



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

June 13, 2024

Case Number: 2024-MOD-004

Property Address: 5514, 5532, and 5550 Victory Drive (approximate addresses)

Location: Franklin Township, Council District #24

Petitioner: Patch Development LLC, by Brian J Tuohy

Current Zoning: C-S

Request:

Modification of Commitments related to 2000-ZON-090 to terminate Commitment #6, which related to fence installation on Lots 385 through 393 of the Far Hill Downs Subdivision, terminate Commitment #7, which required the developer to pay \$600.00 for landscape allowance to each of the lot owners of Lots 385 through 393 of the Far Hill Downs Subdivision, terminate Commitment #8, which required building materials, color scheme and general appearance of the building to be substantially similar to buildings west of the site, terminate Commitment #15, which required water main extension and sanitary sewer connection, and to modify Commitment 4 (D) to provide that no docks and drive in doors will be located on the front of the building facing south, to modify Commitment #5 to delete and replace with acceleration / deceleration tapers shall be provided at the entrance to the site on Victory Drive, and modify Commitment #9 to provide that the maximum building height above the final grade shall be limited to thirty-six (36) feet.

Current Land Use: Undeveloped

Staff Recommendations: Approval with commitments.

Staff Reviewer: Marleny Iraheta, Senior Planner

PETITION HISTORY

This petition was continued from the May 23, 2024 hearing to the June 13, 2024 hearing at the request of the petitioner.

STAFF RECOMMENDATION

Staff **recommends approval** of the request subject to the following commitments being reduced to writing on the Commission's Exhibit "B" 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. A 25-foot half right-of-way shall be dedicated along the frontage of Victory Road, as per the request of the Department of Public Works (DPW), Engineering Division. Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to acceptance of all grants of right-of-way by the DPW. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).
3. The petitioner shall work with DPW to determine a turnaround point on site along the street frontage so that trucks or vehicles can turn around in the event the entrance drive is missed. A final site plan shall be submitted for Administrative Approval showing the turnaround point approved by the Program Manager – Multi-Modal for the Department of Public Works – Engineering.

PETITION OVERVIEW

LAND USE

The subject site is comprised of three undeveloped heavily wooded commercial lots that include parcels 3002965, 3003809, and 3003335.

It is surrounded by single-family dwellings to the east, zoned D-A, single-family dwellings south, zoned D-3, heating contractor business and undeveloped land west, zoned C-S, and industrial property north across I-465, zoned I-2 and I-3.

MODIFICATION

The request would modify commitments related to 2000-ZON-090 as follows:

1. Terminate Commitment #6, which related to fence installation on Lots 385 through 393 of the Far Hill Downs Subdivision,
2. Terminate Commitment #7, which required the developer to pay \$600.00 for landscape allowance to each of the lot owners of Lots 385 through 393 of the Far Hill Downs Subdivision,
3. Terminate Commitment #8, which required building materials, color scheme and general appearance of the building to be substantially similar to buildings west of the site,
4. Terminate Commitment #15, which required water main extension and sanitary sewer connection,
5. Modify Commitment 4 (D) to provide that no docks and drive in doors will be located on the front of the building facing south to,
6. Modify Commitment #5 to delete and replace with acceleration / deceleration tapers shall be provided at the entrance to the site on Victory Drive, and
7. Modify Commitment #9 to provide that the maximum height of the building be limited to 36 feet and the site shall be improved with only one building.

DEPARTMENT OF PUBLIC WORKS

The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 25-foot half right-of-way along Victory Drive. This dedication would also be consistent with the Marion County Thoroughfare Plan.



OVERLAYS

The site consists of an environmentally sensitive overlay, specifically the Forest Woodlands Alliance.

The Environmentally Sensitive Areas (ES) Overlay is intended for areas containing high quality woodlands, wetlands, or other natural resources that should be protected. The purpose of this overlay is to prevent or mitigate potential damage to these resources caused by development. This overlay is also appropriate for areas that present an opportunity to create a new environmental asset. This overlay is not intended for the preservation of open space.

TREE PRESERVATION / HERITAGE TREE CONSERVATION

There are significant amounts of natural vegetation and trees located throughout the entirety of the 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 Staff Exhibit 1 for Table 744-503-3: Replacement Trees.



