



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

January 25, 2024

Case Number: 2023-MOD-022
Property Address: 5151 East 82nd Street
Location: Washington Township; Council District #3
Petitioner: LMR II-Clearwater Springs, LLC, by Joseph D. Calderon
Current Zoning: C-S
Request: Modification of Commitments related to rezoning petition 95-Z-171, as amended by petitions 2007-ZON-833 and 2007-APP-833, to amend Commitment #9 (B) to allow a retail store that sells second-hand goods (current commitment lists second-hand store as a prohibited use)
Current Land Use: Commercial Strip Center
Staff Recommendations: No recommendation.
Staff Reviewer: Kathleen Blackham, Senior Planner

PETITION HISTORY

This petition is scheduled to be heard on January 25, 2024.

STAFF RECOMMENDATION

No recommendation. If approved, staff would request that approval be subject to modification of commitments being reduced to writing on the Commission’s Exhibit “C” form at least three days prior to the MDC hearing.:

PETITION OVERVIEW

This 21.45-acre site, zoned C-S is part of a regional commercial shopping center and parking lot, located at the southwest corner of the intersection of Allisonville Road and East 82nd Street. It is surrounded by commercial uses to the north, across East 82nd Street, zoned C-S; undeveloped land to the south, zoned D-A; and commercial uses to the east (across Allisonville Road) and west, zoned C-S.

Modification (Commitments)

As proposed this modification would modify commitments related to rezoning petition 95-Z-171, as amended by petitions 2007-ZON-833 and 2007-APP-833, to amend Commitment #9 (B) to allow a retail store that sells second-hand goods that would occupy an approximately 5,000-square foot tenant space.

The existing commitments prohibit second-hand stores, except for an antique store.



The commitments were originally the result of negotiation between the petitioner and remonstrators during the 1995 and 2007 rezoning process. Because staff played no role in the negotiation of these subject commitments, staff would ordinarily provide no recommendation under such circumstances. Staff, however recommended approval of the request, subject to the commitments and the “buffer for the residential area and the preservation of a portion of the site,” which is approximately 13 acres (30%) of the entire site.

The permitted uses in the 1995 rezoning (29 years ago) were generally C-3 uses. Because of the intervening years and development of the area, staff believes the proposed use would be supportable and appropriate, without detrimentally impacting the surrounding area. The buffer to the residential along the southern boundary would remain and vacant commercial space would be occupied.

GENERAL INFORMATION

Existing Zoning	C-S	
Existing Land Use	Commercial shopping center	
Comprehensive Plan	Village Mixed-Use Typology	
Surrounding Context	<u>Zoning</u>	<u>Land Use</u>
North:	C-S	Commercial uses
South:	D-A	Undeveloped land
East:	C-S	Commercial uses
West:	C-S	Commercial uses
Thoroughfare Plan		
East 82nd Street	Marion County Thoroughfare Plan (2019)	This portion of East 82nd Street is designated as a primary arterial with an existing 120-foot right-of-way and a proposed 134-foot right-of-way.
Allisonville Road		This portion of Allisonville Road is designated in the Marion County Thoroughfare Plan as a secondary arterial, with an existing 150-foot right-of-way and a proposed 102-foot right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	December 21, 2023	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	

Landscape Plan	N/A
Findings of Fact	N/A
Findings of Fact (Amended)	N/A
C-S/D-P Statement	N/A

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends village mixed-use typology for the site.
- “The Village Mixed-Use typology creates neighborhood gathering places with a wide range of small businesses, housing types, and public facilities. This typology is intended to strengthen existing, historically small-town centers as well as to promote new neighborhood centers. Businesses found in this typology serve adjacent neighborhoods, rather than the wider community. This typology is compact and walkable, with parking at the rear of buildings. Buildings are one to four stories in height and have entrances and large windows facing the street. Pedestrian-scale amenities such as lighting, landscaping, and sidewalk furniture also contributes to a walkable environment in this typology. Uses may be mixed vertically in the same building or horizontally along a corridor. Public spaces in this typology are small and intimate, such as pocket parks and sidewalk cafes. This typology has a residential density of 6 to 25 dwelling units per acre.”

