

**METROPOLITAN DEVELOPMENT COMMISSION  
HEARING EXAMINER**

October 24, 2024

**Case Number:** 2024-ZON-111  
**Property Address:** 4900 and 4952 Kentucky Avenue  
**Location:** Decatur Township, Council District #21  
**Petitioner:** Indianapolis (Kentucky Avenue) WW, LLC, by Joseph D. Calderon  
**Current Zoning:** D-A (FF), D-3 (FF) and C-3 districts to the C-4 (FF) district  
**Request:** Rezoning of 5.861 acres from the D-A (FF), D-3 (FF) and C-3 districts to the C-4 (FF) district to provide for a gas station and convenience store.  
**Current Land Use:** Single-family dwelling  
**Staff Recommendations:** Approval.  
**Staff Reviewer:** Kathleen Blackham, Senior Planner

**PETITION HISTORY**

The Hearing Examiner continued this petition from the October 10, 2024 hearing, to the October 24, 2024 hearing at the request of staff.

**STAFF RECOMMENDATION**

Approval, subject to the following commitments being reduced to writing on the Commission's Exhibit forms at least three days prior to the MDC hearing:

1. A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development; b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.
2. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptacles provided for the proper disposal of trash and other waste.

## PETITION OVERVIEW

This 5.861-acre site, zoned D-A (FF), D-3 (FF) and C-3 is comprised of three parcels. The largest parcel (9.82 acres) is bisected by a railroad right-of-way but only approximately 4.68 acres fronting on Kentucky Avenue and east of the railroad right-of-way would be rezoned, along with two adjoining parcels for a total of 5.861 acres. It is surrounded by commercial uses and a mobile dwelling community to the north, zoned C-4 and D-11 (FF), respectively; commercial uses, across Depot Street / Valley Mills Road to the south, zoned C-3; Kentucky Avenue right-of-way, to the east, zoned C-3 (FF), D-A and C-4; and undeveloped land to the west, zoned D-A.

The request would rezone the site to the C-4 (Community Regional) District. “The C-4 District is designed to provide for the development of major business groupings and regional-size shopping centers to serve a population ranging from a community or neighborhoods to a major segment of the total metropolitan area. These centers may feature a number of large traffic generators such as home improvement stores, department stores, and theatres. Even the smallest of such freestanding uses in this district, as well as commercial centers, require excellent access from major thoroughfares. While these centers are usually characterized by indoor operations, certain permitted uses may have limited outdoor activities, as specified.”

The Comprehensive Plan recommends community commercial typology, which would be consistent with the Plan recommendation. Community commercial typology is contemplated to be consistent with the C-3 (neighborhood commercial) or the C-4 (community-regional) zoning districts, depending upon the location and the surrounding land uses. Given the surrounding commercial uses and the railroad right-of-way, staff believes the surrounding land uses would not be negatively impacted by the proposed rezoning and use.

To “eliminate excessive and confusing sign displays” staff would also emphasize that signage for this development should conform to the Sign Regulations. Staff believes that appropriate site identification and services offered would be possible under the existing Ordinance and would not support any variances for signage for this current request or for any future development.

### **Floodway Fringe**

This site has a secondary zoning classification of a Floodway Fringe (FF), which is the portion of the regulatory floodplain that is not required to convey the 100-year frequency flood peak discharge and lies outside of the floodway. This site, however, lies within the unregulated 500-year floodplain.

The designation of the FF District is to guide development in areas subject to potential flood damage, but outside the Floodway (FW) District. Unless otherwise prohibited, all uses permitted in the primary zoning district (C-4 in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.



## Tree Preservation / Heritage Tree Conservation

There are significant amounts of natural vegetation and trees located on the northern portion, as well as throughout site. Due to their inherent ecological, aesthetic, and buffering qualities, the maximum number of these existing trees should be preserved on the site.

All development shall be in a manner that causes the least amount of disruption to the trees.

A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development, b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.

If any of the trees are heritage trees that would be impacted, then the Ordinance requires that the Administrator, Urban Forester or Director of Public Works determine whether the tree(s) would be preserved or removed and replaced.

