



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

March 28, 2024

Case Number: 2024-CZN-806 / 2004-CVR-806
Property Address: 4896 Kentucky Avenue
Location: Decatur Township, Council District #21
Petitioner: Taco Bell of America, LLC, by Josh Graber
Current Zoning: C-5
Rezoning of 0.6735 acres from the C-5 district to the C-4 district to provide for a restaurant use.
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a drive-through within the front yard of High School Road without the required exclusive bypass lane, (not permitted within front yards along rights-of-way greater than 30 feet wide, exclusive bypass aisle required).
Current Land Use: Commercial uses (used car sales)
Staff Recommendations: Approval, subject to the following commitment:
Staff Reviewer: Kathleen Blackham, Senior Planner

PETITION HISTORY

The Hearing Examiner continued these petitions from the March 14, 2024 hearing, to the March 28, 2024 hearing, with notice, at the request of staff.

STAFF RECOMMENDATION

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

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

REZONING

This 0.18-acre site, zoned C-5, is developed with a used car dealership. It is surrounded by commercial uses to the north, zoned C-4; commercial uses to the south, across South High School Road, zoned C-4; commercial uses to the east, across Kentucky Avenue, zoned C-5; and railroad right-of-way to the west, zoned C-5.

This request would be consistent with the Comprehensive Plan recommendation of Community Commercial typology. This typology is contemplated to be located within the C-3 or C-4 districts, depending upon the location and surrounding land uses. This area is heavily commercial and the proposed rezoning to the C-4 district would have minimal impact on surrounding uses. Furthermore, the C-4 district would be less detrimental than the existing C-5 district. Staff, therefore, supports this request.

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

VARIANCE OF DEVELOPMENT STANDARDS

This request would allow a drive-through within the front yard of High School Road without the required exclusive bypass lane.

The Ordinance prohibits drive-throughs within the front yard along rights-of-way greater than 30 feet wide and requires an exclusive bypass aisle.

Staff supports these variances due to the configuration of the parcel, the elevation of the existing railroad right-of-way (approximately seven feet) and the drainage feature associated with the intersecting streets. This results in a practical difficulty in the use and development of the property.

GENERAL INFORMATION

Existing Zoning	C-5		
Existing Land Use	Commercial uses		
Comprehensive Plan	Community Commercial typology		
Surrounding Context	Zoning	Land Use	
	North:	C-4	Commercial uses
	South:	C-4	Commercial uses
	East:	C-5	Commercial uses
	West:	C-5	Railroad right-of-way
Thoroughfare Plan			
Kentucky Avenue	Primary arterial	Existing 160-foot right-of-way and a proposed 102-foot right-of-way (Indiana State jurisdiction)	
South High School Road	Secondary arterial	Existing 100-277-foot right-of-way and a proposed 80-foot right-of-way	
Context Area	Metro		
Floodway / Floodway Fringe	Yes – 500-year unregulated floodway fringe of Little Dollar Hide Creek		
Overlay	No		
Wellfield Protection Area	No		
Site Plan	February 7, 2024		
Site Plan (Amended)	N/A		
Elevations	N/A		
Elevations (Amended)	N/A		

Landscape Plan	February 7, 2024
Findings of Fact	February 7, 2024
Findings of Fact (Amended)	N/A
C-S/D-P Statement	N/A

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends village mixed-use typology. 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. Enter all comprehensive plans applicable to this proposal.

Pattern Book / Land Use Plan

- *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.
- *Small-Scale Offices, Retailing, and Personal or Professional Services (defined as commercial uses with minimal outdoor operations, storage, or display on lots of less than 1.5 acres and a height of less than 35 feet.)*
 - 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.
 - All development should include sidewalks along the street frontage.”

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 describes 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

2009-APP-093 / 2009-VAR-006; 4896 Kentucky Avenue, requested modification of Commitments, related to petition 2004-ZON-163, to terminate commitments S9xteen requiring installation of permanent concrete curbs along the Kentucky Avenue right-of-way line and a variance of use to legally establish a single-family dwelling, **approved and granted**.

2004-ZON-163; 4896 Kentucky Avenue, requested rezoning of 0.88 acre from the D-3 district to the C-5 classification, **approved**.

