

## STAFF REPORT

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

**Case Number:** 2022-ZON-063 (Amended)  
**Address:** 4720 Kingsway Drive (*Approximate Addresses*)  
**Location:** Washington Township, Council District #9  
**Petitioner:** MRE Investors, LLC, by Patrick Rooney  
**Request:** Rezoning of 3.28 acres from the C-3 (W-5) district to the C-4 (W-5) district to provide for indoor entertainment/banquet hall.

#### ADDENDUM FOR DECEMBER 1, 2022, HEARING EXAMINER

The Hearing Examiner continued this petition from the October 13, 2022 hearing to the December 1, 2022 hearing, with notice, at the request of a remonstrator.

Except for the Affidavit of Notice submitted on November 8, 2022, no new information has been submitted to the file.

#### ADDENDUM FOR OCTOBER 13, 2022, HEARING EXAMINER

The Hearing Examiner continued this petition from the September 15, 2022 hearing, to the October 13, 2022 hearing, at the request of the remonstrator's representative.

Prior to the September 15, 2022 hearing, the petitioner's representative agree to amend the request from the C-5 (W-5) district to the C-4 (W-5) district and submit an amended Plan of Operation, file-dated September 14, 2022, that eliminates any and all outdoor recreation and entertainment. The outdoor recreation and entertainment uses are not permitted in the C-4 district. Consequently, all proposed activities (except for outdoor dining) would be indoors.

Because the petitioner agreed to eliminate the outdoor recreation and entertainment uses and rezone to the C-4 (W-5) district, staff **recommends approval** subject to the following commitments being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. The site shall be developed in accordance with the site plan and floor plans, file-dated August 5, 2022, and the Plan of Operation, file-dated September 14, 2022.
2. A landscape plan shall be submitted prior to the issuance of an Improvement Location Permit (ILP) that complies with the Ordinance and installed prior to any on-site public activity.
3. A right-of-way shall be dedicated along the frontage of North Keystone Avenue, in accordance with Exhibit A, as per the request of the Department of Public Works (DPW), Engineering Division. Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to the acceptance of all grants of right-of-way by the DPW. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).

(Continued)

## **STAFF REPORT 2022-ZON-063 (Continued)**

4. The following uses shall be prohibited:
  - Gas station
  - Liquor store
  - Adult entertainment
  - Pawn shop
  - Automobile / vehicle sales
  - Automobile / vehicle repair shop
  - Adult entertainment business (retail)
  - On-going fireworks sales
  - Heavy general retail
  - Local power generating facility
  - Wireless communications facility
  - Automobile and light vehicle wash
  - Accessory and temporary uses to include
    - Automobile rental station
    - On-going outdoor display and sales
    - Temporary outdoor display and sales
    - Temporary firework sales
    - Temporary outdoor event

### **September 15, 2022**

The Hearing Examiner continued this petition from the June 9, 2022 hearing, to the July 14, 2022 hearing, to provide time for the petitioner's representative to submit additional information related to the proposed uses, at the request of staff.

The Hearing Examiner continued this petition from the July 14, 2022 hearing, to the July 28, 2022 hearing, at the request of the petitioner's representative.

The Hearing Examiner continued this petition from the July 28, 2022 hearing, to the August 11, 2022 hearing, to provide time for the petitioner's representative to submit additional information related to the proposed uses, at the request of staff.

The Hearing Examiner acknowledged an automatic continuance filed by a remonstrator that continued this petition from the August 11, 2022 hearing, to the September 15, 2022 hearing.

### **RECOMMENDATIONS**

Staff **recommends denial** of the request. If the request would be amended to the C-4 district, staff would consider recommending approval, subject to certain commitments related to the dedication of right-of-way, prohibited uses, landscape plan, floor plans and Administrator Approval of a more detailed Plan of Operation.

(Continued)

## **STAFF REPORT 2022-ZON-063 (Continued)**

### **SUMMARY OF ISSUES**

The following issues were considered in formulating the recommendation:

#### **LAND USE ISSUES**

- ◇ This 3.28-acre site, zoned C-3 (W-5) is developed with multi-story commercial office building. It is surrounded by an office building to the north, zoned SU-7 (W-5) commercial office buildings to the south, across Willow Brook Parkway, zoned, zoned C-3 (W-1); a commercial office building to the east, zoned C-3 (W-5); and commercial uses to the west, across North Keystone Avenue, zoned C-5 and C-7 (W-5).

