



**BOARD OF ZONING APPEALS DIVISION III**

**February 13, 2024**

**Case Number:** 2024DV2001  
**Property Address:** 8705 Southeastern Avenue (approximate address)  
**Location:** Franklin Township, Council District #25  
**Petitioner:** Flag Properties LLC, by David A. Retherford  
**Current Zoning:** C-4  
**Request:** Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a sidewalk café with a zero-foot front yard setback from Southeastern Avenue, encroaching 17.5 feet into its right-of-way, and being located zero-feet from a driveway (10-foot front yard setback, eight-feet of separation from a driveway required, encroachment into right-of-way not permitted).  
**Current Land Use:** Commercial  
**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**

- This building on this site was initially constructed as a residential property but has since been converted to commercial uses. It is currently a Thai restaurant which received a structural permit for the interior conversion in 2020. Unpermitted front and rear additions were made to the property which were cited under the violation case VIO23-002432.
- This petition would seek to legalize the placement of the front covered patio to be a sidewalk café servicing the existing restaurant as an accessory use. It would also allow for the covered sidewalk café to encroach into right-of-way (assuming issuance of the required encroachment license) and would legalize its placement within 8 feet of a driveway.

- The sidewalk café use is similar to the related “outdoor seating or patio (nonresidential)” use outlined within the ordinance, with the primary difference being that by definition sidewalk cafés are accessory dining areas *within ROW* while the definition of outdoor seating does not specify that the location is relevant other than to stipulate that it is a distinct use category from sidewalk cafés. Even though this dining area is slightly elevated from grade and is not directly accessible from ROW sidewalks, it would still be defined as a sidewalk café per ordinance given its encroachment into the right-of-way.
- This property is zoned C-4, which allows for restaurant uses by-right and allows for sidewalk cafés as accessory uses. It is identified as the Village Mixed-Use working typology within the Marion County Land Use Plan Pattern Book and falls within the Town Center overlay. The Village Mixed-Use typology envisions neighborhood gathering places with a wide range of small businesses, housing types and public facilities. The Town Center overlay specifically designates new and historic neighborhood areas and emphasizes pedestrian connectivity and slightly higher densities.
- Guidelines associated with both the Village-Mixed Use typology and the Town Center overlay emphasize walkability and pedestrian-oriented development. Additionally, the Wanamaker Community Master Plan (pending approval) mentions the desirability of ‘community-oriented restaurants’ and indicated this specific property had a “positive visual appearance”.
- Front setback rules exist to create uniform and aesthetically pleasing streetways that allow for appropriate foot and vehicle traffic. Additionally, encroachment of private structures in public rights-of-way can result in visual obstructions or pedestrian walkways that are difficult to navigate. While sidewalk cafés are generally permitted within ROW to allow for easy pedestrian access, the addition of the covered and elevated structure was the impetus for the zoning violation.
- This request would seek to legalize placement of the covered sidewalk café with a 0-foot setback and with a 17.5-foot encroachment into public right-of-way. Although under ideal circumstances sidewalk cafés would have more direct access for pedestrians, staff still feels that this development is aligned with the walkability goals outlined within relevant comprehensive plans. Additionally, it is unlikely that future development patterns would result in an expansion of the roadway into the space currently occupied by the covered patio. Staff would recommend approval of the variance for deficient front setback and encroachment into the right-of-way.
- The use-specific standards for placement of sidewalk cafés within 743-306.HH of the Indianapolis Zoning Ordinance also disallow placement within 8’ of hazards, including driveways. These standards are in place to reduce both the immediate danger to patrons of being struck by vehicles as well as the potential long-term effects of inhalation of car exhaust while eating and drinking.
- This request would seek to legalize the placement of the sidewalk café with a 0-foot separation from the existing driveway to the southeast. The lot is narrow enough that placement of either the sidewalk café or driveway in an alternate location would not be feasible, and the inclusion of the outdoor eating area is aligned with the goals of relevant comprehensive plans. Staff would recommend approval of the variance to place the sidewalk café within 8 feet of a driveway.

