Elevations (Amended)	N/A	
Landscape Plan	4/8/24	
Findings of Fact	1/23/24	
Findings of Fact (Amended)		

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book

Pattern Book / Land Use Plan

- The Marion County Land Use Plan pattern Book recommends the Village Mixed-Use living typology for this site.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.



Indy Moves
(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.



ZONING HISTORY

ZONING HISTORY – SITE

N/A

ZONING HISTORY – VICINITY

2023DV3027; 3719 S East Street (north of site), Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a 40-foot-tall building addition (maximum 25-foot-tall buildings permitted along transitional yard), **approved**.

2023DV3002; 3620 S East Street (west of site), (Amended) Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of trash enclosures within the front yard of National Avenue, enclosed on three sides only (not permitted, four-sided enclosures required), **approved**.

2020CVR818; 3620 S East Street (north of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the replacement of an existing pole sign with a 36-foot tall, 260-square foot pole sign with a two-foot front setback from East Street (maximum 20-foot tall pole sign and five-foot front setback required), **approved**.

2015ZON091; 3604 Madison Avenue (north of site), rezoning of three acres from the D-A district to the C-7 classification to provide for truck and trailer repair, **approved**.

2013ZON053; 3800 S East Street (west of site), rezoning of 4.82 acres from the D-4 district and the C-5 districts to the C-5 classification to provide for automobile-related uses, **approved**.

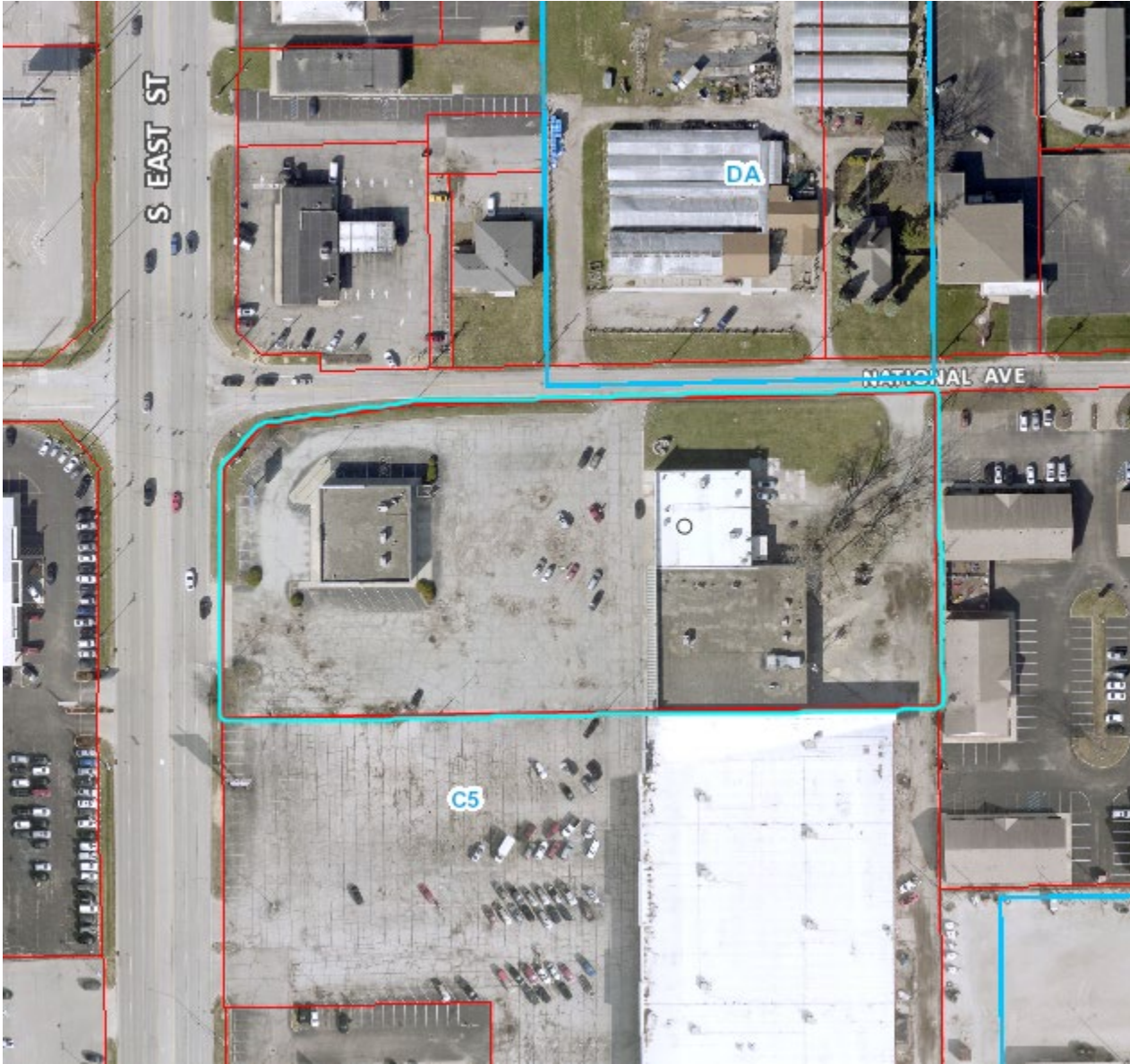
2011DV1056A/B; 3931 S East Street (south of site), Variance of development standards of the Sign Regulations to provide for a 40-foot tall, 360-square foot freestanding sign with a five-foot front setback (15-foot front setback required). Variance of development standards of the Sign Regulations to provide for a freestanding sign with an 80-square foot electronic variable message sign, within 300 feet of a D-4-zoned protected district (600-foot separation required), **approved**.