Staff Analysis

Staff will be recommending approval of the request subject to a commitment for tree preservation and mitigation of any heritage trees to be removed since the site is heavily wooded. Administrative Approval would be required for the tree preservation plan to ensure a significant portion of the dense wooded area remains so the existing ecosystem can continue to thrive.

The Department of Public Works will be requesting right-of-way dedication and a way for vehicles to turn around on site since the road ends further east and trucks and vehicles that miss the entrance drive to the subject site would not have a way to turn around. A final site plan shall be submitted for Administrative Approval showing the turnaround point approved by the Program Manager – Multi-Modal for the Department of Public Works – Engineering.

The commitments to be modified and/or terminated were not imposed by staff, therefore staff did not find there would be issues with the changes proposed since the proposed development would still need to be submitted for Administrative Approval to ensure that all other remaining commitments would be met in addition to meeting the development standards of the Ordinance.

GENERAL INFORMATION

Existing Zoning	C-S	
Existing Land Use	Undeveloped	
Comprehensive Plan	Office Commercial	
Surrounding Context	<u>Zoning</u>	<u>Land Use</u>
	North:	I-2 / I-3 Industrial
	South:	D-3 Residential (Single-family dwellings)
	East:	D-A Residential (Single-family dwellings)
	West:	C-S Commercial / Undeveloped
Thoroughfare Plan		
Victory Drive	Local Street	46 to 47-foot existing right-of-way range with 50-foot proposed right-of-way.
	I-465 Freeway	202-foot existing right-of-way with no proposed right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	Yes	
Wellfield Protection Area	No	
Site Plan	April 19, 2024.	
Site Plan (Amended)	May 9, 2024.	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	



Findings of Fact	N/A
Findings of Fact (Amended)	N/A
C-S/D-P Statement	N/A

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book (2019).

Pattern Book / Land Use Plan

- The Comprehensive Plan recommends office commercial development for this site.
- The Office Commercial typology provides for single and multi-tenant office buildings. It is often a buffer between higher intensity land uses and lower intensity land uses. Office commercial development can range from a small freestanding office to a major employment center. This typology is intended to facilitate establishments such as medical and dental facilities, education services, insurance, real estate, financial institutions, design firms, legal services, and hair and body care salons.

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

2000-ZON-090; 5550 Victory Drive (subject site), Rezoning of 2.5 acres from D-A to C-3, **approved**.

99-Z-93; 5550 Victory Drive (subject site), Rezone 2.5 acres from the D-A to C-3, **denied**.

Zoning History – Vicinity

2022-ZON-035; 5457 Elmwood Avenue (northwest of site), Rezoning of 4.09 acres from the I-2 district to the I-3 district, **denied**.

2019-ZON-074; 4741 South Emerson Avenue (southwest of site), Rezoning of 39.3 acres from the C-S district to the I-2 district to provide for a distribution and delivery facility, **approved**.

2008-ZON-068; 5425 Victory Drive (southwest of site), Rezoning of 5.27 acres, from the C-S District to the C-S classification to provide for all C-1 uses and a veterinary clinic, **approved**.

2006-ZON-031; 5425 Victory Drive (southwest of site), Rezoning of 5.27 acres from C-S to C-S to provide for office uses and a veterinary clinic, **approved**.

