

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-APP-030
Address: 5510 South Emerson Avenue (approximate addresses)
Location: Perry Township, Council District #24
Zoning: D-P
Petitioner: Haven Health Management, LLC, by J. Murray Clark
Request: Appeal of the Administrator's Decision to deny 2023-ADM-158, which proposed the use of a drug addiction and treatment facility in the D-P classification, based on the Development Statement approved for 2007-APP-131 and 2021-ZON-052.

ADDENDUM FOR DECEMBER 6, 2023, METROPOLITAN DEVELOPMENT COMMISSION

This petition was continued from the November 15, 2023 hearing to the December 6, 2023 hearing at the request of the petitioner. No additional information has been provided to the case file.

November 15, 2023

RECOMMENDATIONS

Staff **recommends denial** of this request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

EXISTING ZONING AND LAND USE

D-P	Metro	Drug Addiction and Treatment Facility
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SURROUNDING ZONING AND LAND USE

North	D-A	Surface Parking Lot
South	D-P	Residential (Townhomes)
East	C-S	Undeveloped
West	D-P	Residential (Townhomes)

COMPREHENSIVE PLAN

The Comprehensive Plan for Indianapolis and Marion County (2018) recommends suburban neighborhood development.

- ◇ The subject site is zoned D-P and is developed with a commercial building and associated parking area. The property is bordered to the west and south by townhomes, zoned D-P, to the north by a parking lot, zoned D-A, and an undeveloped lot to the east across Emerson Avenue, zoned C-S.

(Continued)

STAFF REPORT 2023-APP-030 (Continued)

- ◇ The Comprehensive Plan recommends the suburban neighborhood typology. “The Suburban Neighborhood typology is predominantly made up of single-family housing but is interspersed with attached and multifamily housing where appropriate. This typology should be supported by a variety of neighborhood-serving businesses, institutions, and amenities. Natural Corridors and natural features such as stream corridors, wetlands, and woodlands should be treated as focal points or organizing systems for development. Streets should be well-connected, and amenities should be treated as landmarks that enhance navigability of the development. This typology generally has a residential density of 1 to 5 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park.”
- ◇ The request would allow the operation of a drug addiction and treatment facility in this D-P district.

HISTORY

- ◇ The site was included in rezoning case 2004-ZON-078, which rezoned 25.539 acres from the D-A and D-P Districts to the D-P classification to provide for the development of the 104-unit Planned Unit Development known as Coventry Park consisting of multi-family townhouses and two-family dwellings. That rezoning petitioner contemplated eventual development of a Senior Housing Component on the subject site.
- ◇ In 2007, approval petition 2007-APP-131 was granted for the Modification of Development Statement, related to petition 2004-ZON-78 (2004-DP-005), to provide for a **shared senior living building** consisting of twelve resident rooms, an owner’s room and a guest room on 1.04 acres, with density of 13.46 units per acre and Approval to Modify Commitments, related to petition 2004-ZON-078 (2004-DP-005), recorded as instrument number 2004-021854, and replace them with new commitments. See Staff Exhibit A.
- ◇ In 2021, the property was rezoned from the D-P district to the D-P district, via 2021-ZON-052, to use the existing building for a **residential living facility for individuals with psychiatric disorders**. Approval was subject to the Approved Preliminary Planned Unit Development, stamped-approved July 21, 2021. See Staff Exhibit B.
- ◇ The D-P Statement, from 2021-ZON-052, describes the change of use from a shared senior living facility to a facility for adults who voluntarily seek residential mental health treatment. The maximum number of adults would be 16, with the average stay ranging from thirty days to one year.

Staff Analysis

- ◇ The Consolidated Zoning and Subdivision Ordinance, specifically Table 743-1: USE TABLE, distinctly differentiates the residential uses such as group homes, assisted living facilities, and transitional living quarters from health care facilities such as methadone clinic or treatment facility and substance abuse treatment facilities.

