

## STAFF REPORT

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

**Case Number:** 2023-MOD-009 (Amended)  
**Address:** 4375 Kentucky Avenue (approximate address)  
**Location:** Decatur Township, Council District #22  
**Zoning:** C-S  
**Petitioner:** Five Star Oil, Inc., by Garrett E. Lawton  
**Request:** Modification of the Commitments related to 2019-ZON-053 to extend the deadline for the completion of all commitments to March 31, 2024 (previous commitments required completion by several dates in 2020).

### ADDENDUM FOR OCTOBER 18, 2023, METROPOLITAN DEVELOPMENT COMMISSION

This petition was heard by the Hearing Examiner on September 28, 2023. After a full hearing, the Hearing Examiner recommended denial of the rezoning. Subsequently, the petitioner's representative filed an appeal of the Hearing Examiner's decision. A memorandum of her recommendation is attached.

#### September 28, 2023

The Hearing Examiner continued this petition from the August 24, 2023 hearing, to the September 28, 2023 hearing, to provide time for the petitioner's representative to amend the petition and provide new notice.

The amended request extends completion time from September 30, 2023, to March 31, 2024. Staff continues to **recommend approval** of the request that would provide additional time to complete the commitments.

It is staff's understanding that the commitment requiring expansion and installation of the water line will require additional time. Staff would expect, however, that all commitments will be completed by March 31, 2024, and will not support further time extensions.

The Hearing Examiner continued this petition from the July 27, 2023 hearing, to the August 24, 2023 hearing, at the request of the petitioner's representative to provide time to amend the petition and send new notice. The amended petition has not been submitted at this time.

The Hearing Examiner continued this petition from the June 29, 2023 hearing, to the July 27, 2023 hearing, at the request of staff and the petitioner's representative to provide additional time for discussions with the Prosecutor's Office related to on-going violations.

The Hearing Examiner continued this petition from the June 15, 2023 hearing, to the June 29, 2023 hearing, at the request of the petitioner's representative.

(Continued)

## **STAFF REPORT 2023-MOD-009 (Continued)**

### **RECOMMENDATIONS**

Staff **recommends approval** of this request.

### **SUMMARY OF ISSUES**

The following issues were considered in formulating the recommendation:

#### **LAND USE**

- ◇ This 0.82-acre site, zoned C-S, is developed with a fueling station and convenience store with additional tenant spaces. It is surrounded by industrial uses to the west, across Kentucky Avenue, zoned C-S; single-family dwellings to the north and east zoned D-A; and a hotel and commercial uses to the southwest, zoned C-S.
- ◇ Petitions 2019-ZON-053 / 2020-VAR-004 requested rezoning the site from the C-S District to the C-S classification to provide for a convenience store / gasoline station and C-3 uses; modification of commitments related to 2002-ZON-178; and variances to legally establish reduced setbacks. a zero-foot southwest side yard setback, an eleven-foot northeast transitional yard, a zero-foot southeast rear yard and a five-foot front yard.
- ◇ Petition 2002-ZON-178 rezoned the site to the C-S District to provide for a gas station, convenience store, hotel, and restaurant. Petition 2018-PLT-072 platted the site that separated the gasoline station / convenience store from the hotel and commercial uses. Petitions 2018-CZN-850 / 2018-CVR-850 provided for a hotel and other commercial uses adjacent to the south of this site.

#### **MODIFICATION**

- ◇ This request would modify commitments related to 2019-ZON-053 to extend the deadline for the completion of all commitments to September 30, 2023, when the previous commitments required completion by several dates in 2020.
- ◇ The Comprehensive Plan recommends office industrial mixed-use typology. "The Office/Industrial Mixed-Use (Business Park) typology is intended to provide for light industrial, distribution, and office uses conducted within enclosed structures and unlikely to create emissions of light, odor, noise, or vibrations. The typology is characterized by groups of buildings within office/warehouse parks. Examples of typical uses include warehousing, wholesaling, research and development facilities, testing and evaluation facilities, offices, education resource centers, assembly of high technology products, and conference centers. Industrial or truck traffic should be separated from local/ residential traffic in this typology."
- ◇ The Pattern Book lays out a land use classification system that guides the orderly development of the county, protects the character of neighborhoods and serves as a policy guide for development or redevelopment of a site.

