

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-MOD-022
Address: 5389 Rockville Road (*Approximate Address*)
Location: Wayne Township, Council District #15
Zoning: C-S
Petitioner: Rockville Dynasty, LLC, by Michael Rabinowitch
Request: Modification of Commitments related to rezoning petition 2001-ZON-054, to remove Tobacco Store as a prohibited use on Lots 2 and 3.

ADDENDUM FOR JANUARY 12, 2023, HEARING EXAMINER

The Hearing Examiner continued this petition from the December 1, 2022 hearing, to the January 12, 2023 hearing, at the request of the petitioner's representative. Subsequently, the petitioner's representative forwarded an e-mail on December 30, 2022, **withdrawing the request**, which will require acknowledgement from the Hearing Examiner.

December 1, 2022

RECOMMENDATIONS

Staff has **no recommendation** for this request.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE ISSUES

- ◇ This 1.36-acre site, zoned C-S is developed with a one-story commercial strip center. It is surrounded by a self-storage facility to the north, across Rockville Road, zoned C-S; single-family dwellings to the south, zoned D-2; commercial uses to the east, zoned C-4; and commercial uses to the west, zoned C-S.

MODIFICATION

- ◇ This request would modify commitments related to rezoning petition 2001-ZON-054, to remove Tobacco Store as a prohibited use on Lots 2 and 3. See Exhibit A.
- ◇ Petition 2001-ZON-054 rezoned the site (including the abutting parcel to the west) to provide for commercial uses, including offices, restaurants, and automotive tire and wheel sales. Commitments associated with this rezoning included a list of prohibited uses. Petition 2005-ZON-021 rezoned the abutting parcel to the west from the C-S district to the C-S classification to provide for an automotive interior replacement and repair business.

(Continued)

STAFF REPORT 2022-MOD-022 (Continued)

- ◇ The commitments eliminating certain uses were originally the result of negotiation between the petitioner and remonstrators during the 2001 rezoning process. Because staff played no role in the negotiation of these subject commitments, staff would ordinarily provide no recommendation under such circumstances. Staff would note, however, that the neighborhood organization(s) negotiated in good faith with the petitioner during the petition process, and their agreement was contingent upon all commitments being included with the rezoning petition.
- ◇ The Comprehensive Plan recommends Community Commercial 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..”
- ◇ The Comprehensive Plan consists of two components that include the Pattern Book 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

- 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 in excess of 2 acres should include pedestrian amenities for passive and active recreation internal to the development.

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.

(Continued)

STAFF REPORT 2022-MOD-022 (Continued)

Plan of Operation

- ◇ The Plan of Operation, file-dated October 26, 2022, describes the products that would be available for purchase and the hours of operation. See Exhibit B.
- ◇ As described, this business operation would be consistent with the Comprehensive Plan recommendation of community commercial.

Planning Analysis

- ◇ This request would modify commitments for the Rezoning Petition 2001-ZON-054, related to prohibited uses on the site. See Exhibit A.
- ◇ The commitment to prohibit certain uses of the site, including a tobacco store, was originally the result of negotiation between the petitioner and remonstrators during the 2001 rezoning process. Because staff played no role in the negotiation of these subject commitments, staff would ordinarily provide no recommendation under such circumstances. Staff would note, however, that the neighborhood organization(s) negotiated in good faith with the petitioner during the petition process, and their agreement was contingent upon all commitments being included with the rezoning petition.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

C-S	Commercial strip center
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SURROUNDING ZONING AND LAND USE

North -	C-S	Self-storage facility
South -	D-2	Single-family dwellings
East -	C-4	Commercial uses
West -	C-S	Commercial uses

COMPREHENSIVE LAND USE PLAN

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

THOROUGHFARE PLAN

This portion of Rockville Road is designated in the Marion County Thoroughfare Plan as a primary arterial with an existing 112-foot right-of-way and a proposed 88-foot right-of-way.