#### **REZONING**

- ◇ This request would rezone the site from C-3 (Neighborhood Commercial) (W-5) District to the C-5 (General Commercial) (W-5) classification to provide for indoor entertainment / banquet hall. “The C-5 District is designed to provide areas for those retail sales and service functions whose operations are typically characterized by automobiles, outdoor display, or sales of merchandise; by major repair of motor vehicles; by outdoor commercial amusement and recreational activities; or by activities or operations conducted in buildings or structures not completely enclosed. The types of uses found in this district tend to be outdoor functions, brightly lit, noisy, etc. Therefore, to provide a location where such uses can operate in harmony with the vicinity, the C-5 district should be located on select heavy commercial thoroughfares and should avoid locating adjacent to protected districts.”
- ◇ The Comprehensive Plan recommends Office Commercial typology. “The Office Commercial typology provides for single and multi-tenant office buildings. It is often a buffer between higher intensity land uses and lower intensity land uses. Office commercial development can range from a small freestanding office to a major employment center. This typology is intended to facilitate establishments such as medical and dental facilities, education services, insurance, real estate, financial institutions, design firms, legal services, and hair and body care salons.”
- ◇ The Pattern Book serves as a policy guide as development occurs. Below are the relevant policies related to this request:

##### *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 exceeding two acres should include pedestrian amenities for passive and active recreation internal to the development.

(Continued)

## **STAFF REPORT 2022-ZON-063 (Continued)**

*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).*

- Pedestrian connections between buildings should be provided.
- Street connections to perimeter roads should be provided.

### **Department of Public Works**

- ◇ The Department of Public Works, Greenways Section, has requested the dedication and conveyance of right-of-way in accordance with Exhibit A to provide for the development of the proposed Nickle Plate Trail.
- ◇ If approved, staff would request approval be subject to the following commitment being reduced to writing on the Commission's Exhibit "B" form at least three days prior to the MDC hearing.

A right-of-way shall be dedicated along the frontage of North Keystone Avenue, as per the request of the Department of Public Works (DPW), Greenways Section (See Exhibit A). Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to the acceptance of all grants of right-of-way by the DPW. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).

### **Plan of Operation**

- ◇ The amended Plan of Operation, file-dated September 8, 2022, states that the building would be renovated to provide for an event center on the first floor, with office and retail tenant spaces on the second through fifth floors. The rooftop would be renovated to provide for a restaurant, with outdoor seating and music.
- ◇ Additionally, Plan of Operation states there would be outdoor entertainment consisting of music associated with the rooftop restaurant that would consist of a DJ or solo artist would play nightly background music for dinner guests between 5:00 p.m. and 12:00 a.m. (midnight).
- ◇ The Plan also indicates that the petitioner would commit to prohibit the following uses:
  - Gas station
  - Liquor store
  - Adult entertainment
  - Pawn shop
  - Automobile / vehicle sales
  - Automobile / vehicle repair shop
- ◇ Hours of Operation would be:
  - Sunday through Thursday – 6:00 a.m. to 12:00 a.m. (midnight)
  - Friday and Saturday – 6:00 a.m. to 2:00 a.m.

(Continued)

## **STAFF REPORT 2022-ZON-063 (Continued)**

- ◇ Event attendance would be a maximum of 500 people per event, with an average of 250 people per event and an average of eight events per month which would primarily occur on Friday and Saturday evenings.

### **Wellfield Protection Secondary Zoning**

- ◇ 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.
- ◇ 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. All development within these districts is subject to Commission approval. The filing of a site and development plan is required and subject to approval, on behalf of the Commission, by a Technically Qualified Person (TQP), unless exempted by the Ordinance.
- ◇ “Because of the risk that hazardous materials or objectionable substances pose to groundwater quality, it is recognized that the further regulation of the manufacturing of, handling, transfer, disposal, use or storage of hazardous materials or objectionable substances related to nonresidential use activities is essential in order to preserve public health and economic vitality with Marion County.”
- ◇ All uses permitted in the applicable primary zoning district shall be those uses permitted in the W-1 and W-5 zoning districts, unless otherwise prohibited by the Ordinance, and provided no other secondary zoning district prohibits the use.
- ◇ “No building, structure, premises or part thereof shall be altered, constructed, converted, erected, enlarged, extended, modified, or relocated except in conformity with this Section, and not until the proposed Site and Development Plan has been filed with and approved on behalf of the Commission by the Technically Qualified Person (TQP). Regulations found in Chapter 742, Article II, Section 4 shall apply to all land within the Wellfield Protection Zoning Districts. The entire site shall be subject to review by the TQP. These regulations shall be in addition to all other primary and secondary zoning district regulations applicable to such land, and in case of conflict, the more restrictive regulations shall apply.”

(Continued)

## **STAFF REPORT 2022-ZON-063 (Continued)**

- ◇ The subject site is located within the W-5 Fall Creek wellfield protection area and any use or development within a wellfield protection district would be subject to the Technically Qualified Person (TQP) review and approval, unless and until the property owner provides sufficient justification that the type of use, type of facility, and chemical quantity limits, independent of the land use would be exempt from the requirements for filing a development plan. Otherwise, a development plan would be required to be filed and approved on behalf of the Metropolitan Development Commission by the (TQP). 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.

