



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

January 9, 2025

Case Number: 2024-MOD-021

Property Address: 4901 & 4919 South Emerson Avenue & 5155 Shear Avenue (Approximate Address)

Location: Franklin Township, Council District #24

Petitioner: Emerson Place Apartments, LLC by Joseph D. Calderon

Current Zoning: C-S

Request: Modification of Commitments related to 2022-CZN-839 to terminate Commitment 5 and 6, which required the developer to provide (5) "a sidewalk or pavement markings providing safe pedestrian passage between south end of subject property and the intersection of Emerson Ave and Emerson Place Rd" and (6) "Sidewalk connections between subject property and the Grocery Store site".

Current Land Use: Undeveloped

Staff Recommendations: Approval

Staff Reviewer: Marleny Iraheta, Senior Planner

PETITION HISTORY

ADDENUM FOR JANUARY 9, 2025 HEARING EXAMINER

This petition was continued from the December 12, 2024 hearing to the January 9, 2025 hearing at the request of the petitioner.

The petitioner provided evidence to staff that indicated a solution to the installation of sidewalks to the subject properties in Commitments 5 and 6 related to 2022-CZN-839 could not be accomplished with the neighboring property owners. Neither of the neighboring property owners were comfortable taking responsibility for upkeep and maintenance of a proposed sidewalk on their properties.

Because the language of the commitments specifically stated that the installation of a sidewalk or pavement markings would occur provided the owner of the subject properties in question provided consent, staff determined that the petitioner fulfilled their obligation to intentionally seek to have these commitments met to no avail.

Therefore, staff is **recommending approval** of the request to terminate Commitments 5 and 6. The petitioner can install a portion of sidewalk along the eastern property boundary as noted in the December 20, 2024 site plan in the staff report, which they plan to install since it is on the subject site property.

December 12, 2024

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff **recommends denial** of the requests.

PETITION OVERVIEW

LAND USE

The site consists of three abutting parcels that are a part of a large commercial node at the intersection of Emerson Avenue and Thompson Road and extending north to Interstate 465. The commercial development of the area began in earnest in the 1980s and continues today. The subject site is surrounded by commercial and industrial development. A parking lot associated with the development to the west covers the southwest corner of the site. The remainder of the site is former farmland transitioning back to woodland.

MODIFICATION

The request would terminate Commitment 5 and 6 related to 2022-CZN-839. Commitment 5 calls that “provided the owner of the property which contains Emerson Place Road consents, a sidewalk or pavement markings providing save pedestrian passage between the south end of the Subject Property and the intersection of Emerson Avenue and Emerson Place Road shall be installed”. Commitment 6 calls that “provided the owner of the real estate commonly known as 5350 East Thompson Road (a/k/a Parcel No. 3026745) (the “Grocery Store Site”) provides consent, sidewalk connections between the Subject Property and the Grocery Store site shall be installed”.

STAFF ANALYSIS

The site does not front on a public street and currently has vehicular access to Emerson Avenue via abutting parcels in the Emerson Place Shoppes. A traffic signal at Emerson Avenue and the access drive to the Emerson Place Shoppes (Emerson Shoppes Road) controls traffic.

The site also has access to Emerson Avenue by way of Shear Avenue, which is a private street associated with the development to the east.

Emerson Avenue is a bus route with stops at both the entrance to the Emerson Place Shoppes and Shear Avenue. Currently neither a sidewalk or a painted pedestrian path connects the southern portion of the subject site to Emerson Avenue and the bus stop at the Emerson Place Shoppes. A newly constructed sidewalk along the south side of Shear Avenue connects the northern portion of the site to Emerson Avenue and the bus stop at Shear Avenue.

The 2022 rezoning petition and variances proposed housing in the middle of vehicle-oriented commercial development with little greenspace or outdoor recreation opportunities in the vicinity. The sidewalk network in the area is very spotty which does not make the site conducive for residential

development. Instead, for residential development to prosper in this location with safe pedestrian access, staff's commitment for sidewalk installation and connectivity is vital. Staff recognized that this would take the cooperation of the neighboring property owner.

