

BOARD OF ZONING APPEALS DIVISION III

September 17, 2024

Case Number: 2024-UV3-010

Property Address: 6332 Massachusetts Avenue (approximate address)

Location: Warren Township, Council District #9

Petitioner: Baljeet Singh, by David Gilman

Current Zoning: D-3

Request: Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the storage of six commercial vehicles, being three semi-tractor trucks and three associated trailers and the location of a six-foot tall fence within the front yard (not permitted, 3.5-foot tall fencing permitted within front yards).

Current Land Use: Residential

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

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

A timely automatic continuance request was filed by a registered neighborhood organization that continued this petition from the August 20th hearing to the September 17th hearing date.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- The subject site is a narrow and deep lot currently zoned D-3 and improved with a single-family residence near the front property line. It is surrounded by another single-family home to the southwest, a contractor that assembles traffic control systems to the north and east, other residential and institutional uses on the other side of Massachusetts Avenue. The site also has an existing landscape buffer of trees along the southwest property line.
- VIO24-004452 was opened earlier this year in relation to a trucking business being operated at the subject site as well as a fence within the front yard exceeding the height allowed by D-3 zoning. Grant of this variance would allow for the storage of six semi-tractors and trailers on the property as well as the 6-foot fence. The vehicles would be stored on a rear parking pad within

required setbacks and unaffiliated with the nearby storage building owned by the contractor on adjacent property (vehicle access would come from the existing entry on Massachusetts).

- The application filed for this variance did not make explicit reference to legalization of a trucking company use; only to the “personal storage of work vehicles”. If approved, this request would only allow for the parking of commercial vehicles for the property owner, and that any function beyond that scope (such as operating a dispatch center for additional employees) would not be permitted under this variance. Staff has concerns that if granted, this request would result in a use closer in scope to the trucking company use mentioned by the violation (letter within Exhibits) given the multiple commercial vehicles at the site and mention of one additional employee within the plan of operation.
- Staff notes that until recently most of the subject property consisted of grass that has been replaced by ‘asphalt millings’ throughout the backyard (see photographs in Exhibits). The applicant indicates this was added to prevent ruts from being created within the existing grass/stone, presumably a greater risk due to the parking of commercial vehicles at the site. Urbanized areas have increased stormwater runoff volumes and pollutant loadings that can result in a greater concentration of pollutants that can be deposited into stormwater discharges. For this reason, IDEM had standards strictly limiting their use in circumstances under which a MS4 permit would be required. Staff feels that regardless of approval these millings should be removed.
- The plan of operation provided by the applicant indicates that the residence would remain occupied by the owner of the business and that the rear parking area would store three semi-trucks and trailers (staff notes space on the pad for additional vehicles and wrote the blurb for six out of an abundance of caution). The plan also indicates that the trucks would enter or exit the site 2-3 trips per week while engaging in long-haul transports and that the owner also has an employee that would drive for him.
- The current zoning of the property is D-3 to provide for low or medium intensity residential development (predominantly single-family detached dwellings). The Comprehensive Plan recommends most of this property for Suburban Neighborhood uses and a small sliver to the southwest to the Light Industrial typology. Staff would note that (a) the portion of the property recommended for the Light Industrial typology is only a narrow sliver, (b) industrial uses are not a recommended land use when directly adjacent to a living typology (as would be the case here), and (c) ‘light industrial’ uses are typically limited to indoor operations.
- Ordinance regulations on fence heights within front yards exist to facilitate attractive and orderly front yard spaces, and relevant Infill Housing Guidelines discourage placement of privacy fences within front yards. Although the height of neighboring fence is 6 feet (allowed for I-3 zoning), the provided findings of fact are unclear as to what practical difficulty would be created by installation of a compliant 3.5-foot fence. Additionally, since the site is zoned residentially and improved with a residence, this deviation would further reduce the residential character of the site. Staff would recommend denial of the fence height request.

- Staff also feels that approval of this variance would allow for continued operation of a trucking company from the subject site beyond the scope of “personal storage of commercial vehicles” requested by the applicant. No undue hardship would exist that would prevent this site from being developed with standard residential uses (not inclusive of a trucking company), and staff feels that additional industrial encroachment would not be appropriate given the existing church and residences on the other side of Massachusetts. Additionally, staff has concerns about (a) the enforceability of the maximum number of vehicle trips proposed and the (b) placement of asphalt millings throughout much of the property. Staff also recommends denial of the use variance component to allow for parking of trucks.

