

**BOARD OF ZONING APPEALS DIVISION I**

**December 3, 2024**

**Case Number:** 2024-DV1-037 (Amended)  
**Address:** 2402 East 38<sup>th</sup> Street (approximate address)  
**Location:** Washington Township, Council District #8  
**Zoning:** C-5 (TOD)  
**Petitioner:** Popeyes Louisiana Kitchen Inc., by Gilligan Company  
**Request:** Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the renovation of an existing eating establishment including an additional drive-thru lane within the front yard of Keystone Avenue (not permitted)

**Current Land Use:** Commercial Restaurant

**Staff Recommendation:** Staff recommends Denial of this petition.

**Staff Reviewer:** Robert Uhlenhake, Senior Planner

**PETITION HISTORY**

This petition was heard on November 7, 2024, and had an indecisive vote of 2-1 from the Board. Therefore, it was continued to the December 3, 2024, hearing.

At the November 7 hearing, the request for the deficient primary entry transparencies along the east and west facades was withdrawn, after it was determined the existing transparencies were legally non-conforming and would not be altered or changed.

**STAFF RECOMMENDATION**

Staff recommends **denial** of this petition.

**PETITION OVERVIEW**

**Drive-thru Lane within the front yard.**

- ◇ The site currently contains a commercial eating establishment with an existing drive-thru lane. The menu board and beginning of the service unit is located within the side yard to the north, while the rest of the drive-thru lane and pick-up windows constituting the end of the service unit are along the western side of the building in the front yard of North Keystone Avenue. The current building was constructed in 2015 under a previous version of the ordinance and is considered legally non-conforming, requiring any expansion of the building or site features to be subject to the current version of the zoning ordinance.

- ◇ In 2024, permit applications were made to allow for an interior and exterior remodeling of the property. These plans included a partial addition to the drive-thru lane (see site plan below). This reconfiguration of the site would require the full drive-thru lane to comply with current ordinance standards for stacking spaces within front yards, and for the primary entry transparencies to be compliant as well.
- ◇ Current ordinance standards prohibit stacking spaces within front yards along rights-of-way greater than 30 feet wide, and would require exclusive bypass aisles, as well as the compliance with the screening requirements per 743-306.I.3. The grant of this variance request would allow for an additional drive-thru lane and legalize the non-conforming existing drive-thru lane within the front yard of Keystone Avenue and expand it further.
- ◇ Limitations on the placement of stacking spaces within front yards exist to reduce congestion and vehicular conflict with patrons of the restaurant and pedestrians as well as to allow for attractive, pedestrian-oriented storefronts facing rights-of-way (screening requirements also contribute to these goals).
- ◇ As this site lies within the Transit Oriented Development (TOD) Overlay for the Bus Rapid Transit (BRT) Purple Line, proposed uses, and the redevelopment of existing uses as for this property, should be oriented towards supporting the Overlay district design and establishing greater walkability in the district. The proposed request for the additional drive-thru lane within the front yard of Keystone Avenue would expand a non-compliant auto-centric use that is non-contributing in the Overlay which would be counterproductive to the intent of establishing greater walkability and connectivity in the area, therefore Staff does recommend denial of this request.

### **Deficient primary entry transparencies**

- ◇ The Ordinance requires a certain percentage of transparency in commercial spaces, in order to maintain a visual connection between indoor and outdoor spaces, and to increase safety with visual surveillance. Upon entering or exiting, customers and public safety first-responders should be able to visually survey into and out of a structure and be able to safely assess entering and exiting and appropriately respond to any incident. The lack of transparency and visibility adjacent to primary entries could hamper public safety, by increasing response time, and possibly place customers and first responders in jeopardy.
- ◇ The current building was constructed in 2015 under a previous version of the ordinance and the existing transparency deficiencies area considered legally non-conforming as originally developed.
- ◇ The recent 2024 plans for an interior and exterior remodeling of the property, would require the window transparencies to comply with current ordinance standards for the primary entry transparencies. The TOD Overlay seeks to establish a more urban and pedestrian accessible storefront along a BRT Corridor, connecting the public realm with the public-serving business along the corridor.