(Continued)

## **STAFF REPORT 2023-MOD-009 (Continued)**

- ◇ The following elements of the Pattern Book apply to this site:

### *Conditions for All Land Use Types*

- Master-planned developments in excess of 2 acres should include pedestrian amenities for passive and active recreation internal to the development.

### *Small-Scale Retailing, and Personal or Professional Services*

- Should be subordinate to and serving the primary uses of production, warehousing, and offices.
- Should be adjacent to interstate interchanges if present. If no interchange is present, should be located along arterial streets at the edge of the business park.
- Should be located and served in such a way that the use will not interfere with industrial traffic or loading

## **Overlays**

- ◇ This site is located within an overlay, specifically the Residential Corridor Reserve (RR) overlay. “Overlays are used in places where the land uses that are allowed in a typology need to be adjusted. They may be needed because an area is environmentally sensitive, near an airport, or because a certain type of development should be promoted. Overlays can add uses, remove uses, or modify the conditions that are applied to uses in a typology.”
- ◇ The Residential Corridor Reserve (RR) overlay is intended for areas where the residential nature of a corridor is at risk due to encroachment from other land uses. An example might be residential areas that are being overtaken by school, hospital, or corporate campuses.

## **Planning Analysis**

- ◇ As previously noted, this request amends the completion date of many of the commitments agreed upon during the 2019-ZON-053 / 2020-VAR-004 rezoning and variance process.
- ◇ An Agreed Judgement and Order (Cause Number 49D04-2206-OV-21933, file-dated November 16, 2022) enumerated those commitments that have not been satisfied and / or completed. The defendant (Five Start Oil Inc.) admitted to the allegations and agreed to comply with the commitments related to the 2019 rezoning.
- ◇ Staff would note that further extensions of the completion date will not be supported because final approval by the City-County Council was on November 16, 2020. Staff believes there has been adequate time within which to complete and comply with the required and agreed upon commitments associated with 2019-ZON-053 / 2020-VAR-004.

(Continued)

## STAFF REPORT 2023-MOD-009 (Continued)

### GENERAL INFORMATION

#### EXISTING ZONING AND LAND USE

C-S Fueling station / convenience store / commercial uses

#### SURROUNDING ZONING AND LAND USE

North -	D-A	Single-family dwelling
South -	C-S	Commercial use / hotel
East -	D-A	Single-family dwelling
West -	C-S	Industrial uses

COMPREHENSIVE PLAN The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends office industrial mixed-use typology.

Marion County Land Use Pattern Book (2019).

THOROUGHFARE PLAN This portion of Kentucky Avenue is designated in the Marion County Thoroughfare Plan as a primary arterial, with an existing 162-foot right-of-way and a proposed 112-foot right-of-way.

CONTEXT AREA This site is located within the metro context area.

OVERLAY This site is located within the residential corridor reserve.

SITE PLAN File-dated May 1, 2023

### ZONING HISTORY

**2019-ZON-053 / 2020-VAR-004; 4375 Kentucky Avenue**, requested rezoning of 0.82 acre from the C-S district to the C-S district to provide for a convenience store and gasoline station and C-3 uses and to modify Commitments Three, Six and Seven of petition 2002-ZON-178; and a variance of development standards to legally establish reduced setbacks along the southwest side yard northeast transitional yard, southeast rear yard and a five-foot front yard, **approved and granted**.

**2013-ZON-080 / 2014-VAR-001; 4375 Kentucky Avenue**, requested rezoning of 4.79 acres from the C-S District to the C-S classification and a modification of Commitment #3 of 2002-ZON-178 to provide for a liquor store, in addition to the uses previously permitted; and a variance of development standards of the Commercial Zoning Ordinance to provide for a liquor store within 20 feet of a D-3 zoned protected district, **withdrawn**.

**2002-ZON-178; 4375 Kentucky Avenue**, requested rezone 4.79 acres from the D-A and D-3 Districts, to the C-S classification to provide for a gas station, convenience store, hotel and restaurant, **approved**.