(Continued)

STAFF REPORT 2023-APP-030 (Continued)

- ◇ **Group Home** is defined as a residential facility for 2 or more individuals meeting the definition of a handicapped person under the Federal Fair Housing Act and court decisions interpreting that act. This definition includes Community residential facilities for persons with developmental disabilities (as defined by IC 12-7-2-61) as licensed by the Division of Disability and Rehabilitative Services – Bureau of Developmental Disabilities Services, per 460 IAC 9-2. This definition includes residential living facilities for persons with psychiatric disorders or addictions as licensed by the Division of Mental Health and Addiction, per 440 IAC 7.5. For purposes of this definition, the term handicapped does not include persons currently using or addicted to alcohol or controlled substances who are not in a recognized recovery program, nor does it include half-way houses for individuals in the criminal justice system, or diversion centers.
- ◇ **Substance Abuse Treatment Facility** is defined as a facility, the primary function of which is to administer or dispense a schedule II-controlled substance (as listed under IC 35-48-2-6(b) or (c)) to a narcotic addict for maintenance or detoxification treatment. This definition does not include a methadone clinic or treatment facility.
- ◇ **Methadone Clinic or Treatment Facility** is defined as a clinic or facility engaged in dispensing Methadone (dolophine) for the purpose of elimination or reduction of opiate use by drug addicts and abusers.
- ◇ Staff determined that the now proposed use of an addiction and treatment facility is not a permitted use in this D-P district.
- ◇ Staff notified the applicant of Administrative Approval 2023-ADM-158 that the site needed to be rezoned from D-P to D-P to allow for the additional use.

GENERAL INFORMATION

THOROUGHFARE PLAN

Emerson Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary arterial street, with a 140-foot existing right-of-way and a 102-foot proposed right-of-way.

SITE PLAN

File-dated September 25, 2023.

FINDINGS OF FACT

File-dated September 25, 2023.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

1. VIO22-006966; 5510 South Emerson Avenue (subject site), Building violation for the notice of change in permit information: amendment of permits and plans.

PREVIOUS CASES

2023-ADM-158; 5510 South Emerson Avenue (subject site), Approval of three building additions for a drug addiction and treatment facility, **denied**.

(Continued)

STAFF REPORT 2023-APP-030 (Continued)

2021-ZON-052; 5510 South Emerson Avenue (subject site), Rezoning of 1.1 acres from the D-P district to the D-P district to use the existing building for a residential living facility for individuals with psychiatric disorders, **approved**.

2015-ADM-373; (subject site), Approval of a ground sign, **approved**.

2007-APP-131; 5524 South Emerson Avenue (subject site), Approval of Modification of Development Statement, related to petition 2004-ZON-78 (2004-DP-005), to provide for a shared senior living building consisting of twelve resident rooms, an owner's room and a guest room on 1.04 acres, with density of 13.46 units per acre and Approval to Modify Commitments, related to petition 2004-ZON-078 (2004-DP-005), recorded as instrument number 2004-021854, and replace them with new commitments related to this request, **approved**.

2004-PLT-070; 5500 and 5640 South Emerson Avenue (subject site), Subdivision approval dividing 25.53 acres into 41 lots and a Waiver request for sidewalks along South Emerson Avenue and within the interior of the multi-family residential development, **approved**.

2004-ZON-078; 5500 South Emerson Avenue (subject site), Rezoning of 25.539 acres from D-P and D-A to D-P to provide for 30 multi-family townhouses and 37 two-family dwellings, for a total of 104 dwelling units, with a density of 4.1 units per acre, **approved**.

99-Z-23/ 99-DP-5; 5502 South Emerson Avenue (subject site), Rezone 13 acres from D-A to D-P to provide for a mixed residential development, consisting of townhomes and two-family residential structures, **approved**.

98-Z-230/98-DP-28; 5502 South Emerson Avenue (subject site), Rezoning of 13 acres, being in the D-A District to the D-P classification to provide for a mixed residential development, consisting of townhomes and two-family residential structures, consisting of 89 units, **denied**.