- ◇ The proposed site plan indicates the eastern entrance has a blank wall adjacent to it to the south. It is Staff’s recommendation that this wall be converted into a window to allow for transparency adjacent to that east entrance. The site plan also indicates the western entrance has a self-serve soda fountain adjacent to it to the north. It is Staff’s recommendation that the soda fountain be relocated, so the wall behind it could be converted into a window to allow for transparency adjacent to that west entrance.
- ◇ There is no inherent practical difficulty caused by the terms of the Ordinance upon the subject site. This site is planned to be renovated, where renovations could be made to meet the current Ordinance transparency requirements. In Staff’s opinion, the existing structure could be renovated to provide sufficient transparency, as required by the Ordinance.

**WELLFIELD PROTECTION DISTRICTS**

- ◇ There are two wellfield district designations. An area identified as W-1 is a one-year time-of-travel protection area. The W-5 is a five-year time-of-travel protection area. Certain land uses within these districts, which are identified in Section 735-801 of the Wellfield Protection Ordinance require the filing and approval of a development plan on behalf of the Metropolitan Development Commission by the technically qualified person in the Department of Metropolitan Development.
- ◇ A wellfield is an area where the surface water seeps into the ground to the aquifer and recharges the wells that are the source of our drinking water. This secondary zoning district places closer scrutiny on uses and activities that might contaminate the underground drinking water supply.
- ◇ The subject site is located in a W-5 protection area. Pursuant to the Wellfield Protection Ordinance, a development plan may be required when application is made for an Improvement Location Permit (ILP). Contaminants that would have an adverse effect would include chemicals that are used in the home, business, industry, and agriculture. Chemicals such as furniture strippers, lawn and garden chemicals, cleaning chemical and solvents, gasoline, oil, and road salt can all contaminate groundwater supplies if poured on the ground or improperly used or stored.

**GENERAL INFORMATION**

<b>Existing Zoning</b>	C-5	
<b>Existing Land Use</b>	Commercial Restaurant	
<b>Comprehensive Plan</b>	Community Commercial uses	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Surrounding Context</b>
	North:	C-5 Commercial Restaurant
	South:	C-4 Commercial Retail
	East:	C-5 Commercial Retail
	West:	C-5 Commercial Restaurant
<b>Thoroughfare Plan</b>		
East 38 <sup>th</sup> Street	Primary Arterial	110-foot existing and proposed right-of-way
North Keystone Avenue	Primary Arterial	122-foot existing and proposed right-of-way
<b>Context Area</b>	Compact area	
<b>Floodway / Floodway Fringe</b>	No	

<b>Overlay</b>	Purple Line Transit-Oriented Development
<b>Wellfield Protection Area</b>	5-year
<b>Site Plan</b>	August 19, 2024
<b>Window Elevations</b>	September 13, 2024
<b>Landscape Plan</b>	N/A
<b>Findings of Fact</b>	August 27, 2024

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- The Comprehensive Plan recommends Community Commercial uses for the site.

### Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Community Commercial typology that provides for low intensity commercial, and office uses that serve nearby neighborhoods. These uses are usually in freestanding buildings or small, integrated centers. Examples include small-scale shops, personal services, professional and business services, grocery stores, drug stores, restaurants, and public gathering spaces.

### Red Line / Blue Line / Purple Line TOD Strategic Plan

- The subject is within 1000 feet of the existing Purple Line and is designated with the Walkable Neighborhood typology by the comprehensive plan. This typology allows for a mix of uses near transit stations with stabilized residential uses beyond.

### 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

**2014-DV1-015; 3817 N. Keystone Avenue (subject site);** Requesting a Variance of development standards of the Commercial Zoning Ordinance to provide for a three-foot front yard along Keystone Avenue, **granted.**

**2011-DV1-012, 3817 North Keystone Avenue (subject site); Requesting** a variance of development standards of the Commercial Zoning Ordinance and the sign Regulations to legally establish a zero-foot front setback for parking and maneuvering area, without landscaping, and a free-standing sign, **granted.**

**2007-ZON-066, 2302 East 38<sup>th</sup> Street (west of site); Requesting** rezoning of 0.22 acre, from the D-5 (W-1) District to the C-5 (W-1) classification to provide for general commercial uses, **approved.**

**2006-DV2-054; 2335 East 38<sup>th</sup> Street (southwest of site); Requesting** a Variance of Development Standards of the Sign Regulations to provide for the construction of a 30-foot tall, 100-square foot pole sign with a zero-foot setback from the intersection of 38<sup>th</sup> Street and Keystone Avenue, in C-4, **granted.**