The petitioner did not provide any plans, proof, or justification to the case file to warrant staff's support in the termination of the two commitments. Staff informed the petitioner that a layout of the site should be provided to indicate the areas in question that have not resulted in an agreement between property owners.

Staff will be recommending denial of the requests since sidewalk connectivity is vital especially if multi-family development would be proposed considering tenants would likely walk to the amenities in the immediate area and bus stops.

GENERAL INFORMATION

Existing Zoning	C-S	
Existing Land Use	Undeveloped	
Comprehensive Plan	Community Commercial	
Surrounding Context	<u>Zoning</u>	<u>Land Use</u>
North:	C-S	Self-storage facility
South:	C-3	Retail Center
East:	I-2 / C-4	Warehouse / Grocery Store
West:	C-3 / C-4 / C-S	Commercial Uses
Thoroughfare Plan		
Shear Avenue	Private Street	Not Applicable
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	Yes	
Wellfield Protection Area	No	
Site Plan	December 10, 2024.	
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	October 31, 2024	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book (2019)

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book (2019) recommends community commercial development of the site.
- The Community Commercial typology 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

- 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

Zoning History - Site

2022-CZN-839 / 2022-CVR-839; 4901 & 4919 South Emerson Avenue and 5155 Shear Avenue (subject site), Rezoning of 9.619 acres from the C-3 and C-4 districts to the C-S district to provide for multi-family dwelling uses, C-3 and C-4 uses and Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a 208-unit multi-family dwelling development with a 570-foot front setback from Emerson Avenue and Thompson Road (maximum 65-foot front setback permitted), zero-feet of public street frontage (50 feet of public street frontage required) and to allow the multi-family buildings to be 52 feet in height (maximum 45-foot height permitted), **approved and granted**.

2014-CZN-805 / 2014-CVR-805; 5260 & 5414 East Thompson Road and 4805 South Emerson Avenue, requested the rezoning of 29 acres from the C-S district to the C-4 district, and a variance of development standards to provide for a deficient number of parking spaces and excess outdoor display area, **approved**.

94-Z-8; 4901 South Emerson Avenue, requested the rezoning of four acres from the SU-1 district to the C-4 district, **approved**.

93-SE3-1; 4919 South Emerson Avenue, requested a Special Exception to provide for an amusement arcade within an existing nightclub, **approved**.

93-UV3-2; 4919 South Emerson Avenue, requested a variance of use to provide for an amusement arcade with deficient separation from protected districts, **approved**.

89-Z-112; 5414 East Thompson Road and 4855 South Emerson Avenue, requested the rezoning of 86.6 acres from the C-3, D-4 and A-2 districts to the C-S district to provide for commercial uses, **approved**.

87-Z-258; 4905 South Emerson Avenue, requested the rezoning of 7.6 acres from the A-2 and C-3 districts to the C-3 district, **approved**.

Zoning History – Vicinity

2019-ZON-074; 4741 South Emerson Avenue, 5360 East Thompson Road, 4500 Victory Lane & 5445 Victory Drive (east of site), requested the rezoning of 39.3 acres from the C-s district to the I-2 district, **approved**.

2012-DV3-017; 5202 East Thompson Road (south of site), requested a variance of development standards to provide for outdoor seating in a C-3 district, **approved**.

2012-UV2-005; 4911 South Emerson Avenue (southwest of site), requested a variance of use to provide for auto parts sales in a C-3 district, and a variance of development standards to provide for a sign without sufficient separation from other signs, **approved**.



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

2007-UV3-002; 5202 East Thompson Road (south of site), requested a variance of use to provide for a fitness center in a C-3 district, **approved**.

2004-ZON-152; 4723 South Emerson Avenue (north of site), requested the rezoning of 5.7 acres from the C-3 and C-5 districts to the C-S district to provide for a self-storage facility and C-3 uses, **approved**.