Pattern Book / Land Use Plan

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

Conditions for All Land Use Types

- All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
- All development should include sidewalks along the street frontage.
- In master-planned developments, block lengths of less than 500 feet, or pedestrian cut-throughs for longer blocks, are encouraged.
- Where possible, contributing historic buildings should be preserved or incorporated into new development.

- The Pattern Book does not provide guidance in this typology for large scale offices, retailing, and personal or professional services (defined as commercial uses with minimal outdoor operations, storage, or display on lots of more than 1.5 acres and a height of more than 35 feet).

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

- Not Applicable to the Site.

Indy Moves

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

- Not Applicable to the Site.

ZONING HISTORY

2018-ZON-099; 5151 East 82nd Street, requested rezoning of 4.68 acres from the C-S district to the C-S classification to provide for the following uses: a health and fitness facility; gymnasium; instruction in baseball, basketball, gymnastics or swimming; trampoline park; or other similar indoor commercial amusement / recreation establishment in addition to the uses permitted by 95-Z-171, with a Modification of the Commitments related to 95-Z-171 to modify Commitment Ten to permit a health and fitness facility; gymnasium; instruction in baseball, basketball, gymnastics or swimming; trampoline park; or other similar indoor commercial amusement / recreation establishment in addition to the uses permitted by 95-Z-171, **approved**.

2012-CAP-817 / 2012-CVR-817; 5151 East 82nd Street, requested modification of commitments related to 95-Z-171, as modified by 98-Z-87, 98-AP-6, 2007-APP-833, 2007-ZON-833 and 2009-APP-055 to modify Commitments Nine and 13 to provide for outdoor seating / dining for all types of restaurants, adjacent to the applicable tenant space and a variance of development standards of the Commercial Zoning Ordinance to provide for outdoor seating / dining for all types of restaurants, adjacent to the applicable tenant space, **approved and granted**.

2009-APP-055; 5025 East 82nd Street, requested modification of commitments, related to petition 95-Z-171, as previously modified by 98-AP-6, to modify Commitment Two to permit construction of off-street parking areas and a pedestrian walkway, in an area required to be maintained in its natural state, **approved**.

2007-ZON-833 / 2007-APP-833; 5151 East 82nd Street requested rezoning of 1.678 acres, from the C-S District to the C-S classification to provide for a kennel, associated with a retail pet store and approval of a modification of commitments, related to petition 98-Z-87, to modify Commitments Nine and Ten to permit a veterinary care facility with overnight stays as medically necessary and the overnight boarding of pets, **approved**.

98-AP-6; 5101 East 82nd Street, requested a modification of commitments related to petition 95-Z-171, to modify commitment #22 pertaining to the location of a grocery store; and the material and design of the grocery store's elevations, **approved**.

98-Z-87; 4825 East 82nd Street requested rezoning of 41 acres from the C-S District to the C-S classification to provide for a veterinary clinic within a pet store, **approved**.

95-Z-171; 4825 East 82nd Street, requested rezoning of 45 acres from D-A, C-1 and C-4 to C-S to provide for a mixed-use commercial office and retail complex, **approved**.