ZONING HISTORY – VICINITY

2021-CZN-809 / 2021-CVR-809; 5340 & 5406 South Emerson Avenue (north of site), Rezoning of 2.08 acre from the D-A and C-1 districts to the C-1 district and Variance of use of the Consolidated Zoning and Subdivision Ordinance to legally establish a single-family dwelling in the C-1 district (not permitted), **approved and granted**.

2017-ZON-018; 5055 Shelbyville Road (north of site), Rezoning of 1.5 acre from the D-A district to the C-3 district, **denied**.

2008-ZON-096; 5406 South Emerson Avenue, (north of site), Rezoning of four acres from the D-A district to the C-1 district, **approved**.

2009-CZN-832 / 2009-CAP-832; 5501 South Emerson Avenue (east of site), Rezoning of 4.5 acres from the C-S district to the C-S district to provide for a pharmacy, offices, a restaurant and personal and professional services and requested the approval of a modification of site plan to provide for a convenience store and gas station and a modification of commitments related to 89-Z-102 to removed commitments for right-of-way dedication and the requirement that the site be developed as an integrated center, **approved**.

(Continued)

STAFF REPORT 2023-APP-030 (Continued)

2005-ZON-215; 5640 South Emerson Avenue (south of site), Rezoning of 1.824 acres, being in the D-A District, to the C-1 classification to provide for the construction of commercial office buildings, **approved.**

2005-ZON-215A; 5640 South Emerson Avenue (south of site), Rezoning of 0.263 acres, being in the D-A District, to the D-P classification to correct an error in the legal description for 2004-ZON-078 (2004-DP-005), **approved.**

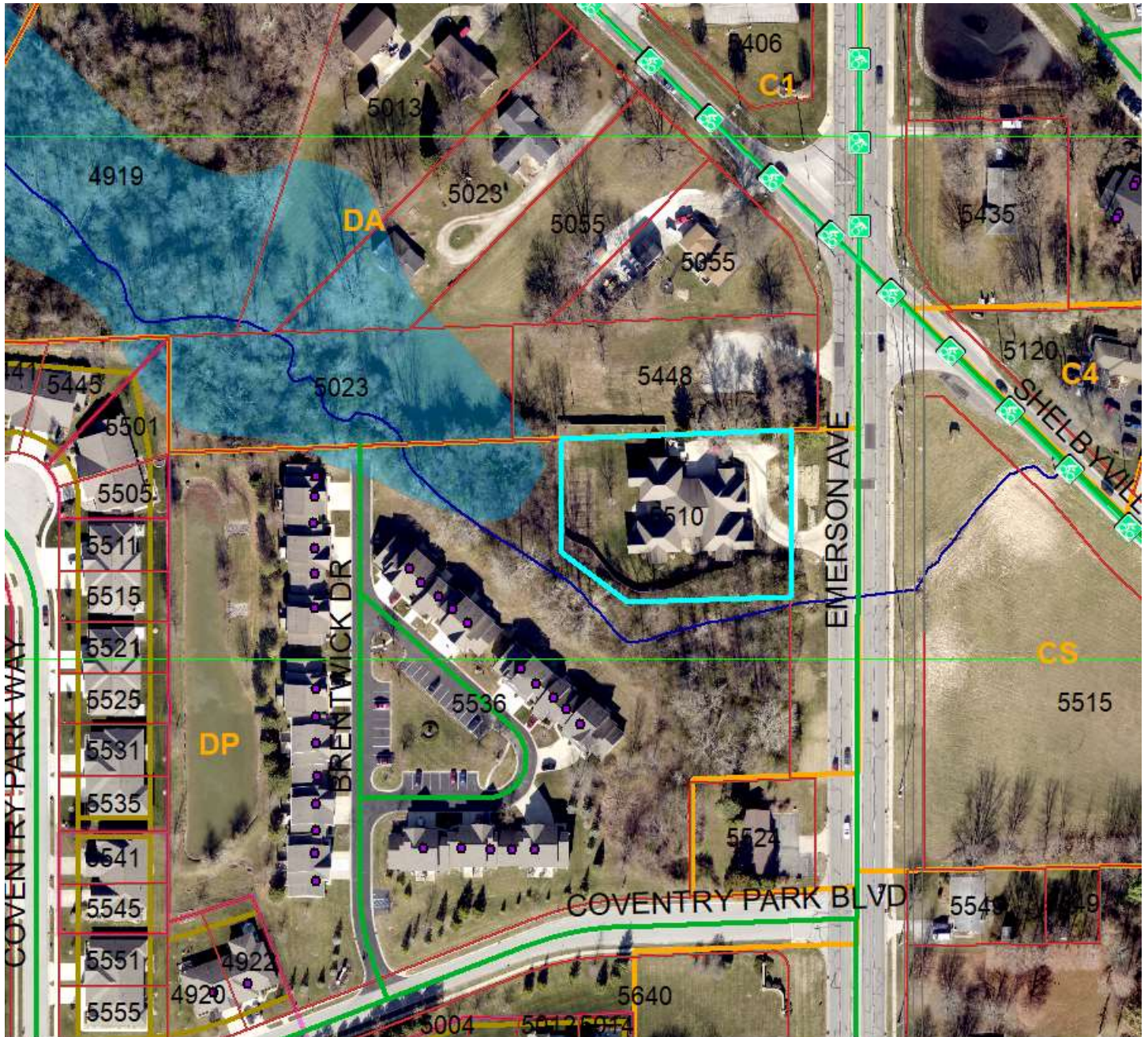
2003-ZON-825 / 2003-VAR-825; 5120 Shelbyville Road (northeast of site), Rezoning of 0.75 acre from the D-A district to the C-4 district and a variance of development standards to provide for deficient transitional yard and a freestanding sign with deficient setbacks, **approved.**

