

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2023-MOD-013
Address: 3951 East Brunswick Avenue (*Approximate Address*)
Location: Perry Township, Council District #24
Zoning: D-4
Petitioner: Gary Hinks
Request: Modification of the Commitments related to petition 90-Z-115 to modify Commitment 6.d, to allow for an above ground pool (previous commitments prohibited above ground pools).

RECOMMENDATIONS

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

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

- ◇ This 0.19-acre site, zoned D-4, is developed with a single-family dwelling. It is surrounded to the south, east and west by a single-family dwelling and a single-family dwelling to the north, across East Brunswick Avenue, all zoned. D-4.

MODIFICATION

- ◇ This request would modify commitments related to petition 90-Z-115 to allow for an above-ground pool when the commitments prohibited above-ground pools.
- ◇ Petitions 90-Z-115 and 92-P-87 rezoned this site from the D-A District to the D-4 classification and platted the area for single-family dwellings
- ◇ The Comprehensive Plan recommends 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."

(Continued)

STAFF REPORT 2023-MOD-013 (Continued)

- ◇ The Pattern Book lays out a land use classification system that guides the orderly development of the county, protects the character of neighborhoods and serves as a policy guide for development or redevelopment of a site.
- ◇ The following elements of the Pattern Book apply to this site:

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.

Conditions for All Housing

- A mix of housing types is encouraged.
- Should be within a one-mile distance (using streets, sidewalks, and/or off-street paths) of a school, playground, library, public greenway, or similar publicly-accessible recreational or cultural amenity that is available at no cost to the user.
- Primary structures should be no more than one and a half times the height of other adjacent primary structures.
- Should be oriented towards the street with a pedestrian connection from the front door(s) to the sidewalk. Driveways/parking areas do not qualify as a pedestrian connection.

Detached Housing

- The house should extend beyond the front of the garage. Garages should be loaded from an alley or side street when possible and should be detached if located on the side of the house.
- Secondary units are encouraged.
- Lots should be no larger than one and a half times the adjacent lots.

Planning Analysis

- ◇ This request would modify commitments for the Rezoning Petition 90-Z-115 (See Exhibit A, 6. (d)). The commitments prohibiting above-ground pools were originally the result of negotiation between the petitioner and remonstrators during the 1990 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.
- ◇ Documents associated with ILP20-01254 (May 26, 2020) indicate an application and site plan were submitted but the file does not include issuance of an Improvement Location Permit. It was noted that above-ground pools were not permitted but a site plan for a compliant in-ground pool could be submitted for review.

(Continued)

STAFF REPORT 2023-MOD-013 (Continued)

- ◇ Upon investigation (INV23-05925) it was determined that construction of the pool occurred without the proper permits or development standards. Subsequently, on April 21, 2023, VIO23-002762 was issued that identified four violations of the Zoning Ordinance. This modification petition was filed on June 22, 2023.

GENERAL INFORMATION

EXISTING ZONING AND LAND USE

D-4 Single-family dwelling

SURROUNDING ZONING AND LAND USE

North -	D-4	Single-family dwelling
South -	D-4	Single-family dwelling
East -	D-4	Single-family dwelling
West -	D-4	Undeveloped land

COMPREHENSIVE PLAN The Comprehensive Land Use Plan for Indianapolis and Marion County (2018) recommends suburban neighborhood typology.

Marion County Land Use Pattern Book (2019).

THOROUGHFARE PLAN This portion of East Brunswick Avenue is designated in the Marion County Thoroughfare Plan as a local street, with an existing and proposed 50-foot right-of-way.

CONTEXT AREA This site is located within the metro context area.

OVERLAY There is no overlay for this site.

SITE PLAN File-dated June 22, 2023

ZONING HISTORY

90-Z-115, 5850 South Gray Road, requested rezoning of 32.383 acres, being in the D-A District, to the D-4 classification to provide for single-family development, **approved**.

92-P-87; 5850 Gray Road, requested a subdivision plat to known as Maple Glen, Section II, dividing 7.19 acres into 26 lots, **approved**.

90-Z-116; 5705 South Gray Road (north of site), requested rezoning of 11.038 acres, being in the D-A District, to the D-3 classification to provide for single-family residential development by platting, **approved**.

90-Z-4; 5530 South Gray Road (north of site), requested rezoning of 34.97 acres, being in the A-2 District, to the D-3 classification to provide for single-family development by platting, **approved**.



