

**BOARD OF ZONING APPEALS DIVISION III**

**January 16, 2024**

**Case Number:** 2023DV3050  
**Property Address:** 805 S Kitley Ave (approximate address)  
**Location:** Warren Township, Council District #18 (#20 beginning 2024)  
**Petitioner:** Kitley Avenue Properties LLC, by J. Murray Clark and Mark R. Leach  
**Current Zoning:** I-4 / C-7  
**Request:** Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of an eight-foot-tall fence and gate within the front yard of Kitley Avenue (maximum height of six feet permitted).  
**Current Land Use:** Commercial  
**Staff Recommendations:** Staff **recommends denial** of this request.  
**Staff Reviewer:** Michael Weigel, Senior Planner

**PETITION HISTORY**

This case was first heard in full at the January 16, 2024 hearing where it received an indecisive 2-1 vote. It has therefore been continued to this hearing date on February 20, 2024.

**STAFF RECOMMENDATION**

Staff **recommends denial** of this request.

**PETITION OVERVIEW**

- This property currently houses a fencing contractor. The property was previously used as an appliance repair service business and received a variance in 2016 to allow for up to two dwelling units on the second floor of the existing building. In September of 2023, a violation case was opened related to the installation of a fence with height exceeding 6' in the front yard (disallowed per Table 744-510-2 of the Indianapolis Zoning Ordinance).
- This petition would seek to legalize the portion of the fence installed on the western portion of the property within the front yard at a height of 8 feet. The portions of the fence placed in the side yard are allowed by-right (maximum height allowable would be 10 feet for side and rear yards).

- Most of the land occupied by these parcels are zoned I-4 (Heavy Industrial District) while a small portion to the south is zoned C-7 (High-Intensity Commercial District). The Marion County Land Use Plan Pattern Book recommends Heavy Commercial development for this area.
- The Indianapolis Zoning Ordinance prescribes height limitations for fences to maintain visibility, orderly development, and the appearance of open space while also allowing for reasonable privacy. Although neighboring properties have taller fences in front yards that predate current ordinance standards, it is unclear what inherent practical difficulties exist that would be remedied by an 8-foot fence but not by an ordinance-compliant 6-foot fence. Therefore, staff recommends denial of this request.

## GENERAL INFORMATION

<b>Existing Zoning</b>	I-4/C-7	
<b>Existing Land Use</b>	Commercial	
<b>Comprehensive Plan</b>	Heavy Commercial	
<b>Surrounding Context</b>	<b>Zoning</b>	<b>Surrounding Context</b>
North:	C-S	North: Light Industrial
South:	C-7	South: Heavy Commercial
East:	I-3	East: Light Industrial
West:	C-S	West: Light Industrial
<b>Thoroughfare Plan</b>		
Kitley Avenue	Primary Collector	Existing ROW: 50' Prop ROW: 80'
<b>Context Area</b>	Metro	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	No	
<b>Wellfield Protection Area</b>	No	
<b>Site Plan</b>	11/27/23	
<b>Site Plan (Amended)</b>	N/A	
<b>Elevations</b>	11/27/23	
<b>Elevations (Amended)</b>	N/A	
<b>Landscape Plan</b>	N/A	
<b>Findings of Fact</b>	11/27/23	
<b>Findings of Fact (Amended)</b>	N/A	

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- Marion County Land Use Plan Pattern Book

**Pattern Book / Land Use Plan**

- The Marion County Land Use Plan Pattern Book recommends the Heavy Commercial working typology for this site.

**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

**2016UV3014**, Variance of use of the Consolidated Zoning and Subdivision Ordinance to provide for up to two dwelling units (not permitted) on the second floor of the existing building, including residential accessory uses and structures (not permitted), **approved**.

**2002LNU021**, legally established nonconforming use certificate to legally establish uses and development standards in relation to the Industrial Zoning Ordinance and the Sign Regulations of Marion County, Indiana, **denied**.

**81-Z-108**, requested the rezoning of 2.39 acres from the SU-28 district to the I-4-U district, **approved**.

### ZONING HISTORY – VICINITY

**95-Z-104; 601 Kitley Avenue (west of site)**, Rezoning of 24.84 acres from the I-3-U and I-3-S Districts, to the C-S classification to provide for the continued use and development of a racetrack and associated facilities, **approved**.

**93-UV2-44; 6464 Brookville Road (southwest of site)**, Variance of use of the Industrial Zoning Ordinance to provide for the sale of automobiles, **approved**.