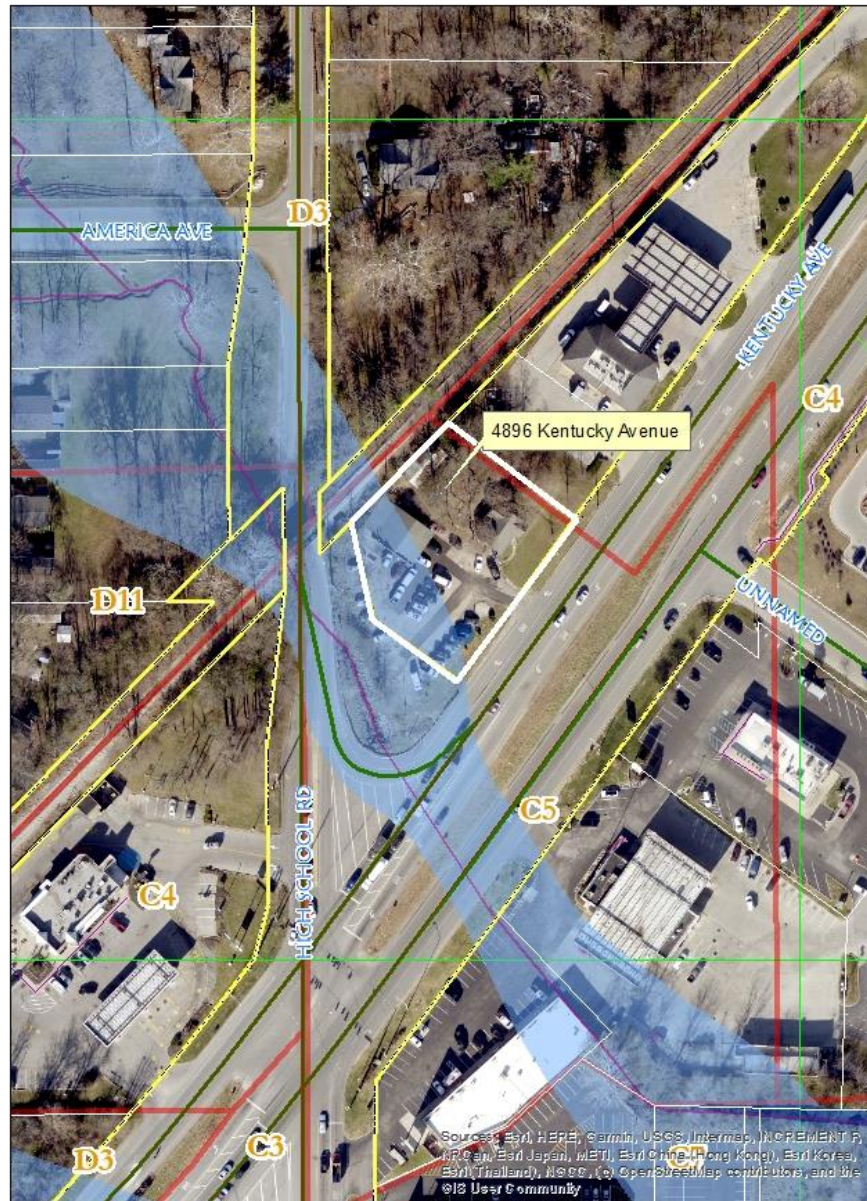
71-UV3-130; 4896 Kentucky Avenue, requested variance to provide for pole sign, to identify nearby bank building, **granted**.

Vicinity

2006-ZON-023; 4892 Kentucky Avenue (abutting site to northeast), requested rezoning of 0.38 acre from D-3 to C-1, **approved**.

2001-ZON-020; 4884 Kentucky Avenue (northeast of site), requested rezoning from D-3 to C-4, **approved**.