(Continued)

STAFF REPORT 2022-MOD-022 (Continued)

CONTEXT AREA	This site is located within the metro context area.
OVERLAY	This site is not located within an overlay.
PLAN OF OPERATION	File-dated October 26, 2022

ZONING HISTORY

2001-ZON-054; 5391 – 5397 Rockville Road, requested rezoning of 2.93 acres from the D-2 District to the C-S classification to provide for commercial uses, including offices, restaurants, and automotive tire and wheel sales, **approved**.

2005-ZON-021; 5397 Rockville Road, requested rezoning of 0.858 acre, being in the C-S District, to the C-S classification to provide for an automotive interior replacement and repair business, **approved**.

VICINITY

2021-CZN-858 / 2021-CAP-858 / 2021-CVR-858; 5380 and 5390 Rockville Road (north of site), requested rezoning of 5.89 acres from the C-S (FF) district to the C-S (FF) district to provide for outdoor storage of vehicles, recreational vehicles and boats; modification of commitments related to 98-Z-181 and 2015-MOD-020 to terminate all existing commitments, except for Commitment #1 related to open occupancy, and replace with commitments submitted with this petition; and a variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a six-foot tall fence in the front yard along Rockville Road, **approved and variance withdrawn**.

2015-MOD-020; 5380 and 5360 Rockville Road, requested modification of site plan and Commitments of 98-Z-191 to modify Commitment Two, requiring adherence to the site plan file-dated September 24, 1998, to terminate Commitment #19 referencing 5380 Rockville Road (Parcel III) as the "C-4 outlot," to modify Commitment Twenty to prohibit uses on the entire "property" instead of just the "outlot," to terminate Commitments Twenty-One and Twenty-Two requiring "chain" businesses and vehicle storage behind the building, and to delete the last sentence of Commitment Twenty-three, requiring Kirkpatrick Companies to have final architectural approval of building elevations, **approved**.

2004-ZON-013; 82-120 North Lynhurst Drive (east of site), requested rezoning of 4.77 acres. Being in the C-4 and D-3 Districts to the C-S classification to legally establish a wholesale electrical supply store and provide for an addition to the store, and to provide for the continued use of a single-family dwelling at 82 North Lynhurst Drive as a single-family dwelling, **approved**.

98-Z-181; 5396 Rockville Road, requested rezoning of 5.385 acres from the C-4(FF) District to the C-S (FF) classification to provide for a self-story facility, and one outlot for C-4 uses, **approved**.

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STAFF REPORT 2022-MOD-022 (Continued)

85-Z-133 / 85-CV-17; 5383 Rockville Road (east of site), requested rezoning of 0.31 acre from the D-2 District to the C-4 classification to provide for additional parking for a restaurant; and a variance of development standards of the transitional yard requirements along the west and south property line, **approved and granted**.

77-Z-110; 5385 Rockville Road (east of site), requested rezoning of 1.07 acres, being in the D-2 District, to the C-4 classification to provide for a restaurant, **approved**.

77-V1-79; 5383 Rockville Road (east of site), requested a variance of development standards to erect a restaurant with drive-through component within 100 feet of a residential district, **granted**.

73-Z-80; 5396 Rockville Road (north of site), requested rezoning of 17.24 acres, being in the D-3 District, to the C-4 classification, to provide for retail commercial development, **approved**.