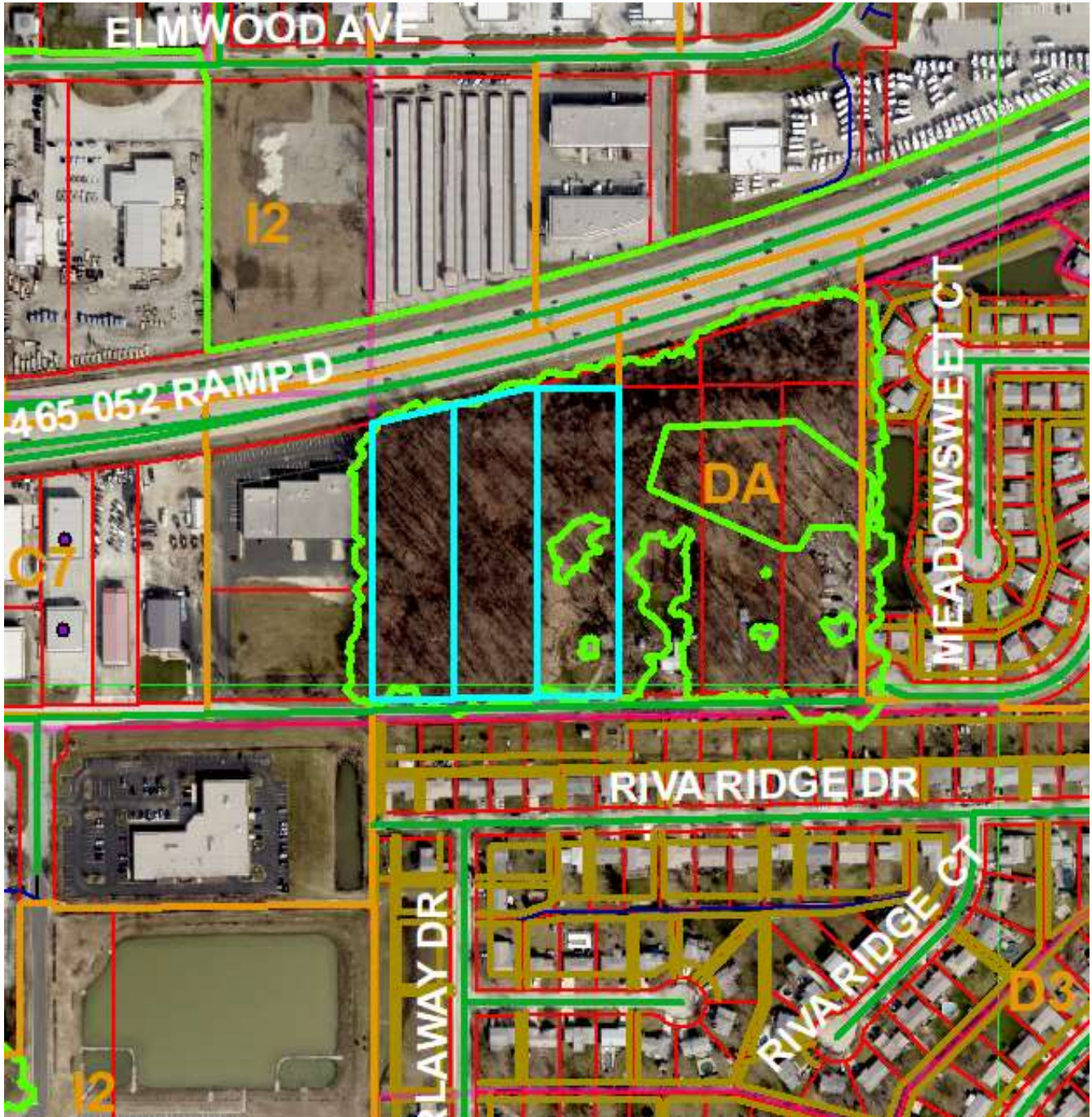
90-Z-178; 5450 Victory Drive (west of site), Rezoning of 4.33 acres, being in the D-4 District, to the C-S classification to provide for office uses, as well as uses permitted in the C-4, I-1-S, and I-2-S Districts, **approved**.