89-Z-102; 5521 South Emerson Avenue (east of site), Rezoning of 4.84 acres from the A-2 district to the C-S district to provide for a pharmacy, offices, a restaurant and personal and professional services, **approved.**

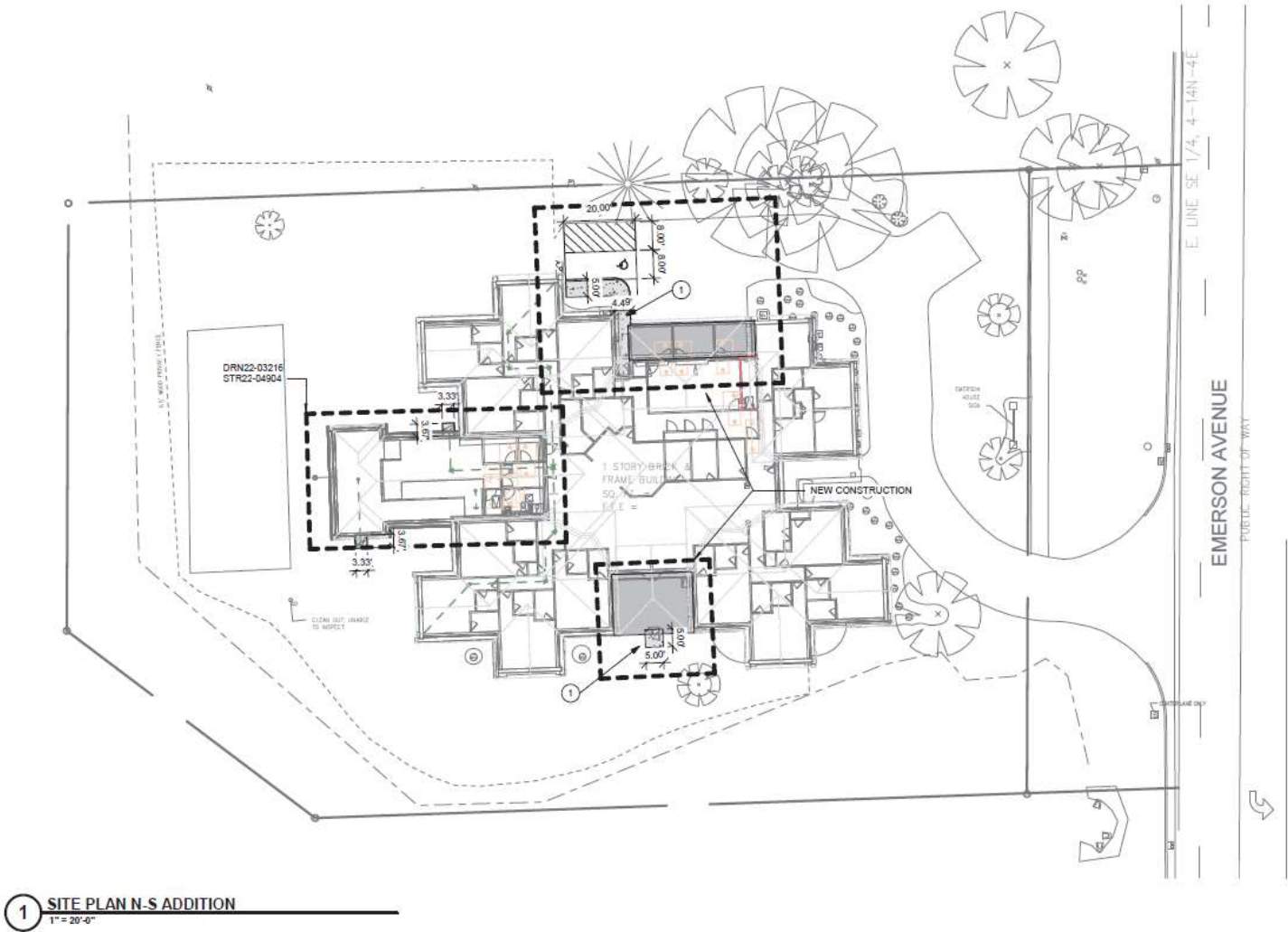
88-Z-59; 5651 South Emerson (east of site), Rezoning of 4.54 acres from the A-2 district to the C-4 district, **withdrawn.**

MI

2023-APP-030; Aerial Map



2023-APP-030; Site Plan



**FINAL PROPOSED PRELIMINARY PLAN
FOR
COVENTRY PARK
A NEW TOWNHOUSE AND SENIOR HOUSING DEVELOPMENT**

5502 South Emerson Avenue

Rezoning Petition No. 2004-ZON-078 (2004-DP-005)

September 16, 2004

**Mainstay, Inc. & Community Development, Inc.
c/o Philip A. Nicely, Esq.
Bose McKinney & Evans LLP
301 Pennsylvania Parkway, Suite 300
Indianapolis, IN 46280
(317) 684-5300**

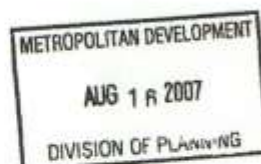
MODIFICATION OF DEVELOPMENT STATEMENT

**ADDENDUM FOR
SHARED SENIOR LIVING**

2007-APP-___

**Prepared by Bose McKinney & Evans LLP
Philip A. Nicely
Attorney for Petitioner
October 17, 2007**

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**ADDENDUM TO COVENTRY PARK
FOR
SHARED SENIOR LIVING**

The Final Proposed Preliminary Plan for Coventry Park is hereby supplemented to allow for a Shared Senior Living component in the development. This petition proposes the development of a single structure which will house twelve resident rooms, the owner's rooms, a guest room, and shared living space.