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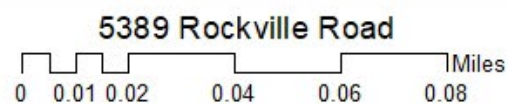
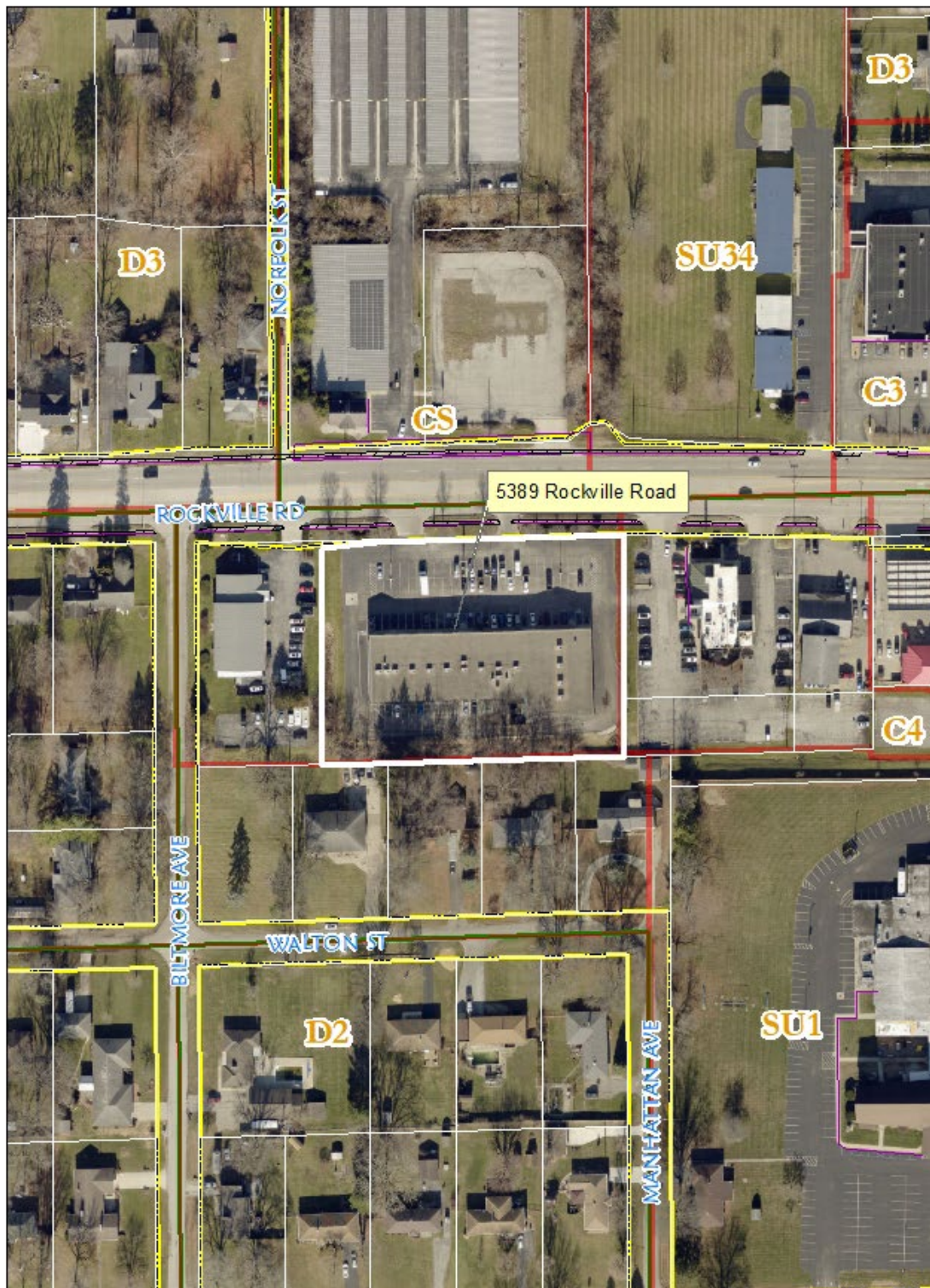


EXHIBIT A

2001-ZON-054

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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. 36-7-4-613 or I.C. 36-7-4-614, 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 Attachment "B" for legal description)

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 (See Attachment "C" for additional commitments.)

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein for a period not to exceed fifteen years; 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 #2001-ZON-054 by the City-County Council changing the zoning classification of the real estate from the D-2 zoning classification to a C-S zoning classification; or

MDC's Exhibit B -- page 1



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(b) the adoption of approval petition #N/A 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
4. Greater Garden City Civic Association, Inc.