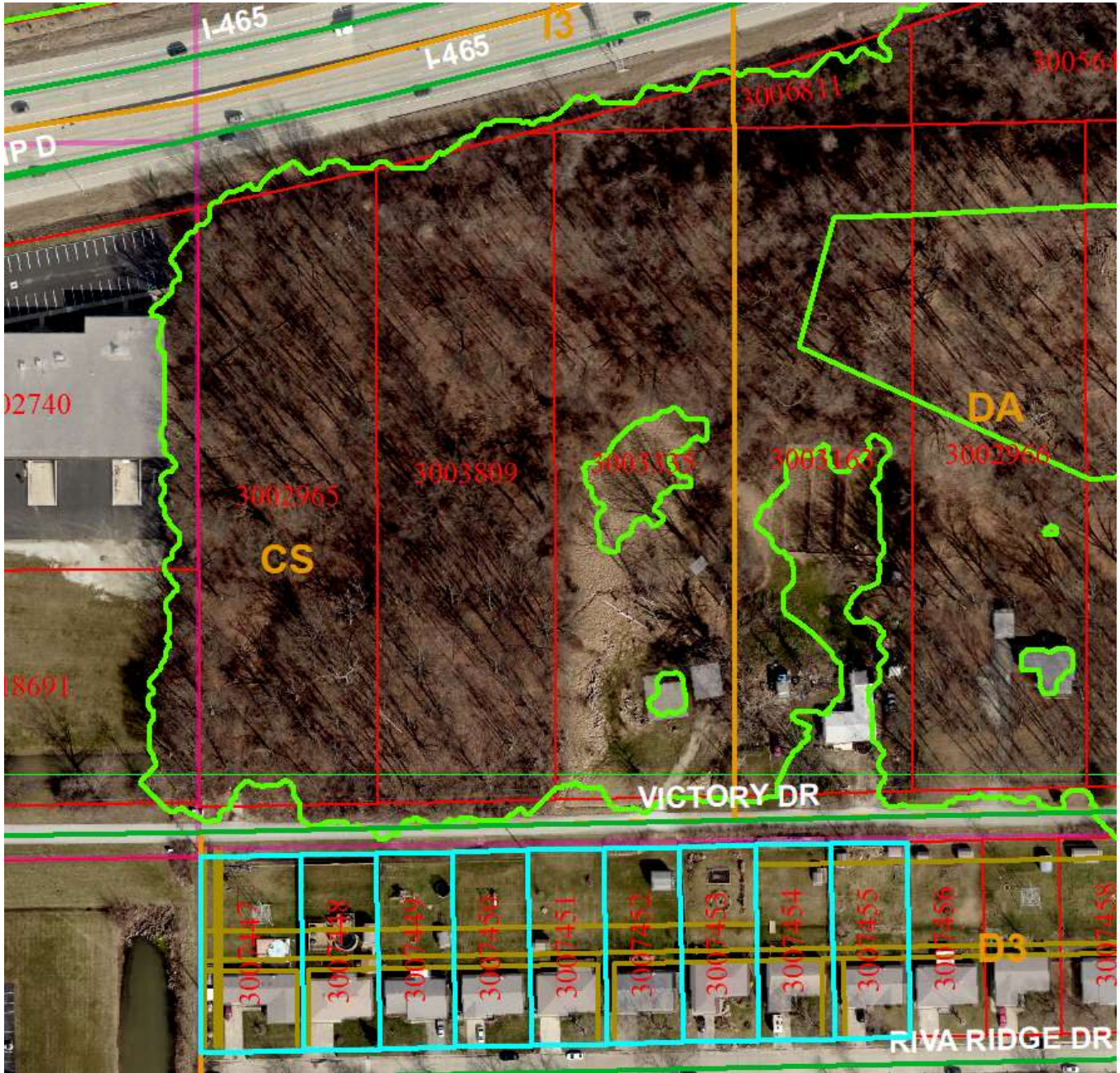
86-Z-177; 5422 – 5440 Victory Drive (west of site), Rezoning of 2.0 acres, being in the D-4 District, to the C-7 classification to provide for the retail sales and services of recreational vehicles, **approved**.

85-Z-17; 5457 Elmwood Avenue (northwest of site), Rezoning of 4.09 acres, being in the D-3 district, to the I-2-S classification, to provide for development for permitted uses, **approved**