**2000-ZON-180; 4375 Kentucky Avenue**, requested a rezoning of 4.92 acres from D-A and D-3 to C-6, to provide for commercial uses, **denied**.

(Continued)

**STAFF REPORT 2023-MOD-009 (Continued)**

**VICINITY**

**2018-CZN-850 /, 2019-CVR-850; 4545 Kentucky Avenue; 4251 Meadowlark Lane and 5500, 5560, 5570 and 5590 Varna Drive**, requested rezoning of 3.97 acres from C-S to C-S to provide for retail uses in addition to the uses approved by 2002-ZON-178, and to Modify Commitment Six to modify the site plan of May 2, 2003 and a variance of development standards to provide for a 46.5-foot tall hotel, with a 109-foot front setback and 20% transparency, **approved and granted**.

**2018-PLT-072; 4100 Kentucky Avenue (south of site)**, requested approval of a Subdivision Plat, to be known as Woodspring Suites, subdividing 5.376 acres into four lots, **approved**.

**2000-ZON-112; 4701 Kentucky Avenue**, requested a rezoning of 7.35 acres, being in the D-3 District, to the C-S classification, to provide for an integrated center with a hotel, restaurants, and C-1 uses, **approved**.

**97-UV2-101; 4245 Kentucky Avenue**, requested a variance of use of the Dwelling Districts Zoning Ordinance to legally establish an administrative office use within an existing single-family residence (not permitted) and the placement of a pylon sign being 4 by 7.66 feet and 5.08 feet in height (pylon sign not permitted), **denied**.

**87-UV1-73; 4209 Kentucky Avenue**, requested a variance of use of the Dwelling Districts Zoning Ordinance and a variance of development standards of the Sign Regulations for commercial archery, with a ground sign and wall sign, **denied**.

**81-Z-21; 4353 Kentucky Avenue**, requested a rezoning of 3.8 acres from A-2 to C-3 to provide for a florist shop, **withdrawn**.

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## **MEMORANDUM OF EXAMINER'S DECISION**

**2023-MOD-009 (Amended)**

**4375 Kentucky Avenue**

The petition requests a modification of commitments related to 2019-ZON-053 to extend the time for completion of all commitments to March 31, 2024 (previous commitments required completion by several dates in 2020).

Your Hearing Examiner visited the site in 2019 when the rezoning petition was pending, and again prior to this hearing. At both site visits, it was noted that residences remain north and east of the site.

The petitioner's representative explained that the extension of time to comply with commitments was needed primarily due to delays in extending the water line to the property to the north. The representative was recently hired to handle this petition, and did not handle the rezoning petition in 2019.

Two remonstrators attended the hearing, and there was a letter of opposition from the City-County Councillor. The Decatur Township Civic League expressed frustration with zoning commitments being ignored for about 10 years, and explained a timeline of all of the delays. Although the 2019 rezoning petition extended deadlines into 2020, none of the deadlines were met, including deadlines to submit revised site, landscape, and lighting plans, and legal action is pending by the City of Indianapolis. The property owner adjacent to the north expressed similar frustration.

Staff described its recommendation of approval as reluctant. Although extension of the water line may take time, other commitments have been ignored.

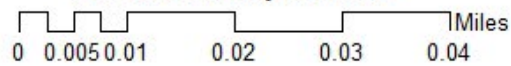
In your Hearing Examiner's opinion, the petitioner has demonstrated a complete lack of respect for the neighbor, the neighborhood association, and the recorded commitments, and has made no substantial effort to comply with any of the commitments. The deadline to comply with the commitments was about 3 years ago, yet, when this petition was originally filed, the requested completion date was September 30, 2023. Due to repeated delays by the petitioner, that date had to be delayed to March 31, 2024. Denial of this petition was recommended.