The undersigned hereby authorizes the Division of Neighborhood Services 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 #2001-ZON-054.

IN WITNESS WHEREOF, owner has executed this instrument this 26th day of June, 2001.

Signature: Mickey A. Cole
Mickey A. Cole

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Mickey A. Cole, the owner of the real estate, who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this
26th day of June, 20 01
Suzanne M. Bowes
Notary Public
SUZANNE M. BOWES
Printed Name of Notary Public
My Commission expires: 4/6/08
My County of residence: Marion

This instrument was prepared by Philip A. Nicely, Bose McKinney & Evans LLP, 600 E. 96th Street, Suite 500, Indianapolis, IN 46240

ATTACHMENT "A"

OPEN OCCUPANCY AND EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

- (a.) The owner commits that he shall not discriminate against any person on the basis of race, color, religion, ancestry, national origin, handicap or sex in the sale, rental, lease or sublease, including negotiations for the sale, rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
- (1) any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
 - (2) any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
 - (3) any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
- (b.) The owner commits that in the development, sale, rental or other disposition of the real estate or any portion thereof, neither he nor any person engaged by him to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment, employed or to be employed in the development, sale, rental or other disposition of the real estate, or portion thereof with respect to hire, tenure, conditions or privileges of employment because of race, color, religion, ancestry, national origin, handicap or sex.

EXEMPT PERSONS AND EXEMPT ACTIVITIES

An exempt person shall mean the following:

1. With respect to commitments (a) and (b) above:
 - (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
 - (b) any school, educational, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution;
 - (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;

provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;

2. With respect to commitment b, a person who employs fewer than six (6) employees within Marion County.

An exempt activity with respect only to commitment (a) shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

ATTACHMENT "C"
ADDITIONAL COMMITMENTS
FOR
5391-5397 ROCKVILLE ROAD

1. These commitments shall control the use and development of the three lots of real estate described in Attachment "B" ("Lot 1," "Lot 2," and "Lot 3").
2. The permitted uses on Lot 1 shall be limited to C-1 uses, except that the following C-1 uses shall not be permitted:
 - Auditorium, Assembly Hall
 - Community, Multi-service, Neighborhood or Senior Citizens Center
 - Blood Donor Stations
 - Membership Organization or Club, any type
 - Radio Station, office or studio
 - Television Station, office or studio
 - Public and Semi-Public Uses
 - Schools/Educational Services
3. The permitted uses on Lot 2 shall be limited to C-3 uses, except that the following C-3 uses shall not be permitted:
 - Check Cashing or Validation Store
 - Coupon or trading stamp redemption service
 - Drinking Place (bar or tavern)
 - Emergency Shelter
 - Gasoline Service Station
 - Tattoo Parlor
 - Post Office
 - Bait and Tackle Shop
 - Liquor Store (Package)
 - Pawn Shop
 - Tobacco Store
 - Trading Stamp Center
 - Social Club, Membership
 - Furniture and Appliance Rental
 - Automobile Oil Change or Lubrication Shops



4. The permitted uses on Lot 3 shall be limited to C-4 uses, except that the following C-4 uses shall not be permitted:

- Check Cashing or Validation Service
- Coupon or trading stamp redemption store
- Drinking Place (bar, tavern, cabaret, nightclub)
- Emergency Shelter
- Tattoo Parlor
- Post Office
- Bait and Tackle Shop
- Liquor Store (Package)
- Pawn Shop
- Tobacco Store
- Trading Stamp Center
- Social Club, Membership
- Adult Entertainment Business
- Auction Rooms
- Bed and Breakfast Inn
- Fire Station
- Fraternal Lodge
- Indoor Commercial Amusement/Recreation Establishments
- Massage Parlor
- Substance Abuse Treatment Facility
- Plasma (Blood) Center
- Firearms/Gun Sales
- Fireworks Sales
- Flea Market
- Rooming and Boarding Houses
- Automobile Oil Change or Lubrication Shops - as a primary use