**90-V1-109; 6520 Brookville Road (southeast of site)**, Variance of development standards of the Industrial Zoning Ordinance to legally establish an existing front setback of less than the required 40 feet from the right-of-way; to allow more than 10% of the required parking within the front yard; to permit the construction of a storage building to store fencing materials within 300 feet of a dwelling district; to permit a rear yard setback of 3.5 feet; and a variance of development standards of the Sign Regulations of Marion County to legally establish an existing pole sign with a 14.5 foot setback from the right-of-way, **approved**.

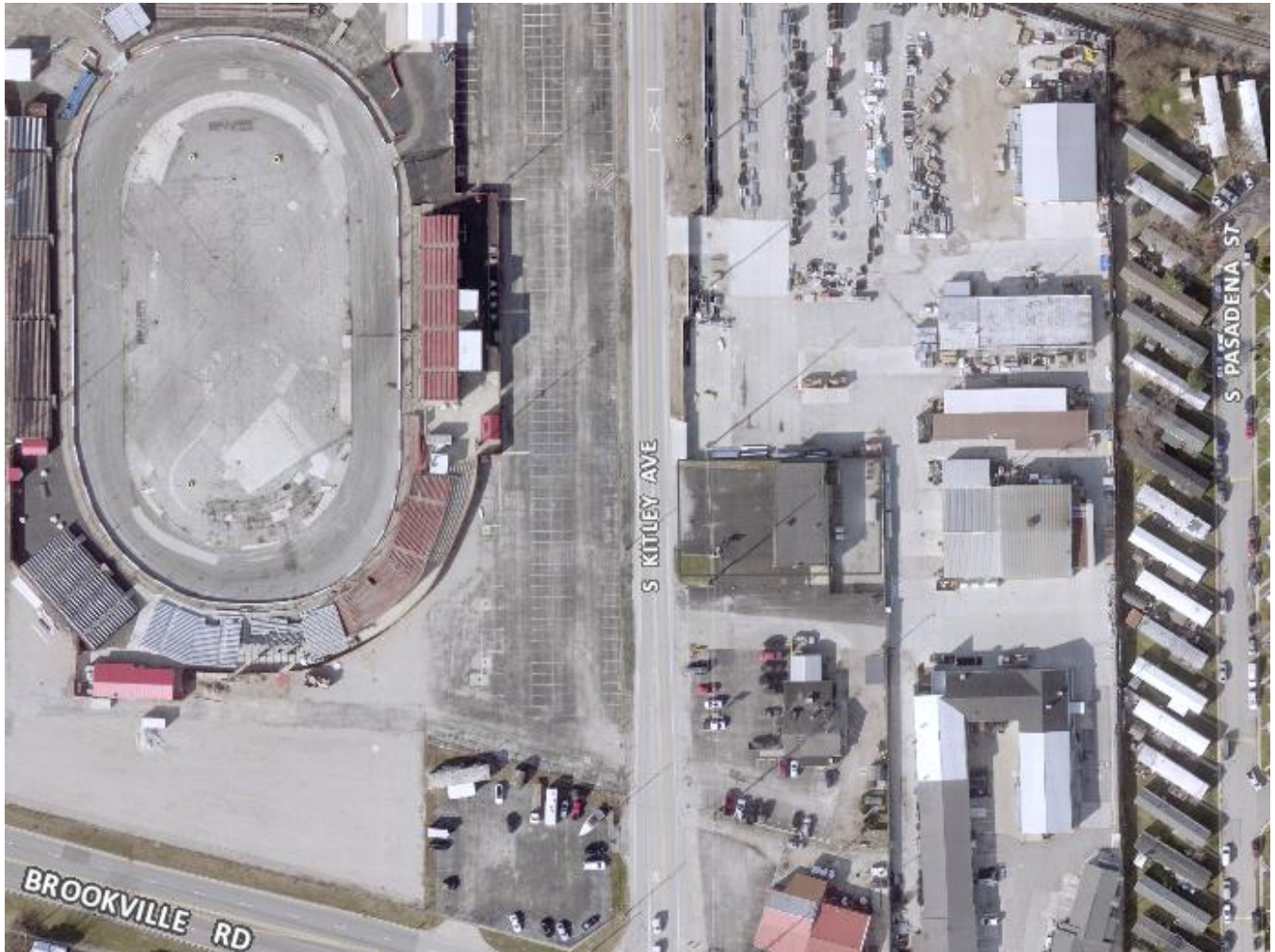
**85-V1-59; 6520 Brookville Road (southeast of site)**, Special request to allow outside storage in excess of fifty percent of total building space, use of the required front yard for outdoor display of products and the use of side transitional yard for storage and display and to extend the time in which to obtain an Improvement Location Permit, **approved**.