For Metropolitan Development Commission Hearing on October 18, 2023





4375 Kentucky Avenue





# BOUNDARY RETRACEMENT SURVEY

HARRISON MONUMENT FOUND  
SECTION CORNER TIES  
NE COR. OF  
SECTION 36  
TOWNSHIP 15 N  
RANGE 02 E  
MARION COUNTY, INDIANA

N 89° 10' 01" E 24979.32'  
SECTION CORNER TIES  
NE COR. OF  
SECTION 36  
TOWNSHIP 15 N  
RANGE 02 E  
MARION COUNTY, INDIANA

154.97'

HARRISON MONUMENT FOUND  
SECTION CORNER TIES  
NE COR. OF  
SECTION 36  
TOWNSHIP 15 N  
RANGE 02 E  
MARION COUNTY, INDIANA

P.O.C.  
NE COR. OF  
SECTION 36  
TOWNSHIP 15 N  
RANGE 02 E  
MARION COUNTY, INDIANA



## CONCLUSION OF UNCERTAINTIES

The uncertainty per this survey relative to (1) availability and condition of reference monuments is 0.2 feet, more or less, as relative to (2) occupation or possession lines is 32.3 feet, more or less, and as relative to (3) clarity or ambiguity of recorded description is negligible.

## SURVEYOR'S REPORT

Survey ordered by: Mike Badacha  
Owner of Record: Five Star Oil, Inc.  
Type of Survey: Retracement Survey  
Purpose of Survey: Establish the survey lines and corners of the "SSE"

## NOTES

- Dimensions on this plat are expressed in feet and decimal parts thereof, and are the measured values.
- Survey monuments set for the survey are 5/8 inch diameter 24 inch long rebar set at grade with "Boundary Pro" identification caps, unless otherwise noted on plat.
- A commitment for this insurance was not provided for use on this survey. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.
- Fence lines, as shown, are for informational purposes only. This survey does not warrant the right of possession or ownership of that part of the within described real estate lying between said fence lines and deed lines.
- Unless specifically shown hereon, this survey does not purport to indicate the presence or absence of storage tanks, asbestos, contaminants, or other hazardous or environmentally injurious materials; and the surveyor expressly disclaims any responsibility or liability for the same.
- A search for easements of record is not to be implied by this survey. Matters of zoning compliance is not expressed or guaranteed by this survey.

## UNCERTAINTY IN LOCATION OF LINES AND CORNERS

- Availability and condition of reference monuments:
  - The Northwest corner of the Northeast Quarter of Section 36, Township 15 North, Range 02 East was defined by a Harrison Monument found per Marion County Referenced Section Corner Ties. Uncertainty is negligible.
  - The Northwest corner of the Northeast Quarter of Section 36, Township 15 North, Range 02 East was defined by a Harrison Monument found per Marion County Referenced Section Corner Ties. Uncertainty is negligible.
  - Existing monumentation shown has an uncertainty that is less than 0.2 feet, unless otherwise noted.
- Occupation or possession lines:
  - There was no observable evidence of occupation or possession defining the lines surveyed aside from the fence lines and pavement shown. Distances relative to the calculated survey lines are as shown.
- Clarity or ambiguity of record descriptions used:
  - There does not appear to be any ambiguity in the recorded description.
- The Relative Precision Accuracy (Standard used by the surveyor herein) of the corners of the subject established hereon survey is within the specifications for an Urban Survey (0.02' feet plus 30 parts per million). Suburban Survey (0.13' feet plus 200 parts per million), Rural Survey (0.42' feet plus 200 parts per million).

## LAND SURVEYOR CERTIFICATE

I, Kenneth Gregory Garrison, hereby certify that I am a Land Surveyor, licensed in compliance with the laws of the State of Indiana, and that to the best of my knowledge and belief, the plat within represents a survey made under my supervision in accordance with Title 36, Article 1, Section 12 of the Indiana Administrative Code. The field work for said survey was completed on August 20, 2019.

Survey Prepared by:  
*Kenneth Gregory Garrison*  
Kenneth Gregory Garrison  
Registered Land Surveyor No. 29100014  
Property address: 4375 Kentucky Avenue, Indianapolis, Indiana  
Survey and certified: August 22, 2019



## BASIS OF BEARINGS

Established by GPS-RTK observation on the monuments located for this survey on August 20, 2019.