GENERAL INFORMATION

Existing Zoning	D-3	
Existing Land Use	Residential	
Comprehensive Plan	Suburban Neighborhood/Light Industrial	
Surrounding Context	Zoning	Surrounding Context
North:	I-3	North: Industrial
South:	SU-1	South: Religious Special Use
East:	I-3	East: Industrial
West:	D-3	West: Residential
Thoroughfare Plan		
Massachusetts Avenue	Secondary Arterial	75-foot existing right-of-way and 56-foot proposed right-of-way
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	06/27/2024	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	06/27/2024	
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 most of the subject site for the Suburban Neighborhood living typology which is predominantly comprised of single-family housing (with some attached and multifamily housing development) and supported by a variety of neighborhood-serving businesses and amenities. It does not contemplate industrial uses as a compatible land use type.
- A small portion of the site to the southwest is recommended for the Light Industrial working typology which provides for industrial, production, distribution, and repair uses conducted within enclosed structures and unlikely to create emission of light, odor, noise, or vibrations. Typical uses include warehousing, self-storage, assembly of parts, laboratories, wholesaling, and printing. However, light industrial land uses are removed as a recommended land use where they would be adjacent to a living typology.

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 indicate that privacy fences should not be installed within the front yards of residential properties and that ornamental fences and other design elements should fit the context of the block and neighborhood.

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

2022CVR857 ; 3730 N Kitley Avenue (northeast of site), Variance of Use of the Consolidated Zoning and Subdivision Ordinance to provide for a cement batching plant (not permitted within 500 feet of a protected district) (3766 North Kitley Avenue), **approved**.

2022CZN857B ; 3730 N Kitley Avenue (northeast of site), Rezoning of 9.422 acres from the I-2 (TOD) and D-3(TOD) Districts to the I-2 (TOD) District, **approved**.

2014CVR822 ; 6400 Massachusetts Avenue (southwest of site), Variance of development standards of the Industrial Zoning Ordinance to provide for a building addition, with an approximate 55-foot west side transitional setback, a parking area, with an approximately 85-foot west side transitional setback and 35-foot east side transitional setback (minimum 100-foot side transitional setback required), and approximately 5.042 acres of outdoor storage (maximum 50% of the gross floor area permitted or 15,329 square feet), **approved**.

2014CZN822 ; 6400 Massachusetts Avenue (northeast of site), Rezoning of 8.002 acres from the D-3 district to the I-3-S classification to provide for the building additions, a new office building, additional parking and outdoor storage, related to the expansion of a traffic control systems business, **approved**.

2007UV3022 ; 6400 Massachusetts Avenue (northeast of site), VARIANCE OF USE of the Dwelling Districts Zoning Ordinance to provide for a business involved in the assembly of traffic control systems and related items (not permitted) in an existing 7,490-square foot building, with a 8,320-square foot building addition, 36 off-street parking spaces and an 116, 700 square-foot, or 2.679 acre, gravel outdoor storage area, **approved**.

95-Z-202 ; 6405 Massachusetts Avenue (southeast of site), rezoning of 0.62 acres from D-3 to C-S to allow for an auto repair facility, **approved**.

93-Z-46 ; 3730 N Kitley Avenue (northeast of site), rezoning of 5.265 acres from D-3 to I-2-U zoning to allow for several industrial building including office buildings, **approved**.