**GENERAL INFORMATION**

|                                   |                   |                                  |
|-----------------------------------|-------------------|----------------------------------|
| <b>Existing Zoning</b>            | C-4               |                                  |
| <b>Existing Land Use</b>          | Commercial        |                                  |
| <b>Comprehensive Plan</b>         | Village Mixed-Use |                                  |
| <b>Surrounding Context</b>        | <b>Zoning</b>     | <b>Surrounding Context</b>       |
|                                   | North:            | North: Village Mixed-Use         |
|                                   | South:            | South: Village Mixed-Use         |
|                                   | East:             | East: Village Mixed-Use          |
|                                   | West:             | West: Village Mixed-Use          |
| <b>Thoroughfare Plan</b>          |                   |                                  |
| Southeastern Avenue               | Primary Collector | Existing ROW: 100' Prop ROW: 66' |
| <b>Context Area</b>               | Compact or Metro  |                                  |
| <b>Floodway / Floodway Fringe</b> | No                |                                  |
| <b>Overlay</b>                    | Yes               |                                  |
| <b>Wellfield Protection Area</b>  | No                |                                  |
| <b>Site Plan</b>                  | 11/08/2023        |                                  |
| <b>Site Plan (Amended)</b>        | N/A               |                                  |
| <b>Elevations</b>                 | 11/08/2023        |                                  |
| <b>Elevations (Amended)</b>       | N/A               |                                  |
| <b>Landscape Plan</b>             | N/A               |                                  |
| <b>Findings of Fact</b>           | 11/08/2023        |                                  |
| <b>Findings of Fact (Amended)</b> | 01/18/2024        |                                  |

**COMPREHENSIVE PLAN ANALYSIS**

**Comprehensive Plan**

- Marion County Land Use Plan Pattern Book
- Wanamaker Certified Redevelopment Plan (pending final approval)

**Pattern Book / Land Use Plan**

- The Marion County Land Use Plan Pattern Book recommends the Village Mixed-Use working typology for this site. This typology provides for neighborhood gathering places with a wide range of small business and housing types that are intended to strengthen existing, historically small town centers as well as promote new neighborhood centers.
- This site falls within the Town Center overlay, which is designed to promote development with a high degree of pedestrian connectivity that has a slightly higher density than the surrounding area.



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

- Not Applicable to the Site.

**Neighborhood / Area Specific Plan**

- The Wanamaker Certified Redevelopment Plan (pending final approval as of January 2024) largely conforms to the land uses and typologies laid out within the pattern book. It encourages placement of community-oriented restaurants within the Village Mixed-Use working typology.

**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

**2019DV3004**, Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to legally establish and provide for the replacement of existing wall, pole, monument and pylon signs of similar style, height and size within the required 15-foot setback prior to July 1, 2019 and within the right-of-way of Southeastern Avenue, without obtaining permits, when located no closer than 10 feet from the back of the curb; to provide for replacement wall signs when located closer than 10 feet to the back of the curb without permits; and to provide for new signs and replacement signs inconsistent with the above only after obtaining a permit and when located no closer than 10 feet from the back of the curb (five-foot minimum front setback in Commercial districts, 10-foot front setback in Special districts, 15-foot front setback required prior to July 1, 2019, signs not permitted within the right-of-way and improvement location permits required for signs), **approved**.

### ZONING HISTORY – VICINITY

**2023DV1019; 8719 Southeastern Avenue (southeast of site)**, Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the renovation of an existing commercial structure resulting in an 18% front façade transparency (40% transparency required) and the addition of a porch with a zero-foot front setback and encroaching up to two feet into the right-of-way of Southeastern Avenue (10-foot front yard setback required, encroachment within the right-of-way not permitted), **approved**.