### **Planning Analysis**

- ◇ As proposed, the request would not be consistent with the Comprehensive Plan recommendation of office commercial. As noted above The Pattern Book guidelines state outdoor operations should be minimal in the commercial office typology but it appears from the documents that outdoor space would be available along a majority of the eastern and southern building façades. Furthermore, the outdoor rooftop music / entertainment would not be appropriate and would negatively impact the surrounding office uses to the north, east and south.
- ◇ Staff is concerned with the portion of the request for rooftop outdoor entertainment (music) associated with the restaurant that would play nightly background music for dinner guests between 5:00 p.m. and 12:00 a.m. (midnight). This proposed use would require the C-5 district that allows for outdoor recreation and entertainment [defined as “an open area offering entertainment or sports, athletics or games of skill to the general public. This definition includes facilities such as golf courses, swimming pools, baseball/softball fields; live entertainment or performances; boat and canoe rentals (as accessory use to a fishing lake operation); fishing lake operations (commercial or private); go cart raceways; scenic railroads; and drive-in theaters. This definition does not include Sports Stadium.”] This zoning designation would also permit other disruptive uses that would not be appropriate for this site due to the negative impact on adjacent property owners.
- ◇ Floor plans, file-dated August 5, 2022, proposes an event center on the first floor, with outdoor seating at the southeast and northeast corners of the existing building; second, third, fourth and fifth floor would be tenant spaces for offices and retail uses; and the rooftop would provide for a 4,931-square foot restaurant, with 2,250 square feet for outdoor seating.
- ◇ If approved, staff would request that approval be subject to the floor plans, file-dated May 5, 2022.
- ◇ If the request would be amended to the C-4 district, which permits indoor recreation and entertainment, staff would reconsider the recommendation. Staff would, however, note that the Ordinance requires that “sound associated with any indoor recreation and entertainment establishment shall not be audible outside of the building in which the activity is occurring.”

(Continued)

## **STAFF REPORT 2022-ZON-063 (Continued)**

- ◇ Additionally, Section 391-302 (C) (2), Unlawful Noise; of The Revised Code of the Consolidated City and County states:

(c) In addition to the foregoing, any person who performs any of the acts enumerated in this subsection, or who causes or allows the performance of any of such acts in or upon any property owned, occupied, or controlled by him, shall be in violation of this section.

(2) Machines and devices for producing sound. Playing, using, or operating, or permitting to be played, used, or operated, any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any machine or device for producing or reproducing sound in a manner that makes unreasonable noise and continuing to do so after being asked to stop, except when a permit granted therefor for some special occasion is in effect. The operation of any such machine or device in a manner that produces sound plainly audible to a person with normal hearing:

- a. From any place other than the property on which the sound source is located when the machine or device is being operated between the hours of 10:00 p.m. and 7:00 a.m.;
- b. From a distance greater than seventy-five (75) feet from the sound source of the machine or device when it is located in any public street or public place of the city; or
- c. In any public conveyance other than a taxicab or jitney, except for a person who is voluntarily listening to the machine or device through earplugs; shall be prima facie evidence of a violation of this subsection, except when a permit granted therefor for some special occasion is in effect.

- ◇ If approved, staff would also request that the following uses be prohibited, in addition to those prohibited uses identified by the petitioner:

- Adult entertainment business
- On-going fireworks sales
- Heavy general retail
- Local power generating facility
- Wireless communications facility
- Automobile and light vehicle wash
- Automobile and vehicle storage or auction
- Accessory and temporary uses to include
  - Automobile rental station
  - On-going outdoor display and sales
  - Temporary outdoor display and sales
  - Outdoor storage and operations
  - Temporary firework sales
  - Temporary outdoor event

- ◇ During the site visit, staff observed the lack of appropriate and required landscaping. If approved, staff would request that a prior to the issuance of an Improvement Location Permit (ILP), a landscape plan that complies with the Ordinance, including parking lot landscaping, shall be submitted for Administrator Approval.

(Continued)

## **STAFF REPORT 2022-ZON-063 (Continued)**

### **GENERAL INFORMATION**

#### EXISTING ZONING AND LAND USE

C-3

Commercial office uses (vacant)

#### SURROUNDING ZONING AND LAND USE

North - SU-7 (W-5)

Commercial office uses

South - C-3 (W-1)

Commercial office uses

East - C-3 (W-5)

Commercial office uses

West - C-5 (W-5) / C-7 (W-5)

Commercial uses

#### COMPREHENSIVE LAND USE PLAN

The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends commercial office typology.

#### THOROUGHFARE PLAN

This portion of Kingsway Drive is designated in the Marion County Thoroughfare Plan as a local street with an existing 50-foot right-of-way and a proposed 50-foot right-of-way.

This portion of Willowbrook Parkway is designated in the Marion County Thoroughfare Plan as a local street with an existing 80-foot right-of-way and a proposed 50-foot right-of-way.

#### CONTEXT AREA

This site is located within the compact metro area.

#### OVERLAY

This site is not located within an overlay.

#### SITE PLAN / FLOOR PLANS

File-dated August 5, 2022

#### RENDERINGS

File-dated August 5, 2022

#### PLAN OF OPERATION

File-dated August 8, 2022

#### PLAN OF OPERATION (AMENDED)

File-date September 8, 2022

#### PLAN OF OPERATION (AMENDED)

File-dated September 14, 2022

#### WELLFIELD PROTECTION DISTRICT

The site is located with the Fall Creek (W-5) Well Protection District.