**2002-ZON-830; 2244-2248 East 38<sup>th</sup> Street (west of site); Requesting** a rezoning of 0.95 acre, being in the D-5 District, to the C-4 classification to provide for an automobile detailing facility, **withdrawn.**

**98-Z-227 / 98-CV-25; 2231-2235 East 38<sup>th</sup> Street (west of site); Requested** a rezoning of 0.14 acre, being in the D-5 District, to the C-3 classification to provide for neighborhood commercial uses and a parking lot with a zero-foot west transitional yard, **approved.**

**96-HOV-13; 3845 North Keystone Avenue (north of site); Requesting** a Variance of Development Standards of the Commercial Zoning Ordinance and Sign Regulations to provide for the placement of a canopy for an existing gasoline station with a 7.5-foot front yard setback along Keystone Avenue, and a 50-foot wide canopy, in C-5, **granted.**

**95-Z-209 / 95-CV-34, 2401 East 38<sup>th</sup> Street; Requesting** rezoning of 0.46 acre from the D-5 District to the C-4 classification; and a variance of development standards of the Commercial Zoning Ordinance to provide for the construction of an automobile parts and accessories sales business with a reduced side transitional yard setback, **approved.**

**95-Z-191; 3850 North Keystone Avenue (north of site),** Requesting a rezoning of 0.4 acre, being in the D-5 District, to the C-5 classification, to provide for automobile sales, **approved.**

**94-Z-208; 2368 East 38<sup>th</sup> Street (west of site); Requesting** a rezoning of 0.63 acre, being in the D-5 and C-5 Districts, to the C-5 classification, to provide for a restaurant, **approved.**

**84-UV1-87, 2425 East 38<sup>th</sup> Street (east of site); Requesting** a variance of use and development standards of the Commercial Zoning Ordinance to provide for a carry-out restaurant with a drive-through window with 100 feet of a dwelling district, without the required rear transitional yard, **granted.**  
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**EXHIBITS**

