



BOARD OF ZONING APPEALS DIVISION 2

March 12, 2024

Case Number: 2023-DV2-038
Property Address: 8245 Allisonville Road
Location: Washington Township, Council District #3
Petitioner: Raising Cane’s Restaurants, LLC, by Joseph D. Calderon
Current Zoning: C-4

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of an eating establishment, with a drive through, including stacking and service units, within the front yard of East 82nd Street, with a 9.2 front yard setback (service units and stacking spaces not permitted along facades adjacent to public rights-of-way with a width greater than 30-feet or related front yards, minimum 10-foot setback required) and without the required screening and exclusive bypass aisle.

Current Land Use: Vacant commercial building

Staff

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

Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This petition was automatically continued, from the January 9, 2024, hearing, to the February 13, 2024, hearing, at the request of City County Councilor Daniel Boots, and was continued for cause from the February 13, 2024, hearing, to the March 12, 2024, hearing, at the request of the petitioner.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition

PETITION OVERVIEW

- ◇ The petitioner proposes to demolish and replace the existing structure, with an eating establishment, having a drive through, including stacking and service units, within the front yard of East 82nd Street, with a 9.2 front yard setback
- ◇ Staff believes that the proposed drive-through facility in the front yard of East 82nd Street, with all of its associated elements, with a reduced front setback, would be injurious to the public health and safety with the headlights from the drive through customers facing east, distracting the oncoming west bound traffic on East 82nd Street.



- ◇ The petitioner has proposed additional landscaping, which would be minimal in helping to prevent this distraction to the westbound motorists, as the proposed trees are all deciduous and not evergreen, which would not provide year-round screening of customer headlights, especially for west-bound vehicles at an elevated height descending from the I-465 overpass.
- ◇ The petitioner has requested a setback reduction to 9.2-feet, while still providing the full amount of required landscaping. However, Staff feels the proposed reduced 9.2-foot setback would be insufficient in buffering the service side of the restaurant from the East 82nd Street frontage and passing traffic. Customers in the drive-through facility, and their headlights would face westbound traffic on East 82nd Street descending from the elevated I-465 overpass. Any reduction in setback would provide less of the required and needed separation from the westbound traffic from the headlights of the vehicles in the drive through lane.
- ◇ Any deviation from the minimum standards should be related to the property, and not to the proposed development. There is no inherent practical difficulty caused by the terms of the Ordinance upon the subject site to keep it from being developed with C-4 uses, as it was previously. This site would consist of new construction that could be designed to meet the terms of the Ordinance. The proposed structure could be modified to meet the required 10-foot setback, as required by the Ordinance. The choice to place the drive through in the front yard is a result of over development of the site, as the Ordinance does not require a drive through for this site.

GENERAL INFORMATION

Existing Zoning	C-4	
Existing Land Use	Commercial	
Comprehensive Plan	Regional Commercial	
Surrounding Context	Zoning	Surrounding Context
North:	C-4	North: Regional Commercial Shopping Center
South:	C-3	South: Community Commercial
East:	C-4	East: Regional Commercial Shopping Center
West:	C-4	West: Regional Commercial Shopping Center
Thoroughfare Plan		
East 82 nd Street	Primary Arterial	224-foot right-of-way existing and proposed
Context Area	Metro	
Floodway / Floodway Fringe	No	



Overlay	No
Wellfield Protection Area	No
Site Plan	12/11/2023
Site Plan (Amended)	N/A
Elevations	N/A
Elevations (Amended)	N/A
Landscape Plan	1/25/2024 (Amended)
Findings of Fact	12/11/2023
Findings of Fact (Amended)	N/A

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Castleton Strategic Plan

Pattern Book / Land Use Plan

The Marion County Land Use Plan Pattern Book recommends the Regional Commercial working typology for this site. This typology provides for general commercial, and office uses that serve a significant portion of the county rather than just the surrounding neighborhoods. Uses are usually in large freestanding buildings or integrated centers. Typical examples include shopping malls, strip shopping centers, department stores, and home improvement centers.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- The Castleton Strategic Plan seeks to integrate pedestrians, cyclists, landscape, drainage, signage, and improved edges to give new identity. make a complete street. The street should be activated with buildings rather than parking, and to the same degree, auto-related uses such as drive through's.

Infill Housing Guidelines

- Not Applicable to the Site.

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



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

- Not Applicable to the Site.

ZONING HISTORY

2022-UV1-012; 5531 East 82nd Street (south of site), requested a variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 42-foot tall, 672-square foot digital off-premise advertising sign, within 415 feet of a protected district, and to allow for digital messages to display for minimum of eight seconds, **denied**.

2017-DV2-010; 5440 East 82nd Street (west of site), requested a variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for deficient transparency on the east elevation, **withdrawn**.