2000-UV2-044; 5202 East Thompson Road (south of site), requested a variance of use to provide for an amusement arcade with an excessive number of machines, **approved**.

99-UV1-128; 5202 East Thompson Road (south of site), requested a variance of use to provide for an auto parts dealer in a C-3 district, **approved**.

94-V2-52; 4903 South Emerson Avenue (west of site), requested a variance of development standards to provide for excessive signage, **approved**.

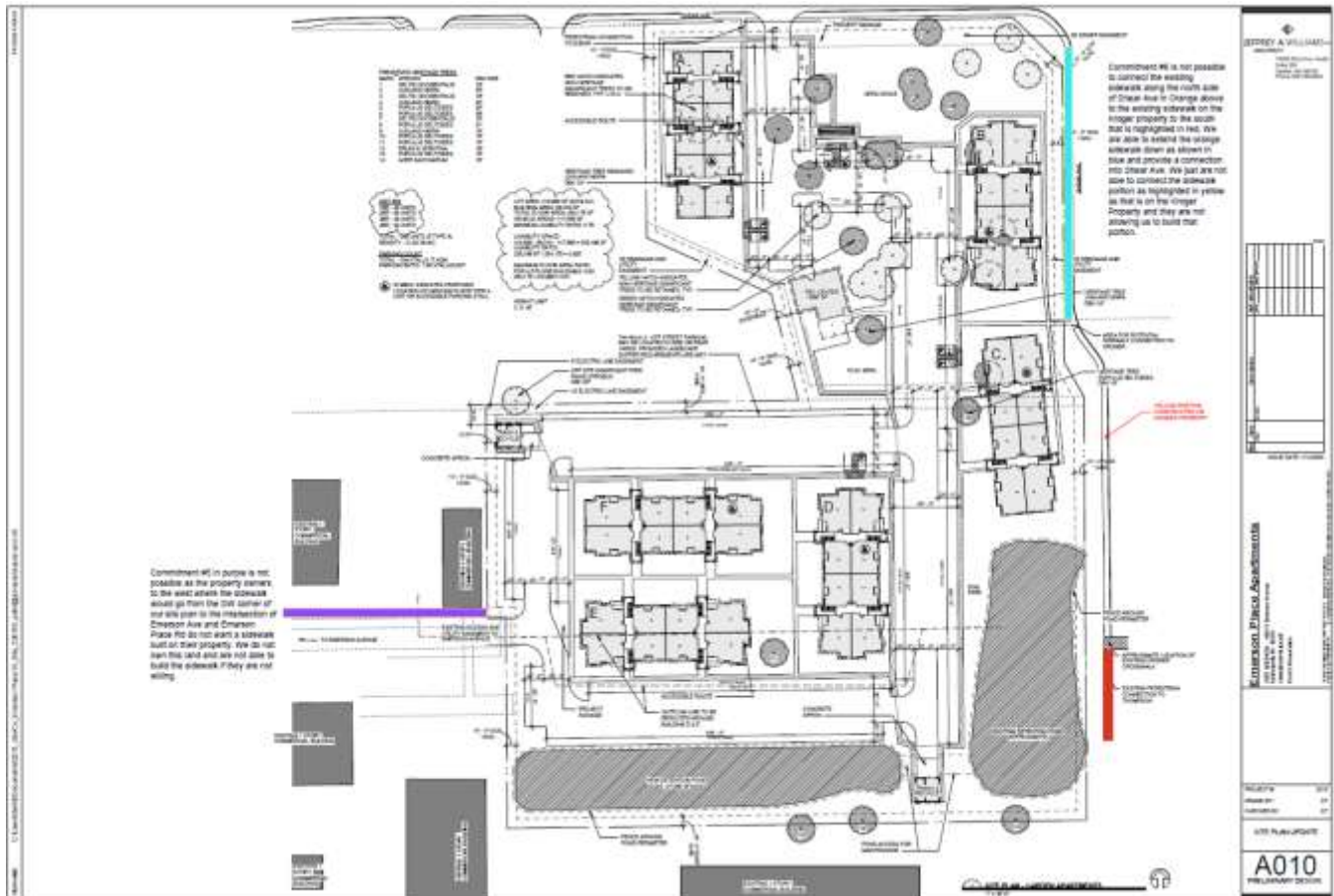
89-Z-85; 5150 East Thompson Road (south of site), requested the rezoning of 6.2 acres from the A-2 district to the C-3 district, **approved**.