2003UV1007; 505 National Avenue (east of site), variance of use and development standards of the Commercial Zoning Ordinance to provide for a 100 foot tall freestanding wireless communication tower (not permitted as an accessory use, maximum 65 feet permitted), **approved**.

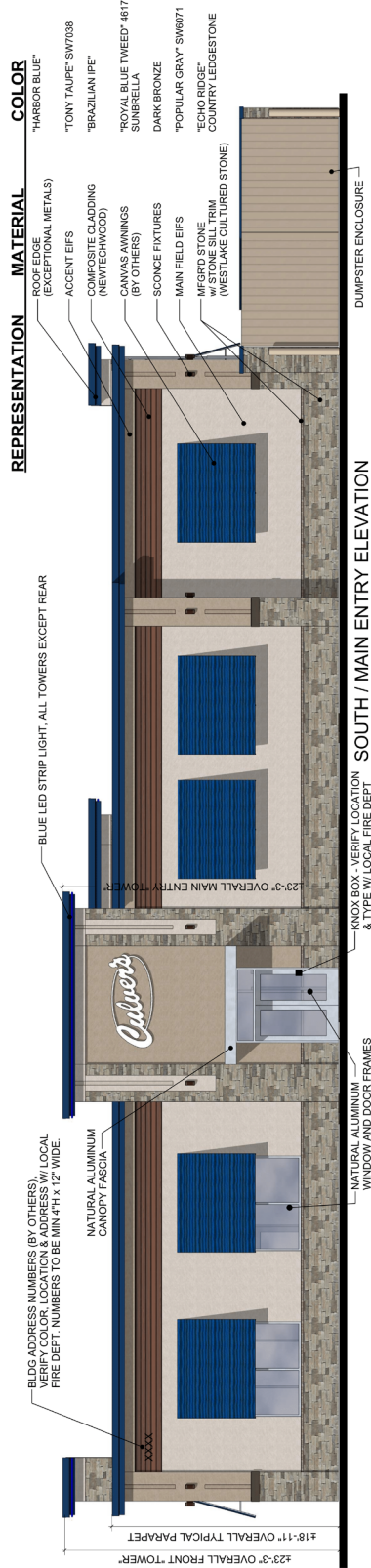
95-Z-189; 3715 S East Street (north of site), rezoning of 2.008 acres from the C-3 district to the C-4 classification to provide for sale of automobile parts and accessories, **approved**.

93-Z-97; 506 East National Avenue (east of site), rezoning of 0.13 acres from C-5 to SU-5 to provide for a radio broadcasting antenna and accessory building, **approved**.