(Continued)



## **STAFF REPORT 2022-ZON-063 (Continued)**

### **ZONING HISTORY**

**2022-ZON-046; 4801 Kingsway Drive (north of site)**, requested rezoning of 6.87 acres from the C-3 (FF) (W-5) district to the MU-2 (FF) (W-5) district to provide for multi-family development, **approved**.

**2008-ZON-007; 4760 Pennwood Drive (south of site)**, requested rezoning of four acres from the C-3 (W-1) (W-5) District, to the D-6II (W-1) (W-5) classification to provide for multi-family residential uses, **approved**.

**2008-ZON-007; 4760 Pennwood Drive (south of site)**, requested a rezoning of four acres, from the C-3 (W-1) (W-5) District, to the D-6 (W-1) (W-5) classification to provide for multi-family residential uses, **withdrawn**.

**2007-ZON-856 / 2007-VAR-856; 4734 Round Lake Road (south of site)**, requested rezoning of 21 acres, from the D-7 District, to the C-2 classification to provide for high-intensity office-apartment uses and a variance of Development Standards of the Commercial Zoning Ordinance to provide for four dumpster enclosures in front of the established front building line along Allisonville Road, five dumpster enclosures in front of the established front building line along Pennwood Drive, a dumpster enclosure with its open side viewable from Allisonville Road and two dumpster enclosures with a zero-foot north transitional side setback, **withdrawn**

**2003-UV3-025, 2508 Willowbrook Parkway (south of site)**, requested a variance of use of the Commercial Zoning Ordinance to provide for the location of a homeless terminal care facility, **approved residential use. Approved**

**90-Z-88; 4760 Kingsway Drive (south of site)**, requested rezoning of 1.0 acre, being in the C-3 District, to the C02 classification to conform zoning with the Keystone Avenue Corridor Study, adopted August 1986, **withdrawn**.

**89-Z-238; 4740 Kingsway Drive (south of site)**, requested rezoning of 4.15 acres, being the C-3 District, to the SU-7 classification, to provide for a headquarters facility and rehabilitation center, **approved**.

**89-Z-29; 5020 North Keystone Avenue (west of site)**, requested rezoning of 11.0 acres, being in the D-5 and C-7 Districts, to the C-5 classification to conform to the Keystone Avenue Corridor Plan, **approved**.

**87-Z-77; 4760 Pennwood Drive (south of site)**, requested rezoning of 12.63 acres, being in the D-3 to the C-2 classification to provide for apartments, **withdrawn**.

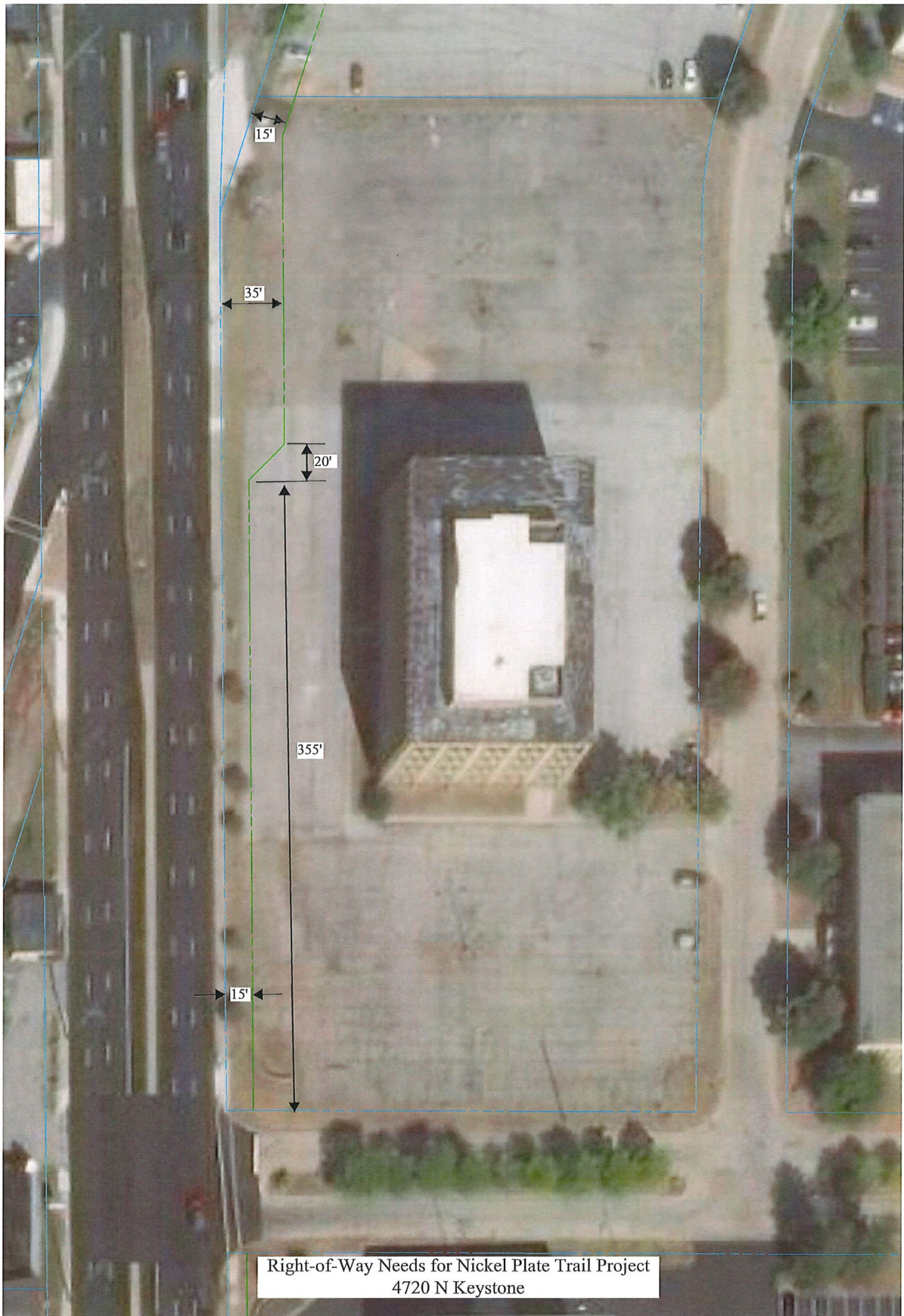
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## EXHIBIT A