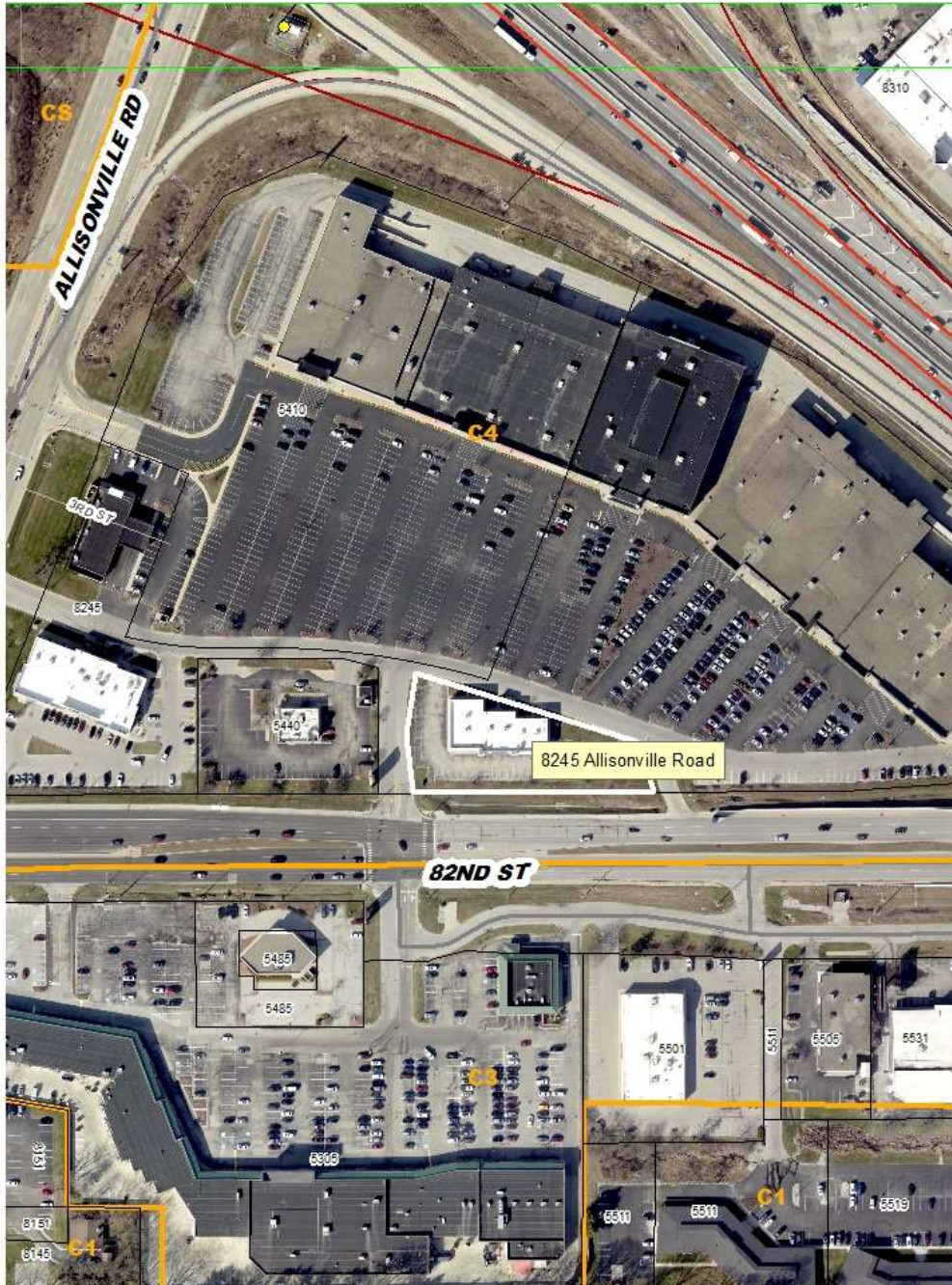
2016-AP1-001; 5505 East 82nd Street (south of site), requested an appeal of the Administrator's Decision of the Department of Business and Neighborhood Services, determining that the proposed use is an adult services establishment, requiring the grant of a variance of use, **denied**.

2009-UV2-019; 5601 East 82nd Street (southeast of site), requested a variance of use and development standards of the Commercial Zoning Ordinance to provide for a tavern with live entertainment (not permitted), with 39 off-street parking spaces (minimum 190 off-street parking spaces required), **dismissed**.