EXHIBITS



4896 Kentucky Avenue
 00 0.006 0.01 0.02 0.03 0.04 Miles



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NOAA, Swisstopo, Mapbox, OpenStreetMap contributors, and the GIS User Community



Petition Number _____

METROPOLITAN DEVELOPMENT COMMISSION
 HEARING EXAMINER
 METROPOLITAN BOARD OF ZONING APPEALS, Division _____
 OF MARION COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

As discussed in more detail within the enclosed narrative, it is our position that the deviations requested to the standards better promote public health, safety, and general welfare of the community than if the standards were strictly adhered to in this context. The site as proposed maximizes efficiency of the drive thru to maintain site circulation. Additionally, the site layout maximizes drive thru stack to not affect Kentucky Ave, which is a thoroughfare. Due to site characteristics, the primary driveway for access to the site is set and thus informs the site layout.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

As discussed in more detail within the enclosed narrative, the adjacent uses are currently as follows: to the west is a large ROW width for High School Rd and an INDOT drainage ditch, to the south is Kentucky Ave with a guardrail and partial INDOT drainage ditch, to the east is a currently unused parcel owned by Speedway (that is proposed to eventually have a connection point to the Speedway for vehicles traveling north), and to the north are railroad tracks owned by Indiana Southern Railroad. As proposed, we are limiting the effect to all property sides. Additionally, the businesses at the intersection of High School Rd and Kentucky Ave consist of a BP gas station/McDonald's, a Speedway gas station, a Burger King, a Subway restaurant, and a Wal-Mart, among others. Taco Bell fits the context of the area and its uses.

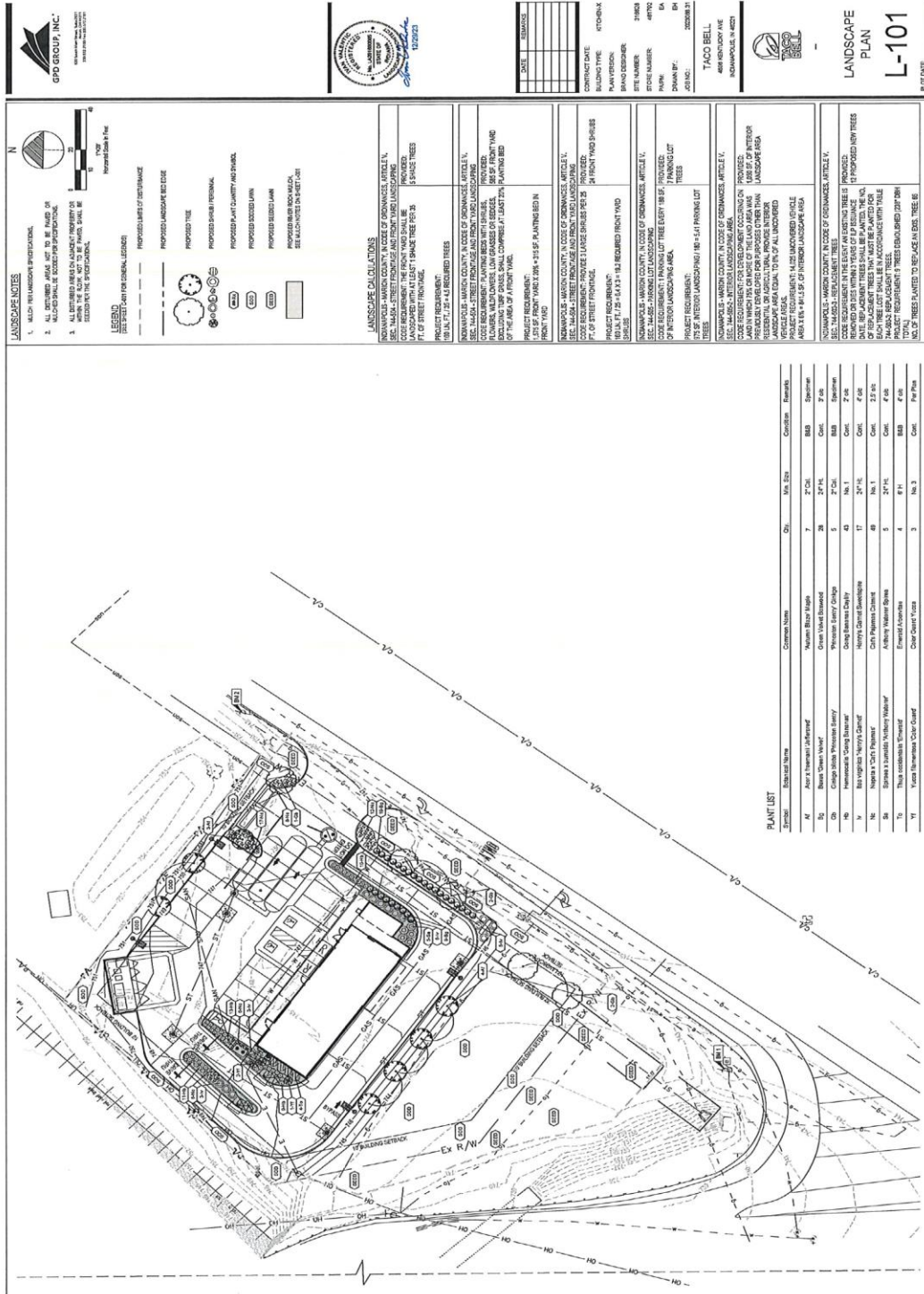
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