# **Amended Plan of Operation**

## **PLAN OF OPERATIONS**

The Owner shall remodel the existing building located on the subject property as depicted in the renderings and floor plans submitted herewith. The Owner shall remodel the first floor to be used as an event center with outdoor seating on the ground level being used in conjunction therewith. The Owner shall remodel the second floor, third floor, fourth and fifth floor for office and retail tenant space. The owner shall remodel the rooftop for a restaurant by converting the existing rooftop equipment room to a restaurant and using the remainder of the rooftop for outdoor seating.

The hours of operation for the building will be 6 am to midnight on Sunday through Thursday, and 6 am to 2 am on Fridays and Saturdays. The event center will have a maximum of five hundred (500) people per event and an average of two hundred fifty (250) people per event. The average number of events will be eight (8) events per month with the majority of events occurring on Friday and Saturday evenings.

Once the remodel is completed, the owner as landlord shall lease out each floor or relevant portion thereof to different tenants. As further described in the Commitments, the Owner agrees that the following shall be prohibited uses which the subject property shall not be used for: gas station; liquor store; adult entertainment business; pawn shop; automobile/vehicle sales; automobile/vehicle repair shop; on-going firework sales; heavy general retail; local power generating facility; wireless communications facility; automobile and light vehicle wash; automobile and vehicle storage or auction; or any of the following accessory and temporary uses: automobile rental station; ongoing outdoor display and sales; temporary outdoor display and sales; outdoor storage and operations; temporary firework sales; and temporary outdoor event

Metropolitan Development

SEP 14 2022

Division of Planning

## EXHIBIT B

### PLAN OF OPERATIONS

The Owner shall remodel the existing building located on the subject property as depicted in the renderings and floor plans submitted herewith. The Owner shall remodel the first floor to be used as an event center with outdoor seating on the ground level being used in conjunction therewith. The Owner shall remodel the second floor, third floor, fourth and fifth floor for office and retail tenant space. The owner shall remodel the rooftop for a restaurant by converting the existing rooftop equipment room to a restaurant and using the remainder of the rooftop for outdoor seating with small portion being set up for a DJ or solo artist to play light background music for dinner guests nightly between 5 pm and midnight.

The hours of operation for the building will be 6 am to midnight on Sunday through Thursday, and 6 am to 2 am on Fridays and Saturdays. The event center will have a maximum of five hundred (500) people per event and an average of two hundred fifty (250) people per event. The average number of events will be eight (8) events per month with the majority of events occurring on Friday and Saturday evenings.