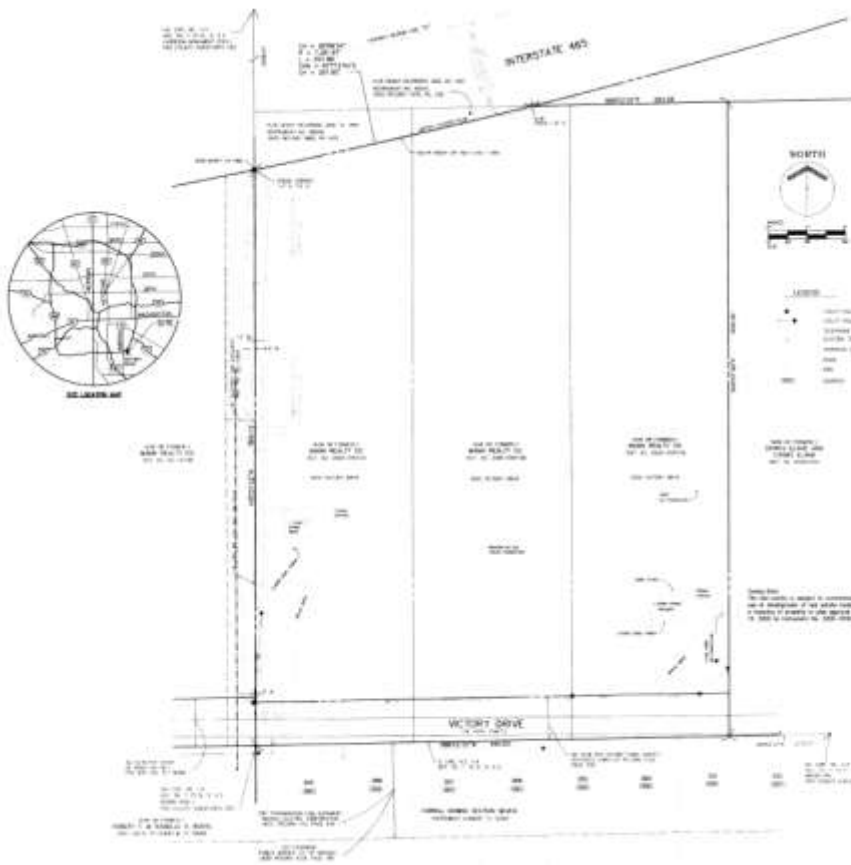
80-Z-183; 5505 Elmwood Avenue (north of site), Rezoning of 3.6 acres, being in the A-2 district, to the I-2-S classification, to provide for the construction of self-service warehouse, **approved**.

EXHIBITS





Lots 385 through 393 of the Far Hill Downs Subdivision,



ALTA/ACSM LAND TITLE SURVEY

VICTORY PARK BUSINESS CENTER PHASE TWO

DEPARTMENT OF METROPOLITAN DEVELOPMENT

1 of 1

DATE: 08/13/2018

TIME: 10:15 AM

PROJECT: VICTORY PARK BUSINESS CENTER PHASE TWO

LOCATION: 3800 WESTBY DRIVE, INDIANAPOLIS, INDIANA

MPA

ALTA/ACSM LAND TITLE SURVEY

VICTORY PARK BUSINESS CENTER PHASE TWO

DEPARTMENT OF METROPOLITAN DEVELOPMENT

1 of 1

DATE: 08/13/2018

TIME: 10:15 AM

PROJECT: VICTORY PARK BUSINESS CENTER PHASE TWO

LOCATION: 3800 WESTBY DRIVE, INDIANAPOLIS, INDIANA





Amended Site Plan

Amended
Proposal Description
5514, 5532 and 5550 Victory Drive (the “Site”)

The approximately 7.291 acre Site was part of approximately 7.7 acres rezoned to C-S in 2000, under Petition No. 2000-ZON-090 (the “2000 Rezoning”). Commitments were recorded in connection with the 2000 Rezoning as Instrument No. 2000-0181950 (the “2000 Commitments”).

Petitioner proposes to develop and improve the Site as approximately depicted on the conceptual site exhibit filed herewith. In connection with such development, Petitioner respectfully requests to terminate Commitment Numbers 6, 7, 8 and 15 of the 2000 Commitments. Additionally, Petitioner respectfully requests the 2000 Commitments be modified as follows:

- Commitment No. 4 (D) shall be modified to read as follows:

“(D) That no docks and drive in doors will be located on the front of the building facing south.”

- Commitment No. 5 shall be deleted in its entirety and replaced with the following language:

“5. Acceleration/deceleration tapers shall be provided at the entrance to the site on Victory Drive.”

- Commitment No. 9 shall be modified to read as follows:

“9. The maximum building height above the final grade shall be limited to thirty-six (36) feet.”