88-Z-57; 5302 East Thompson Road (east of site), requested the rezoning of 16.6 acres from the A-2 and D-4 districts to the C-5 district, **withdrawn**.

87-Z-176; 4825 South Emerson Avenue (southwest of site), requested the rezoning of 2.5 acres from the A-2 district to the C-3 district, **approved**.

EXHIBITS





**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. 36-7-4-918.8 and I.C. 36-7-4-1015, 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 Exhibit "A" Attached Hereto And Incorporated By Reference (the "Subject Property").

Statement of MODIFICATION OR TERMINATION of Covenants or Commitments:

1. Commitments numbered 5 and 6 in that certain Statement of Commitments recorded on December 21, 2022 as Instrument No. A202200134333 in the Office of the Recorder of Marion County are hereby terminated.
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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 2024-MOD-____.



A202200134333

12/21/2022 11:00 AM
KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER
FEE: \$ 35.00
PAGES: 6
By: DG

KLH

STATEMENT OF COMMITMENTS

**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL**

In accordance with I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

Legal Description: See Exhibit "A" Attached Hereto And Incorporated By Reference
(the "Subject Property").

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. The private access drive commonly known as Emerson Place Road shall be rehabilitated or reconstructed from the edge of pavement on Emerson Avenue to a point 75 feet to the east.
3. Pavement marking striping and land use indicators identifying the use of the Subject Property (which may include directional signage) shall be installed on the east leg of the intersection of Emerson Avenue and Emerson Place Road.
4. Traffic detection infrastructure for the east and west approaches to the existing traffic signal at the intersection of Emerson Avenue and Emerson Place Road shall be installed, repaired or replaced, as needed, per the specifications of the Department of Public Works.
5. Provided the owner of the property which contains Emerson Place Road consents, a sidewalk or pavement markings providing safe pedestrian passage between the south end of the Subject Property and the intersection of Emerson Avenue and Emerson Place Road shall be installed.
6. Provided the owner of the real estate commonly known as 5350 East Thompson Road (a/k/a Parcel No. 3026745) (the "Grocery Store Site") provides consent, sidewalk connections between the Subject Property and the Grocery Store Site shall be installed.

MDC's Exhibit B -- page 1 of 6

7. Commitments 2 through 6 above shall be implemented in conjunction with development of all or any portion of the Subject Property as evidenced by an application for an Improvement Location Permit.

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other person acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A" which is attached hereto and incorporated herein by reference. These 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.

COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition #2022-CZN-839 by the City-County Council changing the zoning classification of the real estate from a C-3 and C-4 zoning classification to a C-S zoning classification; or
- (b) the adoption of approval petition # _____ by the Metropolitan Development Commission; and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the C-S zoning classification or until such other time as may be specified herein.

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 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. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and

The undersigned hereby authorizes the Division of Planning of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of petition #2022-CZN-839.



Northern property boundary along Shear Avenue looking east.



Northern property boundary along Shear Avenue looking south.



Photo of the fast-food restaurant west of the site.



Self-storage facility north of the site.



Photo of the northeastern property boundary where the sidewalk ends.



Eastern section of the property boundary without a sidewalk looking south on Shear Avenue.



Eastern section of the property boundary without a sidewalk looking north.



Sidewalk that leads to East Thompson Road.



Existing crosswalk from the property to the grocery store to the east.



Photo of the subject site looking east.



View of the subject site looking southeast.



View looking east across the subject site.



View of the subject site looking north across the site.