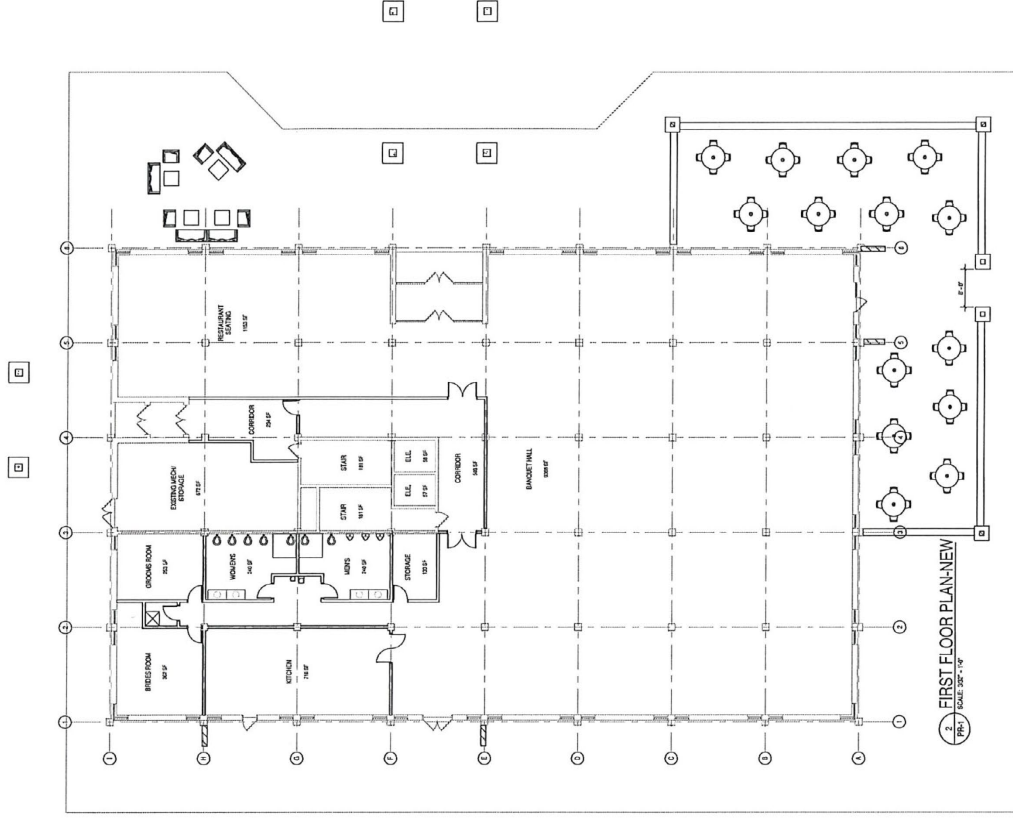
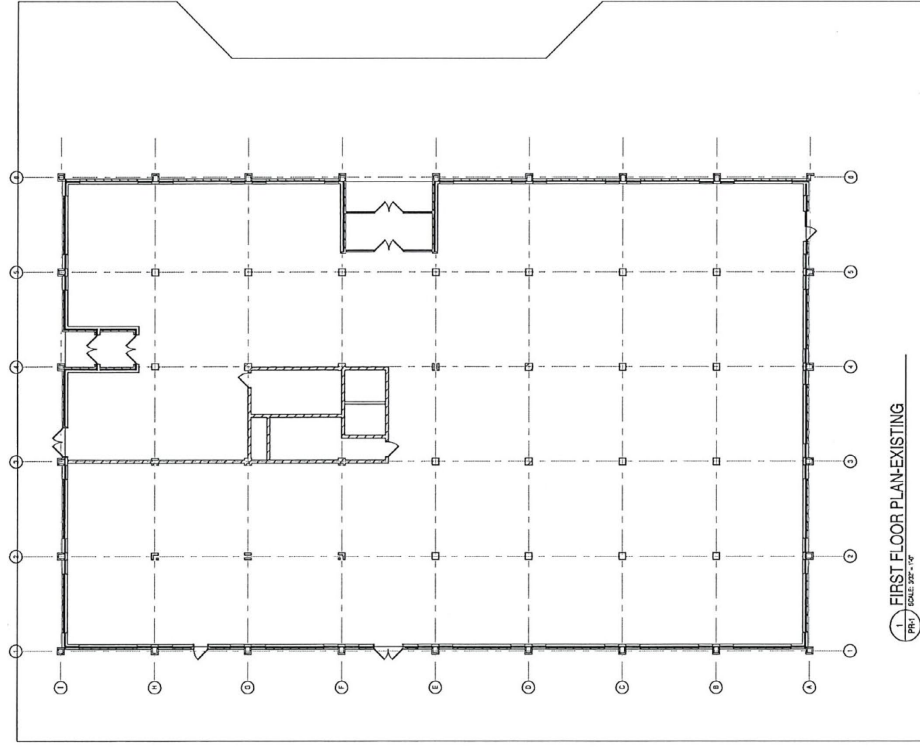
Once the remodel is completed, the owner as landlord shall lease out each floor or relevant portion thereof to different tenants. As further described in the Commitments, the Owner agrees that the following shall be prohibited uses which the subject property shall not be used for: (i) gas station; (ii) liquor store; (iii) adult entertainment; (iv) pawn shop; (v) automobile/vehicle sales; and (vi) automobile/vehicle repair shop.