3951 East Brunswick Avenue



00.004050095 0.019 0.0285 0.038 Miles

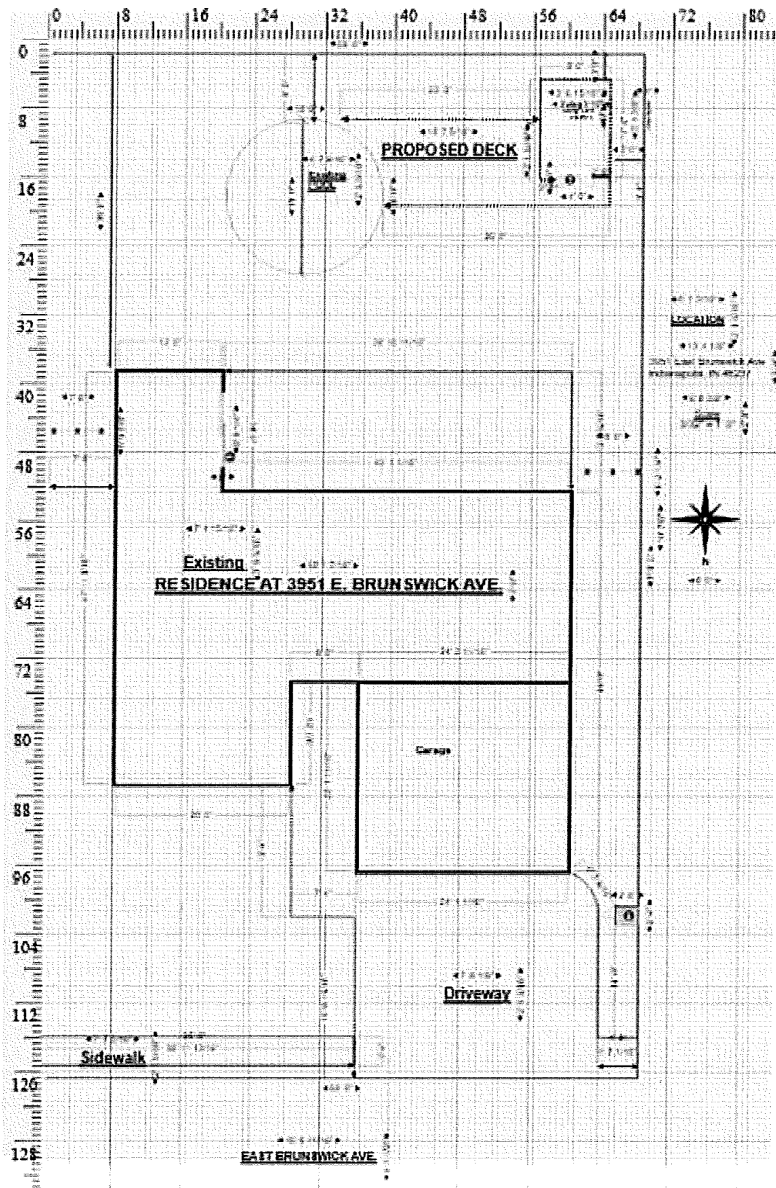


Exhibit A

40-2-115
116

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① * 300

NOTE: Article VI, Section 3(b) of the rules of the Metropolitan Development Commission requires use of this form in recording commitments made with respect to zoning and approval cases in accordance with I.C. 36-7-4-607. Resolution No. 85-R-69, 1985 of the Metropolitan Development Commission requires the owner to make Commitment #1.

30 AUG 1985

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. 36-7-4-607, 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:

A part of the West half of the Southwest quarter of Section 4 and a part of the East half of the Southeast quarter of Section 3, Township 14 North, Range 4 East of the Second Principal Meridian located in Perry Township, Marion County, Indiana, and more particularly described in Exhibits "A" and "B" attached hereto 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. The real estate described herein shall be developed for single family use in accordance with the preliminary and final plats as filed with and approved by the Plat Committee of the Indianapolis, Marion County Department of Metropolitan Development in Order No. 90-P-55 and subsequent plat applications for approval of the additional sections of the development. In no event shall the maximum number of lots developed upon the 43.876 acres described herein exceed the total lots as shown upon the preliminary plat filed in connection with the Section 1 Plat Application referenced above.
3. All residences constructed upon any lot developed within the property shall have a minimum of twelve hundred square feet (1,200) of living space, exclusive of garages, carports, and open porches. Residences constructed upon any lot which has its rear yard adjacent to the Gray Road right-of-way shall contain a minimum of fifteen hundred square feet (1,500) of living space, exclusive of garages, carports, and open porches.

*** CONTINUED ON ATTACHED PAGE -

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 persons 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.