EXHIBITS



 ©2024	NEW CULVER'S RESTAURANT 3805 East Street Indianapolis, IN 46227 County of MARION	 Culver Franchising System, Inc. 1200 West Street, IN 53778 Phone: 608-443-7980	O'LMANN ERNEST MARTIN ARCHITECTS 200 South State Street Bldg 600, Illinois 61008 815-544-7790 Phone	2D ELEVATIONS DATE: 01-10-2024 REVISION: NOTE: THESE IMAGES HAVE PHOTO REALISTIC QUALITIES. THE ACTUAL BUILDING MATERIALS MAY VARY IN APPEARANCE.	2023.102 A1
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<p>2024</p>	<p>NEW CULVER'S RESTAURANT 3805 East Street Indianapolis, IN 46227 County of MARION</p>	<p>Culver's Franchising System, Inc. 1260 Weber Street Phoenix, AZ 85078 Phone: 602-45-7990</p>	<p>OLLMANN ERNEST MARTIN ARCHITECTS 200 South State Street Bellevue, Illinois 61008 815-544-7790 Phone</p>	<p>2D ELEVATIONS</p> <p>NOTE: THOUGH THESE IMAGES HAVE PHOTO REALISTIC QUALITIES, THE ACTUAL BUILDING MATERIALS MAY VARY IN APPEARANCE.</p> <p>Revision: 01-16-2024 Date: 01-16-2024</p>	<p>A2</p>
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 ©2024	NEW CULVERS RESTAURANT 3806 East Street Indianapolis, IN 46227 County of MARION	 Culver Franchising System, Inc. 1260 Water Street Piquette Hill, IN 46376 608-643-7980	OLLMANN ERNEST MARTIN ARCHITECTS 200 South State Street Belvidere, Illinois 61008 815-544-7790 Phone	3D IMAGES NOTE: THOUGH THESE IMAGES HAVE PHOTO REALISTIC QUALITIES, THE ACTUAL BUILDING MATERIALS MAY VARY IN APPEARANCE. DATE: 01-10-2024 PROJECT:	A3
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 @2024	NEW CULVERS RESTAURANT 3805 East Street Indianapolis, IN 46227 County of MARION	 Culver Franchising System, Inc. 1240 Walker Street Phoenix, AZ, USA 85078 608-643-7190	OLLMANN ERNEST MARTIN ARCHITECTS 200 South State Street Bellevue, Illinois 61008 815-544-7790 Phone	STRIP CENTER RE-IMAGE NOTE: THOUGH THESE IMAGES HAVE PHOTO REALISTIC QUALITIES, THE ACTUAL BUILDING MATERIALS MAY VARY IN APPEARANCE.	2024.108 A5
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©2024	NEW CULVERS RESTAURANT 3805 East Street Indianapolis, IN 46227 County of Marion	Culver Franchising System, Inc. 1400 Wacker Street Prairie Ridge, WI 53578 608-643-7800	OLLMANN ERNEST MARTIN ARCHITECTS 200 South State Street Belvidere, Illinois 61008 815-544-7790 Phone	STRIP CENTER RE-IMAGE NOTE: THOUGH THESE IMAGES HAVE PHOTO MATERIALS MAY VARY IN APPEARANCE. REALISTIC QUALITIES, THE ACTUAL BUILDING	2024.116 A6
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Department of Metropolitan Development
Division of Planning
Current Planning



January 18, 2024

City of Indianapolis
200 East Washington St, Suite 1842
Indianapolis, IN 46204

Re: Culver's of Indianapolis, IN – East Street

To whom it may concern:

Enclosed please find the Development Standards Variance application and supporting documents for the proposed Culver's restaurant located at 8305 East Street, Indianapolis, IN. The following information is the proposed plan of operation.

Culver's is a quick serve franchise serving fresh, made to order dinners, sandwiches, salads, and a premium ice cream known as frozen custard. The proposed size of the restaurant is 4,611 square feet, with an indoor seating capacity of approximately 102 guests. The outdoor patio area would seat another 16 guests. The restaurant will also have a drive-thru with two ordering positions and one order pickup window. The total number of parking spaces is 54.

The current zoning for the site is C5. The restaurant will have a drive-thru window facing National Avenue and an outdoor dining patio on the west side. The store hours are planned from 10:00 am to midnight daily.

There are typically twelve (12) persons working onsite in the restaurant at any given shift. Because we have employees of all ages, they will arrive to work by different means; some to drive, some to use the local mass transit system and others to ride share. Employees who drive to work will be provided parking East side of the parking lot.