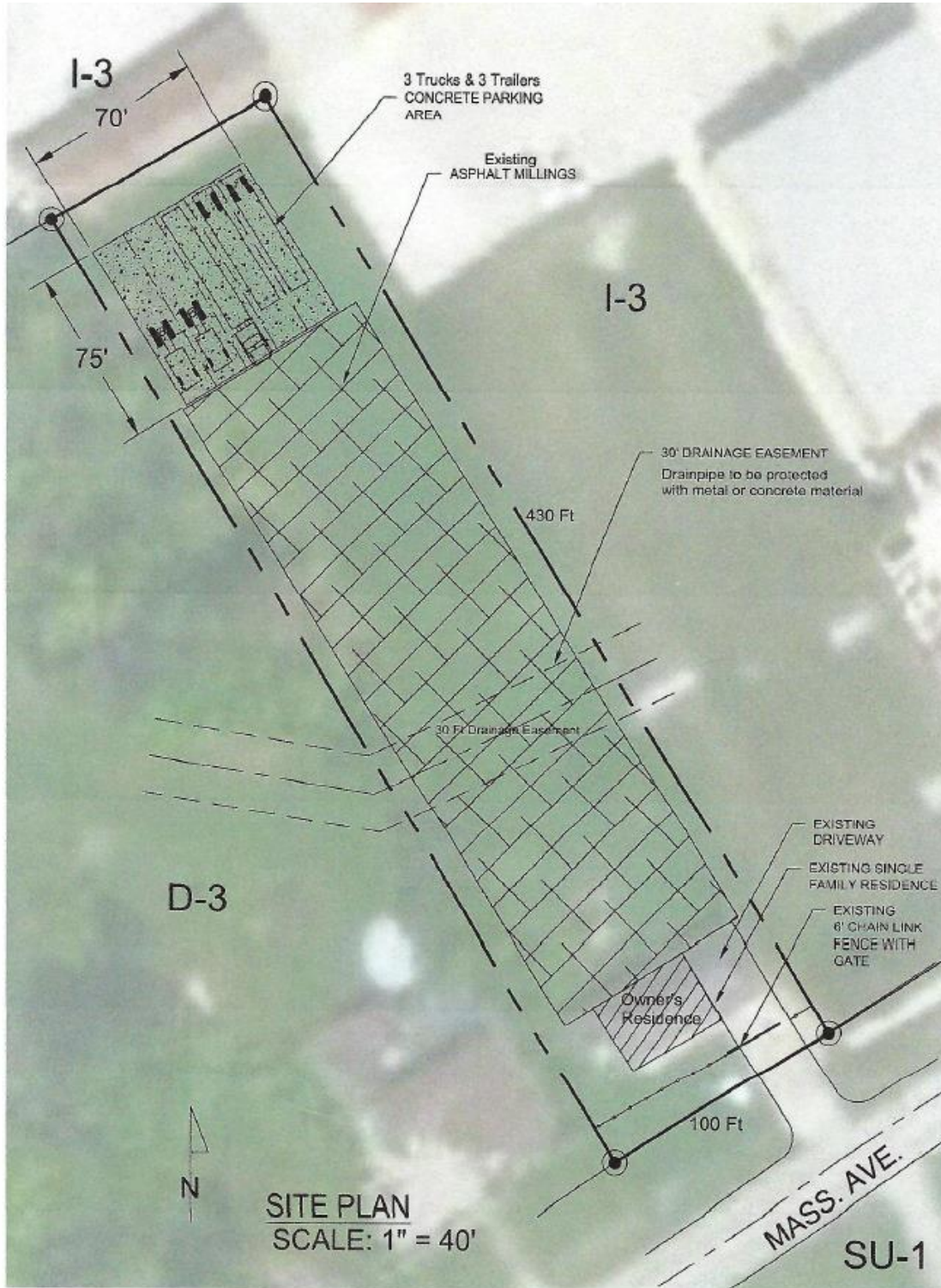
83-V2-21 ; 6580 Massachusetts Avenue (east of site), variance of development standards of the dwelling district zoning ordinance 66-AO-2, as amended to allow for the continued use of a free-standing garage that is not subordinate in area to the primary dwelling as per plans filed, **denied**.

EXHIBITS

2024UV3010 ; Aerial Map



2024UV3010 ; Site Plan





2024UV3010 ; Operation Plan

Plan of Operation
6332 Massachusetts Avenue
7/30/2024

BACKGROUND

The subject site is a 1.00-acre parcel located at 6332 Massachusetts Avenue. The site is adjacent to an existing I3 Industrial business to the east and to the north and the same Industrial user has recently acquired the adjacent property to the west. The site is developed with a single-family residence and has a long narrow asphalt aggregate surfaced rear yard.

Business Use

The owner requests approval to store his three (3) semi-tractor and trailers on site. These vehicles are all his personal property and will only be used for his transport business. The vehicles will not be visible from the public street frontage.