**AMENDED PROPOSED
STATEMENT OF MODIFICATION OR TERMINATION
OF COVENANTS OR COMMITMENTS**

**COVENANTS OR COMMITMENTS MODIFYING OR TERMINATING EXISTING COVENANTS OR
COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN
CONNECTION WITH AN APPROVAL PETITION, REZONING OF PROPERTY, A VARIANCE PETITION
OR SPECIAL EXCEPTION PETITION**

In accordance with I.C. 36-7-4-918.8 and I.C. 36-7-4-1015, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of covenants or commitments concerning the use and development of that parcel of real estate:

Legal Description: *See attached Exhibit A.*

Statement of MODIFICATION OR TERMINATION of Covenants or Commitments:

1. Commitment Numbers 6, 7, 8 and 15 of the Commitments recorded as Instrument No. 2000-0181950 and made in connection with Petition No. 2000-ZON-090 (the "2000 Commitments") shall be terminated.
2. Commitment No. 4 (D) of the 2000 Commitments shall be modified to state as follows:

“(D) That no docks or drive in doors will be located on the front of the building facing south.”
3. Commitment No. 5 of the 2000 Commitments shall be deleted in its entirety and replaced with the following:

“5. Acceleration/deceleration tapers shall be provided at the entrance to the site on Victory Drive.”
4. Commitment No. 9 of the 2000 Commitments shall be modified to state as follows:

“9. The maximum building height above the final grade shall be limited to thirty-six (36) feet.”



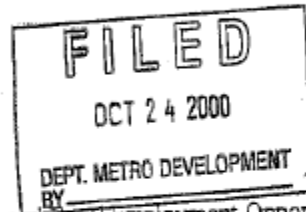
2000-ZON-090 COMMITMENTS

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: (insert here or attach)
See Legal Description attached hereto as Attachment "B" and incorporated herein by this reference.



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 Commitments attached hereto as Attachment "C" and incorporated herein by this reference.
3. n/a
4. n/a
5. n/a

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; 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.

Attachment "C"
ZONING COMMITMENTS
 2000-ZON-090
 5546 Victory Drive (Approx. Address)

1. That the approved uses for the Real Estate (or limited portions thereof as hereinafter set forth) shall include those uses in the C-1 and C-3 Zoning Districts of the Commercial Zoning Ordinance, and the I-1-S, I-2-S, and I-3-S Zoning Districts of the Industrial Zoning Ordinance, with the exception of the following prohibited uses:
 - (A) C-1 uses:
 1. Blood Donor Station
 2. Convalescent or Nursing Home
 3. Intermediate Care Facility
 4. Nursing Care (Skilled) Facility
 - (B) C-3 uses:
 1. Automobile Oil Change or Lubrication Shop
 2. Check Cashing or Validation Service
 3. Drinking Place
 4. Eating Place
 5. Emergency Shelter
 6. Gasoline Service Station
 7. Outdoor Advertising Signs
 8. Tattoo Parlor
 9. Bait & Tackle Shop
 10. Department Store
 11. Liquor Store(Package)
 12. Pawn Shop
 13. Pet Obedience School
 14. Temporary Seasonal Retail Sales Use (as Primary use)
 - (C) I-1-S uses:
 1. Heliports, Landing Pads and Stations for Helicopters (Helistop)
 2. Outdoor Advertising Signs
 3. Railroad or Other Mass Transportation Rights of Way and Trackage.
 - (D) I-2-S uses:
 1. Antennae or Support Structures For: Private or Commercial Mobile Radio Communications, Broadcast Radio or Television; and Associated Equipment, Buildings, Broadcasting Studios, or Radio or Television Business Offices, if such structures are located within 250 feet of the North R/O/W line of Victory Drive
 2. Bottling of Alcoholic or Non-Alcoholic Beverages
 3. Food Products(except catering services)
 4. Manufacture, Assembly or Repair of the following:
 - (a) Biological Products(not to include high-tech medical products facilities)
 - (b) Bottled Gas (equipment/storage)