**2015UV3034; 8711 Southeastern Avenue (southeast of site)**, Variance of use of the Commercial Zoning Ordinance to legally establish and provide for primary and accessory single-family residential uses (not permitted), **approved**.

**2006ZON144; 4437 S Franklin Road (west of site)**, Rezoning of the site to the C-S zoning district, **approved**.

**2002UV3004; 8800 Southeastern Avenue (northeast of site)**, Variance of use to legally establish a single-family dwelling and to provide for an 804 square-foot addition to said dwelling, **approved**.

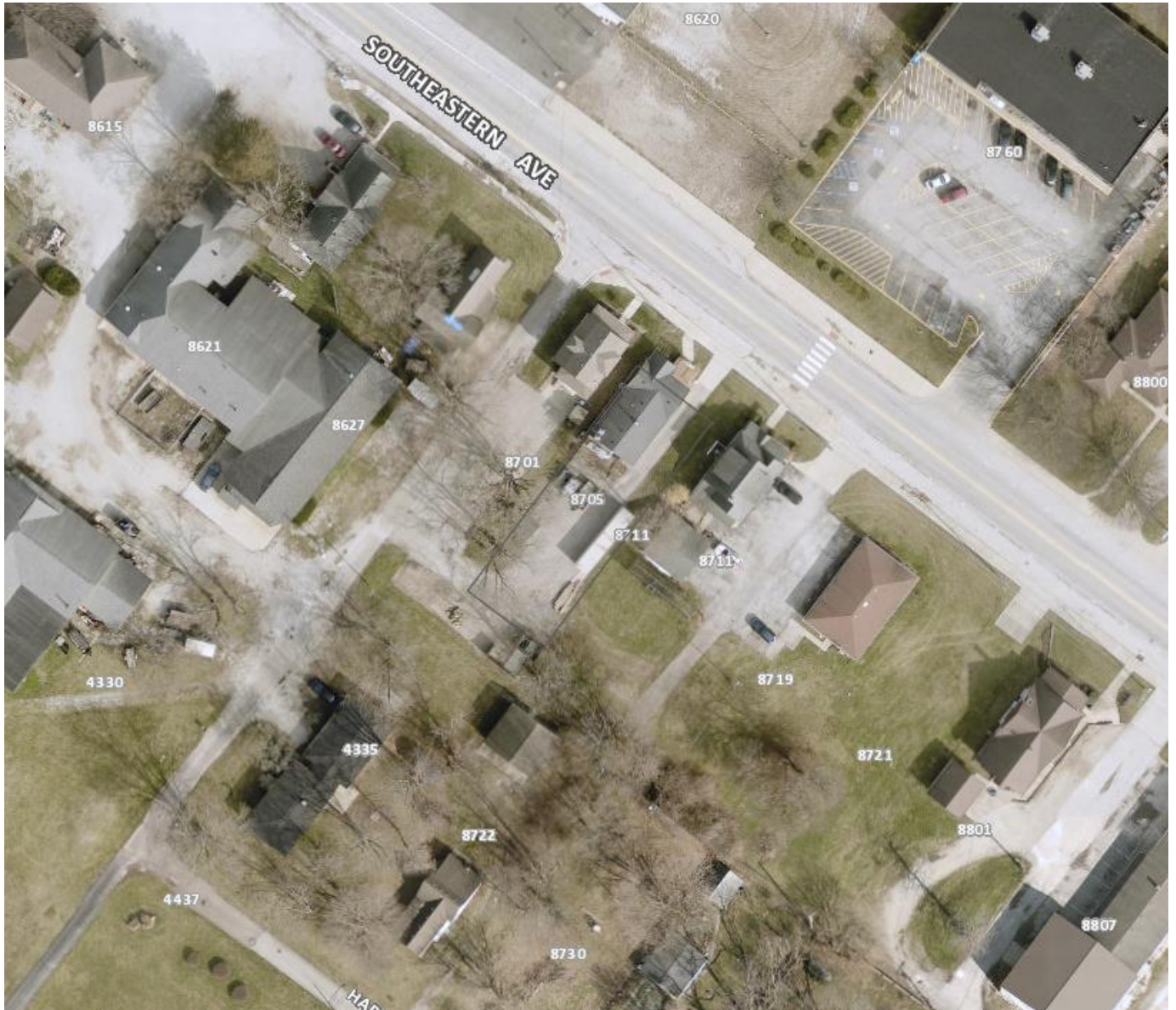
**89-V2-124; 8809 Southeastern Avenue (southeast of site)**, Variance of development standards of the Commercial Zoning Ordinance to permit an addition to an existing carpet store with 10 parking spaces provided (19 required), **approved**.