Workforce

The owner has 1 other person that drives for him.

Hours of Operation

Typically, these are long-haul transports so the drivers will be away for 2 to 3 days at a time.

Traffic

Massachusetts Avenue is a primary thoroughfare and the proposed use would only generate 2 to 3 trips per week.

Off-Street Parking

There is more than adequate off-street parking for vehicles.



2024UV3010 ; Findings of Fact (Use)

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

The proposed use is for the storage of the owner's work vehicles and will be placed on a hard surface. The site has direct access to a stormwater drainage pipe to ensure proper drainage. The site has direct access to a public road that is classified as a major city thoroughfare.

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 site is adjacent to I-3 Industrial uses to the east and north. The single family residence to the west is well screened between the property lines. The vehicles will not be visible from the street.

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

The subject property is long and narrow and is adjacent to a heavy industrial use. The site is not suitable for future residential use and they owner purchased the property to benefit from the industrial nature of the developed area with a single family home that will provide the necessary security of his expensive equipment.

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 owner has a long narrow parcel that will be unusable since is not likely to every be developoed for residential use.

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

The proposed use is compatiablr with the existing developed area and will not have a negative impact on the adjacent uses.

2024UV3010 ; Findings of Fact (Development Standards)

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

The existing fence was professionally installed and does not present a threat to any safety or health concern. The gate is operated electronically to ensure easy of entry and existing the site.

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 adjacent industrial use allows a similar type of fence in the front yard area and the residence to the west is recommended for light industrial use.

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

The subject parcel is in a developed industrial area and the site is burdened by residential development standards that do not match the highest and best use for the property or area.



2024UV3010 ; Notice of Violation (VIO24-004452 ; first page of document)

May 29, 2024

Case #: VIO24-004452

SINGH, BALJEET
6332 MASSACHUSETTS AVE
INDIANAPOLIS, IN 46226

RE: 6332 MASSACHUSETTS AVE

Dear SINGH, BALJEET:

A recent inspection of the above referenced property indicated violation(s) of the Revised Code of Indianapolis and Marion County as follows:

Section 740 -1005.A.5. Civil Zoning Violation

Specific Violation: The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Trailer, open or enclosed, with a cargo holder exceeding 12ft. in length...53ft. trailer).

Section 740 -1005.A.5. Civil Zoning Violation

Specific Violation: The parking or storage of a commercial vehicle in any zoning district, when the provisions of which do not specifically permit such a use; (Vehicle, regardless of weight, used or designed to be used as a semi-truck).

Section 740 -1005.A.7. Civil Zoning Violation

Specific Violation: The conduct of any activity in a zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district; (Table 743-1: - A trucking company is not a permitted use in a D-3 zoning district...RAI TRUCKING INC).

Section 740 -1005.A.8. Civil Zoning Violation

Specific Violation: Failure to comply with use-specific standards and zoning district development standards for the D-3 district; (Table 744-510-2: - Fence height exceeding 48 inches in the front yard).

The City of Indianapolis requests your cooperation in correcting the violation(s). If the violation(s) have not been abated before June 28, 2024, this will result in further enforcement action, which could include:

- 1.) Issuance of a citation for each violation (Section 103-3) and / or
- 2.) Assessment of an administrative fee in the amount of two hundred fifteen dollars (\$215.00) for each scheduled visit to the property and the violation is not abated (Section 536-609) and / or
- 3.) Lawsuit with fines up to \$2,500 for each violation plus court costs (Section 103-3)

2024UV3010 ; Photographs



Photo 1: Subject Site Viewed from Southeast (November 2022)



Photo 2: Subject Site (Yard) Viewed from Southeast

2024UV3010 ; Photographs (continued)



Photo 3: Subject Site Viewed from East



Photo 4: Rear of Subject Site Viewed from East

2024UV3010 ; Photographs (continued)



Photo 5: Fence at Subject Site (D-3) and Adjacent Property (I-3)



Photo 6: Adjacent Property to West (viewed from Massachusetts)

2024UV3010 ; Photographs (continued)



Photo 7: Adjacent Property to North/Northeast (viewed from Massachusetts)



Photo 8: Adjacent Property to Southeast