## LEGEND

○ SURVEY MARKER SET ON EXISTING MONUMENT WITH BOUNDARY PROS CAP (SEE BELOW)	BUILDING
● SURVEY MARKER FOUND AS NOTED ON PLAT	ASPHALT
(M) MEASURED (U) UNMEASURED (D) DEED (P) PLAT (R) RECORDED	CONCRETE
	STONE

## LEGAL DESCRIPTION - INSTRUMENT NO. A201300033297

A part of the West half of the Northeast Quarter of Section 36, Township 15 North, Range 02 East of the Second Principal Meridian located in Marion County, Indiana, described as follows:

Commencing at a Harrison Monument at the Northwest corner of said Northeast Quarter; thence North 88 degrees 10 minutes 07 seconds East (bearing) based upon Indiana State Plane Coordinates, East Zone (NAD 1983) along the North line of said Quarter Section 1136.75 feet; thence South 44 degrees 02 minutes 38 seconds West 944.22 feet to the Northwest corner of the land of Thomas G. and Patricia S. Kirtland and Thomas G. Kirtland (Marion County Record Book 320-321, page 320-321); thence East 123.00 feet to an iron pin on the Southeast right-of-way of State Road 67 and the point of beginning of the herein described parcel; thence continuing South 45 degrees 57 minutes 22 seconds East 182.00 feet to an iron pin on the Northwest line of the Recorder of Marion County; thence South 44 degrees 04 minutes 38 seconds West along said Northwesterly line of said Lot 956 in said Roselawn Park; thence South 45 degrees 57 minutes 22 seconds East along the Northeast line of said Lot 956 a distance of 16.38 feet to a 5/8-inch rebar; thence South 44 degrees 02 minutes 38 seconds West 135.17 feet to a 5/8-inch rebar; thence North 45 degrees 57 minutes 22 seconds West 198.38 feet to the said Southeast right-of-way; thence North 44 degrees 02 minutes 38 seconds East along said Southeast right-of-way 265.17 feet to the point of beginning, bearing 088° 08' 00" E, and subject to all highway rights-of-way and easements.

## THEORY OF LOCATION

The Northwest corner of the Northeast Quarter of Section 36, Township 15 North, Range 02 East was defined by a Harrison Monument found per Marion County Referenced Section Corner Ties. The Northwest corner of the Northeast Quarter of Section 36, Township 15 North, Range 02 East was defined by a Harrison Monument found per Marion County Referenced Section Corner Ties. These corners were utilized in the establishment of the North line of said Quarter Section 36, Township 15 North, Range 02 East. Once this line of said Quarter Section 36, Township 15 North, Range 02 East was established, the bearings and distances and the lines and corners of the "SSE" were recreated. When this method of establishment was utilized, several monuments fell within 0.2 feet of the calculated and accepted survey corners.

BOUNDARY PROS KENNETH GREGORY GARRISON PROFESSIONAL LAND SURVEYOR STATE OF INDIANA - LICENSE NO. 29100014	
SCALE: 1" = 30'	REVISIONS
DRAWN BY: NMS	DATE: AUG 22, 2019
CHECKED BY: NMS	DATE: 11-1-2021
BOUNDARY RETRACEMENT SURVEY	
SHEET 1 OF ONE	



A202000138937

11/24/2020 03:10 PM

KATHERINE SWEENEY BELL  
MARION COUNTY IN RECORDER

FEE: \$ 35.00

PAGES: 8

By: GW

STATEMENT OF COMMITMENTS

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE  
MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL

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 that parcel of real estate:

Legal Description: Attached

Statement of COMMITMENTS:

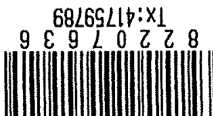
1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. All commitments related to petition 2002-ZON-178 (Instrument Number 2003-0175791) are hereby terminated and replaced by the following commitments in Exhibit A.
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other person acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A" which is attached hereto and incorporated herein by reference. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition # 2019-ZON-053 by the City-County Council changing the zoning classification of the real estate from a C-S zoning classification to a C-S zoning classification; or
- (b) the adoption of approval petition # \_\_\_\_\_ by the Metropolitan Development Commission;

MDC's Exhibit B -- page 1 of 8



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and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the C-S zoning classification or until such other time as may be specified herein.