**85-UV2-141; 8701 Southeastern Avenue (northwest of site)**, Variance of use of the Commercial Zoning Ordinance to provide for the use of an existing building as a pre-school nursery, **approved**.

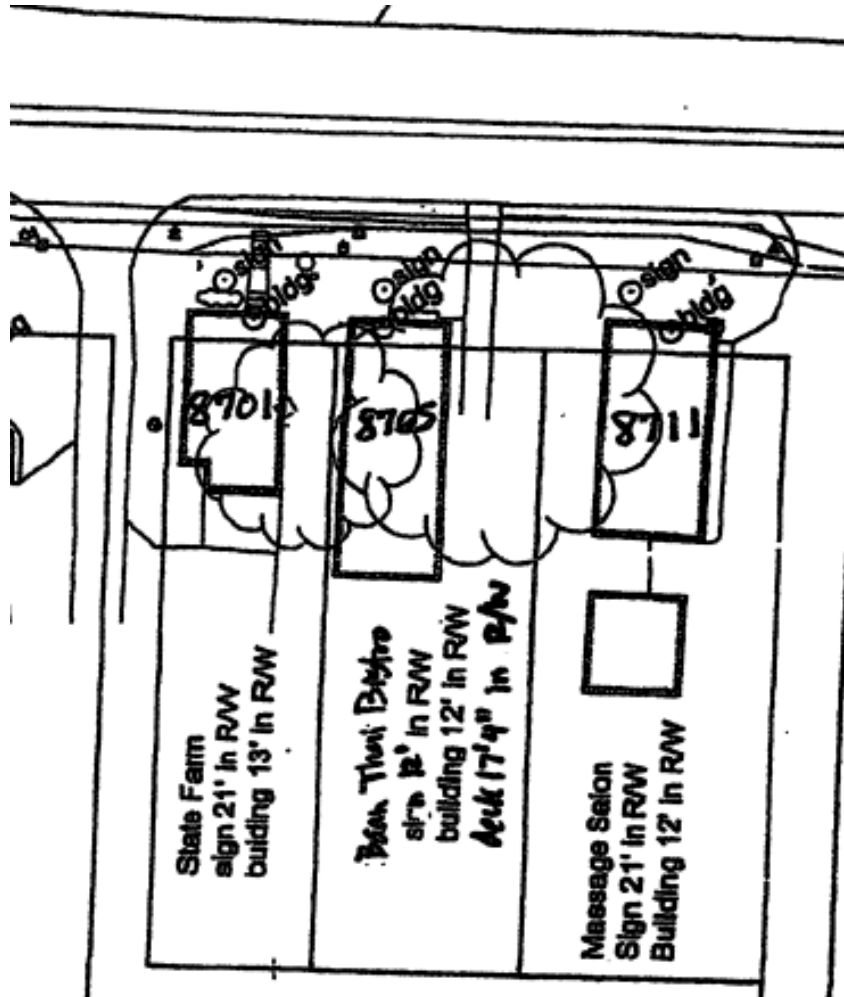


**EXHIBITS**

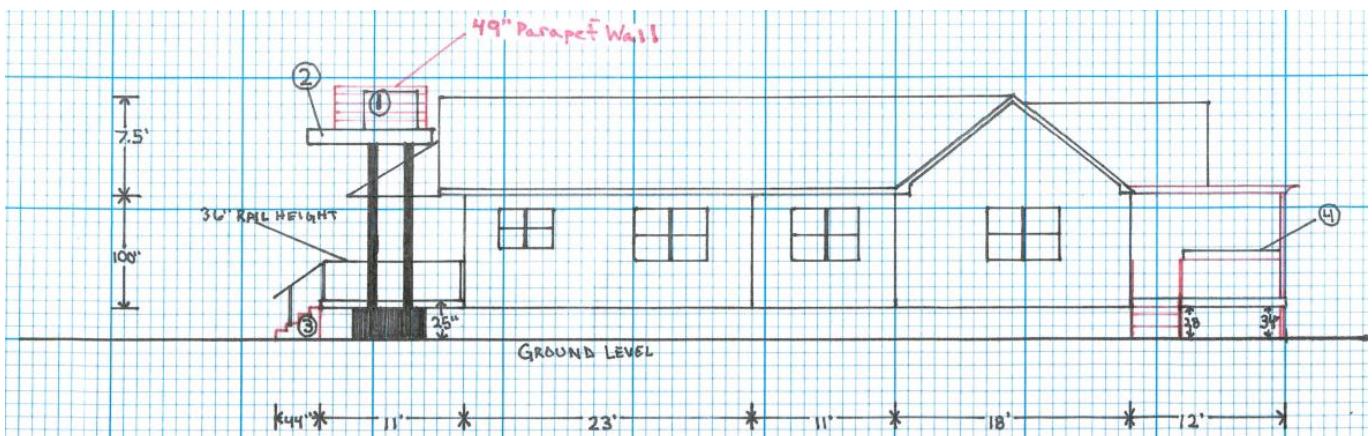
**2024DV2001 ; Aerial Map**



2024DV2001 ; Site Plan



2024DV2001 ; Side Elevation





**2024DV2001 ; Findings of Fact**

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: Legally establishing the existing structure and covered front deck which serves as the outdoor seating area for the new restaurant does not create any such risk of injury since the structure and the concrete porch under the covered deck have existed in its current location since prior to 1969, and the Petitioner will need to obtain an encroachment license for the portion of same which exists in the Right of Way. In addition, there is no access from the outdoor seating area to the abutting driveway except emergency access.
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 East, West and North are similarly zoned C-4, and the former residences along the row of structures on the South side of Southeastern have all been remodeled in the last 20 years for commercial purposes. In addition, the encouragement of the conversion of the several former residences along Southeastern in Wanamaker for similar types of retail and restaurant type uses is consistent with the goals of the recently completed Wanamaker Certified redevelopment plan. The structures on each side are owned by the same property owner as the subject property, and they also encroach into the BSL and public ROW in similar fashion.
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: While the existing residential structure and front porch under the deck would likely qualify as LENCU, without the requested variances the recent conversion of the property to a high end non-chain restaurant would not be possible without demolishing the existing structure, thereby losing the cherished residential character of the structure and its proximity to the pedestrian improvements along Southeastern Avenue. In addition, the pre-existing drive is critical to the traffic pattern on the site, and the lot on which the restaurant is only 40 feet, which does not leave room for any separation between the side of the seating area and the one way drive.



**2024DV2001 ; Pictures**



Photo 1: Existing Restaurant Viewed from Across Thompson (Northeast)



Photo 2: Covered Sidewalk Café Within ROW Viewed from Southeast

**2024DV2001 ; Pictures (continued)**



Photo 3: Side Alley on Southeast of Building Near Sidewalk Café



Photo 4: View of Sidewalk Café and Thompson Road from Side Alley



**2024DV2001 ; Pictures (continued)**



Photo 5: Adjacent Property to the Southeast



Photo 6: Adjacent Property to the Northwest