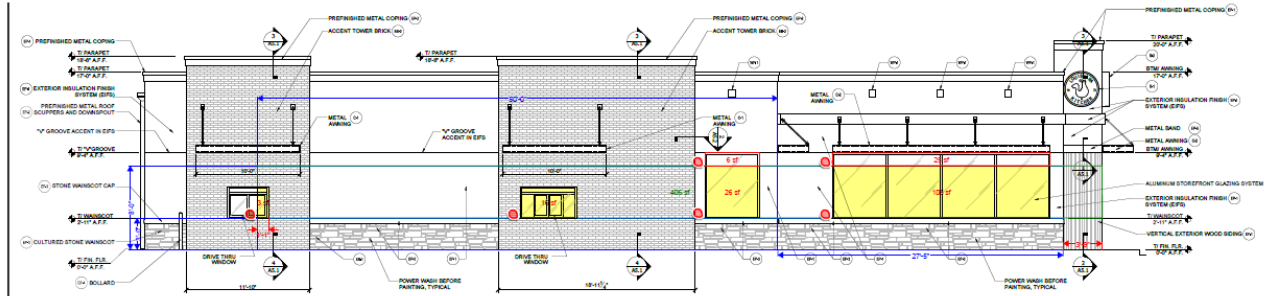
**Location Map Subject Site**



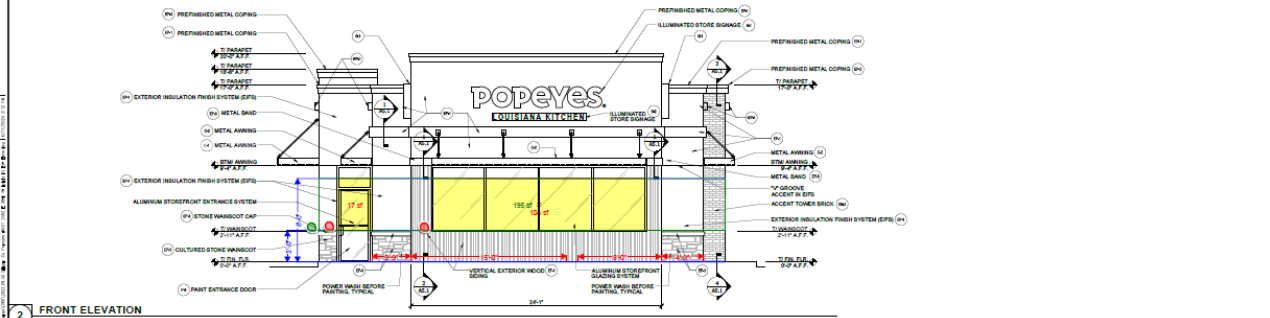
**Site Plan**



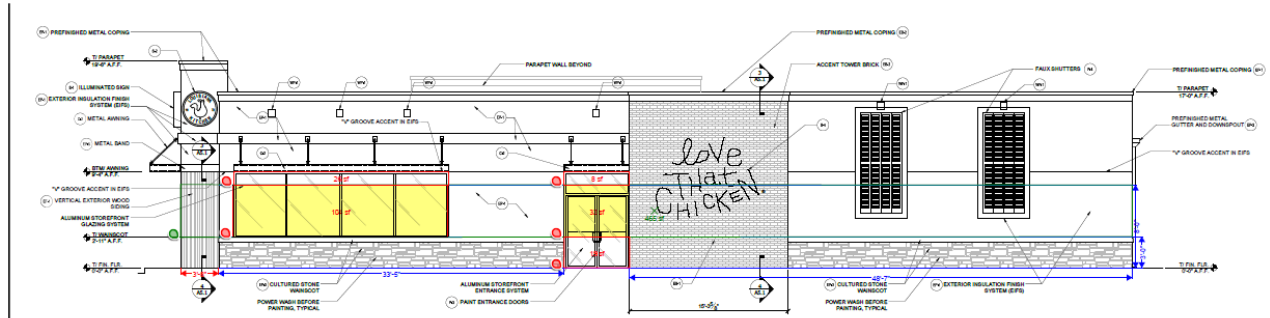
**Window Elevations**



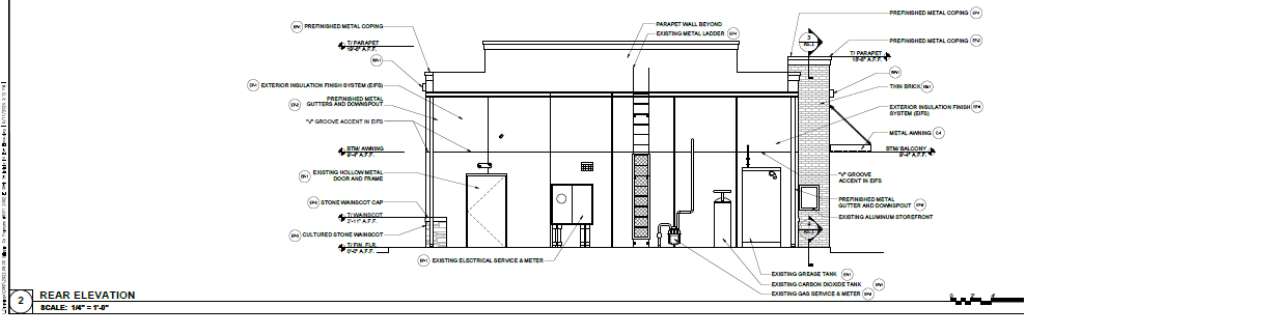
**1 DRIVE THRU ELEVATION**  
SCALE: 1/4" = 1'-0"