S & L Properties uses top-of-the-line video and heat detection surveillance for security measures at all franchise locations.

Typical customers are people of all ages who are looking for great food and friendly service. Customers can choose to dine in, carry out, use the drive-thru, or order delivery.

Food product deliveries will occur three times per week during non-business hours. Deliveries will be made by a WB-50 tractor-trailer. Materials used for operation include food products that are made to order such as burgers, chicken, and fish, and also packaging such as cups, bags, and napkins.

The type of waste generated is typical quick serve restaurant food-related waste. Waste disposal will be provided by a local garbage collection company and there will be a recycling program in place.

Please contact me at any time if you need additional information. I look forward to working with the City of Indianapolis on this project.

Best Regards,

Chris McGuire
President, McCON Building Corporation









**Department of Metropolitan Development
Division of Planning
Current Planning**



BOARD OF ZONING APPEALS DIVISION III

April 16, 2024

Case Number: 2024-DV3-009
Address: 801 North Layman Avenue (approximate address)
Location: Warren Township, Council District #14
Zoning: D-4
Petitioner: Paul & Adrienne Du Rant
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building expansion including a driveway accessing St. Clair Street (exclusive vehicular access from improved alley required), resulting in a 65.82 percent open space and a four-foot north side yard setback (65 percent open space, five-foot side yard setback required).

Current Land Use: Single-family dwelling

Staff Recommendation: Staff recommends approval of this petition, subject to a commitment.

Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **approval** of this petition. subject to the following commitment:

1. The Variance grant shall be subject to the removal of the existing driveway with Layman Avenue access, closing the curb cut, and replacing the affected sidewalk, within three months of completion of the garage with St. Clair Street access.

PETITION OVERVIEW

- ◇ The Ordinance was amended in April of 2016, to regulate access and connectivity for the zoning districts. This property is required to gain exclusive access from the existing improved alley, per Section 744-301 of the Ordinance. The “Access to accessory parking areas” provision states that “... if a lot abuts an improved alley and the street frontage is less than 200 feet, vehicle access to that lot shall be exclusively from that alley.” In addition, per Section 744-401 of the Ordinance. The “Access to and from parking lots and garages” provision states that “... no curb cut for street access to an accessory parking area in the Compact Context area, shall be approved if the property has an improved alley along the side or rear lot line.”



- ◇ The alley right-of-way does exist on paper, however, the physical alley is unimproved in Staff’s opinion, since the alley was never paved or developed by the City. The alley is currently being used by several neighbors to access their alley garages, after they added gravel placed in the alley for access. Otherwise, this alley right of way would consist of grass as it does further to the north.
- ◇ Alley access where available, helps the pedestrian environment by reducing the number of new curb cuts across sidewalks and preserves valuable curbside parking, along with reducing the amount of pavement needed for driveways, which causes significant storm water runoff into city drainage systems.
- ◇ The petitioner has agreed to a commitment to remove the curb cut and driveway on their Layman Avenue frontage, and restore that portion of the sidewalk, within three months of the garage being finished.
- ◇ Since the alley to the rear of the subject site was never improved in Staff’s opinion, the request would be a minor deviation from the Ordinance, and consistent with surrounding residential properties.
- ◇ Generally, staff supports property improvements if their location and characteristics do not negatively impact adjoining residential areas by causing a nuisance to the surrounding neighborhood. Staff believes that this would be true for this particular variance request, and additionally that no public safety or health risks would come from the grant of this variance.

GENERAL INFORMATION

Existing Zoning	D-4	
Existing Land Use	Single-Family Dwelling	
Comprehensive Plan	Recommends 3.5-5.0 dwelling units per acre	
Surrounding Context	Zoning	Surrounding Context
	North:	North: Single-Family dwelling
	South:	South: Single-Family dwelling
	East:	East: Single-Family dwellings
	West:	West: Single-Family dwelling
Thoroughfare Plan		
North Layman Avenue	Local Street	60-foot existing and proposed right-of-way.
Context Area	Compact area	
Floodway / Floodway Fringe	No	
Overlay	N/A	
Wellfield Protection Area	No	
Site Plan	February 7, 2024	
Elevations	N/A	
Landscape Plan	N/A	
Findings of Fact	March 21, 2024	



COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends 3.5 – 5.0 dwellings per acre for the site.