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, and all owners of real estate within the area included in the petition who were not petitioners for the rezoning or approval. 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. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning or approval under the rules in force at the time the commitment was made);
3. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and
4. \_\_\_\_\_
5. \_\_\_\_\_

The undersigned hereby authorizes the Division of Planning of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of petition # 2019-ZON-053.

IN WITNESS WHEREOF, owner has executed this instrument this 5<sup>th</sup> day of October, 2020.

Signature: _____	Signature: _____
Printed: <u>MAKHAM BADESHA</u>	Printed: _____
Title / <u>MANAGER</u>	Title / _____
Organization	Organization
Name: <u>FIVE STAR OIL INC</u>	Name: _____

STATE OF INDIANA)

) SS:

COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared MAKHAM BADESHA owner(s) (title / organization name) of the real estate who acknowledged the execution of the foregoing

instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this

5<sup>th</sup> day of October, 2020

Douglas W. Shoemaker

Notary Public

Douglas W. Shoemaker

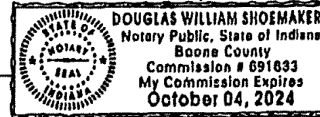
Printed Name of Notary Public

My Commission expires:

10/4/24

My County of residence:

Boone



I affirm under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document unless required by law DAVID KINGEN.

This instrument was prepared by DAVID KINGEN

#### ATTACHMENT "A"

##### OPEN OCCUPANCY AND EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

- (a.) The owner commits that he shall not discriminate against any person on the basis of race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age United States military service veteran status in the sale, rental, lease or sublease, including negotiations for the sale, rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
- (1) any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
  - (2) any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
  - (3) any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
- (b.) The owner commits that in the development, sale, rental or other disposition of the real estate or any portion thereof, neither he nor any person engaged by him to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment, employed or to be employed in the development, sale, rental or other disposition of the

real estate, or portion thereof with respect to hire, tenure, conditions or privileges of employment because of race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age United States military service veteran status.

#### **EXEMPT PERSONS AND EXEMPT ACTIVITIES**

An exempt person shall mean the following:

1. With respect to commitments (a) and (b) above:
  - (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
  - (b) any school, educational, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution;
  - (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;
2. With respect to commitment b, a person who employs fewer than six (6) employees within Marion County.

An exempt activity with respect only to commitment (a) shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

**EXHIBIT A**

**THE PETITIONER COMMITS TO THE FOLLOWING:**

1. With the exception of the location of vent equipment/tubes, air pump equipment, and landscaping within the transitional yards, development of the site otherwise shall be subject to the site plan on file-dated February 19, 2020.
2. An amended site plan shall be simultaneously submitted for Administrator Approval and review by the Decatur Township Civic Council, showing the relocation of the venting equipment/ tubes for the underground gasoline storage tanks from the northeast transitional yard that extends from Kentucky Avenue, to the north corner of the convenience store. Relocation of this equipment shall be completed by November 1, 2020.
3. An amended site plan, which may be the same document as just mentioned, shall be simultaneously submitted for Administrator Approval and review by the Decatur Township Civic Council, that shows the removal of the air pump equipment out of the northeast transitional yard within 30 days of final approval of the rezoning request. Relocation of this equipment shall not be to any other transitional yard and shall be completed by November 1, 2020.
4. An amended site plan, which may be the same document as just mentioned, shall be simultaneously submitted for Administrator Approval and review by the Decatur Township Civic Council, that shows the landscaping along the two transitional yards that abut 4365 Kentucky Avenue and 5540 Varna Drive, respectively. This plan shall be submitted within 30 days of final approval of this zoning. The depth of the transitional yard abutting 4365 Kentucky Avenue shall be 16 feet 5 7/8 Inch, while the depth of the transitional yard abutting 5540 Varna Drive shall be 20 feet. Both landscaping plans shall include a continuous 3 feet tall mound topped with a 6 foot tall privacy fence and a double row of evergreen trees along the residents' side of the mounding. The evergreens shall be spaced far enough apart for healthy growth and close enough on center so that at maturity they will form a visual screen of the subject parcel. The fence shall have a 24 Inch screen affixed along the bottom (on the side facing the subject parcel) designed to keep trash and debris from the neighbors' yards. The landscaping shall be fully installed by November 1, 2020. The landscaping shall be maintained with healthy plants at all times. Diseased and dead plants shall be removed and replaced with live plants of the same species.
5. The petitioner shall obtain an Improvement Location Permit for the rear building addition within 60 days of final approval of the rezoning.
6. The water main shall be extended to the property line shared with 4365 Kentucky Avenue and sized to eventually provide water to unserved residences along Kentucky Avenue from this site to Hanna Avenue. This extension shall be completed by November 30, 2020.
7. The petitioner shall relocate the light pole or reconfigure the access drive to eliminate the existing traffic hazard by December 31, 2020.
8. There shall be no more than three (3) tenant bays in the small retailcenter.
9. Except for the gas station, only C-3 uses will be allowed on the site with the following uses excluded:

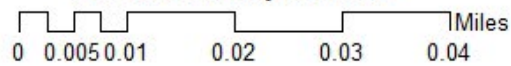


- A. Emergency Shelter, daily
  - B. Check cashing or validation service
  - C. Outdoor advertising off premise sign
  - D. Tattoo Parlor
  - E. Bar or tavern
  - F. Pawnshop
  - G. Wireless communication facility
  - H. Plasma (Blood) center
  - I. Vape shops
  - J. Bed and Breakfast facility
  - K. Laundry (coin)
  - L. Liquor sales
  - M. Garden as a primary use
  - N. Mortuary, Funeral home
10. The two additional proposed tenants shall have rights to place smaller signs under the pricing signs, on the free-standing pole sign that is off site; but is the subject of an easement granting sign rights to the petitioner.
  11. Any modifications to the exterior of the building on this site shall be designed with materials to be compatible with the hotel exterior.
  12. There shall be no outdoor storage on the subject site.
  13. No automobile repair shall occur on the premises.
  14. No trailer or tent shall be located on the property.
  15. No noxious or offensive trade, odor or activity shall occur on the subject property.
  16. No bio-hazardous materials shall be located on the site.
  17. No parking of house trailer, RV, trailer, or semi-truck or trailer shall be located on the premises; except for delivery or pick up purposes and shall not be parked on the site overnight.
  18. No vehicles shall be stored or parked on the site overnight.
  19. The hours of operation shall not exceed 7 am to 9 pm daily; except the 24-hour operation of the convenience store & gas station.
  20. All free-standing lights shall be of "shoebox" design and shall be shielded so as to prohibit any light from being projected into any protected district. The lighting Intensity shall be subject to IMPD's recommended brightness for the site.
  21. All lights mounted on the building and within the canopy, shall be shielded so as to prohibit any light from being projected onto any protected district. The lighting Intensity shall be subject to IMPD's recommended brightness for the site.
  22. No accessory uses shall be permitted on the property.
  23. At least two perimeter surveillance cameras with at least ten (10) mB upload speeds connected to IMPD's B-link system shall be installed on the subject property,
  24. At least once each season (spring, summer and fall) of each year, all walkways and driveways shall be cleaned by power washing those surfaces.

25. The development shall gain all vehicular access from only Kentucky Avenue. There shall be no vehicular access to Varna Drive.
26. Tower mounted wireless communication facilities shall be prohibited.
27. Off-site advertising sign (billboards) shall be prohibited.
28. All construction traffic shall utilize only Kentucky Avenue to access the site and have no construction traffic on Varna Drive.



4375 Kentucky Avenue







View looking north along Kentucky Avenue



View looking south along Kentucky Avenue





View of site looking southeast



View from site looking northwest at adjacent dwelling





View of site south along eastern boundary



View of site looking southwest





View of site looking south at adjacent land uses



View of site looking north along eastern boundary





View from rear of site looking northwest



View from site looking north along southern boundary





View from site looking south



View of shoebox lighting fixture



View looking north along northern boundary