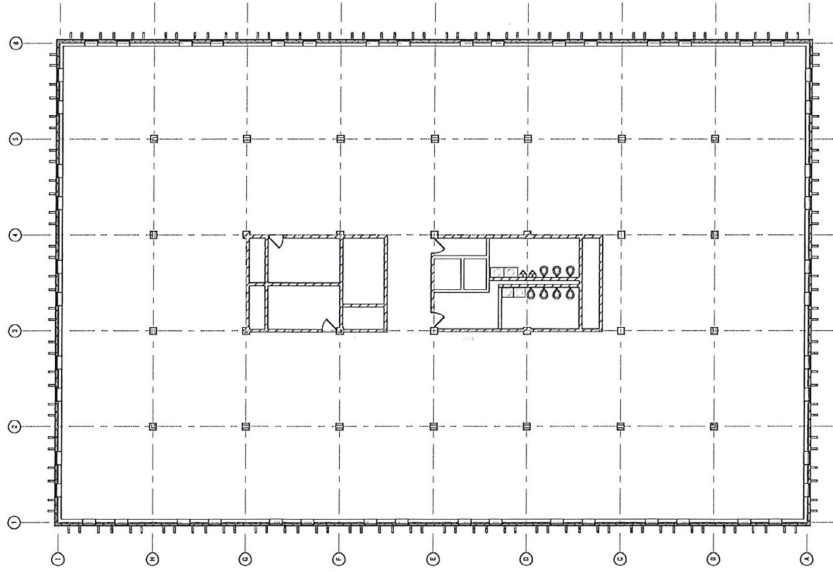
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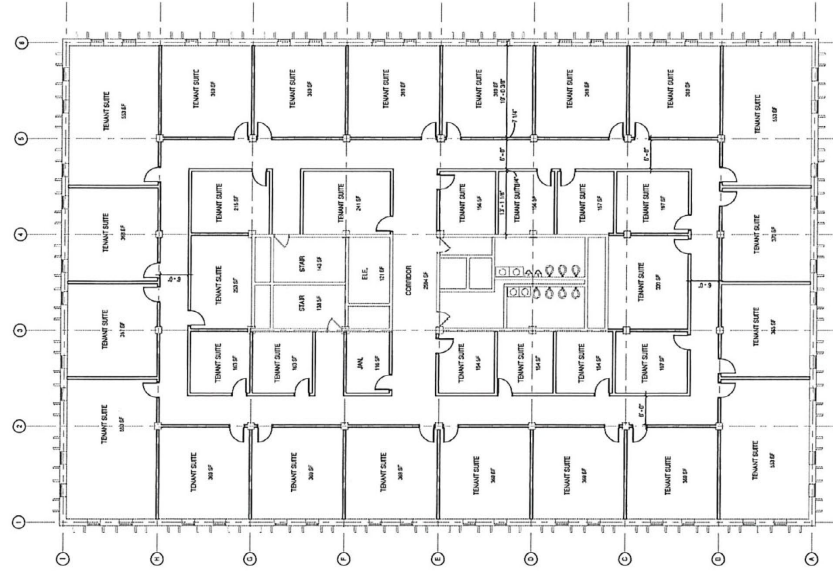
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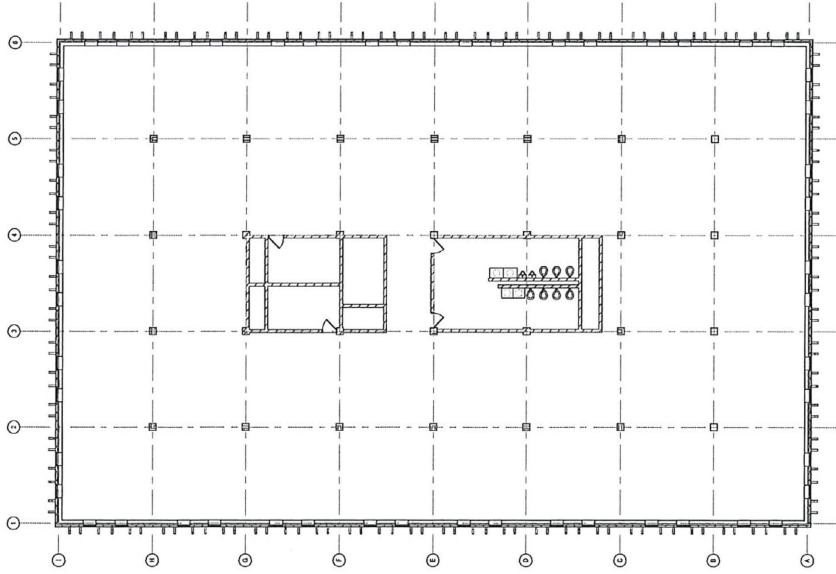