As discussed in more detail within the enclosed narrative, the existing site size, characteristics, and layout constraints due to an INDOT drainage ditch, gas easement through the property, and two frontages preclude the site from being designed practically while maintaining ideal and safe traffic circulation, traffic stack, and drive thru operation efficiency. In context with the adjacent property uses and overall layout, the proposed site is designed to meet the intent of the ordinance as much as possible while designing for safety as the primary objective.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____



LANDSCAPE NOTES:

1. ALL NEW LANDSCAPE INSTALLATIONS SHALL BE MAINTAINED FOR 1 YEAR AFTER COMPLETION OF THE PROJECT.
2. ALL EXISTING TREES TO BE MAINTAINED OR REMOVED SHALL BE IDENTIFIED BY TREE TAGS AND SHALL BE MAINTAINED THROUGHOUT THE PROJECT.
3. ALL EXISTING TREES TO BE MAINTAINED OR REMOVED SHALL BE IDENTIFIED BY TREE TAGS AND SHALL BE MAINTAINED THROUGHOUT THE PROJECT.

LEGEND:

PROPOSED LANDSCAPE BOUNDARY

PROPOSED TREE

PROPOSED SHrub

PROPOSED PLANT QUANTITY AND SYMBOL

PROPOSED EXISTING LAND

PROPOSED EXISTING ROADWAY

SEE ALSO NOTED IN SHEET C-01

LANDSCAPE CALCULATIONS:

INDIANAPOLIS - MARION COUNTY, IN CODE OF ORDINANCES, ARTICLE 11, SECTION 11-1-1-1 (A) THROUGH 11-1-1-1 (I) SHALL BE MAINTAINED THROUGHOUT THE PROJECT.

LANDSCAPE AREA AT LEAST SHALL BE 5 SPACE TREES PER 1,000 SQ. FT. OF STREET FRONTAGE.

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PLANT LIST:

Symbol	Species Name	Common Name	Qty	Min. Size	Container	Remarks
BT	Amelanchier canadensis	Shadbush	1	24" C/L	BBB	Specimen
BT	Betula nigra	Black Birch	28	24" C/L	Coil	2' x 6'
BT	Chaenactis canadensis	Wild Rose	5	24" C/L	BBB	Specimen
BT	Crataegus mollis	Wild Apple	43	No. 1	Coil	2' x 6'
BT	Hamamelis virginica	Witch Hazel	17	24" C/L	Coil	4' x 6'
BT	Malus domestica	Domestic Apple	49	No. 1	Coil	2.5' x 6"
BT	Malus ioensis	Idaho Apple	5	24" C/L	Coil	4' x 6'
BT	Malus domestica 'Empire'	Empire Apple	4	#1 P/L	BBB	4' x 6'
BT	Malus domestica 'Gala'	Gala Apple	3	No. 3	Coil	4' x 6'

DATE: 12/20/23

REVISIONS:

NO.	DATE	DESCRIPTION
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

CONTRACT DATE:

BUILDING TYPE:

PLANNING:

DESIGNER:

DATE:

SCALE:

PROJECT NO.:

JOB NO.:

TACO BELL

4800 HOOVER AVE

INDIANAPOLIS, IN 46201

LANDSCAPE PLAN

L-101

DATE:

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View looking south along Kentucky Avenue



View looking north along Kentucky Avenue



View looking north along North High School Road



View of site looking north across South High School Road



View looking north across intersection of South High School Road and Kentucky Avenue



View of site looking west across Kentucky Avenue



View from site looking south



View from site looking northwest



View from site looking southeast across intersection of Kentucky Avenue & South High School Road



View from site looking south across South High School Road