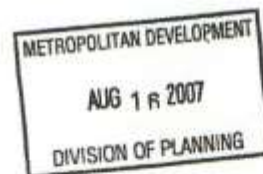
Site development standards for the shared senior living component shall be as follows:

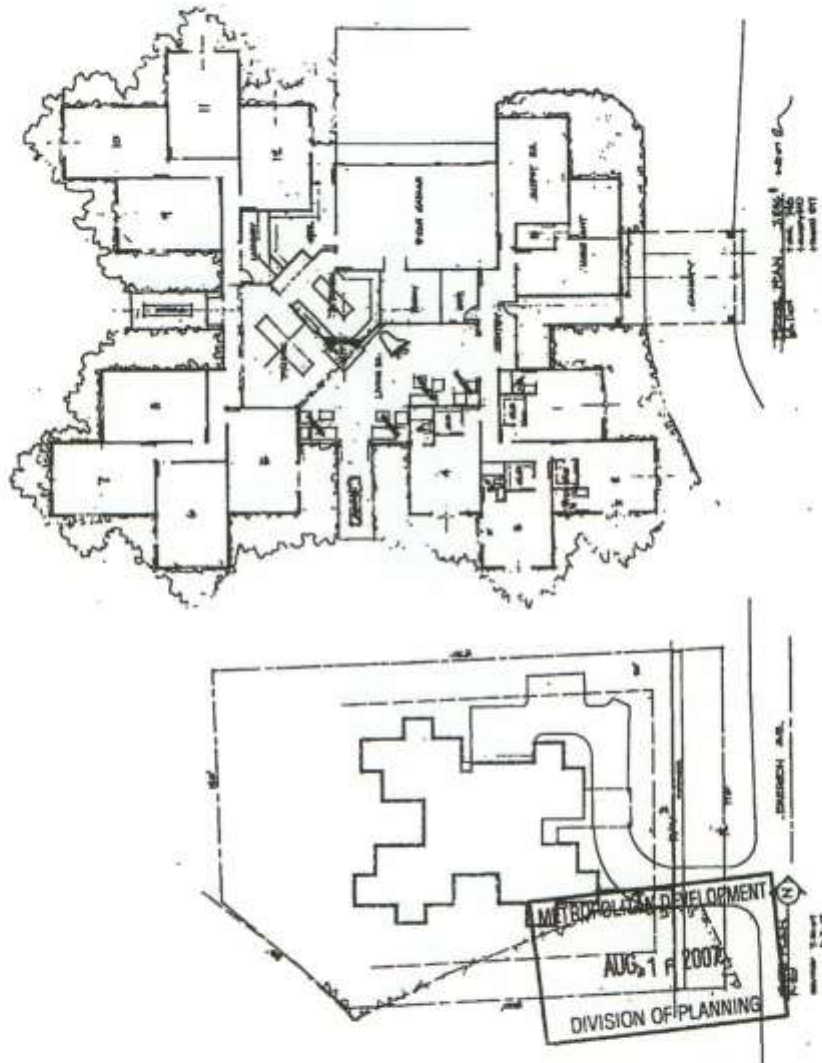
Minimum South Yard:	20 feet
Minimum West Yard:	25 feet
Minimum North Yard:	20 feet
Minimum Front Yard:	40 feet, excluding the entrance canopy
Minimum Height:	35 feet

The shared senior living component use shall be consistent with the Operating Plan file-dated August 16, 2007.

The use and development of the shared senior living component shall be consistent with the site plan, floor plan, building elevations and commitments filed-dated August 16, 2007.

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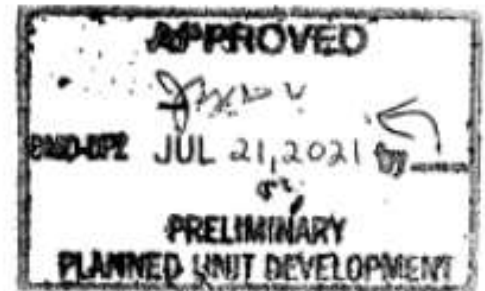




Haven Health Management
fax: (561) 855-4473
2925 10th Avenue N, Palm Springs FL 33461
havenhealthmanagement.com

May 13, 2021

Indianapolis Planning Division
200 E. Washington St., #1821
Indianapolis, Indiana 46204