5. Cross easements for access and parking shall be permitted such that points of access to Rockville Road may serve more than one Lot and parking for a use may be located on a Lot other than the Lot where a building containing the use is located.
6. Reasonable attempts will be made to retain all existing healthy trees located within required transitional yards and landscape strips. Reasonable attempts will be made to retain selected existing healthy trees on the interior of each Lot while recognizing that construction of a building with required parking requires using a large percentage of each Lot. However, existing landscaping shall not be disturbed on any Lot until construction of a building is to commence on a Lot, unless necessary to provide utility or drainage facilities to another Lot.
7. Any automotive tire and wheel sales facility constructed on Lot 3 shall be consistent with the building elevation attached hereto as Exhibit A, unless an alternative elevation equal to or better than the Exhibit A elevation is otherwise approved by the Administrator. The plans for any such alternative elevation for an automotive tire and wheel sales facility shall be submitted to the President of the Garden City Civic Association, Inc. for review and

comment a minimum of seven (7) calendar days prior to the submittal of said alternative plans to the Administrator.

8. The paint colors for any automotive tire and wheel sales facility constructed on Lot 3 shall be limited to neutral and/or earth tone colors.
9. The number of access points to Rockville Road will be limited to three (3) for the entire Real Estate. There shall be no access to Biltmore Avenue from Lot 1.
10. All identification signs constructed on Lot 1 shall comply with C-1 sign regulations.
11. All wall identification signs for any automotive tire and wheel sales facility constructed on Lot 3 shall be limited to white letters only and any illumination of the signs shall be internal. Any identification sign on the front, or north, facade of this facility shall be limited to "A-1."
12. All free-standing security lighting shall be shoe-box type down lighting. All wall-pac security lighting shall have full cutoff shields, which allow no light above a horizontal plane.
13. No outdoor sales or outdoor operations (work) shall be permitted for any automotive tire and wheel sales facility constructed on Lot 3.
14. Any automotive tire and wheel sales facility constructed on Lot 3 shall close for business no later than 6:00 PM each work day.
15. The existing sign for A-1 Tire & Wheel located at 5315 Rockville Road will be repaired within sixty (60) days of the final approval of this petition, 2001-ZON-054.
16. No billboard type outdoor advertising signs shall be permitted on the Real Estate.
17. Any automotive tire and wheel sales facility constructed on Lot 3 shall have either horizontal siding on the front (north) elevation above the canopy roof or a brick or stone veneer on the front (north) elevation below the windows.

EXHIBIT B

Sarah Trading Inc

5389 Rockville Rd Suite 700, Indianapolis, IN, 46224

Plan of Operation

Description of Business

Smoke & Vape retail shop provides tobacco products and related accessories as well as fashion accessories such as carry-on bags, wallets, chains, t-shirts, etc. to the community at a very competitive price.

Owners Information:

Name : Rizwan Haider

Phone: 317-371-0852

Year in Business: 1 year.

Number of employees in a shift : 1

Owner's Background: I am an immigrant who moved to the USA 7 years ago and got my USA citizenship 2 years ago. I began working as an accountant in a tobacco distribution company, and I always wanted to do my own business. I saw a great opportunity/need in this community for a tobacco/vape shop. I am very much involved in the day-to-day operations of my store, and I am learning the needs of the community based on interacting with my customers. So far I have received positive response and online reviews about my store. I have 3 dedicated, knowledgeable employees who help me in operating my store.

Typical Hours of Operation

Monday – Saturday 10:30 a.m. – 9:00 p.m.

Sunday 12:00 p.m – 8:00 p.m



View looking west along Rockville Rpad



View looking east along Rockville Road



View of site looking along the western property boundary



View of site looking southeast



View looking south along the eastern property boundary



View of site looking southwest



View from site looking north across Rockville



View from site looking north across Rockville



View from site looking north across Rockville



View from site looking east