The Ordinance defines "heritage tree" as a tree over 18 inches Diameter at Breast Height (DBH) and one of the Heritage tree species. Heritage tree species include: Sugar Maple (*Acer saccharum*), Shagbark Hickory (*Carya ovata*), Hackberry (*Celtis occidentalis*), Yellowwood (*Cladrastus kentukea*), American Beech (*Fagus grandifolia*), Kentucky Coffeetree (*Gymnocladus dioica*), Walnut or Butternut (*Juglans*), Tulip Poplar (*Liriodendron tulipifera*), Sweet Gum (*Liquidambar styraciflua*), Black Gum (*Nyssa sylvatica*), American Sycamore (*Platanus occidentalis*), Eastern Cottonwood (*Populus deltoides*), American Elm (*Ulmus americana*), Red Elm (*Ulmus rubra*) and any oak species (*Quercus*, all spp.)

The Ordinance also provides for replacement of heritage trees if a heritage tree is removed or dies within three years of the Improvement Location issuance date. See Exhibit A, Table 744-503-3: Replacement Trees.

## Environmental Public Nuisances

The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.

All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.



Environmental public nuisance means:

1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.

Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

**GENERAL INFORMATION**

<b>Existing Zoning</b>	D-A (FF) / D-3 (FF) / C-3	
<b>Existing Land Use</b>	Single-family dwelling	
<b>Comprehensive Plan</b>	Community Commercial	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Land Use</b>
	North: C-4 / D-11 (FF)	Commercial uses / mobile dwelling community
	South: C-3	Commercial uses
	East: C-3 / D-A / C-4 (FF)	Single-family dwelling
	West: D-A	Undeveloped land
<b>Thoroughfare Plan</b>		
Kentucky Avenue	Primary arterial	Existing 162-foot right-of-way and proposed 102-foot right-of-way.
Depot Street / Valley Mills Road	Local Street	Existing 50-foot right-of-way and proposed 50-foot right-of-way.
<b>Context Area</b>	Metro	



<b>Floodway / Floodway Fringe Overlay</b>	Yes – 500-year unregulated floodplain
<b>Wellfield Protection Area</b>	No
<b>Site Plan</b>	September 5, 2024
<b>Site Plan (Amended)</b>	N/A
<b>Elevations</b>	September 5, 2024
<b>Elevations (Amended)</b>	N/A
<b>Landscape Plan</b>	N/A
<b>Findings of Fact</b>	N/A
<b>Findings of Fact (Amended)</b>	N/A
<b>C-S/D-P Statement</b>	N/A

**COMPREHENSIVE PLAN ANALYSIS**

**Comprehensive Plan**

- The Comprehensive Plan recommends Community Commercial. 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.

**Pattern Book / Land Use Plan**

- The Comprehensive Plan consists of two components that include The Marion County Land Use Pattern Book (2019) and the land use map. The Pattern Book provides a land use classification system that guides the orderly development of the county and protects the character of neighborhoods while also being flexible and adaptable to allow neighborhoods to grow and change over time.
- 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 – Community Commercial Typology*
  - 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.

- 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).
  - Should be located along an arterial street.
  - Outdoor display of merchandise should be limited.
  - If adjacent to residential uses or a Living Typology, outdoor display of merchandise is not recommended.
  - Should be located along an arterial or collector street.
  - If proposed within one-half mile along an adjoining street of an existing or approved residential development, then connecting, continuous pedestrian infrastructure between the proposed site and the residential development (sidewalk, greenway, or off-street path) should be in place or provided.
  - Should be no larger than 25 acres with 125,000 square feet of floor space and no more than three out lots.

**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)

- The Marion County Thoroughfare Plan (2019) “is a long-range plan that identifies the locations classifications and different infrastructure elements of roadways within a defined area.”
- The following listed items describe the purpose, policies and tools:
  - Classify roadways based on their location, purpose in the overall network and what land use they serve.
  - Provide design guidelines for accommodating all modes (automobile, transit, pedestrians, bicycles) within the roadway.
  - Set requirements for preserving the right-of-way (ROW).
  - Identify roadways for planned expansions or new terrain roadways.
  - Coordinate modal plans into a single linear network through its GIS database.

## ZONING HISTORY

**2024-ZON-083; 6322 West Thompson Road (south of site)**, requested rezoning of 0.517 acre from the D-3 and C-4 classifications to the C-4 classification to provide for commercial development, **approved**.