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- (E) I-3-S uses:
1. Any I-2-S uses which are prohibited hereinabove,
 2. Electrical Transmission and Distribution
 3. Granaries, Grain Processing, Milling
 4. Manufacture Assembly or Repair of the following:
 - (a) Boats
 - (b) Colors, Dyes, Lacquers, Paints, Varnishes, and other Coating
 - (c) Construction Equipment and Machinery (not to include small tools or parts which are not otherwise prohibited)
 - (d) Malt Products, Brewing and Distillation of Liquor and Spirits
 - (e) Natural Gas Transmission and Distribution
 - (f) Oleomargarine
 - (g) Paper
 - (h) Screw Machine Products, Bolts, Nuts, Rivets and Washers
 - (i) Starch
 - (j) Tobacco Products
 5. Motor Truck Terminals
 6. Power Plant (Electric, Steam, Thermal)
 7. Propane Gas Storage (as Primary Use)
 8. Recycling Facility
 9. Rolling or Extruding of Metal
 10. Stamping and Fabricating Metal Shops Using Press, Brakes and Rolls
 11. Storage of Heavy equipment(as Primary Use)
 12. Transmission Reconditioning
 13. Vehicle Storage (as Primary Use)
 14. Any I-4 use which would otherwise be allowed as an accessory use pursuant to Section 2.01(C)23.
- (2) All operations, servicing or processing (except off street loading), shall be conducted within completely enclosed buildings.
- (3) All storage of materials or equipment shall be within completely enclosed buildings.
- (4) The final Site Plan will be subject to the Administrator's Approval. The Petitioner shall not be specifically bound to the preliminary or conceptual Site Plan. However, the Administrator's review shall insure compliance with the following specifications.
- (A) That the total square footage of the buildings on the site shall not exceed 89,500 square feet.
 - (B) That the building(s) constructed along the Victory Drive frontage shall be constructed with the front of said buildings primarily facing Victory Drive; and shall also be constructed substantially parallel with Victory Drive.
 - (C) That the entrance into the project from Victory Drive shall be entirely contained within the West fifty (50) feet of the project frontage on Victory Drive.

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- (D) That any docks will be located only on the back of the buildings, or on the side facing the interior court of the project, as applicable.
 - (E) That the minimum building setback line from the North edge of the existing 50 foot total Right-of-Way of Victory Drive shall be 110 feet.
 - (F) There shall be no side yard requirement, transitional yard requirement, side building setback line, or similar requirement along the entire West border of the Real Estate, which would prevent the proposed development from directly connecting to the existing development to the West.
5. That as a part of the development of the site, Victory Drive will be widened at the developer's expense along the entire South line of the site, to match the currently existing pavement width of Victory Drive at the West line of the site. This widening will be done to DCAM standards. Additional Right of Way as necessary to match the existing Right of Way at the West edge of the Real Estate will be dedicated to DCAM upon request. The South edge of the widened Victory Drive shall not be further South than the South edge of the existing Victory Drive prior to widening, unless DCAM requires otherwise.
6. Prior to commencing any clearing and/or excavation on the site, and subject to each Lot owner granting access to their Lot as required, the developer will construct at its expense, a "dog eared" stockade style or similar continuous solid "board on board" wooden fence, located approximately 1 to 12 inches (unless the developer and the Lot Owner agree otherwise) South of the entire North property lines of each of Lots 385 through 393 of the Far Hill Downs Subdivision; and continuing South from the Northwest corner of Lot 385 along the West line of Lot 385, to a point even with the Northwest corner of the home located on Lot 385. The fence shall be six (6) feet in height; and shall be constructed of #2 grade treated lumber or better, with the posts having nominal dimensions of no less than 4" X 4", the stringers having nominal dimensions of no less than 2" X 4", and the vertical planks having a nominal thickness of no less than 1". The posts shall be anchored into the ground with concrete at a depth of no less than 2 ft.; and except as required for the one required 16' wide gate on Lot 385, shall be installed approximately 8 feet apart along the entire distance of the fence. The exposed stringers and posts shall be on the side of the fence facing Victory Drive. The fence shall contain an approximately sixteen (16) ft. wide gate/access point along the rear of Lot 385 as required by PSI in order to provide PSI adequate access to their existing electrical improvements South of the proposed fence. In addition, an approximately 8 ft. wide matching wood gate shall be constructed in the fence, upon each of the remaining eight (8) lots, unless on or before construction commences, the developer is notified in writing by any Lot Owner(s) (other than Lot 385) that they do not want such a gate. The portion of the fence which is located on each lot shall, subject to the terms of the PSI easement, become the property of each respective Lot Owner upon completion of the entire fence. The developer shall warrant the material and workmanship of the fence for one year from the date of completion of the fence. In addition, the developer shall warrant the fence from damage resulting from construction activity and/or construction traffic reasonably related to the development of the Real Estate, for one year from the date of completion of the fence. With the exception of these warranties, all responsibility for maintaining, repairing, removing, or replacing said fence shall be the Lot Owner(s), from the date of completion of the fence.