Re: Petition for Rezone

2021-ZON-052

Dear Planning Department:

This letter is submitted as "Exhibit A" to the Petition ("the Petition") to rezone the property located at 5510 S. Emerson Ave., Indianapolis, Indiana 46237 ("the Property") from its current zone ("DP") for use as an assisted living facility to a new zone ("DP") for use as a Residential Living Facility for Individuals with Psychiatric Disorders. Haven Health Management, LLC ("Haven Health") is a healthcare company, and seeks a rezone to permit a minor change to the current use of the Property. As is explained below, the impact on surrounding properties will be no different than the current use, but the positive impact on the City of Indianapolis and Marion County will be substantial.

The Plan of Operation of the Property falls under 440 I.A.C. 7.5, Residential Living Facility for Individuals with Psychiatric Disorders, and will be a Residential program for adults who voluntarily seek residential mental health treatment. The average stay for any given individual would be from thirty (30) days to one (1) year. Once licensed, Haven Health would be permitted to operate a residential facility for purposes of housing a treating not more than sixteen (16) individuals who suffer from mental health disorders. Haven Health only serves adults who struggle with mental health disorders. All individuals are carefully screened to make sure they fit within our approved levels of care. To ensure its participants are personally interested in self-improvement, Haven Health only takes clients who voluntarily seek treatment, and does not accept court-appointed treatment referrals.

Serving the patients of Haven Health will be between 5 and 6 staff members during the day, and 3-4 staff members overnight. Our staffing will consist of qualified professionals, including licensed nurses, Nurse Practitioners, a Medical Director, Licensed Clinicians, and Peer and Mental Health Specialists. Visitors are not permitted on property, in order to ensure treatment is focused on the patient. Accordingly, at any given time, the number of individuals on site will be not more than twenty (20) to twenty-four (24), most of whom will not have vehicles on site.

The property has a 3-car garage and an extensive driveway. There will be up to 6 vehicles on the property for half the day, and up to 3-4 for the second half. The garage will always be utilized for 3 of the vehicles and up to 3 of the vehicles will be in the driveway. There will not be any traffic that



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goes to and from the property besides the employees that will be on the property, and transport of patients to the facility by employees. Accordingly, Haven Health does not expect parking will be an issue at any time.

Haven Health welcomes any questions from the City of Indianapolis regarding its intended use of the Property, and respectfully requests a rezone from the current use to use as a Residential Living Facility for Individuals with Psychiatric Disorders.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Cheyenne N. Riker", is written over a horizontal line.

Cheyenne N. Riker, Esq.
General Counsel
Haven Health Management, LLC

Petition Number

**METROPOLITAN BOARD OF ZONING APPEALS, DIVISION
OF MARION COUNTY, INDIANA**

APPEAL OF THE ADMINISTRATOR’S DECISION

FINDING OF FACT

THE ADMINISTRATOR'S DECISION SHOULD BE OVERTURNED BECAUSE

Under 2021-ZON-052, the City Council permitted the use of the site as a facility licensed under 440 IAC 7.5, which is a psychiatric facility.

Under that section (440 IAC 7.5), a licensee is permitted to treat patients sufference with alcohol and substance use disorder, per

the plain language of 440 IAC 7.5-1-1(23), the definition of "psychiatric disorder" includes "(C) Alcoholism; (D) Addiction to narcotic or other drugs."

The administrative denial should be overturned because the property, even after the permit is complete, will still operate under 440 IAC 7.5, as

permitted under 440 IAC 7.5.

DECISION

IT IS THEREFORE the decision of this body that this PETITION IS APPROVED.

Adopted this day of , 20

2023-APP-030; Photographs



Photo of the Subject Property: 5510 South Emerson Avenue



Photo of the Subject Property: 5510 South Emerson Avenue



Photo of the northern buiding façade.



Photo of the subject site looking west.



Photo of the surface parking lot north of the site looking northeast.



hoto of the surface parking lot north of the site looking north.



hoto of the surface parking lot north of the site looking northwest.