**2008-ZON-047; 4919 Kentucky Avenue (north of site)**, requested rezoning of 0.65 acre, being in the D-3 District, to the C-3 classification to provide for neighborhood commercial development, **approved**.

**2007-DV2-030; 4905 Kentucky Avenue (north of site)**, requested a variance of development standards to legally establish a drive-through facility within 100 feet of a protected district, with reduced parking and sign setbacks, **granted**.

**2006-UV1-008; 6345 West Thompson Road (south of site)**, requested a variance of use to legally establish a heating and cooling contractor business in an existing building and to provide for construction of a one-story, 2,800-square foot storage building in C-1, **denied**.

**2003-ZON-119; 6345 West Thompson Road (south of site)**, requested rezoning of 0.50 acre from D-3 to C-1, **approved**.

**2003-UV1-025; 6345 West Thompson Road (south of site)**, requested a variance of use to provide for a heating and cooling contractor's office and a 2,800-square foot pole barn, with reduced setbacks and a non-permitted wall sign in D-3, **denied**.

**2002-UV1-014; 6403 West Thompson Road (south of site)**, requested a variance of use to provide for welding facility consisting of welding of cast iron and aluminum cylinder heads in a 6,000-square foot commercial building in C-1, **granted**.

**98-UV1-75; 5020 Kentucky Avenue (south of site)**, requested a variance of use to provide for outdoor storage of seasonal sales items in C-3, with reduced front setbacks, maneuvering in the right-of-way of Kentucky Avenue, and a dumpster within the front yard along Depot Street, **granted**.

**97-UV3-38; 5021 Kentucky Avenue (south of site)**, requested a variance of use to provide for used auto sales in C-3, **withdrawn**.

**97-UV1-60; 5021 Kentucky Avenue (south of site)**, requested a variance of use to provide for the construction of a residential model sales home in C-3, **granted**.

**95-UV2-88; 5021 Kentucky Avenue (south of site)**, requested a variance of use to provide for the continued operation of outdoor automobile sales in C-3, **withdrawn**.

**95-UV1-52; 6345 West Thompson Road (south of site)**, requested a variance of use and development standards to provide for a floral shop within an existing dwelling, with a freestanding identification sign in D-3, **granted**.



Department of Metropolitan Development  
Division of Planning  
Current Planning

**91-UV2-128; 5021 Kentucky Avenue (south of site)**, requested a variance of use to provide for the continued operation of outdoor automobile sales in C-3, **granted for a period not to exceed three years.**

**88-Z-273; 5021 Kentucky Avenue (south of site)**, requested rezoning of 1.22 acres from SU-18 to C-3, **approved.**

**85-UV2-91; 5020 Kentucky Avenue (across Kentucky Avenue to southwest)**, variance of use to provide for outdoor storage of seasonal sales items in C-3, **granted for a period not to exceed three years.**

**79-Z-100; 5011 Kentucky Avenue (abutting site to south)**, rezoning of 0.38 acre from SU-18 to SU-42 to provide for a natural gas regulating station, **approved.**

**EXHIBITS**

**EXHIBIT A**

**Heritage Tree Conservation**

Removal of any Heritage Tree is prohibited unless any of the following determinations are made before removal:

1. The Administrator or the city’s Urban Forester determines that the tree is dead, significantly and terminally diseased, a threat to public health or safety, or is of an undesirable or nuisance species.
2. The Director of the Department of Public Works determines that the tree interferes with the provision of public services or is a hazard to traffic.
3. The Administrator determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree.
4. The site from which the tree is removed is zoned D-A and the tree is harvested as timber or similar forestry product.