**E 82nd STREET AND
 ALLISONVILLE ROAD
 INDIANAPOLIS, IN
 SITE PLAN**

Building	Unit	Store Name	Size
Future Paid			1.6 AC Paid Site
A	300	Clio Bella Salon	2,800
A	400	Yogi's Foot Spa	1,400
A	500A	Merle Norman	1,400
A	500B	Available	1,400
A	1000	El Toro Mexican Restaurant	8,400
B		Hoops Works	27,600
C	300	34L ComfortShades	4,200
C	300	Shades	4,200
C	400	Starbuck's	2,425
D	100	Mackenzie River Pizz Co	6,270
D	400	Miscee Day Spa	1,728
D	500	Aspen Dental	3,670
E	100	5 Day Cleaners	1,700
E	400	Country Creamery	1,200
E	500	Cuato	1,200
E	600	AT&T Wireless	2,400
F	800	Wasabi on 82nd	3,300
F	1000	Tropical Smoothie	2,480
F	1000	Smoothie	2,480
G	1400	Club Champion Golf	2,440
G	1500	Can't be Available	1,600
G	1600	Available	1,600
G	1700	Jersey Miles Subs	1,600
H	1800	David's Birch	9,680
H	1800	Barber Shop	2,000
I	3300	Lanier Eye Care	2,000
I	2500	Another Broken Egg	3,957
J	100	ALDI Grocery	22,075
J	300	Haverty's Furniture	41,481
K	300	PetSmart	26,175
L	400	Previews Banany meublen	5,000
M	500/600	Available	5,000
M	700	Howork	2,000
M	800	Regions Bank	4,100
N	100	Adriatico	2,700
N	300	McQuay's Company	133,156
Total			133,156

R4

(13)

**STATEMENT OF MODIFICATION OR TERMINATION
 OF COVENANTS OR COMMITMENTS**

**COVENANTS OR COMMITMENTS MODIFYING OR TERMINATING EXISTING COVENANTS OR
 COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN
 CONNECTION WITH AN APPROVAL PETITION, REZONING OF PROPERTY, A VARIANCE
 PETITION OR SPECIAL EXCEPTION PETITION**

In accordance with I.C. 36-7-4-613, I.C. 36-7-4-614, and/or I.C. 36-7-4-918.8 and I.C. 36-7-4-921, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of covenants or commitments concerning the use and development of that parcel of real estate:

Legal Description:

See attached Exhibit A.

FILED
 SEP 13 2007
 DEPT METRO DEVELOPMENT
 BY

Statement of MODIFICATION OR TERMINATION of Covenants or Commitments:

1. The Statement of Commitments recorded as Instrument No. 1997-0044945 in the Office of the Recorder of Marion County, Indiana in connection with Petition 95-Z-171 (the "Original Commitment") is hereby modified and amended by replacing Attachment C from the Original Commitment with the Attachment C attached hereto.
2. _____
3. _____
4. _____
5. _____

These COVENANTS or COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein. These COVENANTS or 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.

COVENANTS or COMMITMENTS contained in this instrument shall be effective upon the adoption of modification or termination approved by the Metropolitan Development Commission in petition 2007-ZON-833 and 2007-APP-833.

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

MDC's Exhibit C - page 1 of 2

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. N/A
- 4. N/A

These COVENANTS may be enforced by the Metropolitan Development Commission.

The undersigned hereby authorizes the Division of Planning of the Department of Metropolitan Development to record this Covenant or Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of modification and/or termination of Covenant(s) or Commitment(s) of petition # 2007-APP-333 by the Metropolitan Development Commission.

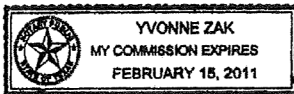
IN WITNESS WHEREOF, owner has executed this instrument this 5 day of September, 2007

Signature: [Signature] Signature: _____
 Printed: MITZI PATIN Printed: _____

Secretary, Metropolitan Development Commission, Member
 STATE OF INDIANA

COUNTY OF MARION) SS:

Before me, a Notary Public in and for said County and State, personally appeared Mitzi Patin, owner(s) 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 day of September, 2007
[Signature]
 Notary Public
Yvonne Zak
 Printed Name of Notary Public
 My Commission expires: 2/15/2011
 My County of residence: Dallas

This instrument was prepared by Thomas H. Engle; Barnes & Thornburg, LLP, 11 S. Meridian St., Indianapolis, IN 46204

This modification and/or Termination Agreement was approved by the Metropolitan Development Commission on the 19th day of September, 2007.
[Signature]
 Secretary, Metropolitan Development Commission

Enter any photographs or site plan



View of site looking southeast



View of site looking east



View from site looking north



View of site looking northwest



View of site looking southeast at available tenant space



View of site looking east along building facade



View of site looking west along building facade