METROPOLITAN DEVELOPMENT COMMISSION PETITIONER'S EXHIBIT

NO. 3
JUNE NO. 40-2-115-116 YCJ
DATE 7-26-90

CONTINUED - Exhibit "B" - Commitments

Petitioner: LaRosa Family Partnership, by Michael J. Kias

Docket Nos. 90-2-115 and 90-2-116

4. The living space of all residences constructed upon any lot within the property shall be constructed upon a crawl space or basement, or upon a combination thereof.
5. Petitioner shall provide landscaping along all rear yard property lines which are immediately adjacent to Cray Road, consistent with the aesthetics and appearance established by the entries to this development. The landscaping shall consist of evergreen plantings or grass mounds, or a combination thereof.
6. Covenants of the plat for all sections of the single family development on the property shall contain the following restrictions, among others, to-wit:
 - (a) No two-family residences shall be constructed upon any lot in the development;
 - (b) All garages shall be attached to the residence structure and all driveways shall be hardsurfaced;
 - (c) No satellite receivers shall be permitted on any lot in the development and all accessory structures must be approved by the Architectural Control Committee for the development;
 - (d) No above-ground swimming pools shall be permitted upon any lot in the development; and
 - (e) A Not-For-Profit Homeowners Association shall exist to own and maintain all common areas within the property.

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COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition # 90-Z-115 and 90-Z-116 by the City-County Council changing the zoning classification of the real estate from a D-4 zoning classification to a D-3 and D-4 zoning classification; or

~~(b) the adoption of rezoning petition # 90-Z-115 and 90-Z-116 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 D-3 and D-4 zoning classification or until such other time as may be specified herein.

These COMMITMENTS may be unforced 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);

The undersigned hereby authorizes the Division of Development 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 # 90-Z-115 and 90-Z-116.

IN WITNESS WHEREOF, owner has executed this instrument this 26th day of July, 19 90
Signature: Larona Family Partnership (Seal) Signature _____ (Seal)

Printed by: John W. [Signature] Printed _____
STATE OF INDIANA)
COUNTY OF MARION) SS:

Before me, a Notary Public in and for said County and State, personally appeared Larona Family Partnership, owner(s) 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 July, 1990.

Signature *Michael J. Kias*
Printed Michael J. Kias
County of Residence Johnson

My Commission expires:

7-14-91

This instrument was prepared by Michael J. Kias, Esq.
STEWART & IRWIN
Two Market Square Center
Suite #1100
251 East Ohio Street
Indianapolis, IN 46204
Phone: (317) 639-5454

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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.

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View looking east along East Brunswick Avenue



View looking west along East Brunswick Avenue



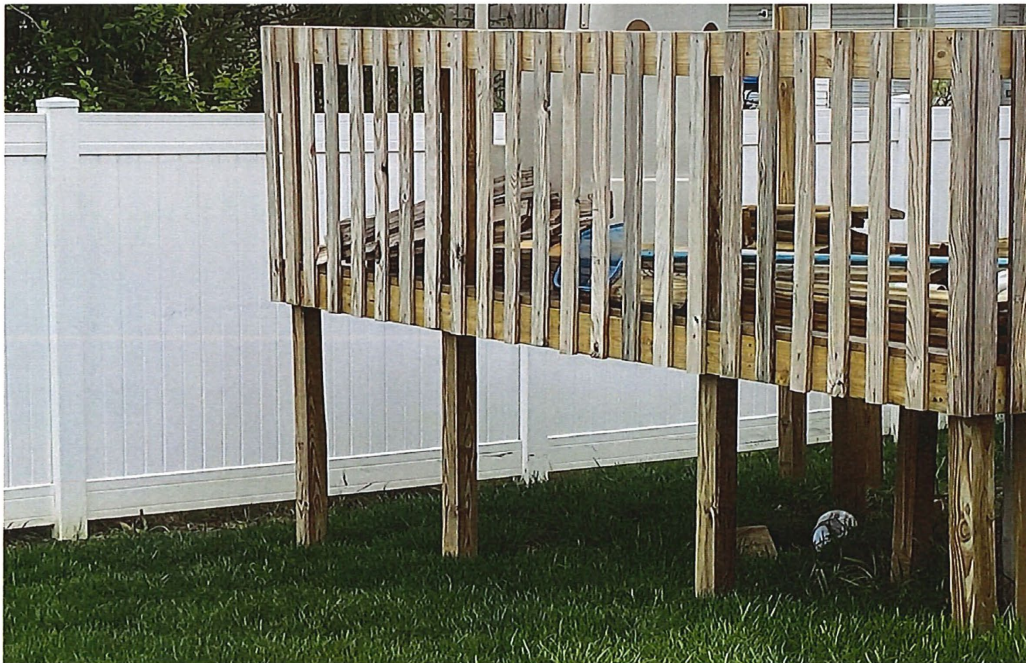
View of site looking southwest



View of site looking southeast

The following photos were taken during investigation of complaint

VIO23-002762, 3951 E BRUNSWICK AVE, 4/21/2023 @ 2:45 PM -- RH



VIO23-002762, 3951 E BRUNSWICK AVE, 4/21/2023 @ 2:45 PM -- RH