Pattern Book / Land Use Plan

- The Comprehensive Land Use Plan recommends 3.5-5.0 dwelling units per acre for the subject site, which provides for a medium density residential use. Permitted are single family and two-family dwellings

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves
(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.

ZONING HISTORY

2016-DV1-010; 944 Lesley Avenue (north of site), requested a variance of development standards to legally establish and provide for a pergola, with a one-foot north side setback, and a patio with a zero-foot setback along the St. Joseph Street frontage, and a raised wood deck, fence, and raised planter, **granted**.

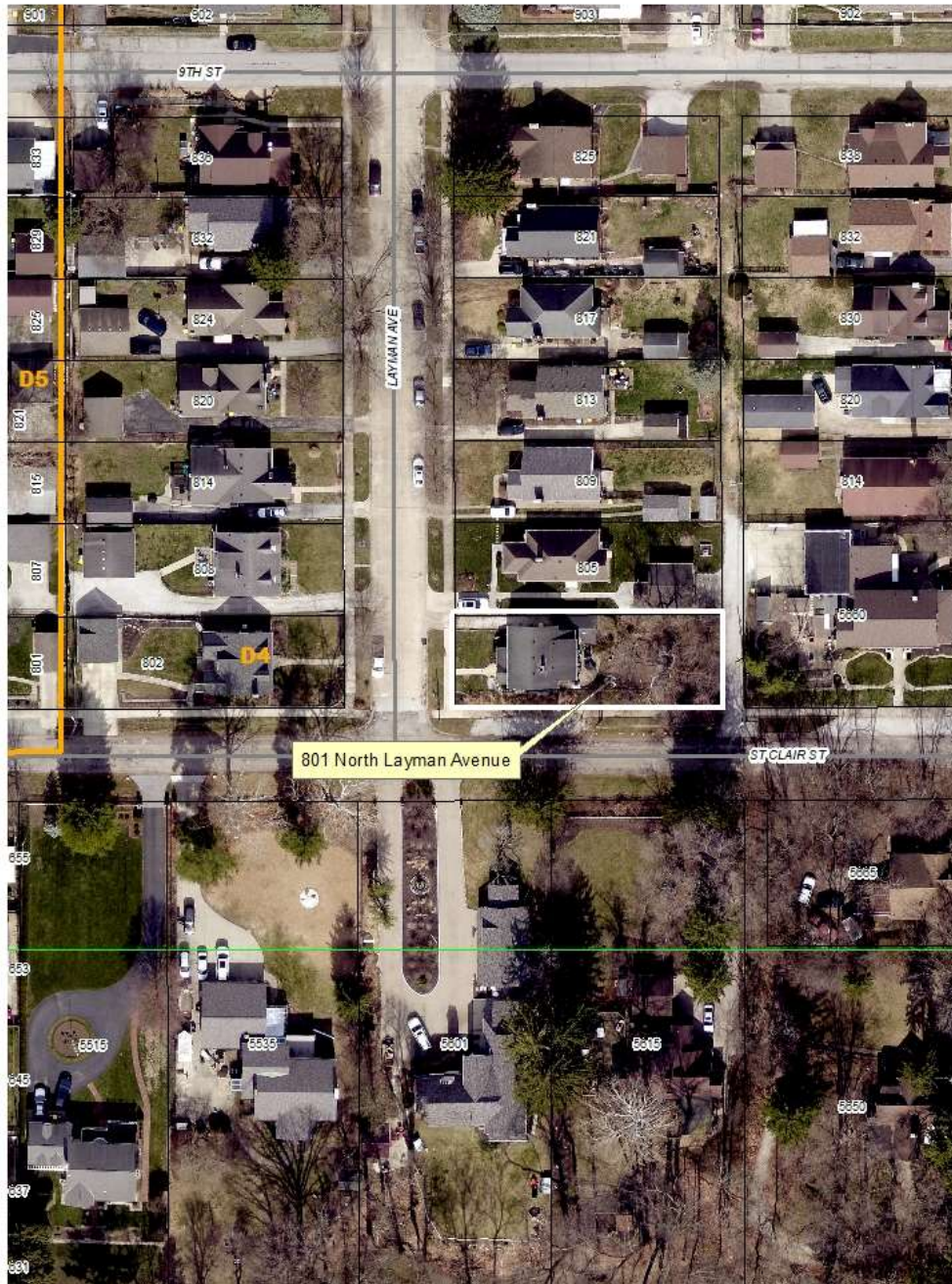
2007-HOV-030, 933 Layman Avenue (north of site), requested a variance of development standards to provide for the construction of a two-story, 24-foot tall, detached garage, **withdrawn**.