<b>Size of tree removed or dead (inches)</b>	<b>Number of Trees to be planted to replace a Heritage Tree</b>	<b>Number of Trees to be planted to replace an existing tree</b>
Over 36 DBH	15	10
25.5 to 36 DBH	11	8
13 to 25 DBH	8	6
10.5 to 12.5 DBH	6	4
8.5 to 10 DBH	5	4
6.5 to 8	3	2
4 to 6	2	2
2.5 to 3.5	1	1











**WAWA  
U63FB-FT**

KEY PLAN  
88'11" x 111'11"

BRIDGE SQUARE FOOTAGE: 4,822

**MATERIALS:**

- 1. BRICK
- 2. CONCRETE SIDING
- 3. EIFS OR STUCCO
- 4. ROOF: SLATE
- 5. TILE
- 6. WAWA SIGNAGE

ALL MATERIALS SHALL BE APPROVED BY THE APPLICANT AND SHALL BE IN COMPLIANCE WITH THE CITY OF INDIANAPOLIS ZONING ORDINANCES.

**FRONT ELEVATION**  
88'11" x 111'11"

NOTE: ALL MATERIALS ARE SUBJECT TO THE CITY OF INDIANAPOLIS ZONING ORDINANCES. ALL MATERIALS SHALL BE APPROVED BY THE APPLICANT AND SHALL BE IN COMPLIANCE WITH THE CITY OF INDIANAPOLIS ZONING ORDINANCES.

MATERIALS CALCULATIONS FRONT ELEVATION	
BRICK	17%
EIFS OR STUCCO	50%
GLAZING	33%
TOTAL	100%

**SIDE ELEVATION**  
88'11" x 111'11"

NOTE: ALL MATERIALS ARE SUBJECT TO THE CITY OF INDIANAPOLIS ZONING ORDINANCES. ALL MATERIALS SHALL BE APPROVED BY THE APPLICANT AND SHALL BE IN COMPLIANCE WITH THE CITY OF INDIANAPOLIS ZONING ORDINANCES.

MATERIALS CALCULATIONS SIDE ELEVATION	
BRICK	17%
EIFS OR STUCCO	50%
GLAZING	33%
TOTAL	100%

**REAR ELEVATION**  
88'11" x 111'11"

NOTE: ALL MATERIALS ARE SUBJECT TO THE CITY OF INDIANAPOLIS ZONING ORDINANCES. ALL MATERIALS SHALL BE APPROVED BY THE APPLICANT AND SHALL BE IN COMPLIANCE WITH THE CITY OF INDIANAPOLIS ZONING ORDINANCES.

MATERIALS CALCULATIONS REAR ELEVATION	
BRICK	17%
EIFS OR STUCCO	50%
GLAZING	33%
TOTAL	100%

**RIGHT ELEVATION**  
88'11" x 111'11"

NOTE: ALL MATERIALS ARE SUBJECT TO THE CITY OF INDIANAPOLIS ZONING ORDINANCES. ALL MATERIALS SHALL BE APPROVED BY THE APPLICANT AND SHALL BE IN COMPLIANCE WITH THE CITY OF INDIANAPOLIS ZONING ORDINANCES.

MATERIALS CALCULATIONS RIGHT ELEVATION	
BRICK	17%
EIFS OR STUCCO	50%
GLAZING	33%
TOTAL	100%

**Wawa**

**HEA**

**U63FB-FT**  
 4952 KENTUCKY AV.  
 INDIANAPOLIS, IN 46221



① FUEL CANOPY ELEVATION  
1/4" = 1'-0"

**MATERIALS:**

- ① BRICKS
- ② BRICKS OR STUCCO
- ③ METAL: WHITE
- ④ ROOF: TITANIUM
- ⑤ PAINT: CEILING BRIGHT WHITE

① TRASH COMPOUND SIDE ELEVATION  
3/8" = 1'-0"

① TRASH COMPOUND FRONT ELEVATION  
3/8" = 1'-0"

① TRASH COMPOUND REAR ELEVATION  
3/8" = 1'-0"

① FUEL CANOPY PERSPECTIVE





View looking north across intersection of Valley Mills Road the Kentucky Avenue



View looking south at adjacent commercial uses along Kentucky Avenue





View of southern portion of site looking northwest across Valley Mills Road



View of site looking north across Vally Mills Road along railroad tract





View of southern portion of the looking north across Valley Mills Road



View of site looking northwest across Kentucky Avenue





View of site looking west across Kentucky Avenue



View of site looking west across Kentucky Avenue





View of site looking west across intersection of Thompson Road and Kentucky Avenue



View of site looking west across Kentucky Avenue





View of site looking west across Kentucky Avenue



View of northern portion of site looking west across Kentucky Avenue