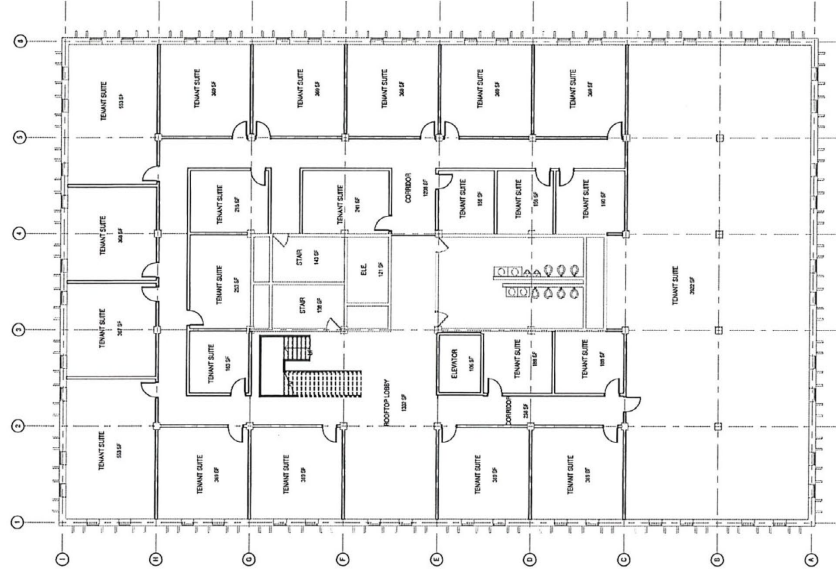
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SCALE: 1/8" = 1'-0"



2. THIRD FLOOR-NEW  
SCALE: 1/8" = 1'-0"

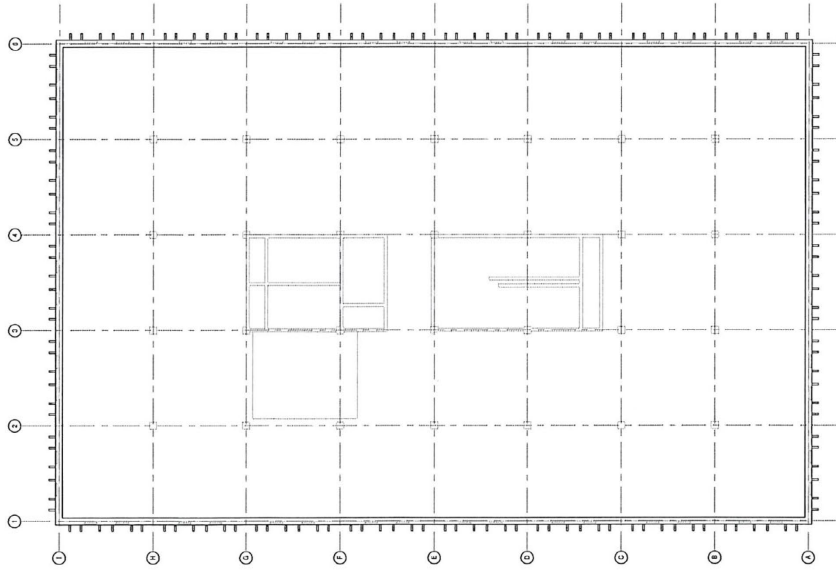


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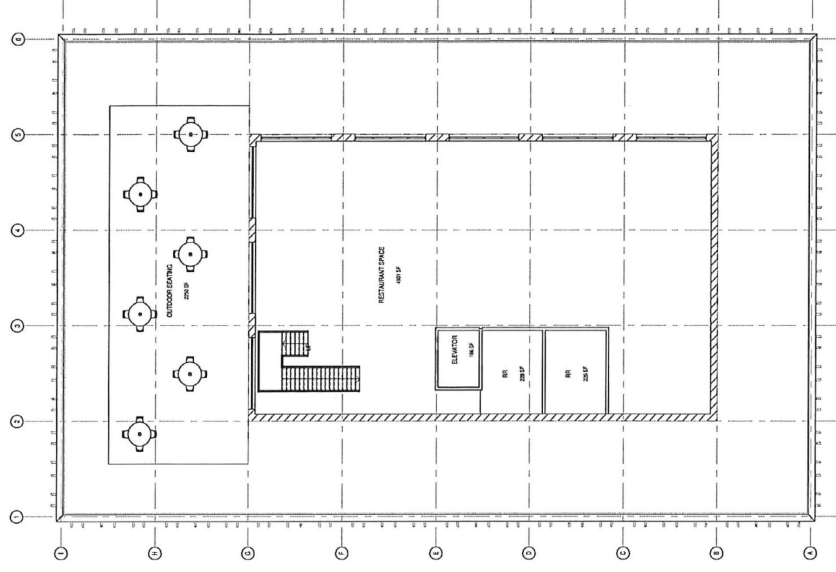


2 FIFTH FLOOR-NEW  
SCALE: 3/8" = 1'-0"





1 ROOF PLAN-EXISTING  
PR-3 SCALE 3/8" = 1'-0"



2 ROOF PLAN-NEW  
PR-2 SCALE 3/8" = 1'-0"

Revised: 07/07/2022  
By: [Signature]  
Checked: [Signature]











View looking west across the intersection of Willowbrook Parkway and Kingsway Drive



View of site looking north across Willowbrook Parkway





View of site looking north across the intersection of Willowbrook Parkway and Kingsway Drive



View of site looking northwest across Kingsway Drive





View from site looking southeast



View of site looking southwest





View of site looking southeast at western building facade



View from site looking northeast at adjacent office buildings



View from site looking north along Kingsway Drive