99-UV1-61; 5920 East Pleasant Run Parkway North Drive (east of site), requested a variance of development standards to provide for a 19 by 24-foot addition to an existing garage with a side yard setback of 3.7 feet, and total accessory use of 855 square feet, or 78.8% of the main floor area of the primary dwelling, **granted**.

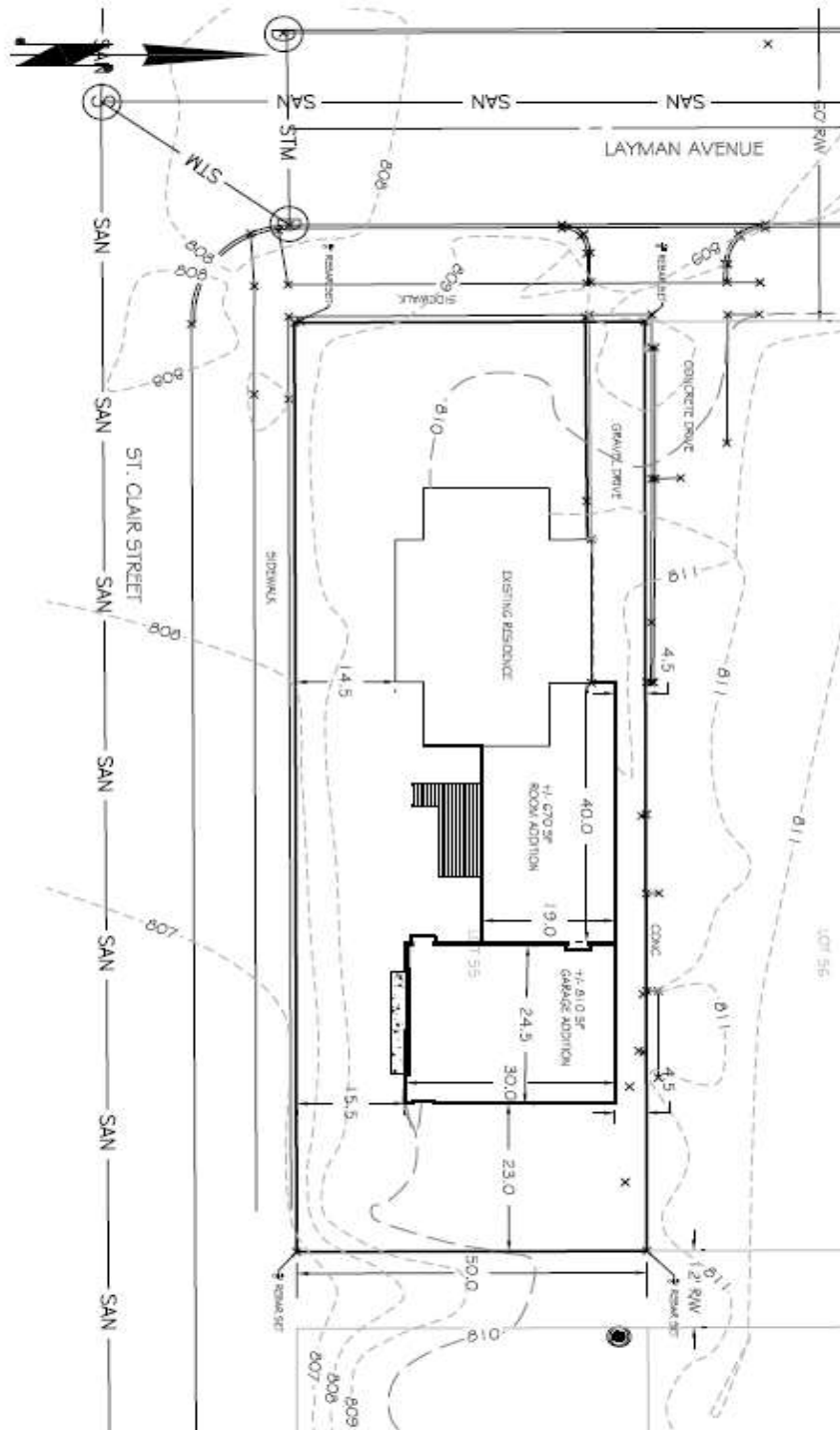
RU

EXHIBITS

Location Map



Site Plan





Findings of Fact

Petition Number _____

**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division _____
OF MARION COUNTY, INDIANA**

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

This grant will not be injurious to the public but the complete opposite as there will be an improvement
in the entire walking experience with the enhancements to the landscape and new hardscape that
will be layed

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

The use and value brought by this approval is to the overall walking experience by the
improvement in the landscaping and smoother hardscape which is not limited just to the warmer
months but year round.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

The current zoning as it stands now will inhibit the amount of greenspace that will be available for
additional plantings and small trees with the driveway entrance off of the alley.

Photographs



Photo of the Subject Property with existing driveway and curbcut on Layman Avenue, looking east



Photo of the proposed garage location with access to St. Clair St., looking north.



Photo of existing alley right-of-way, improved with gravel by adjacent neighbors, looking north.



Photo of existing unimproved alley right-of-way, further north, looking north.



Photo of neighbor's to the north on Layman that back up to the unimproved alley, with driveway street access, looking east.



Photo of neighbor's garages to the west, with unimproved alley right-of-way inbetween garages, with access to St. Clair Street, looking north.

STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2024-DV3-010 (Amended)
Address: 1635 West Michigan Street (approximate address)
Location: Center Township, Council District #18
Zoning: SU-7 / CBD-S (RC)
Petitioner: INDPL Goodwill Industries Inc., by Alan S. Townsend