**2 FRONT ELEVATION**  
SCALE: 1/4" = 1'-0"



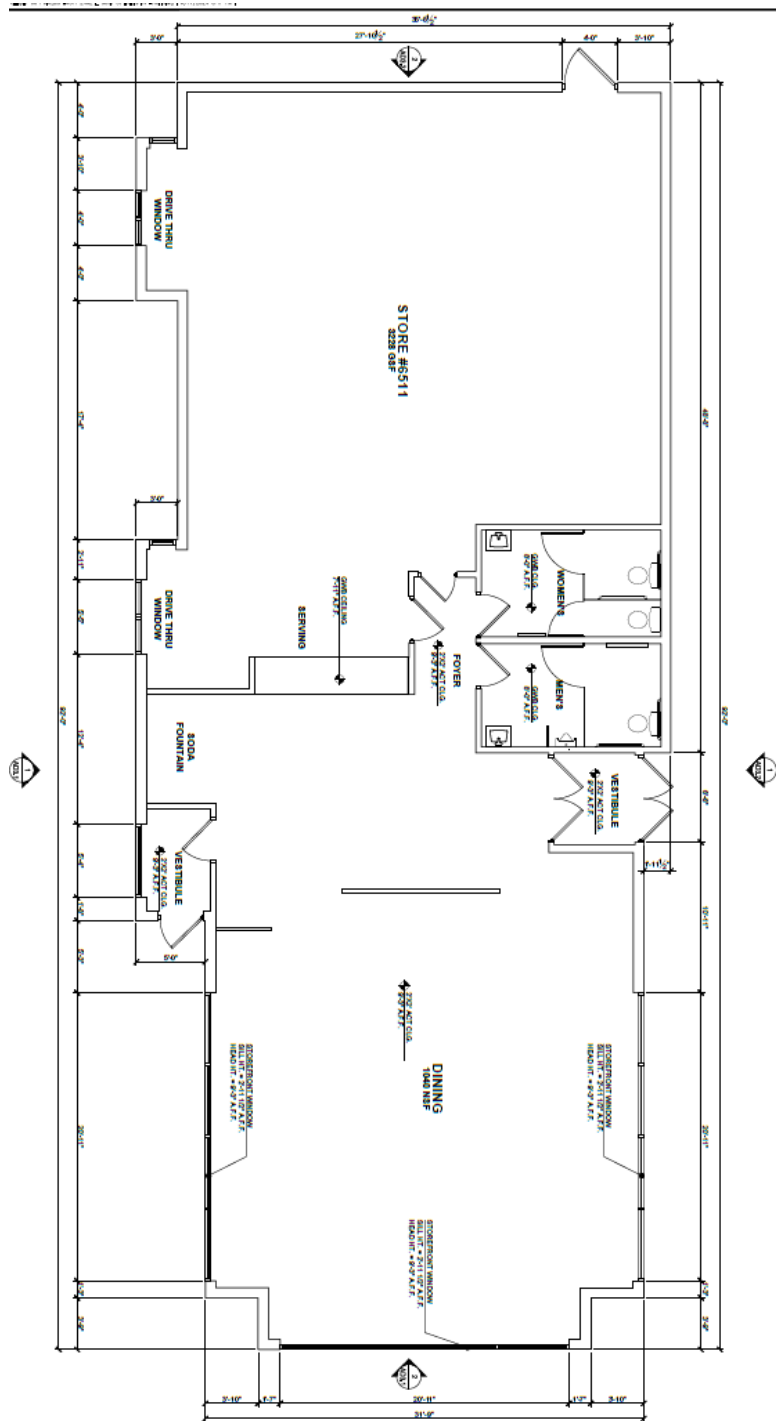
**1 MAIN ENTRANCE ELEVATION**  
SCALE: 1/4" = 1'-0"



**2 REAR ELEVATION**  
SCALE: 1/4" = 1'-0"



**Floor Plan**





**Findings of Fact**

Petition Number \_\_\_\_\_

**METROPOLITAN DEVELOPMENT COMMISSION  
HEARING EXAMINER  
METROPOLITAN BOARD OF ZONING APPEALS, Division 1 \_\_\_\_\_  
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**

*This project is an interior and exterior remodel of the existing Popeye's Restaurant with no foreseen adverse effect on the surrounding parcels or general welfare of the community.  
Converting the drive-thru from a single lane to a double lane drive-thru will still be in compliance of required stacking spaces per 744-406-1 and other drive-thru and C-5 zoning related ordinances.*

**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 parcels adjacent to the existing Popeye's Restaurant are also in the C-5 zoning district and sufficient screening to municipal code exists along the Keystone Ave frontage in question.*

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

*the existing site's stacking lane is, by current ordinance, a non-conforming use, so any remodel/reconstruction of the site would be reevaluated and must conform unless a variance is approved.*

**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**

*Growing demand and queue in the existing single drive-thru and order station can create traffic buildup and limit access.  
The additional order station placement proposed is the most feasible means of resolving this to keep up with demand and the proposed limits how much additional stacking is considered along the Keystone Ave frontage.*

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

*no change in use since original construction and no change in comprehensive plan to conflict with proposed work.*

Photographs



Subject site, west façade, looking northeast.



Subject site, south façade, looking north.



Subject site, east façade, looking northwest.



Subject site, proposed second drive thru location, looking west.



Subject site drive thru stacking spaces in front yard of North Keystone Avenue, looking southeast.



Adjacent to the south, Purple line transit stop.



Adjacent Commercial restaurant to the west.



Adjacent commercial restaurant to the north.