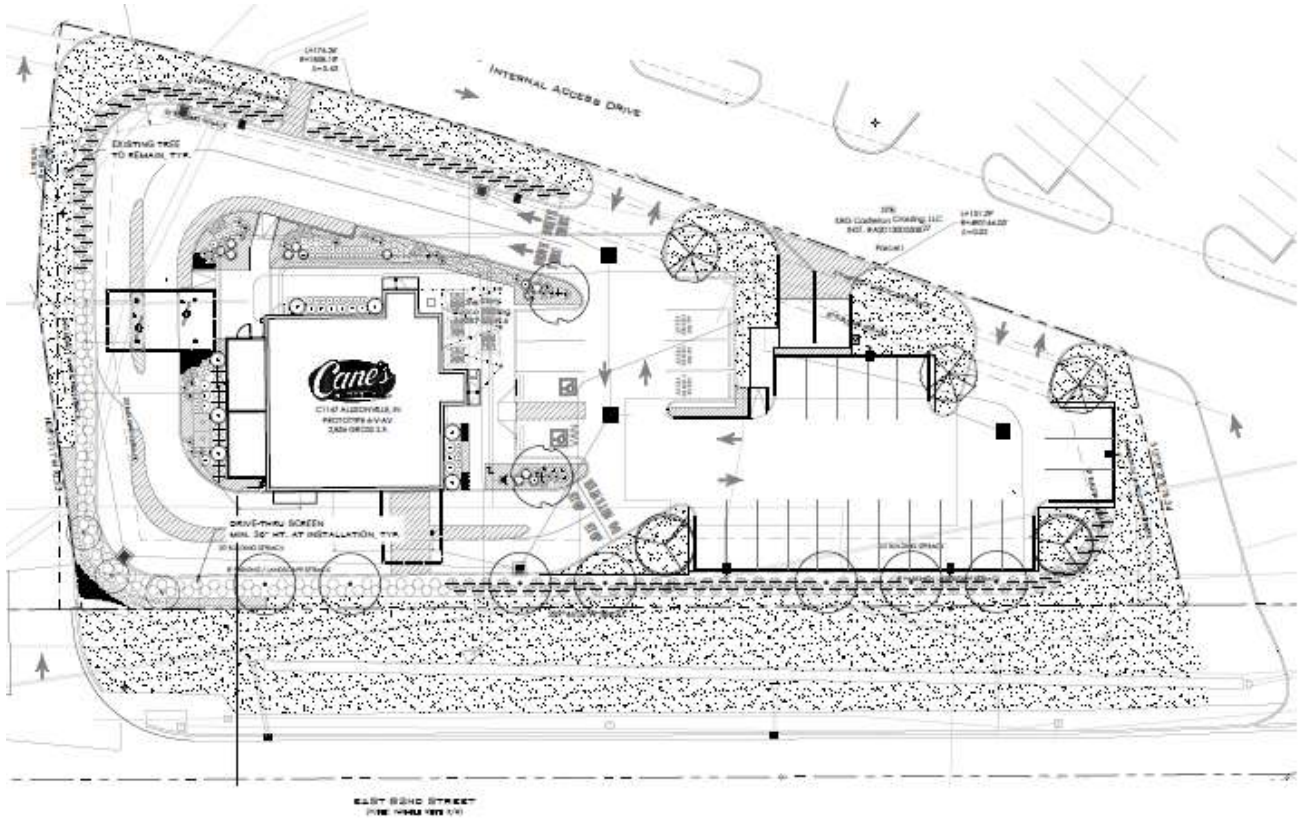
2007-UV1-018; 5501 East 82nd Street (south of site), requested a variance of use and development standards of the Commercial Zoning Ordinance to provide for a restaurant with 80 amusement machines (maximum four amusement machines permitted) with 11 parking spaces (minimum 127 parking spaces required), **granted**.

2005-DV2-057; 5601 East 82nd Street (southeast of site), requested a variance of development standards of the Commercial Zoning Ordinance to legally establish a tavern located ten feet from a protected district (taverns not permitted within 100 feet of a protected district), **granted**.

EXHIBITS



Proposed Landscaping Plan





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 Petitioner will provide screening such that there will be no significant light spill affecting vehicular traffic on East 82nd Street, and there will be adequate opportunities for customers to make an informed decision to enter or exit the drive through stacking lanes. The second (outside) stacking lane will be predominately available for use as a by-pass lane.

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 proposed use will be self contained within the bounds of existing access drives, and is part of an integrated retail center, where there is an established network of access drives and parking areas, so there will be no disruption to activities taking place within the integrated center or other properties adjoining same.

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

the shape of the parcel being developed is triangular, with inconsistent north to south depth, making it difficult to comply with the two (2) standards sought to be verified, especially since the longest base of the triangle fronts on 82nd Street.



Subject site existing building to be demolished, looking north



Subject site proposed drive through location looking north



Subject site proposed drive through location in front yard of East 82nd Street looking west



Subject site proposed drive through location in front yard of East 82nd Street looking east



Adjacent regional commercial uses to the north



Adjacent regional commercial use to the west, looking south