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of an 18.33-foot-tall freestanding pylon sign (eight-foot-tall sign permitted), with a sign area of 106.66 square feet (36 square feet permitted), with a five-foot front yard setback from West Michigan Street (10-foot required) and located within 300 feet of a protected district (600 feet of separation required).

Staff and the Petitioner have mutually agreed to continue this request, to the May 28, 2024 hearing of Division III, in order to further discuss and amend the request.

JY

STAFF REPORT

**Department of Metropolitan Development
Division of Planning
Current Planning Section**

Case Number: 2024-DV3-012
Address: 2916 West Banta Road (approximate address)
Location: Perry Township, Council District #22
Zoning: D-A (GSB)
Petitioner: Martin Marietta Materials Inc., by Jennifer Milliken
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for Gravel, Sand and Borrow operations with a front yard setback of 100 feet from Banta and Concord Roads and a 100-foot east side yard setback (150-foot front yard setback, 175-foot side yard setback required).

Staff and the Petitioner have mutually agreed to continue this request, to the May 28, 2024 hearing of Division III, in order to further discuss the request.

EDH



BOARD OF ZONING APPEALS DIVISION III **April 16, 2024**

Case Number: 2024-UV3-004

Property Address: 2308 Shelby Street (approximate address)

Location: Center Township, Council District #19

Petitioner: Walter Resinos

Current Zoning: C-3 (TOD)

Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of a tattoo parlor within 55 feet of a protected district (not permitted within 500 feet of a protected district).

Current Land Use: Commercial

Staff Recommendations: Staff has no recommendation for this petition

Staff Reviewer: Noah Stern, Senior Planner

PETITION HISTORY

- This petition is to be continued to the May 28, 2024 BZA Division III hearing due to unpaid filing fees.



BOARD OF ZONING APPEALS DIVISION III **April 16, 2024**

Case Number: 2024-UV3-005
Address: 6901 East 38th Street (approximate address)
Location: Warren Township, Council District #9
Zoning: C-5 (TOD)
Petitioner: Equipment Share, by Michael Rabinowitch
Request: Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for the operation of heavy equipment sales and rental business (not permitted).

Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

The petitioner has filed an automatic continuance, **continuing this petition from the April 16, 2024, hearing, to the May 28, 2024, hearing.** This will require the Board’s acknowledgement.