**84-Z-80; 6450 Brookville Road (southwest of site)**, Rezoning of 0.822 acres from the I-3-U District, to the C-3 District to provide for restaurant and tavern uses, **approved**.

**83-UV1-133; 802 S Kitley Avenue (west of site)**, Variance of use of the Industrial Zoning Ordinance to allow the construction of a building for restroom facilities accessory to an auto-race track, **approved**.




**EXHIBITS**

**2023DV3050 ; Aerial Map**



**2023DV3050 ; Site Plan**



-  Front Yard with Tall Fence
-  8' Ornamental Black Metal Fence with 24'-wide Cantilever Gate
-  8' Decorative Masonry Fence



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community





**2023DV3050 ; Findings of Fact**

**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:**

The fence was installed at its current height to protect the safety of those from the surrounding area as well to protect the substantial business investment of the Petitioner. The Petitioner operates a Monday - Friday business that is open during normal business hours. However, the surrounding sites include a bar (to the south) that is open until 3:00 AM each day and the Indianapolis Speedrome (to the west) that has eclectic, but often after hours, events drawing large numbers of people to the area. During these times, Petitioner's site, which stores its commercial vehicles and a large supply of valuable and dangerous (i.e., sharp) fencing materials, is vulnerable. Further, if someone were to gain access, especially with reduced mental faculties due to alcohol consumption, the potential to injure themselves is great.

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**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:**

The Petitioner owns a number of parcels in the area which they have taken pains to secure to preserve the safety of their property and the general public. The business to the west, the Indianapolis Speedrome, is an entertainment complex with inconsistent hours of visiting patrons and patrons that may be new to the area. The fence is of high quality and looks aesthetically pleasing and complements the surrounding area. Clearly the use or value of adjacent properties will not be adversely affected.

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

The fence is of similar height and quality as the other fences along the business and in the area. This specific parcel is one of many that the Petitioner owns that completes an entire business footprint that encompasses a majority of the block. Requiring the fence to be lowered to less than its current height would create inconsistencies and detriment to the business. Further, IMPD reports that from June 6, 2023, to November 20, 2023, there were 167 incident reports made within a 1-mile radius of the site. If the Petitioner's fence is lower, the site could become a magnet for the existing nearby activity, and attract the problematic activity to the site. Additionally, strict compliance with the ordinance would substantially decrease protection of the commercial materials within the Petitioner's property. Finally, it would be cost prohibitive to remove the fence, as it is valued at more than \$42,000.

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**2023DV3050 ; Pictures**



Photo 1: View of the Subject Site (from West)



Photo 2: View of the Subject Site (from South)



**2023DV3050 ; Pictures (continued)**



Photo 3: Fence from South

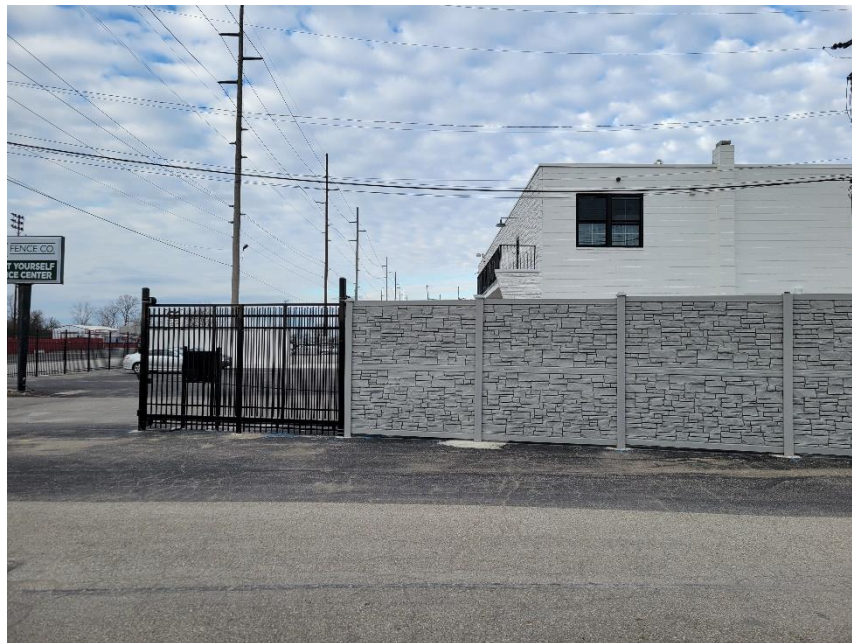


Photo 4: Fence from South showing Front Building Line

**2023DV3050 ; Pictures (continued)**



Photo 5: Adjacent Property to North



Photo 6: Adjacent Property to South