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7. No later than thirty (30) days after the fence described in Commitment No. 6 above is completed, the developer shall pay a landscape allowance in the amount of Six Hundred and No/100 Dollars (\$600.00) to the Lot Owner(s) of each of the nine lots identified in Commitment No. 6 above.
8. The building materials, color scheme, and general appearance of the buildings constructed in the project will be substantially similar to the building(s) constructed on the petitioner's C-S Zoned Parcel immediately to the West of the site.
9. The maximum building height above the final grade, shall be limited to thirty (30) feet. However, the first row of buildings North of Victory Drive shall have a maximum building height above the final grade, of twenty-four (24) feet.
10. On site surface water shall be collected and routed to the West along Victory Drive, and shall not be outletted into the storm drainage system of Far Hill Downs Subdivision, or the rear yards of the homes on the South side of Victory Drive.
11. A copy of the final Site Plan, Final Drainage Plan, and Landscaping Plan shall be provided as a courtesy to the Land Use Committee of the Franklin Township Civic League, prior to or at the same time each is submitted for the approval of the Administrator and/or is submitted for permits, whichever is earlier; and the developer shall notify said Committee of the actual date work is to commence on the development of the site, once such date is determined.
12. Garbage trucks shall only empty the dumpster(s) between the hours of 6:00 A.M. and 10:00 P.M.
13. All exterior lighting shall be designed and installed to direct light downward; with no more than 1 foot candle of light generated by such lighting measurable at the property line.
14. Those businesses located in the first row of buildings North of Victory Drive shall not be open to serve the public between the hours of 11:00 P.M. and 7:00 A.M.
15. The IWC water main will be extended by the developer along the entire South line of the Real Estate; and all buildings on the Real Estate will be serviced by Sanitary Sewers as approved by DCAM. The developer will cooperate reasonably with the owner of the residence immediately East of the Real Estate, if, prior to the completion of the construction plans for the development, such owner requests a temporary easement for so long as said residence exists, for purposes of attaching a lateral to each such utility to service said residence. However, all expenses related to installing and/or removing such lateral, the related hook-up itself, and all related fees, etc, shall be the responsibility of said neighboring property owner to the East.
16. Although unlikely given the currently anticipated development plan, if the actual development of the site results in areas other than the East transitional yard area remaining substantially undisturbed, the developer will make a reasonable effort to incorporate the existing trees within such areas into the project's landscaping. The 20 foot wide transitional yard along the East line of the site will be preserved in compliance with and without seeking a variance of, the tree preservation provisions of Sections 2.13(G)(1)(k) and (l) of the Commercial Zoning Ordinance. In addition, the developer acknowledges the significance of a certain large Oak

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- tree within such transitional yard, near or possibly even on the East property line; and agrees to exhaust all reasonable alternatives to avoid the removal of this tree for reasons other than disease or natural causes.
17. The development of the site shall not result in the final grade of the site, as measured at the front building setback line (i.e. 110 feet North of the existing north R/O/W line of Victory Drive) being raised more than 4 ft. above the pre-construction grade.
 18. No lighted business signs attached to the exterior fronts of the first row of building(s) located North of Victory Drive shall extend more than 14 ft. above the floor of the building.
 19. No lighted business signs attached to the exterior fronts of the first row of building(s) located North of Victory Drive shall be illuminated with neon.
 20. The utilization of exterior lighted "band" style continuous signage (such as installed around the top of many new gasoline service stations) is not permitted.



Photo of the western property boundary of 5514 Victory Drive.



5514 Victory Drive.



5532 Victory Drive.



5550 Victory Drive



Single-family dwelling east of the site at 5516 Victory Drive.



Photo of single-family dwellings to the south.



Photo of Victory Drive looking west.



Photo of existing trees and shrubs along the south of Victory Drive.



Photo of the subject site looking northwest along Victory Drive.



Photo of single-family dwellings south of the subject site.



Photo of single-family dwellings south of the subject site.



Photo of a single-family dwelling south of the subject site.



Photo of the commercial business west of the site.



Photo of Victory Drive looking east toward the site to the left.